
Mohd.Sharief and Ors. Vs State of J & K

561-A, Cr.P.C. 50 Of 2004

Court: Jammu & Kashmir High Court

Date of Decision: Feb. 10, 2005

Acts Referred:

Jammu and Kashmir Criminal Procedure Code, 1989 â€” Section 196, 235, 561A#Ranbir Penal Code, 1989 â€” Section 120B, 121, 121A, 122, 123

Citation: (2005) JKJ 234 Supp

Hon'ble Judges: Y.P.Nargotra, J

Bench: Single Bench

Advocate: B.L.Chatta, A.H.Qazi, Advocates appearing for the Parties

Judgement

1. On receiving the information from reliable sources that a group of terrorists at the instance of ISI an intelligence agency of Pakistan has entered

this side of country by crossing border after having obtained training in terrorist camps, with the intention of committing such acts which endanger

the security of the State etc, that they on 14.4.2003 at 9.30 P.M entered into the house of Mohd. Fazal Advocate and abducted him and then after

taking him to a place at some distance from his house shot him dead with the guns and ammunition in their illegal possession, in the Police Station

Mendhar the F.I.R No. 55 of 2003 was registered on 15.4.2003 for commission of the offences under Sections 302, 364, 1206, 121 & 122

RPC and 7/25,26/27 I.A Act and investigation was commenced. During the course of investigation the Superintendent of Police Poonch vide his

letter dated 9.10.2003 sought sanction to prosecute the accused from District Magistrate Poonch who by his letter dated 10.10.2003 has

accorded sanction under Section 196 Cr.P.C for prosecution of the accused.

2. The investigating agency after completion of the investigation filed the charge sheet for the trial of the accused. Learned Sessions Judge Poonch

by his order dated 26.4.2004 has framed charges against the accused for commission of the offences under Sections 302,364, 120B/121,

121A/122, 123/212 RPC and 7/25, 26, 27 I.A Act and 2/3/3A E & IMCO. It be seen that the accused have been charged for two types of

offences i.e. one which do not require any sanction for prosecution while the other which are covered by the provision contained in Section 196

Cr.P.C the taking of cognizance of which is prohibited unless procedure prescribed in the Section is followed. The grievance of the petitioner/accused is with regard to the framing of charges regarding later category of offences. The petitioners are seeking to invoke inherent

jurisdiction of this Court for quashing the charge so far as it pertains to those offences.

Section 196 of Code of Criminal Procedure reads as follows:

Prosecution of offences against the State. No Court shall take cognizance of any offence punishable under Chapter VI or IXA of the Ranbir Penal

Code (except section 127, and section 171F, so far as it relates to the offence of personation, or punishable under section 108A, or section 153A,

or section 294A, or section 505 of the Ranbir Penal Code, unless upon complaint made by order of, or under authority from the Government or

District Magistrate or such other officer as may be empowered by the Government in this behalf.

3. Sections 121,121A, 122,123 RPC with which the accused/petitioners have been charged fall in chapter VI of the Code.

4. The contention of Mr. Chatta, learned counsel for the petitioners is that learned Session Judge was debarred from taking cognizance in respect

of said offences on the police report, in view of the bar created there for by Section 196 Cr.P.C. As according to him the cognizance into the said

offences can only be taken upon a complaint made by order of or under authority from the Government or District Magistrate.

5. Per contra the contention of Mr. Qazi, learned Additional Advocate General is that cognizance has validly been taken by the learned Sessions

Judge, as the case has been instituted after obtaining proper sanction/authority from District Magistrate and therefore for the purposes of said

offences the police report has to be treated as complaint under the authority of District Magistrate.

