

Sayed Abdul Alim, etc.,  
 v.  
 Sh. Mohd Saeed, etc.

petitioner to deposit the additional expenses but he has failed without reasonable cause to comply with the order of this Court. The petition must be dismissed with costs.

Bhandari J.

**REVISIONAL CRIMINAL**

*Before Bhandari and Soni JJ.*

**JITU MAL,—Petitioner,**

*versus*

**KASTURI LAL, Sub-Inspector, Police,—Respondent.**

1950

**Criminal Revision No. 187 of 1950**

**Dec. 5th**

*Police Act (V of 1861) Sections 23, 42—Criminal Procedure Code (Act V of 1898) Section 200—Communication against a Sub-Inspector of Police to Inspector-General of Police and Deputy Commissioner—Whether it can be regarded as a complaint under section 200 of the Code of Criminal Procedure made to them in their capacity as Magistrates or as a representation made to them in their capacity as Executive Officers. Report by Sub-Inspector to his superior officers containing defamatory statements—Whether under the provisions of section 23 of the Police Act and governed by section 42 of the said Act.*

On 24th March 1948 one Sarju lodged a formal complaint in the court of a magistrate in which he stated that he had been beaten by the police and kept in wrongful confinement for a period of three days. On 26th March he addressed a communication to the Inspector-General of Police, the Deputy Commissioner of Karnal and certain other persons complaining against the treatment that had been meted out to him. The Deputy Superintendent of Police forwarded this communication to the Station House Officer, Kaithal for report and on the 7th April the Station House Officer (Sub-Inspector Kasturi Lal) submitted a report which contained certain defamatory statements in regard to the character and antecedents of one Jitu Mal of Kaithal, the petitioner in the present case. On 11th February 1949, the petitioner filed a complaint under section 500 of the Penal Code, against Sub-Inspector Kasturi Lal and a question arose whether this complaint was barred by the provisions of section 42 of the Police Act, 1861 having been filed after the expiry of a period of three months from the date of the said report.

*Held*, that the complaint was barred by time as the communications addressed by Sarju to the Inspector-General of Police and the Deputy Commissioner of Kaithal could not be regarded as complaints made to them in their

capacity as Magistrates but as representations made to them in their capacity as Executive Officers and consequently that the report dated 7th April 1948, submitted by Sub-Inspector Kasturi Lal to the Deputy Superintendent of Police must be deemed to be submitted not under the provisions of the Code of Criminal Procedure but under the provisions of the Police Act.

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*Hori Ram Singh v. Emperor* (1), referred to.

*Petition under section 439 of Criminal Procedure Code for revision of the order of Shri Dalip Singh, Sessions Judge, Karnal, dated the 12th December, affirming that of Shri V. P. Gautama, Magistrate 1st Class, Kaithal, dated the 10th May 1949, dismissing the complaint.*

FAQIR CHAND MITAL, for the petitioner.

KRISHAN LAL KAPUR, for Kasturi Lal and HARBANS SINGH GUJRAL, for Advocate-General, for State.

The case in the first instance came up for hearing before Mr Justice Soni who made the following order, dated 30th August 1950, referring it to a Division Bench.

#### ORDER

SONI, J. This case involves rather an unusual point. The facts are that one Surju went on the 19th of March 1948, to Police Station Kaithal for making a report under section 395, Indian Penal Code. It is alleged that the Police refused to record the report on which a written report was given. Surju asked for a copy of the report to be given to him and he was asked to come the next day for the copy. When he went to the Police Station the next day, it is stated that he was beaten and wrongfully confined for three days. Regarding this incident a complaint was made on the 24th of March 1948, by Surju to the Sub-Divisional Magistrate at Kaithal. Two days later he sent copies of a document representing his grievances to six gentlemen, the Chief Minister, the Inspector-General of Police, the Deputy Inspector-General of Police, the Superintendent of Police, the Deputy

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Superintendent of Police and the Deputy Commissioner. Five copies have been exhibited. These five copies were carbon copies of each other and the substance of the representation contained in this document gives the same facts expressed very slightly differently from the facts given in the complaint which had been made two days earlier to the Sub-Divisional Magistrate at Kaithal. Prompt action seems to have been taken on this document by the Deputy Superintendent of Police as the copy to him bears the following endorsement, dated the 29th March :—

“ This man has also filed a complaint in Court. A copy may please be obtained from P. I and full report submitted.”

