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PRAVIN CHANDRA MODY

v.

STATE OF ANDHRA PRADESH

September 15, 1964

B (K. SUBBA RAO, M. HIDAYATULLAH AND J. R. MUDHOLKAR JJ.)

Essential Commodities Act (10 *of* 1955), *s.* 7—*Offence under—Report under s.* 11.—*Whether amounts to Police Report requisite under s.* 251-*A and s.* 190(1)(*b*) *of Code of Criminal Procedure* (5 *of* 1898)—*Whether triable under s.* 251-*A or s.* 252 *of the Code.*

The appellant was being tried before a Magistrate for offences under
C s. 420 of the Indian Penal Code and s. 7 of the Essential Commodities Act, 1955. The offences arose out of the same set of facts and were investigated together under Chapter XIV of the Code of Criminal Procedure. At the end of the investigation the police officer filed in respect of the offence of cheating a charge-sheet against the appellant under s. 173 of the Code which was intended to serve also as a report in writing of a public servant as required by s. 11 of the Essential Commodities Act. At the trial the appellant objected that as the police had filed a report
D under s. 11 of the Essential Commodities Act, the trial of the offence under s. 7 could not be under s. 251-A but should be under s. 252 of the Code of Criminal Procedure. The Magistrate overruled his objection, and in revision the Sessions Judge and the High Court upheld the Magistrate's order. Thereupon, the appellant came to the Supreme Court.

The appellant's contention in the appeal was that under s. 251-A as well as under cl. (b) of s. 190(1) the report must be a report of a
E police officer under s. 173 after investigation under Chapter XIV of the Code of Criminal Procedure, that the report in the appellant's case being under s. 11 of the Essential Commodities Act, and not a report under s. 173 it could only be treated as a complaint under s. 190(1)(a), and that the procedure applicable was that under s. 252.

HELD : (i) Cases falling under cls. (a) and (c) of s. 190(1) are triable according to the procedure in s. 252 while those falling under
F cl. (b) of that section are triable under s. 251-A of the Code of Criminal Procedure. As the report in the present case was made by a police officer it could not be taken cognizance of under cls. (a) and (c) which expressly exclude report or information given by a police officer. The offences mentioned in such a report could therefore not be tried under s. 252. [272H; 273C-D]

(ii) A report under s. 11 is not a charge-sheet, but a report made under s. 173 satisfies the provisions of s. 11 as the police officer who
G makes it is also a public servant. The report regarding the offence under s. 7 was rightly included in the charge-sheet under s. 173 because both the offences were investigated under Chapter XIV. The case therefore was one instituted on a police report under s. 173 and s. 251-A was applicable. [273G; 274D-E; 275C-E]

Bhagwati Saran v. *State of U.P.* [1961] 3 S.C.R. 563, *Ram Krishna Dalmia* v. *State* A.I.R. 1958 Punj. 172 and *Premchand Khetry* v. *State*
H A.I.R. 1958 Cal. 213, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 49 of 1964.

Appeal by special leave from the judgment and order dated September 3, 1963 of the Andhra Pradesh High Court in Criminal Revision Case No. 132 of 1963 and Cr. R. Petition No. 118 of 1963.

J. L. Jain, K. Jayaram, for *J. R. Gagrat,* for the appellant.

K. R. Chaudhry and *B. R. G. K. Achar,* for the respondent.

The Judgment of the Court was delivered by

Hidayatullah J. The appellant is being prosecuted under s. 420, Indian Penal Code and under s. 7 of the Essential Commodities Act, 1955 for contravention of cls. (4) and (5) of the Iron and Steel Control Order. The prosecution was commenced by the Inspector of Police, Crime Branch, C.I.D., Hyderabad by filing against him a charge-sheet under s. 173 of the Code of Criminal Procedure in respect of the offence of cheating which was intended to serve also as a report in writing of a public servant as required by s. 11 of the Essential Commodities Act, 1955. Learned City Magistrate of Secunderabad framed a charge against him under s. 251A(3) of the Code of Criminal Procedure in respect of both the offences. The appellant then raised two preliminary objections : the first was that as the commodity was obtained and disposed of at Bombay, the Court at Secunderabad had no jurisdiction to try him. This objection, which would have necessitated the recital of facts, has not been raised before us and it is not necessary to mention it again. The second objection was that as the police had filed a report under s. 11 of the Essential Commodities Act, a trial of the offence under s. 7 could not be under s. 251A but under s. 252 of the Code of Criminal Procedure. He, therefore, asked that the charge framed against him should be quashed. This objection was rejected. The appellant thereupon moved the Sessions Judge in revision who declined to interfere. He filed a second revision in the High Court of Andhra Pradesh but it was dismissed by the order which is now under appeal.

