

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO.2911 OF 2015**

SBI Global Factors Limited

...

...Petitioner

v/s.

The State of Maharashtra and anr.

...Respondents

...

Mr.Yashpal Thakur i/b PKA Advocates for the Petitioner.

Dr.F.R.Shaikh, APP for the Respondent No.1.

Mr.A.S.Khandeparkar i/b Akshar Law for the Respondent No.2.

...

CORAM : A.S.OKA &**A.A. SAYED, JJ.****DATED : 2 AUGUST 2016****ORAL JUDGMENT:** *(Per A.S.Oka,J.)*

As the regular Bench presided over by the Hon'ble Justice Shri N.H.Patil has declined to take up this Petition, as per the general standing order of the Hon'ble the Chief Justice, the present Petition has been placed before this Bench.

2. Rule. Advocate on record for the second Respondent waives service for the second Respondent. Learned APP waives service for the first Respondent. By consent, forthwith taken up for final disposal.

3. The second Respondent filed a complaint in the Court of the learned Additional Chief Metropolitan Magistrate, 4th Court at Girgaon, Mumbai seeking an action under Section 156 (3) of the Code of Criminal Procedure, 1973 (for short "Cr.P.C."). It is not in dispute that the verification of the second Respondent on the said complaint was recorded by the learned Metropolitan Magistrate on 2 March 2011 and on the very date, an order was made directing investigation in terms of Section 202 of Cr.P.C.. By order dated 16 March 2012, learned Metropolitan Magistrate exercised powers under Section 204 of Cr.P.C. and dismissed the complaint. A Revision Application being Criminal Revision Application No.556 of 2012 was filed by the second Respondent before the Sessions Court for challenging the said order. The Revision Application was allowed by the Judgment and Order dated 4 October 2013. The operative part of the said Judgment and Order read thus:-

- "1. The application for revision is allowed.
2. The order impugned is set aside and following order is passed.
Issue process against the Respondent No.1 u/s 406 and 420 of the IPC.
3. R and P be sent back to the Ld.Addl.Metropolitan Magistrate.
4. The Parties are directed to appear before the Ld.Metropolitan Magistrate on 12 November 2013."

4. The present Petitioner filed Criminal Application No.1186 of 2013 for challenging the judgment and order dated 4 October 2013 in Criminal Revision Application filed by the second Respondent. By judgment and order dated 6 February 2014, the said Criminal Application filed by the Petitioner was allowed by passing the following order:

ORDER

(i) The application is allowed.

(ii) The order dated 4.10.2013 passed by the Addl. Sessions Judge, Greater Bombay is hereby quashed and set aside.

((iii) The matter is remanded to the Court of Addl. Chief Metropolitan Magistrate, 4th Court, Girgaum, who shall reconsider the complaint without being influenced by the observations made by the revisional/Sessions Court and pass appropriate orders after hearing the complainant.

Application is allowed in terms of prayer clause (b). application stands disposed of.

5. Thereafter, the complaint was placed before the learned Metropolitan Magistrate. By order dated 1 April 2015, the learned Metropolitan Magistrate passed an order under sub-section (3) of Section 156 of Cr.P.C. directing investigation. On the basis of the said order, First Information Report being MECR No.10/15 was registered with V.P.Marg Police Station, Mumbai.

6. In this Petition under Article 226 of the Constitution of India read with Section 482 of the Cr.P.C., a prayer is for quashing and setting aside the order dated 1 April 2015 and for quashing the registration of the First Information Report on the basis of the said order.

