

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

CRIMINAL WRIT PETITION NO.577 OF 2013

Dnyaneshwar s/o Baburao
Chandrawanshi,
Age 32 years, Occu. Advocate
& Agril., R/o Yehalegaon (T.)
Taluka Kallamnuri,
District Hingoli

..Petitioner

Versus

1. The State of Maharashtra
2. Ashok s/o Yayatirao Ghorband,
Age : 41 years, Occu. A.P.I.,
R/o Presently working at
Police Station, Hatta,
Taluka Basmatnagar,
District Hingoli

..Respondent

Mr D.M. Shinde, Advocate for petitioner
Mr S.M. Ganachari, A.P.P. for respondent No.1
Mr Sachin S. Deshmukh, Advocate for respondent No.2

CORAM : N.W. SAMBRE, J.

DATE : 28th October 2015

PER COURT

1. Heard Mr Shinde, learned Counsel for the petitioner, learned Addl. Public Prosecutor for respondent No.1 and Mr Sachin Deshmukh, Advocate for respondent No.2.

2. The present petitioner has questioned the order dated 23rd April 2013, passed by learned Sessions Judge, Basmath in Criminal Revision No.2/2013 and the order dated 4th January 2013 passed by learned Judicial Magistrate, First Class, Basmath in R.C.C. No.307/2012, whereby the present petitioner – complainant in a complaint was directed to remain present before the Court.

3. The facts, as are necessary for deciding the present petition are as under :

4. The petitioner herein filed R.C.C. No.307/2012 on 1st December 2012 against the Police officials and other persons for taking cognizance under Section 156 (3) of the Cr.P.C.

5. Pursuant to the said complaint, the 2nd Judicial Magistrate, First Class, Basmath, by order dated 4th January 2013, having satisfied that the inquiry under Section 200 of Cr.P.C. would be appropriate in the complaint case preferred by the petitioner under Section 156 (3) of Cr.P.C. directed the present petitioner - complainant to remain present before the Court pursuant to the provisions of Section 190 and 200 of Cr.P.C. for examination on oath.

6. The petitioner, feeling aggrieved thereby preferred Criminal Revision No.2 of 2013 which came to be dismissed on 23rd April 2013 as such, present petition.

7. Mr Shinde, learned Counsel for the petitioner would urge that looking to the nature of accusation/allegation against the respondent No.2-accused and the applicant being not a direct witness to the incident, the Court should have straightway ordered registration of offence under Section 156(3) of Cr.P.C., as the allegations are serious. On 4th January 2013, when the Court had directed the petitioner to remain present before the Court, the petitioner - complainant was not an eye witness to the incident and as such, ought not to have been summoned. So as to substantiate his case, learned

Counsel for the petitioner has placed reliance upon the judgment of this Court in the matter of **Sandeep Rammilan Shukla Vs. State of Maharashtra**, reported in **2009 ALL MR (Cri) 2991**, particularly paragraphs 16 and 17 and the Full Bench judgment of this Court in the matter of **Panchabhai Popotbhai Butani & Ors. Vs. State of Maharashtra & Ors.**, reported in **2010 (1) Bom.C.R. (Cri.) 1**, particularly paragraphs 39 and 42 and also the judgment of Rajasthan High Court in the matter of **Babu Lal Vs. State of Rajasthan and Ors.**, reported in **2009 CRI. L.J. 4362**, so as to canvass that the order impugned is not sustainable.

8. Learned Addl. Public Prosecutor would submit that in view of scheme of Section 156 (3) of Cr.P.C., Section 190 and 200, the order passed by learned Judicial Magistrate is in accordance with law and has sought to place reliance upon the judgment of Apex Court in the matter of **Mona Panwar Vs. High Court of Judicature of Allahabad through its Registrar and ors.**, reported in **(2011) 3 SCC 496** so as to draw support that the procedure adopted by the learned Judicial Magistrate First Class is just and proper, particularly relied upon paragraphs 18 and 19 of the same judgment.

9. It is required to be noted herein that the scheme of Chapter XV of Cr.P.C. deals with the issue that is sought to be raised in the present petition. It is not in dispute that the petitioner has preferred the complaint under Section 156 (3) of Cr.P.C., for police investigation. The learned Judicial Magistrate, First Class since has decided to take

cognizance of complaint preferred by the petitioner, which appears to be the reason in the present case to examine the petitioner-complainant on oath to form an opinion whether the matter needs further consideration or not.

10. It is also required to be noted here that of the two options as are available i.e. to pass an order under Section 156 (3) of the Cr.P.C. or to direct examination of the complainant upon oath and the witnesses present, if any, as mentioned in the complaint pursuant to the provisions of Section 200 of Cr.P.C., as provided under Section 202 of Cr.P.C., the Magistrate has ordered petitioner to remain present for recording verification, which in my opinion is in accordance with law. Support can be drawn from the judgment of Apex Court, in justifying the order of Magistrate which is impugned herein, in the matter of **Mona Panwar** (cited supra). Paragraphs 18, 19 and 20 of the said judgment are worth referring to :

“**18.** When the complaint was presented before the appellant, the appellant had mainly two options available to her. One was to pass an order as contemplated by Section 156 (3) of the Code and the second was to direct examination of the complainant upon oath and the witnesses present, if any, as mentioned in Section 200 and proceed further with the matter as provided by Section 202 of the Code. An order made under subsection (3) of Section 156 of the Code is in the nature of a peremptory reminder or intimation to the police to exercise its plenary power of investigation under Section 156 (1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with the final report either under Section 169 or submission of charge-sheet

under Section 173 of the Code. A Magistrate can under Section 190 of the Code before taking cognizance ask for investigation by the police under Section 156 (3) of the Code. The Magistrate can also issue warrant for production, before taking cognizance. If after cognizance has been taken and the Magistrate wants any investigation, it will be under Section 202 of the Code.

19. The phrase “taking cognizance of” means cognizance of an offence and not of the offender. Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cog of an offence on a complaint or on a police report or upon information of a person other than a police officer. Before the Magistrate can be said to have taken cognizance of an offence under Section 190 (1) (b) of the Code, he must have not only applied his mind to the contents of the complaint presented before him, but must have done so far the purpose of proceeding under Section 200 and the provisions following that section. However, when the Magistrate had applied his mind only for ordering an investigation under Section 156 (3) of the Code or issued a warrant for the purposes of investigation, he cannot be said to have taken cognizance of an offence.

20. Taking cognizance is a different thing from initiation of the proceedings. One of the objects of examination of the complaint and his witnesses as mentioned in Section 200 of the Code is to ascertain whether there is prima facie case against the person accused of the offence in the complaint and to prevent the issue of process on a

complaint which is either false or vexatious or intended only to harass such person. Such examination is provided, therefore, to find out whether there is or not sufficient ground for proceeding further.”

11. So far as the judgments relied upon by learned Counsel for the petitioner are concerned, it is required to be noted here that the said judgments deal with the matter in relation to the powers and duties of the Police Officer after he receive a complaint in relation to cognizable offence and the same has hardly any bearing over the issue sought to be raised in the present petition.

12. For the reasons stated herein above, in my opinion, there is no substance in the petition. As such, petition fails, stands dismissed.

(N.W. SAMBRE, J.)

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