In so far as the trial of the alleged offence under s. 420, Indian Penal Code is concerned there is no objection to its trial under s. 251A, Code of Criminal Procedure. That provision is made for the procedure to be adopted in cases "instituted on a police report". Under that procedure the Magistrate has to satisfy himself, at the commencement of the trial, that the documents referred to in s. 173 have been furnished to the accused and if they have not been furnished to cause them to be so furnished.

A The Magistrate must then consider all the documents and after making such examination, if any, of the accused, as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate must consider whether a charge should be framed against the accused or not. If he comes to the conclusion that the charge is groundless he B must discharge him. On the other hand, if he is of the opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which he is competent to try and which, in his opinion, could be adequately punished by him, he must frame a charge in writing against the accused and after C explaining it to him record his plea and proceed according to it. Under s. 252, Criminal Procedure Code, it is provided as follows :—

"252(1) In any case instituted otherwise than on a police report, when the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the D complainant (if any) and take all such evidence as may be produced in support of the prosecution :

Provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court.

E (2) The Magistrate shall ascertain, from the complaint or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary."

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Under s. 253, Criminal Procedure Code, if, upon taking all the evidence referred to in the section just quoted and making such examination, if any, of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the G Magistrate can discharge him. On the other hand, if it appears to the Magistrate that there are grounds for presuming that the accused has committed an offence which the Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he frames a charge against him and records a plea. If the accused does not plead guilty the Magistrate gives H him time to state which of the prosecution witnesses he wishes to cross-examine, if any, and if he says that he does so, the witnesses are recalled and are allowed to be cross-examined.

Contention of the appellant is that by the words 'police report' in s. 251A of the Code of Criminal Procedure, is meant the report mentioned in s. 173 which the police officer makes to a Magistrate in respect of offences investigated by him under Chapter XIV. The investigation is in respect of cognizable offences because non-cognizable offences may only be investigated by police officers after being authorised in that behalf by a competent Magistrate. It is pointed out that under s. 190, cognizance of an offence is taken in different ways : (a) upon receiving a complaint of facts which constitute an offence; (b) upon a report in writing of such facts made by any police officer; and (c) upon information received from any person other than a police officer, or upon the Magistrate's own knowledge or suspicion that such offence has been committed. It is argued on the basis of this three-fold distinction that by the 'police report' in s. 190(1)(b) is meant the charge-sheet of the police officer under s. 173 of the Code, and since the report in writing which the police officer makes under s. 11 of the Essential Commodities Act, 1955 is not a charge-sheet under s. 173 of the Code it must be equated to a complaint of facts under s. 190(1)(a). In view of this distinction it is contended that while the offence under s. 420, Indian Penal Code is triable under the procedure laid down in s. 251A, Criminal Procedure Code, the offence under s. 7 of the Essential Commodities Act is triable under the procedure laid down under s. 252, Criminal Procedure Code. The appellant submits that either the two charges should be split up or the two offences should be tried under the procedure laid down by s. 252 of the Code of Criminal Procedure as the procedure under s. 251A, Criminal Procedure Code, does not afford the accused the chance of a second cross-examination which s. 252 of the Code gives, and there is prejudice to him in the trial of the offence under s. 7 of the Essential Commodities Act.

A B C D E F

In our judgment the meaning which is sought to be given to a 'police report' is not correct. In s. 190, a distinction is made between the classes of persons who can start a criminal prosecution. Under the three clauses of s. 190(1), to which we have already referred, criminal prosecution can be initiated (i) by a police officer by a report in writing, (ii) upon information received from any person other than a police officer or upon the Magistrate's own knowledge or suspicion, and (iii) upon receiving a complaint of facts. If the report in this case falls within (i) above, then the procedure under s. 251A, Criminal Procedure Code, must be followed. If it falls in (ii) or (iii) then the pro-

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A cedure under s. 252, Criminal Procedure Code, must be followed. We are thus concerned to find out whether the report of the police officer in writing in this case can be described as a "complaint of facts" or as "information received from any person other than a police officer". That it cannot be the latter is obvious enough because the information *is* from a police officer. The term B "complaint" in this connection has been defined by the Code of Criminal Procedure and it "means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but it does not include the report of a police officer". [*See* s. 4(1)(h)].

C It, therefore, follows that s. 252, Criminal Procedure Code, can only apply to those cases which are instituted otherwise than on a police report, that is to say, upon complaints which are not reports of a police officer or upon information received from persons other than a police officer. The initiation of the prosecution in this D case was upon a report in writing by the police officer. Section 11 of the Essential Commodities Act, 1955 reads as follows :—

> "11. *Cognizance of offences.*—No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant E as defined in section 21 of the Indian Penal Code."