7. The legal position is well settled. After recording the verification statement on a complaint filed by the second Respondent, the learned Metropolitan Magistrate had no jurisdiction to pass an order under sub-section (3) of Section 156 of Cr.P.C., inasmuch as such order under sub-section (3) of Section 156 of Cr.P.C. can be made only at a pre-cognizance stage. In the present case, the order dated 16 March 2012 passed by the learned Metropolitan Magistrate dismissing the complaint specifically records that not only the verification statement was recorded on 2 March 2011, but an order was made under Section 202 of the Cr.P.C. on the very same day. Hence, the complainant had crossed pre-cognizance stage. The order dated 16 March 2012 was set aside in Revision Application preferred by the second Respondent by the Sessions Court. The Sessions Court directed that process should be issued against the first Respondent in the Revision Application under Sections 406 and 420 of the Indian Penal Code. As stated earlier, the said order was challenged before this Court and this Court interfered by judgment and order dated 6 February 2014. Learned

single Judge observed that the learned Sessions Judge after setting aside the order of the the learned Metropolitan Magistrate ought to have remanded the complaint to the learned Metropolitan Magistrate with a direction to pass an appropriate order thereon in accordance with law after hearing the complainant. The effect of the said order of the learned single Judge is that the complaint was remanded to the Court of the learned Metropolitan Magistrate. The learned Magistrate was required to pass a fresh order on the complaint in accordance with law. As stated earlier, a verification statement was already recorded. Therefore, after remand by this Court, the learned Metropolitan Magistrate could have dealt with the complaint from the stage at which the complaint was pending on 16 March 2012, when the complaint was dismissed.

8. However, from the impugned order dated 1 April 2015, we find that the learned Magistrate did not notice the fact that the complaint had crossed the pre-cognizance stages, as the verification statement was already recorded. In view of the said legal position, after recording a verification statement, the learned Magistrate could not have passed an order under sub-section (3) of Section 156 of the Cr.P.C.

9. Learned Counsel appearing for the second Respondent does not dispute the legal position that after recording the verification statement, the learned Metropolitan Magistrate could not have passed an order under sub-section (3) of Section 156 of Cr.P.C. However, he submits that the learned Magistrate could have considered the question of issuing process. Learned Counsel appearing for the Petitioner pointed out that while passing the impugned order dated 1 April 2015, the learned Magistrate also disposed of the Application at Exhibit `9' made by the second Respondent praying for amendment of the complaint for adding some other persons as accused. He submitted that the said Application was not maintainable.

10. As the order dated 1 April 2015 is completely illegal, the said order will have to be set aside. As a consequence, the First Information Report registered on the basis of the said order will have to be quashed. As far as the Application at Exhibit `9' is concerned, the same was disposed of by order dated 1 April 2015. As we are setting aside the said order, even the said Application will stand restored. However, the learned Magistrate will have to decide the issue of maintainability of the said Application.

11. Accordingly, the Petition must succeed and we pass the following order:

- (i) The impugned order dated 1 April 2015 is quashed and set aside and the complaint bearing CC/06/SW/2011 is restored and is remitted to the Court of Addl.Chief Metropolitan Magistrate, 4th Court, Girgaon, Mumbai;
- (ii) Consequently, the First Information Report being MECR 10/15 registered with V.P.Marg Police Station, Mumbai is hereby quashed;
- (iii) We direct the learned Addl.Chief Metropolitan Magistrate to proceed with the complaint from the stage at which the complaint was pending as on 16 March 2012;
- (iv) Learned Metropolitan Magistrate will pass appropriate order on the complaint after giving an opportunity of being heard to the second Respondent-complainant. Learned Metropolitan Magistrate will also pass appropriate order in accordance with law on the Application at Exhibit '9'. As observed earlier, the issue of maintainability of the said Application is kept open, which will have to be decided by the learned Metropolitan Magistrate;

- (v) As held earlier, we make it clear that it will not be open to the learned Magistrate to issue a direction under sub-section (3) of Section 156 of Cr.P.C.;
- (vi) We make it clear that subject to what is observed earlier, we have made no adjudication on the merits of the complaint filed by the second Respondent and all contentions of parties are kept expressly open;
- (vii) Rule is disposed of on above terms;

(A.A. SAYED, J.)

(A.S.OKA, J.)