

CASE NO.:

Appeal (crl.) 1111 2000

Appeal (crl.) 1112 2000

PETITIONER:

THE STATE OF BIHAR

Vs.

RESPONDENT:

CHANDRA BHUSHAN SINGH & ORS.

DATE OF JUDGMENT: 13/12/2000

BENCH:

K.T.Thomas, R.P.Sethi

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T...J

SETHI, J.

Leave granted. Respondents, who are the employees of the Railways, were caught red handed on 25.3.1987 while carrying away Railway Cement unlawfully for sale. Upon inquiry offences under The Railways Property (Unlawful Possession) Act, 1966 (hereinafter referred to as "the Act") were held proved against the accused persons. Inquiry Report (Complaint) under the Act was filed by M.I. Khan, Inspector, RPF, Samstipur, against the accused persons in the court of Judicial Magistrate, First Class, Smastipur. The accused persons filed applications before the Magistrate praying for their discharge on the ground that Sub-Inspector of Railway Protection Force, who submitted charge-sheet against them was not a "police officer" within the meaning of Section 173 of the Code of Criminal Procedure (hereinafter referred to as "the Code") and upon his report submitted in the court, the Magistrate had no jurisdiction to take cognizance. Their prayer was rejected by the Magistrate against which they filed petitions in the High Court for quashing the order of the Magistrate. The High Court allowed the petitions of the respondents-accused and quashed the proceedings pending against them before the Railway Magistrate, vide the order impugned in these appeals. We have heard the learned counsel appearing for the parties and perused the record and relevant provisions of the Act besides the Code. Mr.P.S. Misra, the learned Sr.Advocate appearing for the respondents has frankly conceded that the order of the High Court impugned in these appeals cannot be justified. He has, however, prayed that as the respondents-accused had raised various other contentions for quashing of the proceedings before the Magistrate, this Court may consider desirability of adjudicating such pleas or remand the case back to the High Court for decision on the points raised but not decided. Section 3 of the Act provides the penalty for unlawful possession of railway property. Section 6 authorises a superior officer or member of the Force to arrest any person

who has been concerned in an offence punishable under the Act or against whom a reasonable suspicion exists of his having been so concerned without an order from the Magistrate and without a warrant. Section 7 provides that every person arrested under the Act, shall, if the arrest is made by a person other than the officer of the Force, to forward such person, without delay to the nearest officer of the Force. Section 8 of the Act provides: "Inquiry how to be made against arrested persons-- (1) When any such person is arrested by an officer of the Force for an offence punishable under this Act or is forwarded to him under section 7, he shall proceed to inquire into the charge against such persons.

(2) For this purpose the officer of the Force may exercise the same powers and shall be subject to the same provisions as the officer in charge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1898, when investigating a cognizable case:

Provided that--

(a) if the officer of the Force is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;

(b) if it appears to the officer of the Force that there is no sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the officer of the Force may direct, to appear, if and when so required, before the Magistrate having jurisdiction, and shall make a full report of all the particulars of the case to his official superior."

In this case, after seizure of the Railway property and interrogation of the accused, Case Crime No.14/87 under Section 3 of the Act was registered. As per statement of accused Baleshwar Singh further recovery of 136 bags of cement in addition to the cement already seized, was effected. Shri MI. Khan, IPF/SPJ inquired the case and submitted the complaint before the Magistrate. Copy of the complaint has been annexed with this appeal as Annexure P-3. A perusal of Annexure P-3 unambiguously indicates that it was not a report within the meaning of Section 173 of the Code but a complaint filed before the Magistrate, obviously under Section 200 of the Code. The process against the accused appears to have been issued under Section 204 of the Code. By no stretch of imagination, Exhibit P-3 can be termed to be a report within the meaning of Section 173 of the Code. Merely because the inquiry was held by a member of the Force having some similar powers as are possessed by an investigating officer, would not make the complaint to be a report within the meaning of Section 173 of the Code. Section 2(d) of the Code defines the complaint to mean any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown, has committed an offence but does not include a police report. Explanation to clause (d) to Section 2 of the Code provides: "Explanation-- A report made a police officer in a case which discloses, after

investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant."

Section 2(d) of the Code encompasses a police report also as a deemed complaint if the matter is investigated by a police officer regarding the case involving commission of a non-cognizable offence. In such a case, the report submitted by a police officer cannot be held to be without jurisdiction merely because proceedings were instituted by the police officer after investigation, when he had no power to investigate. For quashing the proceedings, the High Court relied upon the judgment of this Court in *Balkishan A. Devidayal, etc. v. State of Maharashtra, etc.* [1981 (1) SCR 175]. The reliance appears to be misconceived. In that case the court, while interpreting the provisions of Section 25 of the Evidence Act held, "an officer of the RPF could not, therefore, be deemed to be a 'police officer' within the meaning of Section 25 of the Evidence Act and, therefore, any confessional or incriminating statement recorded by him in the course of an inquiry under Section 8(1) of the 1966 Act cannot be excluded from evidence under the said section". As noted earlier by us, this Court in *Balkishan's* case also observed that an officer conducting an inquiry under Section 8(1) of the Act has not been invested with all powers of an officer incharge of a police station making an investigation under Chapter XIV of the Code. He has no power to file a charge sheet before the Magistrate concerned under Section 173 of the Code. The main purpose of the Act was to invest powers of investigation and prosecution of an offence relating to Railway property in the RPF in the same manner as in a case relating to the offences under the law dealing with excise and customs. The offences under the Act are non-cognizable which cannot be investigated by a police officer under the Code. The result is that initiation of inquiry for an offence inquired into under this Act can be only on the basis of a complaint by an officer of the Force, as was actually done in this case. To the same effect is the judgment of this Court in *Criminal Appeal No.512-515 of 1997* decided on 2.5.1997 (*State of Bihar and Ors. v. Ganesh Chaudhry & Ors.*). Mr. Misra, the learned Senior counsel vehemently argued that the case be remanded back to the High Court for adjudication of other grounds on the basis of which the proceedings were sought to be quashed. He pointedly referred to the averments made in para 27 of the petition filed in the High Court to urge that as the trial of the case was pending against the accused for over a period of 5 years, the proceedings against them are liable to be quashed under a notification allegedly issued by the State Government. Learned counsel has neither shown us the notification nor the authority of law under which such notification could have been issued by the State Government. He also tried to emphasise that even on admitted facts no case under Section 3 of the Act was made out against the accused and that the proceedings initiated against his clients were otherwise not sustainable. We are of the opinion that such pleas cannot be raised before us at this stage and the case cannot be remanded back to the High Court in view of the fact that the proceedings against the respondents appear to have been sufficiently prolonged on one pretext or the other for over a period of 13 years. We are, however, of the opinion that the respondents have a statutory right to raise all such pleas as are available to them under the law during the trial before the Magistrate.

All such pleas, when raised, can appropriately be considered and disposed of by the trial court. In view of what has been stated hereinabove, these appeals are allowed by setting aside the order of the High Court and upholding the order of the Magistrate refusing to discharge the respondents in the complaint pending before him. The Magistrate is further directed to expedite the trial.

JUDIS