

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 435 of 2016.

Dr. Omprakash B. Soniminde & Ors Applicants.
V/s.
State of Maharashtra & Anr Respondents.

Mr Rishi Bhuta for the Applicants.
Dr. F.R. Shaikh, A.P.P for Respondent No.1 & 2.
Mr. Ravi L. Gurnani for Respondent No.3.

CORAM : A.S. OKA &
ANUJA PRABHUDESAI, JJ.

DATE : 23rd JANUARY, 2017

ORAL JUDGMENT: (PER : A.S. OKA, J)

1. Rule. Learned Counsel appearing for the third respondent waives service. The learned APP waives service for the first and second respondents. Forthwith taken up for final disposal considering the narrow controversy involved in this petition.
2. The prayer in this application under Section 482 of the Code of Criminal Procedure, 1973 is for quashing the proceedings of the complaint filed by the third respondent before the learned Metropolitan Magistrate, 71st Court, Bandra, Mumbai and for quashing the first information report

registered on the basis of the order made by the learned Magistrate on the said complaint.

3. On the complaint subject-matter of this petition filed by the third respondent, on 2nd May, 2014, the learned Metropolitan Magistrate passed an order holding that no case was made out for passing an order under sub-section (3) of Section 156 of the Code of Criminal Procedure, 1973 (for short, “Cr.P.C”). He observed that there is a need for an enquiry under section 202 of the Cr.P.C. Hence, he directed the third respondent to furnish verification. Accordingly, on 4th September, 2015 verification of the third respondent was recorded by the learned Magistrate. Thereafter, the complaint was adjourned from time to time and on 1st January, 2016 the learned Magistrate passed an order directing investigation under sub-section (3) of Section 156 of the Cr.P.C.

4. An Order under sub-section (3) of Section 156 of the Cr.P.C. could have been made only at pre-cognizance stage. In the present case, the said order has been made long after the verification of the third respondent was recorded under Section 200 of the Cr.P.C. The Court had no jurisdiction to pass an

order under sub-section (3) of Section 156 of Cr.P.C. after pre-cognizance stage was over. Therefore, the order dated 1st January, 2016 and consequential action taken thereon of the registration of the first information report will have to be set aside being completely illegal. However, the complaint will have to be remanded to the learned Magistrate from the stage at which it was pending on 1st January, 2016.

5. We make it clear that we are quashing the order dated 1st January, 2016 and consequential first information report only on the ground that the order dated 1st January, 2016 could not have been passed after the pre-cognizance stage was over. We are not making any adjudication on the allegations made by the third respondent in his complaint.

6. Accordingly, we pass the following order :-

ORDER

(a) The Order dated 1st January, 2016 passed by the learned Metropolitan Magistrate, 71st Court, Bandra, Mumbai in C.C. No.124/SW/2014 is hereby quashed and set aside;

(b) M.E.C.R. No. 5 of 2016 registered with Santacruz Police Station, Mumbai is hereby quashed and set aside only on the ground that the order dated 1st January, 2016 is set aside;

(c) We clarify that the complaint bearing No. 124/SW/2014 remains pending before the learned Magistrate who shall proceed with the complaint in accordance with law from the stage at which it was pending when the impugned order dated 1st January, 2016 was passed by him;

(d) All contentions of the parties on merits of the complaint are kept open;

(e) Considering the fact that verification has been recorded long back in September, 2015, the learned Magistrate will pass appropriate order after taking into consideration the verification statement as expeditiously as possible;

(f) Rule is made partly absolute in terms of the above order;

(g) No order as to costs.

(ANUJA PRABHUDESAI, J)

(A.S. OKA, J)