

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.98 OF 2014

Mayur Bharat Gade

..... Applicant

V/s

Babasaheb Anandro Gade & Anr.

..... Respondents

Mr. Manoj S. Mohite for the Applicant.

Mr. Ankush N. Dhokale for the Respondent No.1.

Dr. F.R. Shaikh, APP for the Respondent No.2/State.

CORAM : A.S. OKA &

A.A. SAYED, JJ.

DATED : 18 OCTOBER 2016

ORAL JUDGMENT: (Per A.S. Oka, J.)

1 On the earlier date the parties were put to notice that this Application will be taken up for final disposal.

2 By this Application under section 482 of the Code of Criminal Procedure, 1973 (for short "CrPC"), the first challenge is to the order dated 5 October 2012 passed by the learned Judicial Magistrate First Class, Vadgaon Maval, District Pune under sub-section 3 of section 156 of CrPC. The second challenge is to the First Information Report registered on the basis of the said order.

3 The submission of the learned Counsel appearing for the Applicant is that after an application of mind, on 13 June 2012, on the Complaint filed by the first Respondent, the learned Judicial Magistrate First Class, Vadgaon Maval passed an order directing that the Complaint should be kept for recording of verification statement of the first Respondent on 2 August 2012. He submitted that by ignoring the said order, the learned Judicial Magistrate First Class passed impugned order on 5 October 2012 directing investigation in accordance with sub-section 3 of section 156 of CrPC. The submission is that as the Complaint was already fixed for recording the verification statement, pre-cognizance stage was already over. Reliance is placed on a decision of Division Bench of this Court in the case of **Pinni Co-operative Housing Society & Ors vs. Maruti Mathu Gaikwad & Ors.**¹. He submitted that even on merits no case was made out to pass an order under sub- section (3) of section 156 of CrPC.

4 The learned Counsel appearing for the first Respondent submitted that merely because an order was earlier made directing that the Complaint should be put up for verification, the learned Magistrate was not powerless to pass an order under sub-section 3 of section 156 of the CrPC. He urged that in any event, the remedy of filing a Revision Application is available against the order of the learned Magistrate. He

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submitted that on the basis of the impugned order, the investigation has been carried out and therefore, no interference is called for. In the alternative he submits that if this Court is inclined to interfere, the Complaint may be remanded for consideration of the learned Judicial Magistrate from the stage at which it was pending on the date on which the impugned order was passed. The learned APP supported the impugned order. He stated on instructions that a charge-sheet is not yet filed.

5 We have given careful consideration to the submissions. We have perused the roznama of the Complaint. On 13 June 2012 when the Complaint was filed, the learned Magistrate passed an order directing that the Complaint should be kept for verification on 2 August 2012. On the date fixed for recording verification, the first Respondent was absent and therefore, the Complaint was adjourned to 5 October 2012 for taking steps. On that day, the learned Magistrate passed the impugned order under sub-section (3) of section 156 of the CrPC. The impugned order does not take a note of the earlier order by which the Complaint was ordered to be put up for verification.

6 At this stage, we may advert to the decision of the Division Bench in the case of **Pinny Co-operative Housing Society Ltd. & Ors.** In the

case before the Division Bench, the challenge was to the order passed under sub-section 3 of section 156 of the CrPC. In the facts of the case, on the date of filing of the Complaint, the same was ordered to be put up for verification. On the date on which the Complaint was fixed for verification, an order was made under sub-section (3) of section 156 of CrPC. As pointed out in paragraph 4 of the said decision, the issue was whether the order passed by the learned Magistrate directing that the Complaint should be put up for verification amounts to taking cognizance of the offence. In paragraph 15 of the said decision, the Division Bench held that the order passed by the learned Magistrate of directing that the Complaint should be put up for verification is not at a pre-cognizance stage. The Division Bench held that directing to put up the Complaint for verification is a stage which succeeds when the Magistrate takes cognizance of the offence by registering the Complaint. Thus, the Division Bench proceeded to quash the order sub-section (3) of section 156 of CrPC on the ground that the same was passed after pre-cognizance stage was over. The said decision is squarely applicable to the facts of the present case. In the present case on 13 June 2012, when the Complaint was filed, the learned Magistrate ordered registration thereof and directed that the same should be put up on 2 August 2012 for verification. Hence, impugned order dated 5 October 2012 could not have been lawfully passed. We are not entering into the

controversy on merits of the Complaint as the learned Counsel appearing for the first Respondent suggested that the Complaint should be remanded to the learned Magistrate.

7 Hence, the impugned order under sub-section 3 of section 156 of CrPC is per se illegal and without jurisdiction. It deserves to be quashed and set aside. Accordingly, consequential action of registering the First Information Report on the basis of the said order quashed and set aside. We may note here that as a First Information Report has been registered on the basis of the impugned order, the remedy of Revision is not an efficacious remedy as, a First Information Report cannot be quashed in exercise of power of revision. Hence, we pass following order:

O R D E R

i) Rule is made absolute in terms of prayer clauses (B) and (C) which read thus:

“(B) The order dated 5/10/2012 passed in RCC No.248/2012 passed by Judicial Magistrate, First Class, Vadgaon Maval, Dist-Pune directing investigation u/s. 156(3) Cr.P.C., be quashed and set aside.

(C) The FIR registered vide MECR No.10 of 2013 registered at Dabhade Police Station and consequent proceedings be quashed and set aside.”

ii) The Regular Criminal Complaint No.248 of 2012 shall be placed before the learned Judicial Magistrate First Class, Vadgaon Maval. The learned Judicial Magistrate shall proceed with the Complaint in accordance with law from the stage at which the same was pending on 5 October 2012. All contentions of the parties on merits of the Complaint are kept open.

iii) Rule is partly made absolute on above terms.

(A.A. SAYED, J.)

(A.S. OKA, J.)

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