This document was sent to the Station House Officer, Kaithal. The complaint was against Kasturi Lal, Station House Officer, Mangat Ram, Assistant Sub-Inspector, Sohan Lal, Assistant Sub-Inspector and Narsingh Dass, Constable. In the complaint before the Sub-Divisional Magistrate he was asked to take action against them under sections 323 and 343, Indian Penal Code. The document which was addressed to the other gentlemen ended with these words :—

“ I hope you will kindly intervene, take necessary action and oblige.”

When this document was sent to the Station House Officer he made a report thereon and in that report, which is dated the 7th of April 1948, he made certain allegations against Jitu Mal Mahajan of Kaithal. On the 11th of February 1949, Jitu Mal Mahajan put in a complaint before Mr. Gautam, Magistrate, 1st Class, Kaithal, against Kasturi Lal, Sub-Inspector, for defamation under section 500, Indian Penal Code, in respect of the Sub-Inspector's report. The Magistrate without going into the merits of the case or enquiring into any question mentioned in the complaint dismissed the complaint on the 10th of May 1949. He held that the report of Kasturi Lal, Sub-Inspector, was covered by the Police Rules; and, therefore, any prosecution regarding that report should have been lodged within

three months of 7th April 1948, the date of the making of the report and as the complaint has been made on the 11th of February 1949, it was barred under section 42 of the Police Act, 1861, which laid down a limit of three months for such prosecution. From this order of the Magistrate a revision was taken to the Sessions Judge. The learned Sessions Judge dismissed the petition on the 12th of December 1949. A revision application was thereupon put in this Court on the 13th of March 1950.

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It has been urged by the learned counsel for the petitioner that the Magistrate and the Sessions Judge are wrong when they say that the report of the Sub-Inspector was a report which was departmental in nature made by Kasturi Lal in response to the order of the Deputy Superintendent, his superior officer. According to the argument this report was not a report which was covered by the Police Rules. Kasturi Lal when he was asked to explain his conduct by his superior officers was doing so as an accused person. It was argued that two of the officers to each of whom Surju had sent one of the five copies of his representation were Magistrates ex-officio and that what he was asking them was to take action and punish the Sub-Inspector criminally though he had not said so in so many words. It is true that under section 5 of the Police Act, the Inspector-General of Police has full powers of a Magistrate throughout the general Police district, but he exercises those powers subject to such limitations as may from time to time be imposed by Government. What those limitations are has not been brought out. It is also correct to say that the Deputy Commissioner is a Magistrate ex-officio, he being the District Magistrate. But what has to be seen is whether these gentlemen were approached to take action under the Criminal Procedure Code or whether they were asked to take action departmentally. From the facts that I have narrated above it seems to me that these gentlemen were asked to take action departmentally as before a copy of this representation was sent, Surju had moved the Sub-Divisional Magistrate, Kaithal, two days earlier on the 24th of March 1948, in the same manner in which Magistrates are

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moved to take action under the Code of Criminal Procedure and the Indian Penal Code, and his prayer before the Sub-Divisional Magistrate was that the accused be punished under sections 323|343 of the Indian Penal Code. And what Surju was doing when he was drawing the attention of the gentlemen to whom he sent his representation on the 26th of March 1948, was to ask them to have necessary action taken, apparently on the administrative side. So far as the criminal side was concerned Surju had asked the Sub-Divisional Magistrate to do the needful. It may be mentioned that this complaint was enquired into by the Sub-Divisional Magistrate and after a preliminary enquiry the Sub-Divisional Magistrate found no case against three of the accused persons but directed summonses to issue only to Kasturi Lal to answer a charge under section 323 of the Indian Penal Code. This he did on the 8th of July 1949. On the 20th of August 1949, this case appears to have been compromised and the compromise was sanctioned by the Sub-Divisional Magistrate that day.

