

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.665 OF 2016

Prakash C. Sheth)..Applicant

V/s.
State OF Maharashtra)...Respondent

Mr. Rahul Kadam, Advocate for the Applicant.

Mr. P.H.Gaikwad-Patil, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 16th JANUARY 2017.

P.C. :

By this Revision Application, the Revision Applicant/Original Complainant before the learned Metropolitan Magistrate, 18th Court at Girgaon, Bombay is challenging the order passed below Exhibit 1 in Criminal Case No.1789/SW/2016 on 25.10.2016 thereby allowing his complaint/application for issuing order under Section 156(3) of the Cr.P.C. and thereby directing respondent therein i.e. Senior PI of the D.B.Marg Police Station to carry out investigation under Section 156(3) of the Cr.P.C. against Mr. T. Ramalingam Nadar @ Ramalingam Thrivium Nadar with

further order that prayer to register FIR against non-applicant no.3 Mr. C.Ramkrishnan and non-applicant no.4-API Mr. Prakash Daund is rejected. The Revision Applicant/Original Complainant is aggrieved by this rejection of registration of FIR against Mr. C.Ramkrishnan and API Mr. Prakash Daund.

2 Heard learned counsel appearing for the Revision Applicant at sufficient length. By placing reliance upon the judgment of this Court in **Criminal Writ Petition No.159 of 2014 Avinash s/o Trimbakrao Dhondage v. The State of Maharashtra & Anr.** with connected matters decided at Aurangabad Bench on 21.10.2015, the learned counsel argued that the Revision Application challenging the order passed on complaint under Section 156(3) of the Cr.PC. is maintainable. The learned counsel further relied upon the judgment of full bench of this Court in the matter of **Laxminarayan Vishwanath Arya v. The State of Maharashtra** reported in **MANU/MH/0477/2007** to submit that when the Magistrate passes an order under Section 156(3) of Cr.PC. subsequently he cannot control investigation. After issuing the order under Section 156(3) of Cr.PC., he cannot inter-check or

stop or give further direction to the Investigating Officer. For this purpose, paragraph 12 of the said judgment is pressed in service.

It reads thus:

“12. Another aspect is the case would be dependent on the construction of language under Section 156(3) of the Code. Though this provision does empower the Magistrate to order an investigation, the Legislature in its wisdom had extended no further power to the Magistrate to control or inter-check or stop or give direction to the mode of investigation. The scheme of the investigation thus postulate investigation uncontrolled by the Magistrate. This was also the view taken by the Supreme Court in S.N.Sharma v. Bipen Kumar Tiwari and Ors. MANU/SC/0182/1970 : 1970CriLJ764 and State of Bihar v. J.A.C. Saldanha and Ors. 1980(1)SCC 534.”

With this, the learned counsel for the Revision Applicant argued that rejecting prayer to register FIR against Mr.C. Ramkrishnan and API Mr. Prakash Daund virtually amounts to interference in investigation after issuing direction under Section 156(3) of Cr.PC. on complaint of the Revision Applicant. The learned

counsel argued that the Magistrate in this manner is controlling the investigation after passing the order under Section 156(3) of Cr.PC.

3 The learned counsel for the Revision Applicant drew my attention to the statement of API A.D.Kamble to demonstrate that A.D.Kamble has agreed with averments made in complaint dated 31.12.2015 (Annexure 'B') and argued that factually API Daund has induced the Complainant/Revision Applicant to part with money and, therefore, rejection of prayer of the Revision Applicant by the learned Metropolitan Magistrate amounts to error of law. With this, the learned counsel for the Revision Applicant insisted this Court that this Court should invoke its revisional jurisdiction in the matter.

4 I have heard learned APP. At the outset, it needs to be mentioned here that revisional jurisdiction of this Court is very limited and it has to be exercised in exceptional cases when glaring defect of procedure is pointed out which is resulting in miscarriage of justice. Revisional Court cannot re-appreciate evidence and it cannot function as appellate Court. Such

jurisdiction has to be exercised when there is manifest error of law or procedural defect resulting in miscarriage of justice.

