Supreme Court of India
Keshav Lal Thakur vs State Of Bihar on 11 October, 1996
Bench: M.K. Mukherjee, S.P. Kurdukar

PETITIONER:
KESHAV LAL THAKUR

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT: 11/10/1996

BENCH:
M.K. MUKHERJEE, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Special leave granted.

On a report lodged by Jnanerdra Parchchya, Anu Mandal Padadhikari, Gooda, a case under Section 31 of the Representation of Peoples Act, 1950 ('Act' for short) was registered against Keshav Lal Thakur, the appellant herein, by Thakur Gangti Police Station and on completion of investigation a report in final form was submitted praying for his discharge on the ground that the offence was a non- cognizable one. On that report the Chief Judicial Magistrate, Godda, took cognizance as in his view, a prima facies case was made out against the appellant; and aggrieved thereby he moved a petition under Section 482 Dr. P.C. before the Patna High Court wherein he contended, inter alia, that the cognizance was barred by limitation under Section 468 Dr. P.C. A learned Judge of the High Court, who entertained the petition, ultimately dismissed the same being of the view that under Section 473 Dr. P.C. cognizance could be taken beyond the period of limitation. The above order of the High Court is under challenge us in this appeal.

We need not go into the question whether in the facts of the instant case the above view of the High Court is proper or not for the impugned proceeding has got to be quashed as neither the police was entitled to investigate into the offence in question nor the Chief Judicial Magistrate to take cognizance upon the report submitted on completion of such investigation. On the own showing of the police, the offence under Section 31 of the Act is non cognizable and therefore the police could

not have registered a case for such an offence under Section 154 Dr. P.C. of course, the police is entitled to investigate into a non-cognizable offence pursuant to an order of a competent Magistrate under Section 155 (2) Dr. P.C. but, admittedly, no such order was passed in the instant case. That necessarily means, that neither the police could investigate into the offence in question nor submit a report on which the question of taking cognizance could have arisen. While on this point, it may be mentioned that in view of the proviso to Section 2 (d) Dr. P.C., which defines 'complaint', the police is entitled to submit, after investigation, a report a relating to a non-cognizable offence in which case such a report is to be treated as a 'complaint' of the police officer concerned, but that explanation will not be available to the prosecution here as that related to a case where the police initiates investigation into a cognizable offence - unlike the present one - but ultimately finds that only a non-cognizable offence has been made out.

On the conclusions as above we allow this appeal and quash the impugned proceedings.