It is submitted on behalf of the Sub-Inspector by his learned counsel that not only from the words of the representation which was made to the five gentlemen it appears that Surju's idea was that action be clear that the gentlemen whom he was appealing to also took the same view. If it had been a complaint under the Criminal Procedure Code and had been sent to a Magistrate the first thing that a Magistrate had got to do was to examine the complainant under section 200 of the Code of Criminal Procedure. This was never done. Even under section 202, if the complaint is to be sent to somebody else for enquiry it is essential that the complainant should be examined before this is done and reference in support of this was made to the proviso to section 202. It was also urged that had this been a complaint in the proper sense each of these five representations would have borne a stamp as did the complaint before the Sub-Divisional Magistrate. None of these five representations bears any stamp. It was further submitted that under section 23 of the Police Act, it is provided that it is the duty

of every Police Officer promptly to obey and execute all orders and warrants lawfully issued to him by competent authority and that when the Deputy Superintendent of Police on the 29th of March sent this representation on to Kasturi Lal, Station House Officer, Kaithal, the report that he was making was a report in compliance with the order which had been made by the Deputy Superintendent of Police in which he had asked a full report to be submitted to him. The report, therefore, that was submitted was a report in obedience to the orders of his superior lawfully given to the Sub-Inspector and was a report under the provisions of section 23 of the Police Act. For the State Mr. Bhagirath Lal adopted the argument of the learned counsel for the Sub-Inspector and also submitted that his was confidential report and was covered by the provisions of section 124 of the Evidence Act, and that there can be no prosecution for sending such a report. It was submitted that this was a report communicated by the Sub-Inspector of Police to his superior officer in official confidence. If it had been not confidentially made, it would have been restricted in scope, reserved in nature and guarded in language. There is much to be said for this view, but section 124 of the Evidence Act is a section which confers a privilege on the officer who received the report and he can claim privilege where he considers that public interest would suffer by disclosure. In the present case as the report has been made public it appears to me that this point cannot be urged at this stage.

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For the petitioner it was also argued that in so far as section 42 of the Police Act prescribed a period of three months for proceeding against the Sub-Inspector that part of the section dealing with the period of limitation had been repealed by the Limitation Act. IX of 1871. The Act of 1871, however, repealed so much of section 42 as relates to the limitation of suits. There is no repeal regarding prosecutions for which the period of three months is still operative. What therefore has to be decided in this case really is whether the report that the Sub-Inspector made was a report which was otherwise

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covered by section 42. If it was a report made by the Sub-Inspector in obedience to the order of his superior officer calling for a report then the report would be one which is made under section 23 of the Police Act, and, therefore, would be covered by section 42 of the Act. In this report the Sub-Inspector was explaining to his superior officer how Jitu Mal was interested in the complainant and what sort of a person Jitu Mal was. He referred to a case under sections 302|109|326, Indian Penal Code, against 18 accused which had been challaned and how the complaint under section 395, Indian Penal Code, which Surju was making was a put-up affair. In the course of this report Jitu Mal's conduct was commented upon by the Sub-Inspector. In my opinion, this was an official communication made by Kasturi Lal as Sub-Inspector of Police and not as an accused to the Deputy Superintendent of Police. The Deputy Superintendent of Police in his turn made his report on the Sub-Inspector's report and forwarded that report to the Superintendent of Police on the 6th of May 1948. In these circumstances the Sub-Inspector's report appears to be covered by the Police Rules. How this report or a copy of it came into the hands of Jitu Mal is not explained, but a prosecution regarding anything contained in this report would be a prosecution which appears to be covered by section 42 of the Police Act.

