

(2001) 03 MP CK 0032

**Madhya Pradesh High Court**

**Case No:** Miscellaneous Criminal Case No. 334 of 2001

Gulab Chand Chandani

APPELLANT

Vs

State of M.P.

RESPONDENT

**Date of Decision:** March 29, 2001

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 155(2), 190(1), 2, 200, 482
- Penal Code, 1860 (IPC) - Section 420
- Trade and Merchandise Marks Act, 1958 - Section 69, 81

**Citation:** (2001) 2 MPHT 342 : (2001) 3 MPLJ 467 : (2002) 1 RCR(Criminal) 142

**Hon'ble Judges:** Mr. S.P. Khare, J

**Bench:** Single Bench

**Advocate:** Shri S.C. Datt. and Mr. Siddhartha Datt, for the Appellant; Ku. Alka Pandya, Government Advocate, for the Respondent

**Final Decision:** Dismissed

**Judgement**

@JUDGMENTTAG-ORDER

S.P. Khare, J.

This is a petition u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter to be referred to as the Code) for quashing the prosecution of the petitioner u/s 420, IPC and Sections 69 and 81 of the Trade and Merchandise Marks Act, 1958 (hereinafter to be referred to as the Act).

On 22-3-2000 Sanjeev Marwaha submitted a report before the Station Officer, Kotwali, Sagar in which he complained that accused Gulab Chand Chandani is manufacturing plastic shoes at Sagar using the trade name "Micro Art 439" which is registered in the name of Ajay Industries, New Delhi. The complainant is the Salesman in this firm. The police registered a case u/s 420, IPC. After investigation a charge-sheet has been filed against the petitioner before the Chief Judicial

Magistrate, Sagar.

The petitioner contends that the offence u/s 420, IPC is prima facie not made out and the offence, if any, would be covered by Sections 78 and 79 of the Act and that offence being "non-cognizable" the police could not investigate it without the order of the Magistrate u/s 155(2) of the Code and therefore the prosecution should be quashed. Reliance is placed on [Zahir Ahmed Vs. Azam Khan](#), and [Syed Kaleem Vs. M/s Mysore Lakshmi Beedi Works and another](#),

After hearing the learned counsel for both the sides this Court is of the opinion that there is no abuse of the process of the Court nor it would be proper to quash the prosecution to secure the ends of justice. It is for the Trial Magistrate to consider whether the charge u/s 420, IPC is prima facie made out or not. If he is of the opinion that the charge u/s 420, IPC is prima facie not made out he can proceed with the case treating the police report as "complaint". There is an "Explanation" to Section 2(d) of the Code which provides that a report made by 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. It is well settled that it is the offence disclosed from the facts which has to be taken cognizance of and it is not material that the complainant has mentioned a wrong Act or a wrong Section in the complaint. Where the facts alleged in the complaint disclose an offence, the Magistrate should take cognizance of the complaint and any error in the recital of the statutory provision is not of much significance.

The Magistrate can treat the police report in a non-cognizable case as a complaint u/s 190(1)(a) of the Code. The law of Crimes is founded upon the theory that a crime is wrong done to the State, the criminal law can, as a general rule, be set in motion by anyone unless the law says otherwise. The Magistrate can examine the police officer who has filed the charge-sheet u/s 200 of the Code and then proceed further.

The petition is dismissed.

Misc. Criminal Case dismissed.