

IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) NO. 906/2015

(Ramesh s/o Moreshwar Ingle vs. 1. Kundatai w/o Punjabrao Masram and others)

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Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders
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Court's or Judge's order

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Mr. A.V.Bhide, Advocates for applicant
Mr. Ritu Kaliya, APP for respondent

CORAM: A.B.CHAUDHARI, J.
DATED : 14th January, 2016.

Learned counsel for the applicant submits that the impugned order dated 8.10.2015 passed by the Chief Judicial Magistrate, Nagpur (Exh.6) in Regular Criminal Case no.1203/2014 is illegal, because the trial Court should have entertained his Application u/s 156(3) Cr.PC. in a pending private complaint case that was filed by his client. I quote the relevant portion of the Chief Judicial Magistrate's order, as under :-

“ It reveals that on filing the complaint under Section 200 of Code of Criminal Procedure, the verification statement of complainant was recorded and thereafter, an enquiry under Section 202 of the Code of Criminal Procedure was directed by the Court by an order dated 21.06.2014. Police Station Ambazari has submitted its inquiry report under Section 202 of the Code of Criminal Procedure on 06.09.2014 which is at Exh.5.

It appears that after filing of report, the complainant despite of hearing on the case choose to move this application under Section 156(3) of the Code of Criminal Procedure. It is pertinent to note that the power to direct investigation under Section 156(3) of the Criminal Procedure Code is quite different to that of the power to direct investigation under Section 202(1) of the Code of Criminal Procedure. As per the ratio laid down by the Hon'ble Supreme Court in the case cited above, the direction for investigation under section 156(3) of the Code of Criminal Procedure is to be issued only after application of mind by the Magistrate. Such direction is issued where Magistrate does not take cognizance and does not find it necessary to postpone issuance of process and finds the case made out to proceed forthwith. In the matter at hand, the court has already take the cognizance of the offence and directed inquiry by police under Section 202 (1) of the Code of Criminal Procedure.”

It is clear from the above order that after filing of complaint under Section 200 Cr.PC. the Magistrate recorded the verification statement of complainant and then in terms of Section 202 sub-section (1) directed an investigation to be made by a Police officer. The settled legal position is that such a direction to Investigating Officer in a complaint case, while postponing the issue

of process is not akin to the direction contemplated by Section 156(3) of the Cr.PC. But this power to direct investigation to be made by the Police officer u/s 202 (1) is for aiding the Magistrate to find out whether or not there is sufficient ground for proceeding. This has however nothing to do with the direction stated in Section 156(3) Cr.PC., which sections falls in the earlier Chapter as against Chapter XV regarding complaints to Magistrate. The applicant was not at all justified in filing the application u/s 156(3) in his private complaint, having elected the remedy of filing a private complaint u/s 200 of Cr.PC. It is well settled by now that having elected the remedy to file private complaint, the applicant cannot go back to Section 156(3) Cr.PC. Mr. Bhide, learned counsel for the applicant submits that the complainant wants the original will to be produced before the Court and the police report received by the Magistrate pursuant to the direction us/ 202(1)Cr.PC. is infirm and incomplete. In that case, the remedy for the applicant is to pursue his criminal complaint case and take resort to the proceedings under Cr.PC. for properly prosecuting his complaint Case.

The impugned order is perfectly legal and correct. No interference is required.

Criminal Application No.906/2015 is rejected.

JUDGE

sahare