I should add that I was referred to a judgment of Blacker, J. reported in *Kaniya Ram v. Chanan Mal and others* (1), in which the learned Judge had held that a representation of a somewhat similar kind made in that case was a complaint falling within the meaning of clause (h) of section 4 of the Criminal Procedure Code. The circumstances of that case, however, are in my opinion distinguishable from the circumstances of the present case.

It could also be urged though this point was not urged that the report is covered by the Ninth Excep-

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(1) 1940 A.I.R. (Lah.) 208.

tion to Section 499. See illustration (b) to that Exception. This point is, however, somewhat on the merits.

The points raised in this petition are unusual and are of some importance. I direct that the papers be laid before the Hon'ble the Chief Justice so that this case may be heard by a Division Bench.

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#### JUDGMENT OF THE DIVISION BENCH

BHANDARI, J. The sole point for decision in the present case is whether a complaint filed against a Sub-Inspector of Police in respect of certain defamatory statements which are alleged to have been made by the latter is barred by time on the ground that it was filed after the expiry of a period of three months from the date of the said report.

Bhandari J.

The facts of the case are fairly simple. On the 19th March 1948, one Surju appeared at the Police Station at Kaithal with the object of making a report under section 395 of the Penal Code. The Police declined to record the report. Undeterred by this refusal Surju reduced his grievances into writing, submitted his complaint to the police and asked the police to supply him a copy thereof. The police gave him a severe beating and kept him in unlawful confinement for a number of days. Surju decided to seek redress at the hands of a criminal Court and on the 24th March he lodged a formal complaint under sections 323|343 of the Penal Code against Sub-Inspector Kasturi Lal and certain other police officers in the Court of the Sub-Divisional Magistrate at Kaithal. Two days later, that is on the 26th March, he submitted a representation to the Chief Minister of the Punjab and asked him to take the necessary action against the police officers concerned. Copies of this representation were sent to the Inspector-General of Police, the Deputy Inspector-General of Police, the Superintendent of Police, the Deputy Superintendent of Police and to the Deputy Commissioner. Some of these complaints were sent to Sub-Inspector Kasturi Lal for report and on the 7th April 1948, he submitted a report to the Deputy Superintendent of Police in the course of which

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he made certain defamatory statements concerning the character and antecedents of one Jitu Mal, a Mahajan at Kaithal, who is the petitioner in the present case. On the 11th February 1949, Jitu Mal filed a complaint under section 500 of the Penal Code, against Sub-Inspector Kasturi Lal in the Court of Mr Gautam, a Magistrate of the first class, at Kaithal. The learned Magistrate came to the conclusion that the representations which were sent to the Inspector-General of Police and the other officers were merely complaints of a departmental and administrative nature against the conduct of a Sub-Inspector of Police, that the report submitted by S. I. Kasturi Lal in answer to the allegations contained in the said representations was a purely departmental report submitted by a government servant to his official superior, that the said report was submitted under the provisions of the Police Act of 1881, that a prosecution in respect of the imputations contained in the said report should have commenced within a period of three months from the date of the said report and that as the complaint was lodged on the 11th February 1949, seven months after the expiry of the said period of three months, the complaint was clearly barred by time under section 42 of the Police Act. On these findings the learned Magistrate dismissed the petitioner's complaint under section 203 of the Criminal Procedure Code. The learned Sessions Judge declined to interfere with this order and the petitioner has accordingly come to this Court in revision.

