

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
GILGIT.**

Cr. P.L.A NO. 20/2011.

Before:-

**Mr. Justice Rana Muhammad Arshad Khan, Chief Judge
Mr. Justice Muzaffar Ali, Judge.**

Mst. Noshad w/o Afsar Jan r/o Nomal, Tehsil & District Gilgit.

Petitioner/Complaint

VERSUS

1. Incharge Police Chowki Nomal Gilgit.
2. Ghulam Raza s/o Ramzan. 3. Ghulam Hussain. 4. Afsar Jan. 5. Sher Wali sons of Ghulam Raza, Residents of Nomal, tehsil & District Gilgit. 6. Azor Khan s/o Ali Muhammad. 7. Shahid Hussain. 8. Karim Khan sons of Azor Khan, residents of Nageral Gilgit.

Respondents/Accused

PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 60(13) OF GILGIT-BALTISTAN (EMPOWERMENT AND SELF GOVERNANCE) ORDER, 2009. AGAINST THE ORDER DATED 13-10-2011 PASSED BY LEARNED CHIEF COURT GILGIT-BALTISTAN IN CR. REVISION NO. 13/2010 WHEREBY THE LEARNED CHIEF COURT HAS DISMISSED THE ABOVE REVISION PETITION HOLDING THAT THE PETITIONER HAS GOT NO CASE WHEREAS THE LEARNED ADDITIONAL SESSION JUDGE GILGIT HELD THE PETITION OF PETITIONER UNDER SECTION 22-A CR. P.C NOT COMPETENT.

FOR SETTING ASIDE THE IMPUGNED ORDERS OF THE SUBORDINATE COURTS BY ACCEPTING THIS PETITION FOR LEAVE TO APPEAL WHILE CONVERTING THE SAME INTO APPEAL BE ACCEPTED AND ORDER FOR REGISTRATION OF CASE TO MEET THE ENDS OF JUSTICE, LAW AND EQUITY.

Present:-

Advocate General, Gilgit-Baltistan.
Munir Ahmad, Advocate for petitioner.
Johar Ali, Advocate for respondents.

DATE OF HEARING:-01-07-2013.

JUDGMENT

Rana Muhammad Arshad Khan, CJ: This petition has been directed against the order dated 13.10.2011, passed by the learned

single Judge of the Chief Court Gilgit-Baltistan, in Criminal Revision Petition No. 13/2010, whereby Revision Petition was dismissed and order dated 31.07.2010, passed by the learned Additional Sessions Judge Gilgit was upheld.

2. The necessary facts as they appear from the record are that reportedly an occurrence had taken place on 22-04-2010, when the petitioner was working in her fields situated in village Nomal District Gilgit, the respondents No. 2 to 8 allegedly armed with different types of weapons suddenly appeared at the venue of occurrence and statedly mounted an attack on the petitioner and caused injuries on the different parts of her body with their respective weapon.

3. It is pertinent to mention here that occurrence had taken place on 22.04.2010 at about 12 noon. The petitioner was taken to the hospital for medico legal certificate. She was medically examined at Nomal Hospital and thereafter, she was referred to the DHQ Hospital for further treatment. The Medical Officer did not prepare the final report and the same was reported to be submitted on the receipt of X-Ray report prepared by the Radiologist. The perusal of the report of Radiologist is demonstrative of the fact that there was no bony lesion and according to his report, he found the nature of injuries as simple and was caused by blunt weapon. The offence purportedly was made out under Section 337-A PPC which is non cognizable.

4. The aforesaid respondents statedly being affluent persons of the area, exercised their influence and did not allow the

local police to proceed with the matter and the case was not registered against them despite repeated requests of the petitioner.

5. The petitioner feeling aggrieved made an application under Section 22-A Cr. PC in the Court of learned Sessions Judge/Justice of Peace, District Gilgit and same was entrusted to the learned Additional Sessions Judge, District Gilgit for hearing. The learned Additional Sessions Judge/Justice of Peace dismissed the petition vide order dated 31.07.2010 on the ground that cognizance of the matter has already been taken by the learned Judicial Magistrate Gilgit on the complaint lodged by the SHO. The petitioner feeling aggrieved and dissatisfied, called in question the order dated 31.07.2010 passed by the learned Additional Sessions Judge/ Justice of peace, whereby, the application of the petitioner under Section 22-A Cr.PC was dismissed. The petitioner, therefore, impugned the order dated 31.07.2010, before the Hon'ble Chief Court Gilgit-Baltistan through Cr. Revision Petition filed under Section 439(1) Cr. PC which came up for hearing before learned single Judge of the Hon'ble Chief Court, Gilgit-Baltistan and the same was also dismissed vide order dated 13.10.2011. Hence this petition has been filed.

