

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (MAIN) NO. 172 OF 2015

Shri Rui Ferreira, s/o Dr. Joao Filipe
Ferreira, major of age, married,
resident of House No. E-1, Near
Panjim Church, Panaji, Goa.

.... Appellant/
Applicant

Versus

1. The Police Inspector, Panaji
Police Station, Panaji, Goa.
2. The Superintendent of Police
(North), Office of the
Superintendent of Police
(North), Porvorim, Bardez,
Goa.

.... Respondents

Mr. Ryan Menezes, Advocate for the Appellant/Applicant.

Mr. Mahesh Amonkar, Additional Public Prosecutor for the
Respondents.

CORAM:- S.B. SHUKRE, J.

DATE:- 4th FEBRUARY, 2016.

ORAL JUDGMENT:

Heard. Admit. Heard finally by consent of the
parties.

2. A complaint was filed by the applicant before the Court of Judicial Magistrate First Class at Panaji contending that he is the share holder of Goa Urban Co-operative Bank Limited and therefore, concerned for welfare and interest of the bank. He submitted that he noticed a fact that one Mr. Sham Naik, was appointed by the bank on contract basis, although he was a former employee of the bank who had been allowed to take voluntary retirement from the bank. It was further submitted by learned Counsel for the applicant that under the Voluntary Retirement Scheme-2005, once an application of an employee seeking his voluntary retirement from the bank is allowed, his association with the bank in any manner is not permissible and in no case, such an employee can be recruited or appointed on contract basis. He submits that the fact that Mr. Naik was appointed by the bank amounted to committing of fraud by the bank as the funds of the bank stood misappropriated. So, the applicant filed a police complaint dated 27.02.2013. However, no action was taken by the police.

3. The applicant, therefore, filed a criminal complaint before the Judicial Magistrate First Class, Panaji alleging all these facts. In this complaint, the applicant prayed for issuance

of directions to the respondents, that is the Police Inspector, Panaji police station and Superintendent of Police (North), Goa for registration of F.I.R. for offences punishable under Sections 404, 406 and 420 IPC against Mr. Sham Naik and one more person Mr. Vishnoo Naik, the Chairman and the principal administrator of the bank, who had acted in collusion with Mr. Sham Naik. The applicant also sought a direction to the police to investigate the matter properly and submit it's report to the Court.

4. Learned Magistrate, upon perusal of the complaint, the documents filed therewith and also the reply of the police, passed the following order:

"Perused the application and documents. Perused reply filed. Heard Adv. Ryan Menezes for the applicant/complainant. Perused case-law.

I find that cognizable offences are said to have been committed by the persons named in the complaint dated 27/02/2013. The complainant is directed to examine himself and his witnesses if any as cognizance is hereby taken u/s 200 Cr.P.C. in view of the ratio in Mona Panwar Vs. Hon'ble High Court of Judicature at Allahabad (2011/SC)."

5. It is contended by learned Counsel for the applicant that the Magistrate has wrongly applied the ratio of the case of **Mona Panwar Vs. High Court of Judicature of Allahabad, (2011) 3 SCC 496**, to the facts of this case and erroneously took cognizance of the offences under Section 200 Cr.P.C. He submits that a decision is the authority for what it actually decides and that the ratio in the case of **Mona Panwar** (supra) was that whether in the facts and circumstances of that case, the order passed by the Magistrate taking cognizance of the offences alleged therein under Section 200 Cr.P.C. was correct or not and while answering this question, Hon'ble Supreme Court held that the Magistrate exercised her discretion correctly. He submits that the facts considered by Hon'ble Apex Court were that the complainant therein had alleged committing of an offence of rape by her father-in-law and that the complainant knew the accused and was also well acquainted with the witnesses. Therefore, taking cognizance of such an offence under Section 200 Cr.P.C. was seen by Hon'ble Apex Court as a proper course adopted by the Magistrate. He further submits that the facts of this case are quite different and they show that the complainant, although a share holder, does not have any control over the bank and its officers and therefore, would not

be in a position to produce the relevant evidence and rather would require help of the police and as such police investigation is absolutely necessary.

6. Learned Counsel for the applicant further submits that the impugned order ought to have stated the reasons as to why the prayer made by the applicant specifically seeking direction to the police under Section 156(3) Cr.P.C. was not granted, and as to why the learned Magistrate decided to proceed under Section 200 Cr.P.C. instead. On this count also, learned Counsel for the applicant submits, the impugned order passed by the learned Magistrate and also another impugned order passed by the learned Sessions Judge upholding the order of the Magistrate dated 24.09.2013, deserve to be quashed and set aside.

7. Mr. Amonkar, learned Additional Public Prosecutor for the State submits that there is nothing illegal or arbitrary in the orders impugned herein. He further submits that the complaint itself indicates an alternate prayer to the effect that any such order as deemed fit by the Court may be passed, and which has been actually considered by the Court by exercising its

discretion appropriately. He submits that at the stage of deciding the question of taking of cognizance, it is not expected of a Magistrate to give detailed reasons as if findings regarding guilt of the accused are being recorded. He submits that even in the case of **Mona Panwar** (supra), Hon'ble Apex Court has laid down that when the complaint is presented to a Magistrate, the Magistrate would have two options, one to pass an order as contemplated under Section 156(3) Cr.P.C. and two, to direct examination of the complainant upon oath and the witnesses present, if any, as provided under Section 200 Cr.P.C.