Section 42 of the Police Act provides that all actions and prosecutions against any person which may be lawfully brought for anything done or intended to be done under the provisions of this Act, or under the general police-powers hereby given shall be commenced within three months after the act complained of shall have been committed, and not otherwise. It is contended on behalf of the petitioner that two of the representations sent by him were addressed to the Inspector-General of Police and the Deputy Commissioner of Karnal, that the Inspector-General of Police exercises powers of a Magistrate under the provisions of section 5 of the Police Act, that the Deputy

Commissioner is obviously a District Magistrate of the District of Karnal, that the representations addressed to these two officers must be deemed to be complaints filed in the Court of two different Magistrates, that the copy of the representation, sent to S. I. Kasturi Lal must be deemed to have been sent to him under section 202 of the Criminal Procedure Code, that the report of the 7th April submitted by S. I. Kasturi Lal must be deemed to have been submitted under the provisions of the Code of Criminal Procedure and not under the provisions of the Police Act, that the period of limitation prescribed in section 42 of the Police Act cannot govern the case and consequently that the view taken by the learned Magistrate that the complaint is barred by time is wholly misconceived.

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After a careful consideration of the arguments which have been addressed to us, I am clearly of the opinion that the report of the Sub-Inspector can by no stretch of imagination be regarded as a report under section 202 of the Criminal Procedure Code. In the first place the complaint was not sent either to the Inspector-General of Police or the Deputy Commissioner of Karnal in his capacity as a Magistrate but in his capacity as an executive Officer under whom S. I. Kasturi Lal was serving. Secondly, there was no reason why formal complaints under the provisions of the Criminal Procedure Code should have been made to the Inspector-General of Police or to the Deputy Commissioner of Karnal, when a formal complaint had already been made to the Sub-Divisional Magistrate at Karnal and when the said Magistrate had already fixed a date for recording the evidence of the complainant. Thirdly, neither the Inspector-General of Police nor the Deputy Commissioner of Karnal appear to have treated these representations as complaints under the Code of Criminal Procedure for neither of these two officers cared to record the statement of the complaint under the provisions of section 200 of the said Code. Fourthly, if the representation was addressed to the Deputy Commissioner of Karnal in his capacity as a District Magistrate, I entertain no doubt whatever that it would have been

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addressed to the District Magistrate and not to the Deputy Commissioner. Fifthly, although the complaint presented in the Court of the Sub-Divisional Magistrate at Kaithal bore a court-fees stamp of Re. 1, no court-fees stamp whatsoever was affixed to any of the six applications which were submitted on the 26th March 1948. Sixthly, the Inspector-General of Police did not refer the complaint to the Deputy Superintendent of Police under the provisions of section 202 of the Criminal Procedure Code, for if he had taken the view that his help was being invoked in his capacity as a Magistrate of the 1st Class he would have proceeded to examine the complaint under the provisions of section 200 of the said Code. Seventhly, the complaints which were forwarded by the Deputy Superintendent of Police were addressed to the Station House Officer in-charge of the Police Station and not to Sub-Inspector Kasturi Lal by name. Eighthly, the complaints are not only against Sub-Inspector Kasturi Lal himself but also against certain other persons whose names are mentioned therein and consequently the report that was submitted by him was submitted under the provisions of the Police Act and not under those of the Criminal Procedure Code. Ninthly, the complaint which was forwarded to S. I. Kasturi Lal could not have been forwarded to him under the provisions of the section 202 of the Criminal Procedure Code for it is a matter of common knowledge that a complaint against an accused person cannot be sent to accused person himself for preliminary investigation. Lastly, the Deputy Superintendent of Police asked the Station House Officer for a full report in regard to the allegations made in the complaint and did not ask Sub-Inspector Kasturi Lal to furnish his own explanation in regard thereto. As section 23 of the Police Act requires every Police Officer promptly to obey and execute all orders lawfully issued to him by a competent authority and as it was within the power of the Deputy Superintendent of Police to call for a report from Sub-Inspector Kasturi Lal, it seems to me that in making the report in question Sub-Inspector Kasturi Lal was carrying out the orders which were issued to him by a competent authority. It follows

as a consequence that he was acting under the provisions of the Police Act or under the general police-powers conferred by the said Act. Mr. Mital contends that he could not be acting under the provisions of the Police Act for it was no part of the duty of Sub-Inspector Kasturi Lal to make defamatory statements in regard to petitioner. A decision of the Federal Court has been cited in support of this contention. In *Hori Ram Singh v. Emperor* (1), a Medical Officer was prosecuted under sections 409 and 477-A of the Indian Penal Code, the charges against him being—

