

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Writ Petition No.355 of 2015

Priti @ Vaibhavi w/o Abhijeet Manore
And Others.

.. Petitioners.

Versus

The State of Maharashtra
And Another.

.. Respondents.

Shri. Vishwajeet R. Jain, Advocate, for petitioner.

Shri. S.A. Ambad, Additional Public Prosecutor, for
respondent No.1.

Shri. Rahul G. Joshi, Advocate, for respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 17th JULY 2015

ORDER:

1) The petition is filed to challenge the order made by the learned Additional Sessions Judge Aurangabad in Criminal Revision No.87/2014. Both the sides are heard.

2) The revision was filed by present respondent No.2 to challenge the order made by the learned Chief Judicial Magistrate in M.A. No.1244/2011 (letter bearing

outward No.2561/11 dated 17-8-2011). By this letter direction was given by the Chief Judicial Magistrate to police not to make investigation of M. Case No.4/11. The Sessions Court has observed that such direction cannot be given by the Chief Judicial Magistrate.

3) It appears that respondent Abhijeet, husband of present petitioner, Priti had given written application to Kranti Chowk Police Station Aurangabad on 7-5-2011. He has made allegation against the wife and others that without taking his consent illegal abortion was caused and so action needs to be taken against his wife and others. As no action was taken by police, Abhijeet filed private complaint on 12-8-2011 and he requested the learned Chief Judicial Magistrate to give direction for investigation under section 156(3) of the Code of Criminal Procedure for commission of offence under sections 315, 109 etc. of the Indian Penal Code.

4) It appears that by letter dated 12-8-2011 the Chief Judicial Magistrate called the status report in respect of complaint application made by Abhijeet on 7-5-2011 from the police station. As no response was

received from the police, the Chief Judicial Magistrate made order on 25-8-2011 in the proceeding filed by Abhijeet that he would take cognizance of the matter and verification under section 200 of the CrPC will be recorded. The Magistrate had no intention to give direction under section 156(3) of the Code. Verification of Abhijeet was recorded. Then on 7-6-2012 the learned Chief Judicial Magistrate made order of inquiry under section 202(2) of the Cr.P.C. for offence punishable section 315 of the Indian Penal Code. The complainant was directed to produce witnesses whose statements could be recorded before passing further orders. It appears that the complainant did not turn up after making such order by the Chief Judicial Magistrate and then the complaint came to be dismissed on 29-5-2012.

5) It appears that when the learned Chief Judicial Magistrate had called status report under the aforesaid letter given to the police station, the police under some impression thought that it was a direction given under section 156(3) of the Code of Criminal Procedure and registered the cases as M Case No.4/2011. It needs to be

noted here that it was only a letter calling status report in respect of complaint application given by Abhijeet on 7-5-2011 to the police. The complaint itself which was filed in the Court was not referred under section 156(3) of the Code of Criminal Procedure. It appears that the police then informed that M Case No.4/2011 was registered on the basis of aforesaid correspondence made by the Chief Judicial Magistrate. Then the Chief Judicial Magistrate made order in M.A. No.1244/2011 and directed the police on 17-8-2011 not to take further action in M Case No.4/2011. This correspondence / order dated 17-8-2011 was brought to the notice of the Sessions Court in the aforesaid criminal revision. Learned counsel for the present petitioners submitted that revision was filed very late and this point was brought to the notice of the Sessions Court by the office but this point was ignored and the revision was registered. The record produced shows that order was made to register the revision by the learned Judge of the Sessions Court by observing that there was correspondence like letters under the Right to Information Act etc. It can be said that the Sessions Court wanted to take cognizance of the matter *suo moto* as per

the provisions of section 397 of the Cr.P.C. In view of availability of such power, point of delay caused in filing of the revision need not be considered.

6) The learned counsel for the present petitioner submitted that the order made by the learned Chief Judicial Magistrate on 17-8-2011 was interlocutory order and so revision was not tenable and the Sessions Court ought not to have set aside the order. This proposition is not at all acceptable. There was complaint application already given by the complainant dated 7-5-2011 and police could have taken cognizance. It is a matter of procedure only. When some complaint is already pending in the police station, the police can register offence and they may give number like FIR No.I____ of the year as the crime number. When the order is received from the Magistrate to make investigation under section 156(3) of the Code they may give number as M Case No.____ of the year. In any case crime is registered in the police station by describing the crime in different way. It is upto the police to register crime.

7) In the present case it appears that the police were under misconception that there was direction given for investigation under section 156(3) of the Code and so crime was registered as M Case No.4/2011. In any case, the Magistrate could not have prevented the police from making investigation of the case. It can be said that the Magistrate could have only informed the police that there was no such direction from the Magistrate and the things would have been over. Directing by the letter dated 17-8-2011 the Magistrate prevented the police from making investigation of the crime which is not permissible. The learned Additional Public Prosecutor has shown one correspondence to this Court that police had explained to the Magistrate that there was such misconception and they wanted to cancel the F.I.R. No such order also can be given by the Magistrate. It is upto the police to decide as to whether they want to make investigation on the basis of application dated 7-5-2011 given by Abhijeet or they did not find any substance in the complaint to make any investigation. (section 157(1)(a) of the Cr.P.C.).

8) In view of the facts and circumstances of the case and the position of law, this Court holds that it is not possible to interfere in the order made by the Sessions Court. The proceeding stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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