

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 110 OF 2017

Kishor Dattatraya Patil.

..Petitioner.

Versus

Jafar Shaikh and Others.

..Respondents.

Mr. P. K. Dhakephalkar, Senior Advocate with Mr. V. J. Bhanushali for the Petitioner.

Mr. K. V. Saste, APP for the State.

Ms. Mallika Ingale for Respondent No. 1.

Mr. J. G. Reddy for Respondent No. 2.

Coram : RANJIT MORE &
SANDEEP K. SHINDE, JJ.

Date : **December 6, 2017.**

P. C. :

1. Heard Mr. Dhakephalkar, the learned Senior Counsel appearing for the Petitioner as well as Ms. Mallika Ingale, the learned Counsel for Respondent No.1, Mr. Reddy, the learned Counsel for Respondent No. 2 and Mr. Saste, the learned APP for the State.

2. The petition is filed seeking to quash and set aside the FIR bearing MECR No.9 of 2012 registered with Economic Offences Wing, Unit No.2, Mumbai [earlier registered as MECR No. 9 of 2011 with D.N.Nagar police station, Mumbai]

3. Mr. Saste, the learned APP at the outset pointed out that though the investigation of the subject FIR is completed, charge-sheet is not filed against the present Petitioner. He further states that in all

there are five accused including the Petitioner. So far as other accused persons are concerned, two charge-sheets are already filed in the Court of Metropolitan Magistrate, 19th Court, Esplanade, Mumbai and the proceedings are numbered as CC No. 267/PW/2014 and CC No. 403/PW/2014.

4. The learned Senior Counsel appearing for the Petitioner submits that the Petitioner is Deputy Registrar of Co-operative Societies and thus public servant and therefore Magistrate could not have passed order under section 156(3) of the Code of Criminal Procedure, 1973, nor the police could have registered the subject FIR against the Petitioner. Mr. Dhakephalkar relied upon the decision of the Apex Court in Anil Kumar and others vs. M. K. Aiyappa and Another [(2013) 10 SCC 705] as well as the decision of the division bench of this Court in Criminal Writ Petition No. 924 of 2016 decided on 28th February 2017 in the matter of Sayed Anwar Ahmed and Another vs. the State of Maharashtra and Another and submitted that Magistrate could not have entertained the private complaint.

5. Be that as it may, the issue similar to the issued involved in the present writ petition fell for consideration before the Division Bench in Writ Petition No. 924 of 2016 (supra). In paragraph 25 and

28, the Division Bench has made following observations :

“25 To summarise,

(a) While dealing with a complaint seeking an action under sub-section (3) of section 156 of Cr.P.C., the learned Magistrate cannot act mechanically. He is required to apply his mind to the contents of the complaint and the documents produced along with the complaint ;

(b) An order passed on the said complaint must record reasons in brief which should indicate application of mind by the Magistrate. However, it is not necessary to record detailed reasons;

(c) The power under sub-section (3) of section 156 is discretionary. Only because on plain reading of the complaint, a case of commission of cognizable offence is made out, an order of investigation should not be mechanically passed. In a given case, the the learned Magistrate can go in to the issue of the veracity of the allegations made in the complaint. The learned Magistrate must also consider the other relevant aspects such as the inordinate delay on the part of the Complainant. The nature of the transaction and pendency of civil proceedings on the subject are also relevant considerations.

(d) When a complaint seeking an action under Sub-section (3) of section 156 is brought before learned Metropolitan Magistrate or the learned Judicial Magistrate, it must be accompanied by an affidavit in support as contemplated by the decision of the Apex Court in *Priyanka Srivastava*. The affidavit must substantially comply with the requirements set out in Chapter-VII of the Criminal Manual and especially paragraphs 5 and 8 which are quoted above; and

(e) Necessary averments recording compliance with sub-sections (1) and (3) of section 154 of Cr.P.C should be incorporated with material particulars. Moreover, the documents in support of the said averments must filed on record.

28. In the city of Mumbai, there are large number of such complaints filed concerning execution and implementation of several Rehabilitation Schemes which are being implemented in Mumbai. In view of the law laid down by the decision of this Court in *Shailesh Gandhi vs. State of Maharashtra and Others*, the aggrieved party must first approach the High Power Committee. As directed by the said Judgment, if the High Power Committee finds that there is an element of criminality and particularly in cases of fraud, impersonation and like cases, the High Power Committee will ensure that the investigation will be handed over to the appropriate agency. As stated earlier, the complaint in the present relies on so called draft prepared containing names of the eligible slum dwellers. If the Complainant has any grievance about the names included in Annexure-II, he can always approach High Power Committee. The said Committee can direct setting of criminal law in motion, if it finds element of criminality."

6. In the light of decision of the Apex Court in *Anil Kumar* (supra) as well as principles laid down in above referred case, the FIR against present Petitioner deserves to be quashed and set aside. The learned Counsel for Respondent No. 1, however, invited our attention to the affidavit filed by Respondent No. 1 on 17th July 2017. He submitted that after registration of the subject FIR, Respondent No. 1 realised his mistake and therefore he does not want to proceed against the Petitioner. The learned Counsel for Respondent No. 1 submitted that Respondent No.1 has no objection to quash the subject MECR not only against the Petitioner but he has no objection to quash the charge-sheets filed against accused persons. In the affidavit filed

by Respondent No. 1 in paragraph 15, he has made similar prayer.

7. Thus, it can be seen that dispute between Respondent No. 1 and other accused persons is amicably settled. In the present case, we are therefore inclined to quash the subject FIR. So far as other accused persons are concerned, though they are not before us, however, Respondent No. 1 has made specific prayer and given no objection to quash the charge-sheets filed against them, we are inclined to quash the subject criminal cases against other accused persons.

8. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of Madan Mohan Abbot vs. State of Punjab, [(2008) 4 SCC 582], we find that no purpose would be served by keeping the subject FIR alive and criminal proceedings pending except ultimately burdening the Criminal Courts which are already overburdened. In the light of the principles laid down by the Apex Court in the aforesaid decision as well as in the case of Narinder Singh vs. State of Punjab [2014 AIR SCW 2065] we are of the considered view that there is no impediment in quashing the subject FIR and criminal proceedings. In the background of above discussion, we dispose of this writ petition by passing following order :

:- ORDER :-

- (A) FIR bearing MECR No.9 of 2012 registered with Economic Offences Wing, Unit No.2, Mumbai [earlier registered as MECR No. 9 of 2011 with D.N.Nagar police station, Mumbai] is hereby quashed and set aside.
- (B) So also, the proceedings of criminal cases against other accused persons in the said FIR, namely, CC No. 267/PW/2014 and CC No. 403/PW/2014 pending on the file of the learned Metropolitan Magistrate, 19th Court, Esplanade, Mumbai are also hereby quashed.

[SANDEEP K. SHINDE, J.]

[RANJIT MORE, J.]