

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 502 OF 2015

Kiran Raghunath Wavekar

....Petitioner

Vs.

The State of Maharashtra and another

... Respondents

Mr. Murtaza Najmi i/b Mr. Omkar Khaiyam Shaikh
Advocate for Petitioner
Mr. V. V. Gangurde APP for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATED : 28th APRIL, 2017.

P.C.

- 1) Heard.
- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) Being aggrieved by the order dated 03/01/2014, passed by the Metropolitan Magistrate, 21st Court at Bandra, Mumbai in C.C. No. 380/SW/2013, present petitioner has approached this Court in writ jurisdiction. The impugned order reads as follows:

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“(1) Perused complaint and documents on record. Heard the learned Advocate for the complainant.

(2) No case made out for investigation under section 156 (3) of Code of Criminal Procedure, 1973. But case made out for enquiry. Hence, put up for verification”.

4) Petitioner who happens to be the complainant submits that in fact, petitioner had specifically prayed for directions under section 156 (3) of Code of Criminal Procedure, 1973. Petitioner had also prayed to the Magistrate that the learned Magistrate may take cognizance of offences under sections 120 (B), 109, 420, 465, 466, 467, 468, 470, 471, 166, 167, 192, 193, 196 r/w 34 of the Indian Penal Code. Petitioner had also prayed to the Magistrate to take action against the police officer who had refused to register the offence and that the investigation be handed over to some independent investigating agency. That the prayer clause (a) & (b) would be inconsistent as in prayer clause (a) to the complaint, the petitioner had prayed for directions under section 156 (3) and at the same time, in prayer clause (b), there was a prayer that the learned Magistrate may take cognizance of the offence.

5) The learned counsel for the petitioner submits that the principal

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grievance of the petitioner is that the Magistrate has not assigned any reason for refusing to issue directions under section 156 (3) of Code of Criminal Procedure, 1973 and has instead passed an order to the effect that the complaint contemplates an enquiry and therefore, the complaint was put up for verification.

6) Upon perusal of the impugned order, it is clear that the learned Magistrate had applied his mind and had not passed the order mechanically as the learned Magistrate has specifically observed that there is no case made out for investigation. Therefore, at this stage, it cannot be said that there is no application of mind.

7) The learned counsel for the petitioner further submits that the stage of enquiry would be subsequent to recording of verification and that the Magistrate has committed grave error in holding that a case is made out for enquiry.

8) Section 200 of the Code of Criminal Procedure, 1973 contemplates as

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follows.

“Examination of complainant – A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses -

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for enquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them”.

9) In fact, an order under section 156 (3) of Code of Criminal Procedure, 1973 is in the nature of a direction.

10) The learned counsel for the petitioner has placed implicit reliance upon the Judgment of the Hon'ble Apex Court in the Case of **Anil Kumar and Others Vs. M. K. Aiyappa and another [2013 (10) SCC 705]**. The learned counsel has drawn the attention of this Court to para 11 of the Judgment

wherein the Hon'ble Apex Court had observed as follows:

“After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation Under Section [156\(3\)](#) Code of Criminal Procedure, should be reflected in the order, though a detailed expression of his views is neither required nor warranted”.

11) In the above case, the Hon'ble Apex Court was considering a case where the proposed accused was to be prosecuted under the provisions of Prevention of Corruption Act, 1988. The proposed accused were public servants. The question that had fallen for consideration is whether Special Judge to take cognizance or refer the matter for investigation under section 156 (3) of Code of Criminal Procedure, 1973 as the proposed accused are protected under section 197 of Code of Criminal Procedure, 1973 as well as under section 19 of the Prevention of Corruption Act, 1988.

12) Thus, the Judgment has to be read in consonance with the facts of the case. The Hon'ble Apex Court in para 16 of the said Judgment has observed as follows:

“A Special Judge is deemed to be a Magistrate Under Section [5\(4\)](#) of the PC Act and, therefore, clothed with all the magisterial powers provided under the Code of Criminal Procedure. When a private complaint is filed before the Magistrate, he has two options. He may take cognizance of the offence Under Section [190](#) Code of Criminal Procedure or proceed further in enquiry or trial”

13) The word “enquiry” is also taken into consideration by the Hon'ble Apex Court.

14) The learned counsel for the petitioner has further placed reliance upon the Judgment of Hon'ble Apex Court in the case of **Ramdev Food Products Private Limited Vs. State of Gujarat [2015 (6) SCC 439]**. The learned counsel has placed implicit reliance upon para 37 which reads as follows.

“Indicating the scope, ambit of Section [202](#) of the Code of Criminal Procedure this Court in Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker observed as follows: (AIR p. 1116, para 9)

9....Section [202](#) says that the Magistrate may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against and direct an enquiry for the purpose of ascertaining the truth or falsehood of the complaint; in other words, the scope of an

enquiry under the section is limited to finding out the truth or falsehood of the complaint in order to determine the question of the issue of process. The enquiry is for the purpose of ascertaining the truth or falsehood of the complaint; that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at that stage; for the person complained against can be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial”.

15) In the present case, the Magistrate had not yet recorded verification, and therefore not arrived at a conclusion whether it would be a fit case to issue process or postpone the issue of process and therefore, the contention of the petitioner is pre matured. The learned counsel for the petitioner has also placed reliance upon the Judgment in the case of **S. R. Sukumar V/s. S. Sunaad Raghuram [2015 (9) SCC 609]**. The learned counsel has placed implicit reliance upon para 11 of the said Judgment wherein the Hon'ble Apex Court has considered the statutory provisions under section 200 to 204.

“A Magistrate takes cognizance of an offence when he decides to proceed against the person accused of having committed that offence and not at the time when the Magistrate is just informed either by the complainant by filing the complaint or by the police report about the commission of an offence”.

16) In the present case, according to the learned counsel, the learned Magistrate has assigned no reasons for placing the matter for verification.

17) Suffice it to say that the learned Magistrate has specifically observed that **“No case for investigation under section 156 (3) is made out”**.

It is not expected that a Magistrate should conduct roving enquiry only because the complainant feels that it is a fit case for issuing directions under section 156 (3) of Code of Criminal Procedure, 1973. The learned Magistrate is not expected to pass a mechanical order. It is apparent that the Magistrate has exercised powers judiciously. All the citations relied upon by the learned counsel for the petitioner would indicate that in the said cases the impugned orders were passed at subsequent stage where the learned Magistrate is

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expected to assign reasons for taking cognizance.

18) In the present case, the learned Magistrate spells out a reason that no case for investigation is made out. It can be safely inferred that the learned Magistrate has exercised his powers judiciously. No proceedings can be scuttled on mechanical grounds. It is in view of this that petition deserves to be dismissed.

19) Rule is discharged.

20) The learned Magistrate is hereby directed to proceed with further stages in accordance with Law.

21) It is made clear that all contentions are kept open. Needless to say that interim relief granted vide order dated 09/08/2016 stands vacated. Office to communicate this order to the concerned Court, forthwith.

(SMT. SADHANA S. JADHAV, J.)