

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4927 OF 2014

Mrityunjay Pandey & Anr. ...Petitioners

Versus

State of Maharashtra & Anr. ...Respondents

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Mr. Bhavesh Parmar i/b Mr. Devmani Shukla for Petitioners.

Dr. Nilesh V. Pawaskar for Respondent No.2.

Ms G.P. Mulekar, APP for Respondent No.1-State.

CORAM:-M.L. TAHALIYANI, J.

DATED : -14th JULY, 2015.

P.C.

Admit. Heard finally.

2. Heard the learned counsel for the Petitioners, the learned counsel for Respondent No.2 and the learned APP for Respondent No.1- State of Maharashtra.

3. Respondent No.2 had filed a criminal complaint in the Court of Metropolitan Magistrate against the Petitioner Nos.1 and 2. Respondent No.2 had prayed for order under section 156 (3) of Criminal Procedure Code. Learned Magistrate instead of passing any order under section 156 (3) directed that the complaint should proceed under section 200 of Criminal Procedure Code. Aggrieved

by the said order Respondent No.2 had filed a revision application before the learned Sessions Court. Learned Additional Sessions Judge while disposing of the Criminal Revision Application passed the following order :-

“1.Revision application No.14 of 2014 is allowed.
2.Impugned order dated 18.12.2013 is hereby set aside.
3.Ld. Magistrate to hear both the parties again and pass detailed order as to whether or not investigation u/s. 156 (3) of Cr.P.C. is required.
4.Revision application No.14 of 2014 is disposed of accordingly.”

4. After the said order, a clarification was prayed for by Respondent No.2. Learned Additional Sessions Judge on the said application had passed the following order :

“1. Cri. M.A. No.153/14 is allowed.
2.Para No.3 of order passed in Cri. Revision Application No.14 of 2014 be read as under :

Para 3:

Ld. Magistrate to hear the complainant again and pass detail order as to whether or not investigation under section 156 (3) of Cr.P.C. is required.

3. Note be taken on the original order in Criminal Revision Application No.14/2014 about corrected para No.3 of operative portion of the order.
4. Cri.M.A. No.153/14 is disposed of accordingly.”

5. The Petitioners are aggrieved by the said order of the learned Additional Sessions Judge. After having gone through both the orders what appears to me is that the clarificatory order was necessary in as much as the Petitioner Nos. 1 and 2 could not have been heard at the stage when the learned Magistrate was considering the application /complaint of Respondent No.2 under section 156 (3) or 200 of Criminal Procedure Code.

6. The Petitioners seek to set aside original order in revision application and the clarificatory order passed below miscellaneous application. Whether Respondent No.2 had been able to make out a case for the offence under section 156 (3) or otherwise, was the issue to be decided by the Magistrate without hearing the proposed accused. In view thereof, the clarificatory order was necessary and I do not find anything wrong in the order passed by the learned Additional Sessions Judge.

7. The petition is therefore, dismissed.

(JUDGE)