

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 3263 OF 2015

Zaitoon Taherali Nalwala

.....Petitioner

V/s.

State of Maharashtra

....Respondent

Mr. Vikas Singh i/b Lambay and Co. for Petitioner

Mr. D. R. More APP for the State

Mr. A. D. Kamble A.P.I. Dharavi Police Station,

Mumbai.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : OCTOBER 7, 2015.

PC :

Heard.

2) Rule. Rule made returnable forthwith with the consent of parties.

3) Petitioner herein happens to be original complainant. On the basis of the report filed by present petitioner, crime no. 167 of 2011 was registered at Dr. D. B. Marg Police Station against accused for offence punishable under sections, 465, 466, 467, 468, 471, 420 r/w 34 of Indian Penal Code. Investigation was set in motion. Upon perusal of records, it appears that Investigating Officer (who is present in the court) had filed a report under section 173 of Code of Criminal Procedure, 1973. It is pertinent to note that

the date of filing of the report is not mentioned either in the report or at the conclusion of the report. Investigating Officer had filed a report that offence is committed, it would be a case of 'A' summary since no evidence was found. The conclusion drawn by Investigating Officer appears to be omnibus. On 20/12/2013, learned Metropolitan Magistrate, 18th Court, Girgaon, Mumbai passed an order:

“Perused the report and other documents filed along with the report and I am satisfied that it is a fit case in which 'A' summary can be granted. Hence, 'A' summary is granted as prayed for.”

4) It was incumbent upon the Magistrate to issue notice to original complainant before accepting 'A' summary report. Learned APP upon instructions from the Investigating Officer who is present in the court submits that the said report was filed “sometime” in October 2013. Without issuing notice to the complainant, 'A' summary report has been accepted. Hence, this writ petition.

5) Learned counsel for the petitioner has placed implicit reliance on the Judgment of Hon'ble Apex Court in the case of **Bhagwant Singh Vs Commissioner of Police and Another** reported in **1985 AIR (SC) 1285**. The Hon'ble Apex Court has held that:

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“The action taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under Sub-section (2)(i) of Section 173 if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant”.

Hon'ble Apex Court has further observed that:

“If the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in Sub-section (2) of Section 154, Sub-section (2) of Section 157 and Sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him”.

Hon'ble Apex Court has further held that:

“In a case where the magistrate to whom a report is forwarded under Sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report”.

6) Taking into consideration the fact that Magistrate has not complied with the mandate of the statute and has accepted 'A' summary report, without giving notice to original complainant, order dated 20/12/2013, thereby accepting 'A' summary report deserves to be quashed and set aside. Hence, following order.

ORDER

- (i) Writ petition is allowed in terms of prayer clause (c).
- (ii) Order dated 20/12/2013, passed by Metropolitan Magistrate, 18th Court, Girgaon, Mumbai, thereby accepting 'A' summary report is hereby quashed and set aside.
- (iii) Matter is remanded to the court of Metropolitan Magistrate, 18th Court, Girgaon, Mumbai.
- (iv) Learned Magistrate shall issue notice to the complainant within 3

weeks from the date of receipt of this order and hear the complainant, and after giving the complainant a fair opportunity to be heard and then decide the matter in accordance with Law.

(v) Rule is made absolute in the above terms.

(SMT. SADHANA S. JADHAV, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.