REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1439 OF 2017
(Arising out of Special Leave Petition(Crl.)No.6444 of 2016)

R.A.H. Siguran ...Appellant

Versus

Shankare Gowda @ Shankara & Anr. ...Respondents

O R D E R

1. Leave granted. Heard learned counsel for the parties.

2. The question for consideration is whether the High Court was justified in quashing the proceedings against Respondent No.1 on the ground that Investigating Officer who conducted the investigation was not authorized to do so under the provisions of Immoral Traffic (Prevention) Act, 1956 (the Act).

3. The case of the prosecution is that a raid was conducted on the night of 27th August, 2010 in a lodge and it was found that Respondent No.1 had procured minor girls and sent them for prostitution through his co-accused. He was indulging in prostitution with the aid of co-accused. After investigation, charge-sheet was filed under Sections 3, 4, 5, 6, 7, 8 and 9 of the Act read with Sections 366A, 372 IPC read with Section 34 IPC on 20th August, 2011.

The Magistrate committed the case to the Sessions Court. The charges were framed on 23rd April, 2015.

5. The prosecution examined PW-1 on 14th July, 2015 but the cross-examination of PW-1 was deferred at the request of Respondent No.1.

6. Thereafter, Respondent No.1 filed an application under Section 482 Cr.PC before the High Court on the ground that Investigating Officer was not competent to investigate. He was not a Special Police Officer covered by notification issued by the Government of Karnataka under the Act. Reliance was placed on judgment of this Court in ***Delhi Administration versus Ram Singh***[1].

7. The High Court allowed the petition as follows:-

> "*14. The investigation since not steered by Special Officer appointed by Section 13 of the Act is illegal and vitiated, though the trial has already begun, having noticed the basic infirmity allowing the proceedings to continue any more is abuse of the process of the Court itself. On that count, the petition is liable to be quashed under the jurisdiction of Section 482 of Cr.P.C.*
> *The petition is allowed. The criminal proceedings in S.C.No. 219/2013 pending on the file of VIII Additional District and Sessions Judge, Bengaluru Rural District, Bengaluru, is hereby quashed."*

8. No doubt, this Court in ***Ram Singh*** (supra) held by majority that the Act was a complete code and certain provisions of the Act could not be complied with by the regular police. Arrest without warrant may be made only by Special Police Officer under the proviso to Section 14 of the Act and not by a regular police. Search without a warrant can also be done only by a Special Police Officer. Thus, only a

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1 (1962) 2 SCR 694, AIR 1962 SC 63

Special Police Officer could conduct the investigation. 9. However, this conclusion was not enough for the High Court to quash the proceedings. It is well settled law that even if investigation is not conducted by authorized officer, the trial is not initiated unless a prejudice is shown.

10. In ***H.N. Rishbud and Anr. versus State of Delhi***[2] the question considered by this Court was whether after the court takes cognizance, trial can be held to be initiated merely on the ground that investigation was invalid. Answering in the negative, this Court held that if the plea of invalidity of investigation is raised at sufficiently early stage, the court, instead of taking cognizance direct reinvestigation by competent investigating officer. But, after cognizance is taken the trial cannot be quashed for invalidity of investigation.

11. The observations in the said judgment are:-

> *"9. The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the Court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality vitiating the proceedings or a mere irregularity arises. A defect or illegality in investigation,*

2 AIR 1955 SC 196, (1955) 1 SCR 1150

however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in Section 190 of the Code of Criminal Procedure as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. Section 190 of the Code of Criminal Procedure is one out of a group of sections under the heading "Conditions requisite for initiation of proceedings". The language of this section is in marked contrast with that of the other sections of the group under the same heading i.e. Sections 193 and 195 to 199. These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. While no doubt, in one sense, clauses (a), (b) and (c) of Section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under clause (a) or (b) of Section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation Section 537 of the Code of Criminal Procedure which is in the following terms is attracted:

> *"Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, unless such error, omission or irregularity, has in fact occasioned a failure of justice."*

If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. *That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the*

Court for trial is well settled as appears from the cases in ***Prabhu v. Emperor*** *(AIR 1944 PC 73) and* ***Lumbhardar Zutshi v. King*** *(AIR 1950 PC 26). These no doubt relate to the illegality of arrest in the course of investigation while we are concerned in the present cases with the illegality with reference to the machinery for the collection of the evidence. This distinction may have a bearing on the question of prejudice or miscarriage of justice, but both the cases clearly show that invalidity of the investigation has no relation to the competence of the Court. We are, therefore, clearly, also, of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby.*