In *Bhagwati Saran* v. *State of U.P.*(1) this Court explained the nature of a report under s. 11 of the Essential Supplies (Temporary Powers) Act, 1946 which was a provision in the same words. This Court has held that the function of the report under s. 11 is not F to serve as a charge-sheet against the accused, and that the purpose of s. 11 is to eliminate private individuals such as rival traders or general public from initiating the prosecution and to insist that before cognizance is taken the complaint must emanate from a public servant. The police officer is a public servant and this was not denied before us. The requirements of s. 11 are, there- G fore, satisfied, though s. 11 does not make the report, if filed by a police officer, into a charge-sheet. It is then contended that the report under s. 11 cannot be treated as a report under s. 173 but only as a complaint under s. 190(1)(a). The police officer was investigating under s. 156(1) of the Code of Criminal Procedure an offence under s. 420, Indian Penal Code which was based H on the same facts as the offence under s. 7 of the Essential Commodities Act. He investigated the latter offence along with the

(1) [1961] 3 S.C.R. 563.

former and joined it with the former in the charge-sheet which he presented. A

Section 156(2) provides that where a police officer enquires into an offence under s. 156(1) his action cannot be called into question on the ground that he was not empowered to investigate the offence. The enquiry was an integrated one, being based on B the same set of facts. Even if the offence under the Essential Commodities Act may not be cognizable—though it is not alleged by the appellant that it is non-cognizable—the police officer would be competent to include it in the charge-sheet under s. 173 with respect to a cognizable offence. In *Ram Krishna Dalmia* v. *State*(1), Falshaw J. (as he then was) observed that the provisions C of s. 155(1), Criminal Procedure Code, must be regarded as applicable to those cases where the information given to the police is solely about a non-cognizable offence. Where the information discloses a cognizable as well as a non-cognizable offence the police officer is not debarred from investigating any non-cognizable offence which may arise out of the same facts. He can D include that non-cognizable offence in the charge-sheet which he presents for a cognizable offence. We entirely agree. Both the offences if cognizable could be investigated together under Chapter XIV of the Code and also if one of them was a non-cognizable offence.

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It was contended before us on the authority of *Premchand Khetry* v. *The State*(2) that a prosecution under s. 251A, Criminal Procedure Code can only commence on a report under s. 173 of the Code of Criminal Procedure. It is submitted that the report of the police officer cannot be regarded as a charge-sheet for purposes of s. 173, Criminal Procedure Code. In that case the learned F Judges of the Calcutta High Court went elaborately into the meaning of the expression 'police report' in s. 190(1)(b) and held that those words were confined to a charge-sheet under s. 173 of the Code. We have pointed out above that in all those cases where the law requires a report in writing by a public servant the G requirements of the law are satisfied when a report is filed by a public servant who is also a police officer. We have also pointed out that even in cases where the police officer cannot investigate a non-cognizable offence without the permission of a Magistrate he is not prevented by anything in the Code from investigating a non-cognizable offence along with a cognizable H offence when the two arise from the same facts. In the Calcutta

(1) A.I.R. 1958 Punj. 172. (2) A.I.R. 1958 Cal. 213.

A case to which we have last referred, there was a provision (s. 20G) in the Opium Act, as amended in Bengal, which provided that a report in writing by an officer of the Excise, Police or the Customs Department shall be enquired into and tried as if such report was a report in writing made by police officer under cl. (b) of s. 190(1) of the Code of Criminal Procedure, 1898. The Divisional Bench B in the Calcutta High Court held that the section created a fiction by which the report of an Excise or Customs officer was to be regarded as the report of a police officer but only for the purpose of s. 190(1)(b), that it did not make the report a charge-sheet under s. 173 of the Code, and that s. 251A, Criminal Procedure Code, was not applicable because it contemplated a report under C s. 173 of the Code. We invited counsel to tell us that if the effect of the fiction did not make it a report under s. 173, Criminal Procedure Code, what other purpose could the Legislature have had in mind in saying that it was a police officer's report? He could suggest none, and we cannot also see what other purpose was D intended. In our opinion, the position is clear that such reports, if they are regarded as made under s. 190(1)(b), must attract the provisions of s. 251A of the Code, because if the fiction is given full effect they cannot be regarded as falling within 'complaints' under s. 190(1)(a) or within s. 190(1)(c). In any case, the Divisional Bench also said that s. 251A is applicable to the trial E of a case which is initiated on a police report under s. 173 if the investigation is one to which s. 173, Criminal Procedure Code may be applied, and both the conditions are fulfilled in this case.

The High Court was right in not interfering in revision with the trial of the case. We dismiss the appeal. The appellant has F succeeded in delaying this trial for a considerable time. We direct that the trial shall take place from day to day till the case is disposed of according to law.

Appeal dismissed.