8. Learned Additional Public Prosecutor further submits that while exercising discretion under Section 482 Cr.P.C., it must be seen by the High Court that there is no abuse of process of the Court and that ends of justice are secured. He submits that if no prejudice is caused to the complainant, there would be no case for invoking Section 482 Cr.P.C. power. He submits that what has been ordered by the learned Magistrate is only examination of the complaint and the witnesses present, if any, under Section 200 Cr.P.C. and the stage of issuance of process is still there. He also submits that under Section 202 Cr.P.C., a police investigation, as sought for by the applicant,

can always be sought from the Magistrate. Therefore, he submits that in the instant case there is neither abuse of the process of the Court nor any injustice caused to the applicant.

9. In support of his contentions, learned Counsel for the applicant has placed reliance upon the case of **Government of Karnataka and Others Vs. Gowramma and Others, 2007(13) SCC 482**. He has also referred to the case of **Mona Panwar** (supra), to demonstrate as to how it's ratio is not applicable to the present case.

10. Learned Additional Public Prosecutor has placed reliance upon the case of **Rameshbhai Pandurao Hedau Vs. State of Gujrat, AIR 2010 SC 1877**, in support of his contention that the Magistrate has not committed any error in refusing the applicant's prayer for an investigation by the police under Section 153 Cr.P.C. and deciding to proceed under Section 200 Cr.P.C. instead.

11. In the case of **Mona Panwar** (supra), Hon'ble Apex Court, has held that the order passed by the learned Magistrate taking cognizance of the offences under Section 200 Cr.P.C. and

proceeding in the matter as provided in that section was not erroneous. The facts and circumstances of that case disclose that the complainant therein being a victim of the alleged offence of rape knew the accused and also the witnesses and so the Magistrate decided to proceed under Section 200 Cr.P.C. and onwards. Therefore, the ratio of that case would have to be understood in the back ground of these facts of that case.

12. In the case of **Gowramma** (supra), Hon'ble Apex Court has held that a case is a precedent and binding for what it explicitly decides and no more. This would include the principles on which the decision is founded. So, one has to also ascertain the principles on which founded is the decision in the case of **Mona Panwar** (supra). They, *inter-alia*, are that after the complaint is presented to the Magistrate, the Magistrate would have two options, one directing investigation under Section 153 Cr.P.C. and two, taking cognizance of the offences under Section 200 Cr.P.C. and proceeding in the matter under the provision of Section 200 Cr.P.C. If, the learned Magistrate has taken one of these two options and if it is seen that exercise of discretion in choosing one of the options is not arbitrary or has not resulted in the abuse of process of the Court or has not caused any

injustice to the complainant, the exercise of such a discretion cannot be interfered with by this Court by invoking its power under Section 482 Cr.P.C.

13. In the instant case, no doubt, reasons for rejection of the prayer for seeking direction to the police for making investigation as provided under Section 153 Cr.P.C. are not stated. But, in my view, it has not resulted in causing of any prejudice to the complainant nor has it resulted in miscarriage of justice in this case. The reason being that what the learned Magistrate has directed is only examination of complainant that is the applicant and his witnesses, if any, as provided under Section 200 Cr.P.C. and nothing more. Further course of action is still open to the applicant and it is to convince the learned Magistrate of the need for postponing issuance of process and directing police investigation under Section 202 Cr.P.C. In the case of **Rameshbhai Pandurao Hedau** this is what the Hon'ble Apex Court has stated. Hon'ble Apex Court has held that the only difference under Section 153(3) and 202 Cr.P.C. is the stage at which the power to direct police investigation may be invoked. The power to direct investigation by police under Section 156(3) Cr.P.C. is at the pre-cognizance stage, while the

power under Section 202 is at the post-cognizance stage. Such being the difference between these two sections, no prejudice or injustice can be said to have been caused to the complainant in this case.

14. Now, dealing with the other argument about absence of reasons, I must state, giving no reasons for adopting one of the courses available after the complaint is filed is one thing and denial of opportunity to prove the case of the complainant is another. These orders are passed at preliminary stages, which sometimes, due to pressure of work or otherwise, may not disclose reasons. But, preliminary as they are, they need to be examined for their legality or correctness, from the view point of their impact on the complainant's case. This is not to say that reasons are not to be stated. Reasons form the soul of any judicial order. The order impugned herein is also a judicial order. But, while examining a preliminary order, like the one impugned herein, perspective changes. If by absence of reasons, serious prejudice or miscarriage of justice occurs, only then, in my opinion, and as rightly submitted by learned Additional Public Prosecutor, such an order can be upset by invoking power under Section 482 Cr.P.C. But, such is not the

case here.

15. Thus, it would be seen from the above discussion that this is not a case where **Mona Panwar** (supra) has been improperly applied by the learned Magistrate. Ultimately, it is the principle on which the decision is based that is a binding precedent. No fault can be found with the orders impugned here. The Application must fail. The Application stands dismissed.

S. B. SHUKRE, J.

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