10. It does not follow, however, that the invalidity of the investigation is to be completely ignored by the Court during trial. When the breach of such a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such reinvestigation as the circumstances of an individual case may call for. Such a course is not altogether outside the contemplation of the scheme of the Code as appears from Section 202 under which a Magistrate taking cognizance on a complaint can order investigation by the police. Nor can it be said that the adoption of such a course is outside the scope of the inherent powers of the Special Judge, who for purposes of procedure at the trial is virtually in the position of a Magistrate trying a warrant case. When the attention of the Court is called to such an illegality at a very early stage it would not be fair to the accused not to obviate the prejudice that may have been caused thereby, by appropriate orders, at that stage but to leave him to the ultimate remedy of waiting till the conclusion of the trial and of discharging the somewhat difficult burden under Section 537 of the Code of Criminal Procedure of making out that such an error has in fact occasioned a failure of justice. It is relevant in this context to observe that even if the trial had proceeded to conclusion and the accused had to make out that there was in fact a failure of justice as the result of such an error, explanation to Section 537 of the Code of Criminal Procedure indicates that the fact of the objection having been raised at an early stage of the proceeding is a pertinent factor. To

> *ignore the breach in such a situation when brought to the notice of the Court would be virtually to make a dead letter of the peremptory provision which has been enacted on grounds of public policy for the benefit of such an accused. It is true that the peremptory provision itself allows an officer of a lower rank to make the investigation if permitted by the Magistrate. But this is not any indication by the Legislature that an investigation by an officer of a lower rank without such permission cannot be said to cause prejudice. When a Magistrate is approached for granting such permission he is expected to satisfy himself that there are good and sufficient reasons for authorising an officer of a lower rank to conduct the investigation. The granting of such permission is not to be treated by a Magistrate as a mere matter of routine but it is an exercise of his judicial discretion having regard to the policy underlying it. In our opinion, therefore, when such a breach is brought to the notice of the Court at an early stage of the trial the Court have to consider the nature and extent of the violation and pass appropriate orders for such reinvestigation as may be called for, wholly or partly, and by such officer as it considers appropriate with reference to the requirements of Section 5-A of the Act. It is in the light of the above considerations that the validity or otherwise of the objection as to the violation of Section 5(4) of the Act has to be decided and the course to be adopted in these proceedings, determined."* (*emphasis added)*

12. The above view has been repeatedly followed in subsequent decisions of this Court. In ***Union of India and ors. represented through Superintendent of Police versus T. Nathamuni***[3]**,** the position was discussed as follows:-

> *"12. It is clear that in the case of investigation under the Delhi Special Police Establishment Act, an officer below the rank of Inspector cannot investigate without the order of a competent Magistrate. In the present case, order of the Special Judge was obtained by filing an application. That order dated 24-9-2009 shows that it was passed on request and in the interest of justice, investigation pursuant to such order did not suffer from want of jurisdiction and hence, in the facts of the case, the High Court erred in law in interfering with such investigation more so when it was*

3 (2014) 16 SCC 285

already completed.

13. The question raised by the respondent is well answered by this Court in a number of decisions rendered in a different perspective. The matter of investigation by an officer not authorised by law has been held to be irregular. Indisputably, by the order of the Magistrate investigation was conducted by the Sub-Inspector, CBI who, after completion of investigation, submitted the charge-sheet. It was only during the trial, objection was raised by the respondent that the order passed by the Magistrate permitting the Sub-Inspector, CBI to investigate is without jurisdiction. Consequently, the investigation conducted by the officer is vitiated in law. Curiously enough the respondent has not made out a case that by reason of investigation conducted by the Sub-Inspector a serious prejudice and miscarriage of justice has been caused. It is well settled that invalidity of the investigation does not vitiate the result unless a miscarriage of justice has been caused thereby.

14. In ***M.C. Sulkunte v. State of Mysore*** *[(1970) 3 SCC 513], the main question raised by the appellant in an appeal against the order of conviction was that the sanction to investigate the offence given by the Magistrate was not proper inasmuch as he had not recorded any reason as to why he had given permission to the Inspector of Police to investigate the offence of criminal misconduct of obtaining illegal gratification. Considering Section 5-A of the Act, Their Lordships observed: (SCC p. 517, para 15)*

> *"15. Although laying the trap was part of the investigation and it had been done by a police officer below the rank of a Deputy Superintendent of Police, it cannot on that ground be held that the sanction was invalid or that the conviction ought not to be maintained on that ground. It has been emphasised in a number of decisions of this Court that to set aside a conviction it must be shown that there has been miscarriage of justice as a result of an irregular investigation. The observations in* ***State of M.P. v. Mubarak Ali*** *[1959 Supp (2) SCR 201], at pp. 210-11 to the effect that when the Magistrate without applying his mind only mechanically*

issues the order giving permission the investigation is tainted cannot help the appellant before us."

15. In ***Muni Lal v. Delhi Admn*** *[(1971) 2 SCC 48], this Court was considering the question with regard to the irregularity in investigation for the offence under the Prevention of Corruption Act. Following earlier decisions, this Court held: (SCC p. 52, para 14)*

"14. From the above proposition it follows that where cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the preceding investigation will not vitiate the result unless miscarriage of justice has been caused thereby and the accused has been prejudiced. Assuming in favour of the appellant, that there was an irregularity in the investigation and that Section 5-A of the Act, was not complied with in substance, the trial by the Special Judge cannot be held to be illegal unless it is shown that miscarriage of justice has been caused on account of illegal investigation. The learned counsel for the appellant has been unable to show us how there has been any miscarriage of justice in this case and how the accused has been prejudiced by any irregular investigation."