6. We have heard the learned counsel for the respective parties at full length and perused the record carefully with their able assistance.

7. Admittedly, information with regard to the commission of an offence was made to the concerned Police Officer who in view of the medico legal certificate found the offence committed under Section 337-A PPC. Since, the offence under Section 337-A PPC as

per second schedule is non cognizable offence, the police officer incorporated the report made to him in the "Register Roznamcha". Now the question arises as to how the Police officer is to proceed with the information pertaining to the commission of non cognizable offence. The question has been answered in Section 155 Cr.PC which reads as under: -

"155. Information in non-cognizable cases: (1) When information is given to an officer incharge of a police station of the commission within the limits of such station of a non cognizable offence, he shall enter in a book to, be kept as aforesaid the substance of such information and refer the informant to the Magistrate.

(2) Investigation into non-cognizable cases: No police-officer shall investigate a non cognizable case without the order of a Magistrate of the First or Second Class having power to try such case *[or send the same for trial to the Court of Session]*.

(3) Any police officer receiving such order may exercise, the, same powers in respect of the investigation (except the power to arrest without warrant) as an officer incharge of a police-station may exercise in a cognizable case."

8. There are two relevant sections in the Code of Criminal Procedure to set the law in motion i.e. Section 154 and Section 155. The mere reading of Section 154 Cr.PC makes it crystal clear that the statutory duty has been cast upon the police officer Incharge of the respective Police Station to enter the information with regard to the commission of any cognizable offence in a register to be kept in the Police Station, prescribed by the provincial government. The entry of information with regard to the cognizable offence in such a register is commonly known as FIR (First Information Report). The Incharge of a Police Station is under legal obligation that if any information relating to the commission of a cognizable offence, is given orally, he shall reduce it in writing and obtain the signature of the informant and thereupon, if the information is in writing signed by a person giving it, the substance of the same shall be entered into the prescribed register and

thereafter, he shall proceed with investigation under Section 156 Cr.PC forthwith without obtaining prior permission from the concerned Magistrate.

9. Now, if the information with regard to the commission of non cognizable offence is given, the same shall also be incorporated in another prescribed Register known as "Register Roznamcha" and the informant generally is sent away without any action. However, if the Police Officer is of the view that the information so recorded in "Roznamcha" is required to be investigated, he shall prepare an application for obtaining necessary order from the Magistrate concerned. The plain reading of Section 155 Cr.PC makes it clear that the Police officer can also make an investigation even in a non cognizable case, though he cannot do so without an order of a Magistrate of First Class or Second Class having power to try such case or commit the same for trial. The comparative and juxtapositional study of the afore-referred sections reveals that the orders/permission of the Magistrate is not required at all in a commission of cognizable offence, the Police Officer can himself proceed with investigation and on the conclusion of the investigation, he shall prepare a report under Section 173 Cr.PC for onward submission to the Court concerned for trial. This may be called "Challan" in common parlance. On the other hand if the investigation is ordered by the Magistrate in a non cognizable offence, the Police Officer, after completing the investigation in its all respects, shall also prepare a report under Section 173 Cr.PC and this report would be a Police Report under Section 173 Cr.PC and not a private complaint. The report of Police Officer mentioned

in Section 190(1)(b) Cr.PC includes even the Police Report in a non cognizable offence. It is not only confined to report of cognizable offence.

10. Now, the question arise that if the investigation is not carried out in a non cognizable offence, then what would be the procedure to be adopted by the Police Officer pertaining to the information of commission of non cognizable offence incorporated in the "Roznamcha". The minute study of the afore-referred legal provisions makes it quite clear and leads one to a conclusion that since, the information in the case in hand relates to the commission of non cognizable offence, the officer incharge of the Police Station would only proceed under Section 155 Cr.PC. When the substance of an offence relating to commission of non cognizable offence is entered in the register "Roznamcha", since, the investigation in a non cognizable case cannot be carried out without prior order of the Magistrate, he shall refer the informant to the Magistrate. These words "refer the informant to the Magistrate" are of great significance. It means that the informant is to go to the Magistrate with the copy of "Rapat Roznamcha" and Magistrate is to make an order for the investigation and if the magistrate comes to the conclusion that no investigation in the circumstances of the case is required to be carried out, he shall take the cognizance of the case and would summon the parties to proceed with the case.