6. From the bare reading of the Section, it is manifest that no court can take cognizance into the offences enumerated in the section unless a com

plaint is made by order of or under authority from the Government or District Magistrate or such other officer empowered by the Government in

this behalf. If a person is accused of commission of the offences enumerated in section 196 Cr.P.C only, then there cannot be any doubt or

difficulty in applying the rule enunciated by section 196 Cr.P.C that cognizance can only be taken upon a complaint made by order of or under the

authority of the competent person/authority. But what would be the position if the acts committed by a person in the same transaction constitute

offences of both categories i.e. ordinary cognizable offences and the one referred to in Section 196? When in the same transaction the series of

acts committed by a person both kinds of offences are found constituted from the investigation of the police, whether the prosecution of such

person would have to be conducted separately i.e. for ordinary cognizable offences upon the police report and for offences enumerated in Section

196 Cr.P.C by a separate complaint.

7. The Code of Criminal Procedure in Section 235 makes a provision for a single trial.

235. Trial for more than one offence (i): If, in one series of acts so connected together as to form the same transaction, more offences than one

are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) Offence falling within two definitions: If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for

the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such

offences.

(3) Acts constituting one offence, but constituting when combined a different offence: If several acts, of which one or more than one would by itself

or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with and tried at

one trial for, the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(4). Nothing contained in this section shall affect the Ranbir Penal Code. Section 71.

SubSection (1) of section 235 thus provides for single trial of a person whose one series of acts committed in the same transaction constitute more

offences than one. Is the rule postulated in SubSection (1) mandatory?

8. Regarding the scope of the section the Supreme Court in *Ranchhod Lal v. State of Madhya Pradesh*, AIR 1965 SC 1248 observed:

16. Lastly, reference was made, on behalf of the appellant to S.235, Cr.P.C and it was urged that all these offences were committed in the course

of the same transaction, and therefore, they should have been tried at one trial. Assuming, without deciding, that these offences could be said to

have been committed in the course of the same transaction, the separate trial of the appellant for certain specific offences is not illegal. This section

too is an enabling section.

In *Shamsudheen and others v. State of Kerala*, 1989 Cri. L.J 2068, it was observed:

A separate charge and a separate trial for each distinct offence is the rule. Exception in S.220 (Corresponding to Sec. 285 of J&K Code) is no

more than an enabling provision. Even departure from S.220 will not vitiate proceedings. S.461 does not extend to such a situation. Illustration(h)

to S.220 refers to a situation, similar to one in the case on hand. In *Ranchhod Lal v. State of M.P.* AIR 1965 SC 1248: (1965(2) Cri LJ 253) the

Supreme Court held that:

The provisions in question are only enabling provisions and these do not contain the normal rule.

9. Under law a person accused of different offences though committed in the same transaction can be tried separately for each offence or jointly

for all the offences committed in one transaction in one trial. The provision made in Section 235 is only an enabling provision for trying a person in

a single trial for all the offences committed in the same transaction. The separate trials for each offences may be in breach of the aforesaid enabling

provision but it does not vitiate such trials because the provision only enables joinder of charges in one trial but does not exclude separate trials for

each of the offences. Therefore, a person very well can be tried separately, for the ordinary cognizable offences by filing police report and for

offences enumerated in Section 196 by filing a complaint ""by the order of or under authority from"" the competent authority in terms of the said

section.

10. Now the question arises if such person is to be put on a single trial with the aid of Section 235, can the report of the police filed under the

sanction of the competent authority be treated as 'complaint' in terms of Section 196 Cr.P.C. Section 196 nowhere provides as to in what form the

complaint should be. The word complaint however has been defined in Section 4(e) of the Code as follows:

Complaint"". ""Complaint"" 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.

11. There is no reason why the definition of complaint given in Section 4(e) supra cannot be applied to the word 'complaint' used in Section 196.

The police report for having been expressly excluded from the definition of word complaint cannot be treated to be a complaint under Section 196

Cr.P.C, consequently in a trial initiated on a police report offences mentioned in Section 196 can not be tried together with the ordinary cognizable

offences. The sanction for prosecution accorded by District Magistrate cannot cure the defect.

12. Learned Sessions Judge Poonch therefore was not right in taking cognizance against the accused by framing charges for the offences under

Sections 121, 121A, 122, 123 RPC and therefore, order impugned of Learned Sessions Judge Poonch to the extent of framing of charges for the

aforesaid Sections against the accused is quashed. The competent authority however shall be free to file a complaint in competent court of law in

terms of Section 196 Cr.P.C for seeking trial of the accused for the said offences.