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- (a) that being a public servant and in such capacity entrusted with medicines of the hospital which were the property of the District Board, Dera Ghazi Khan, the accused committed criminal breach of trust in respect of certain medicines and thereby committed an offence punishable under section 409 of the Indian Penal Code, and
- (b) that being a public servant, he wilfully and with intent to defraud omitted to record entries in the stock book of medicines for 1937, relating to certain medicines belonging to the District Board and in his possession and thereby committed an offence punishable under section 477-A of the Indian Penal Code.

A question arose whether the prosecution launched against the accused was in respect of any act done or purporting to be done by him in the execution of his duty as a public servant and whether in view of the provisions of section 270 of the Government of India Act, 1935, the proceedings could be instituted without the sanction of the Governor. The learned Judges of the Federal Court held that when a public servant simply embezzles some property entrusted to him and thereby commits a criminal breach of trust under section 409, he is not doing an act, nor even purports to

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(1) 1939 A.I.R. (F.C.) 43.

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do an act, in execution of his duty ; for when he commits the act, he does not pretend to act in the official discharge of his duty, and a case like that would not fall within the ambit of section 270 (1) of the Government of India Act. But an offence under section 477-A, Penal Code, is committed if an officer or servant or anyone employed or acting in such capacity, wilfully and with intent to defraud falsified any book or account. Thus, where it is his duty to maintain a register and in maintaining that register he makes some entries which are false to his knowledge, he is certainly purporting to act, though not actually acting in the execution of his duty, because he is making certain entries in the register, knowing them to be false. Hence for a prosecution under section 409, the consent of the Governor is not necessary but for a prosecution under section 477-A consent is necessary. The learned Judges held further that having regard to the ordinary and natural meaning of the words "purporting to be done," it is difficult to say that it necessarily implies "purporting to be done in good faith," for a person who ostensibly acts in execution of his duty still purports so to act, although he may have a dishonest intention. The test is not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistake belief as to the existence of such duty. The section is not intended to apply to acts done purely in a private capacity by a public servant. It must have been ostensibly done by him in his official capacity in execution of his duty, which would not necessarily be the case merely because it was done at a time when he held such office, nor even necessarily because he was engaged in his official business at the time. Moreover, an act is not less one done or purporting to be done in execution of a duty because the officer concerned does it negligently. This decision appears to support the contention of Sub-Inspector Kasturi Lal that he was acting under the provisions of the Police Act, for it was

clearly his duty as a police officer to submit a report to the Deputy Superintendent of Police when he was required so to do.

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Fore these reasons I am clearly of the opinion that none of the six representations which were forwarded by the petitioner on the 26th March 1948, could be regarded as a complaint under the provisions of section 200 of the Criminal Procedure Code. On the other hand the report submitted by S. I. Kasturi Lal on the 7th April 1948 must be deemed to be a report submitted by him to the Deputy Superintendent of Police in obedience to an order issued by the said Deputy Superintendent of Police under the provisions of the Police Act of 1861. As the said report is alleged to have contained certain defamatory statements in respect of the petitioner and as the said report was submitted on the 7th April 1848 the prosecution in respect thereof could have been lodged only within a period of three months from the said date and a complaint filed on the 11th February 1949 was clearly barred by time. It is true that section 42 of the Police Act was amended in part by the Indian Limitation Act of 1871, but the first schedule to Act IX of 1871 makes it quite clear that only so much of section 42 was repealed as relates to the limitation of suits. The portion of the section relating to prosecutions was allowed to remain unaltered.

The present petition is clearly barred by the provisions of section 42 of the Police Act 1861 and must be dismissed.

SONI, J. I agree.