11. Now, we return to the case in hand, the petitioner made information regarding the commission of an offence, the Police Officer, keeping in view the medical report, incorporated the same

in the Register Roznamcha and prepared a complaint and the same was submitted before the Judicial Magistrate Gilgit. The learned Magistrate on the receipt of complaint perused the same and registered in the relevant register and issued notices to the parties vide order dated 12.01.2010 and the case was fixed for hearing on 04.08.2010. On the first date of hearing the counsel for the complainant was present and some of the respondents were also present andailable warrants were issued against the absent accused persons. The perusal of the record reveals further that the fresh summons were issued to the complainant on 22.09.2010 and on the next date i.e. 12.10.2010 complainant did not appear. The complainant was summoned again on 12.10.2010 for 02.11.2010. The complainant remained absent, the complaint was dismissed on account of non appearance of the complainant vide order dated 02.11.2010.

12. The survey of the facts of the case and study of statutory provisions clearly distinguish the Police Report than the complaint. The word complaint is defined in Section 4(1)(h) of the Criminal Procedure Code which reads as under for ready reference:-

“4. (1) (h) .”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.”

13. As stated, the report of Police, either in cognizable offence after investigation or in non cognizable offence investigated with the permission of the Magistrate, is to be prepared under Section 173 Cr.PC. This report filed by the Police cannot be termed

to be a complaint at all. This view remained consistent since long as it has been held by a full bench of Madras High Court in a case “Public Prosecutor v. Ratnavelu Chaetty” {Air 1960 Mad 865 (F.B)} as under: -

“The report of Police Officer mentioned in Section 190(1)(b) Cr.PC is not confined to a report of a cognizable offense. It includes even the Police report in a non cognizable case”

14. The record in the case in hand was summoned by the learned single Judge of Chief Court and after perusal of the same the learned Judge observed, which reads as follows: -

“I have called respondent No. 1 alongwith record and enquired about the matter who read out the statements of PWs mentioned in the “Roznamcha” dated 22-04-2010 namely Qarar Hussain and Asher Hussain. From the perusal of the statements and the medical opinion of the Radiologist who states that there was no bone injury and other injures were simple in nature. I feel that there is no need to charge the respondents under the said offences which the counsel for the petitioner has referred above.”

15. There were two options with the complainant/informant, either to file a private Criminal Complaint in the Court of learned Magistrate competent to try the case, or to associate with the complaint filed by the Police, though after a lapse of time. The petitioner opted, at the first instance, to

associate with proceedings having carried out on the Police complaint before the Magistrate. The complaint filed by the police was ultimately dismissed vide Order dated 02.11.2010 on account of non appearance of the petitioner/complainant.

16. It would be advantageous to note that in number of cases, it has been held by the different Hon'ble Superior Courts to the effect that the Magistrate has jurisdiction to take cognizance of a non cognizable offence upon a complaint made by the Police on the basis of information relating to commission of non cognizable offence conveyed to him and incorporated in the "Roznamcha". The entry of information in the "Roznamcha" is not without any legal consequence, even if the informant does not go to the Magistrate as referred, the Police Officer shall prepare a complaint and submit before the Magistrate with the request for taking the cognizance of the case as it has been done in the instant case. The court is empowered to take cognizance of non cognizable offence but the petitioner neither remained associated with the case, the cognizance of which was taken by the learned Magistrate nor she made a private complaint and the parties remained locked in litigation for a long time unnecessarily.

17. The issue of summons against the accused persons is tantamount to take cognizance of an offence. If there are irregularities during the course of the proceedings before the Police officer, it would only affect the value attached to evidence of the complaint, however, it would not vitiate the proceedings in the trial.

18. In view of the circumstances of the case we are not inclined to make an order for the registration of the case, however, the complainant is at liberty to move to Court of learned Magistrate with a fresh criminal complaint against the respondent Nos. 2 to 8 herein as there is no limitation for preferring a complaint of criminal offence and there is no prescribed period within which a complaint may be made in respect thereof, as no justiciable purpose will be served by making an order for the registration of the criminal case at this belated stage. It is always open to the learned trial Court to frame the Charge against the accused person made out from the complaint as well as the statements of the witnesses.

19. In view of what has been discussed in the preceding paragraphs we find no substance in this petition on merits, which may justify the exercise of our discretion for granting leave to appeal in the petition in hand. Consequently, this petition is dismissed. Leave is refused.

Chief Judge

Judge