16. In ***State of Haryana v. Bhajan Lal*** *[1992 Supp (1) SCC 335], this Court while considering Section 5-A of the Act, held as under: (SCC pp. 384-85, para 119)*

"119. It has been ruled by this Court in several decisions that Section 5-A of the Act is mandatory and not directory and the investigation conducted in violation thereof bears the stamp of illegality but that illegality committed in the course of an investigation does not affect the competence and the jurisdiction of the court for trial and where the cognizance of the case has in fact been taken and the case is proceeded to termination, the invalidity of the preceding investigation does not vitiate the

result unless miscarriage of justice has been caused thereby. See (1) H.N. Rishbud v. State of Delhi [AIR 1955 SC 196], (2) Major E.G. Barsay v. State of Bombay [AIR 1961 SC 1762], (3) Munnalal v. State of U.P [AIR 1964 SC 28], (4) Sailendranath Bose v. State of Bihar [AIR 1968 SC 1292], (5) Muni Lal v. Delhi Admn. [(1971) 2 SCC 48] and (6) Khandu Sonu Dhobi v. State of Maharashtra [(1972) 3 SCC 786]. However, in Rishbud case [AIR 1955 SC 196] and Muni Lal case [(1971) 2 SCC 48], it has been ruled that if any breach of the said mandatory proviso relating to investigation is brought to the notice of the court at an early stage of the trial, the court will have to consider the nature and extent of the violation and pass appropriate orders as may be called for to rectify the illegality and cure the defects in the investigation."

17. ***In A.C. Sharma v. Delhi Admn*** *[(1973) 1 SCC 726], provisions of Section 5-A were again considered by this Court and held as under: (SCC p. 735, para 15)*

"15. As the foregoing discussion shows the investigation in the present case by the Deputy Superintendent of Police cannot be considered to be in any way unauthorised or contrary to law. In this connection it may not be out of place also to point out that the function of investigation is merely to collect evidence and any irregularity or even illegality in the course of collection of evidence can scarcely be considered by itself to affect the legality of the trial by an otherwise competent court of the offence so investigated. In H.N. Rishbud v. State of Delhi [AIR 1955 SC 196], it was held that an illegality committed in the course of investigation does not affect the competence and jurisdiction of the court for trial and where cognizance of the case has in fact been taken and the case has proceeded to termination of the invalidity of the preceding investigation does not vitiate the result unless miscarriage of justice has been caused thereby. When any breach of the mandatory provisions relating to investigation is brought to the notice of the court at an early stage of the trial the Court

> *will have to consider the nature and extent of the violation and pass appropriate orders for such reinvestigation as may be called for, wholly or partly, and by such officer as it considers appropriate with reference to the requirements of Section 5-A of the Prevention of Corruption Act, 1947. This decision was followed in Munnalal v. State of U.P. [AIR 1964 SC 28] where the decision in State of M.P. v. Mubarak Ali [AIR 1959 SC 707], was distinguished. The same view was taken in State of A.P. v. N. Venugopal [AIR 1964 SC 33] and more recently in Khandu Sonu Dhobi v. State of Maharashtra [(1972) 3 SCC 786]. The decisions of the Calcutta, Punjab and Saurashtra High Courts relied upon by Mr Anthony deal with different points: in any event to the extent they contain any observations against the view expressed by this Court in the decisions just cited those observations cannot be considered good law."*

13. In view of the above, we are satisfied that the High Court was not justified in quashing the proceedings merely on the ground that the investigation was not valid. It is not necessary for this Court to go into the question raised by learned counsel for the appellants that there was no infirmity in the investigation.

14. Accordingly, we allow this appeal, set aside the impugned order and direct the trial court to proceed with the matter in accordance with law.

15. The parties are directed to appear before the trial court for further proceedings on 22nd September, 2017.

.....J.
[Adarsh Kumar Goel]

.....J.
[Uday Umesh Lalit]

New Delhi;
18th August, 2017.

ITEM NO.46 COURT NO.12 SECTION II-C

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 6444/2016

(Arising out of impugned final judgment and order dated 03-02-2016 in CRLP No. 5330/2015 passed by the High Court Of Karnataka At Bangalore)

R.A.H. SIGURAN Petitioner(s)

VERSUS

SHANKARE GOWDA @ SHANKARA & ANR. Respondent(s)
(With appln. For exemption from filing O.T.)

Date : 18-08-2017 This petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Petitioner(s) Mr. A. Philips,Adv.
Ms. Lityi M. Noshi,Adv.
Ms. Amita Singh Kalkal, AOR

For Respondent(s) Mr. Anil V. Katarki,Adv.
Mr. Anil C. Nishani,Adv.
Mr.T. R. B. Sivakumar, AOR

Mr. V. N. Raghupathy, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed reportable order.

(MADHU BALA) (PARVEEN KUMARI PASRICHA)
COURT MASTER (SH) COURT MASTER
(Signed reportable order is placed on the file)