

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 370 OF 2003

Shri. K. J. Padmanabha
Proprietor Hotel Mikado,
Swami Jairamdas Complex, R. C. Marg,
Chembur, Mumbai – 400 071.

... Petitioner

vs.

1. The State of Maharashtra
2. Shri. Mohan Tolaram Kukreja
Partner of M/s. Kukreja Construction
Company Lalasis, 11th Road,
Chembur, Mumbai-400071

... Respondents

Mr. Raja Thakare, Advocate for the petitioner.
Ms. Pallavi Dabholkar, A.P.P. for the State/respondent no.1.
Mr. Niranjana Mundargi a/w Mr. Hamed Kadiani a/w. Mr. Nilesh Tated
i/by DSK Legal, Advocate for respondent no.2.

Coram : Smt. R. P. SondurBaldota, J.

Date : 9th February, 2017.

JUDGMENT :

1. The short question arising in this petition for consideration of the Court is, whether the Court of Magistrate, at the time of acceptance of report under Section 173(2) Criminal Procedure Code (“Cr.P.C.” for short) can direct further investigation by police. The order impugned in this petition, while declining to accept 'B' summary report, directs further investigation on the following four specific points :

(i) To collect the original questioned agreement from

the concerned office as the police have already deposited the questioned agreement 20.10.2000 as per the record.

(ii) To obtain the fresh specimen signatures of the accused and the first information under due panchnamas.

(iii) To refer questioned agreement together with the specimen signatures of the accused and the first informant to Chief Examiner of Documents, C.I.D. M.S. Mumbai for examining documents and opinion;

(iv) After such fresh and further investigation the police may submit a chargesheet or again submit final report depending upon the further investigation made by them.

2. The brief factual background of the impugned order is that respondent no.2 filed complaint with Chembur Police Station against the petitioner alleging commission of offences punishable under Sections 465, 467, 468, 471 and 472 Indian Penal Code. On the basis of which, FIR No.59 of 1998 was registered on 21st December, 1998. During the course of investigation the Investigating Officer obtained the specimen signatures of the petitioner and respondent no.2 for sending the documents in question for examination by the Handwriting Expert. After receiving report from the Handwriting Expert the police filed report in the trial Court for application of 'B' summary. The trial Court by its order dated 29th April, 2000 accepted the 'B' summary without any notice and hearing to respondent no.2. Respondent no.2, then approached this Court with Writ Petition No.1057 of 2000. By the order dated 20th December, 2000 this Court allowed the writ petition and set aside the order of the trial Court accepting 'B' summary. It further directed the trial Court to decide afresh on the aspect of acceptance or otherwise of the 'B' Summary submitted by the police after issuing notice to respondent no.2 and after giving him an opportunity of being heard in the matter. The trial Court thereafter issued notice not just to respondent no.2 but also to the petitioner stating that the

notice was being issued in compliance of the order passed on the writ petition. Thereafter both parties were heard on the protest petition filed by respondent no.2 and the impugned order came to be passed.

3. Mr. Thakare, the learned advocate for the petitioner submits that there is an inherent defect in the impugned order because the trial Court could not have given directions for further investigation after taking cognizance in the matter by summoning the petitioner before him. On the question of power, a Magistrate to order to further investigation, he relies upon decision of the Apex Court in ***Randhir Singh Rana vs. State (Delhi Administration) reported in (1997) 1 Supreme Court Cases page 361.*** He submits as stated in para 7 of the decision cited, the Apex Court has considered different stages of the case in which powers are to be exercised by the Trial Court under Criminal Procedure Code. The different stages mentioned there are, (i) at the time of cognizance, (ii) after cognizance is taken, (iii) after appearance of the accused and (iv) after commencement of trial on charge being framed. The power of further investigation, undoubtedly exists in the first stage, may exist at the second stage and Section 331 permits examination of any witness during the course of trial. However at the third stage i.e. after appearance of the accused no power is conferred upon the Court for ordering further investigation. All that has to be done at that stage is looking into the material already on record and either frame charge if a prima-facie case is made out or discharge the accused bearing in mind the relevant provision relating thereto. The discharge, of course, would not prevent further investigation by police and submission of the charge-sheet thereafter if a case for the same is made out.

4. Mr. Mundargi, the learned advocate for respondent no.2 submits that the question of power for learned Magistrate in directing further investigation at the time of acceptance of the report under Section

173(2) Cr.P.C. i.e. at the first stage, has been considered in the subsequent decision of the Apex Court also. He relies upon the decision in ***Minu Kumari and another vs. State of Bihar and others reported in (2006) 4 Supreme Court Cases page 359.*** The Apex Court at para 11 observes that when a report is forwarded to the police by the Magistrate under Section 173(2) (i) is placed before him several situations arise. The report may conclude that an offence appears to have been committed by a particular person or persons. In such case, the Magistrate (i) may either accept the report and take cognizance of the offence and issue process or (ii) may be disagree with the report and drop the proceedings and (iii) may direct further investigation under Section 173(2) and require the police to make the further report. The report may on the other hand say that, according to the police, no offence has been committed. When such report is placed before the Magistrate, he again has option of one of the three courses open i.e. (i) he may accept the report and drop the proceedings, or (ii) he may disagree with the report and take the view that there is sufficient ground for proceeding, take cognizance of the offence and issue process, or (iii) he may direct further investigation to be made by the police under Section 156 (3) Cr.P.C. as above.

5. There can obviously be no dispute as regards the position of law laid down in both the decisions. The dispute is about the stage at which the proceedings can be said to be pending before the trial Court. Whether it is the first stage of acceptance of the report under Section 173(2) Cr.P.C. and taking cognizance or whether it is the third stage i.e. after appearance of the accused.

6. Mr. Thakare submits that since notice had already been issued by trial Court and since the petitioner had appeared before the trial Court pursuant to the notice, the stage must be treated as third stage i.e. after appearance of the accused. The submission advanced by Mr. Thakare

cannot be accepted for the simple reason that at the stage of consideration of the report of investigation filed by the police, the person against whom the complaint is filed has not yet assumed the character of “accused”. He becomes an accused only after cognizance is taken by the Court and summons is served upon him. Until then, he has no right of hearing in the proceedings against him. At the stage of acceptance of the report, the only person who has a right of hearing, is the complainant. As such, the notice directed to be issued by the order of this Court on the writ petition could be issued only to respondent no.2 and not to the petitioner. The issuance of notice by the trial Court to the petitioner was clearly misreading of the order of this Court passed in writ petition. Therefore, the notice to the petitioner is required to be completely ignored even though the petitioner appeared before the trial Court and was heard on the protest petition. In the circumstances, the stage of the proceedings before the trial Court was the first stage of “the time of taking cognizance”. Therefore, the impugned order was within the powers conferred upon the trial Court. Secondly, the presence of the petitioner before the trial Court pursuant to the notice served upon him would not amount to taking of cognizance by the Court. This is because the cognizance to be taken by the Court is of the offence and not an individual. At the relevant time, the Court was yet to decide on a *prima-facie* view of the matter, whether offence is said to have been committed. Therefore, there is no infirmity in the impugned order directing further investigation by the police. Hence, the petition is dismissed.

[Smt. R. P. SondurBaldota, J.]