5 In the case in hand, a complaint came to be filed by the Revision Applicant before the learned Metropolitan Magistrate 18th Court at Girgaon, Mumbai with a prayer that the Court may direct the respondent under Section 156(3) of Cr.P.C. to register FIR in pursuance of complaint dated 31.12.2015. Now, it is well settled that in any such complaint though it is titled as application under Section 156(3) of Cr.P.C., it is choice of the Magistrate either to issue order under Section 156(3) of Cr.P.C. or to resort to other modes prescribed in Cr.P.C. for further dealing with such complaint. In fact, such applications are complaints to the Magistrate as defined in Section 2(d) of the Cr.P.C. Section 2(d) defines complaint as allegation made orally or in writing to the Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

6 Section 154 of Cr.P.C. deals with information in cognizable cases. If the information relates to commission of

cognizable offence then, officer-in-charge of the police station is required to reduce it into writing for taking further steps to investigate such cognizable offence. Cognizable offence can be investigated into without permission or order of the Magistrate. Section 190 of the Cr.P.C. deals with conditions requisite for initiation of proceedings and it reads thus:

“190. Cognizance of offences by Magistrates-(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.”

Thus, the Magistrate upon receipt of complaint of facts which constitute cognizable offence or upon receipt of police report or upon receipt of information from any person regarding commission of cognizable offence can take cognizance of the offence. Such Magistrate can order investigation into commission of such cognizable offence by resorting to the provisions of Section 156(3) of Cr.P.C. Thus, Code of Criminal Procedure, 1973 makes it clear that investigation can also be ordered only on demonstration of commission of cognizable offence by lodging complaint under Section 2(d) of the Cr.P.C. Such complaint must demonstrate that some known or unknown persons committed a cognizable offence so as to enable the Magistrate to direct investigation by police.

7 By keeping into mind this requirement of demonstration of cognizable offence, if the complaint lodged by Revision Applicant titled as application for issuing order under Section 156(3) of Cr.P.C. is examined then, it is clear that said complaint/application is not at all demonstrating commission of

cognizable offence by Mr. C.Ramkrishnan or API Mr. Prakash Daund in respect of whom the learned Magistrate has not directed investigation. The complaint/application for issuing order under Section 156(3) of Cr.P.C. is at Page 18 of the compilation. In the first paragraph of complaint/application, there is mention of lodging a written complaint with the Sr.P.I., Dr.D.B.Marg Police Station giving the facts of commission of a cognizable offence with regard to the accused having cheated for a sum of Rs.3,00,000/-. In the second paragraph of that application there is mention of conducting preliminary enquiry by subordinate officer of respondent with further averments that such subordinate officer (not named) has testified that the complaint is true and the accused named in the complaint have committed alleged offence. In third paragraph of the complaint/application, it is averred that written complaint dated 31.12.2015 made to the Sr.P.I. is sufficiently disclosing commission of cognizable offence but no FIR is registered despite lapse of 116 days. In fourth paragraph, it is mentioned that the Revision Applicant/ Complainant had made written application to the DCP, Zone-II with request to exercise his powers under Section

154(3) and to register FIR. In fifth paragraph of that application/complaint to Metropolitan Magistrate, it is mentioned that DCP too has failed to take any action on the said application. In paragraph 6, it is mentioned that despite lapse of 140 days, respondent-Sr.PI. as well as DCP has failed to register an FIR. In paragraph 7 of that application to the Metropolitan Magistrate, it is mentioned that one of the accused is police officer and in order to shield him, the respondent is not registering an FIR. In paragraph 8, it is prayed that the Court may direct the respondent under Section 156(3) of Cr.P.C. to register the FIR in pursuant to the complaint dated 31.12.2015. This is what such complaint/application for issuing order under Section 156(3) of Cr.P.C. is.

8 Entire contents of the application is perused in its entirety, are not demonstrating commission of any cognizable offence by Mr. C.Ramkrishnan or API Mr. Prakash Daund. It was incumbent upon the Revision Applicant to specifically plead and demonstrate that these two persons committed cognizable offence in order to invoke the jurisdiction of the Metropolitan Magistrate for directing investigation. As this basic foundation is not made out in the

application, by no stretch of imagination, this Court can hold that the learned Metropolitan Magistrate while rejecting prayer so far as Mr. C.Ramkrishnan and API Mr. Prakash Daund are concerned, has committed manifest error of law or procedural defect. The learned Metropolitan Magistrate as such, rightly refused to exercise jurisdiction in so far as these two persons are concerned.

9 As commission of cognizable offence by these two persons is not demonstrated in the body of the complaint/application for issuing order under Section 156(3) of Cr.PC., it cannot be said that the Magistrate is controlling the investigation despite direction under Section 156(3) of Cr.PC. Reliance on the judgment of the full bench of this Court in the matter of **Laxminarayan (Supra)** is totally misplaced as there is no foundation laid to invoking jurisdiction of the learned Metropolitan Magistrate for passing order directing investigation against Mr. C.Ramkrishnan and API Mr. Prakash Daund. In the result, I am of the considered view that there is no scope for interference in the impugned order and the revision is, therefore, dismissed.

(A. M. BADAR, J.)