

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1264 OF 2018

Saleha Kausar d/o Saber Ahmed,
Age 28 years, Occupation Service,
R/o Near Memon Building Darga Road,
Parbhani Tq. Dist. Parbhani.

...Applicant

Versus

- 1) The State of Maharashtra,
Through Nanalpeth Police Station,
Parbhani Tq. Dist. Parbhani.
- 2) Mohammad Samiullah Khan s/o Jabbar
Khan Pathan, Age 56 years, Occupation
Service, R/o Fatema High School, Near
Khoja Masjid, Parbhani Tq. and Dist.
Parbhani.

...Respondents

Mr. G. R. Syed, Advocate for applicant.

Mr. K. D. Munde, Addl. Public Prosecutor, for respondent No.1/
State.

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 06-08-2018.

ORAL JUDGMENT :

1. Present application has been filed by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure in order to challenge the acceptance of 'B' Summary report filed by the Investigating Officer in Crime No. 342 of 2016 i.e. charge-sheet No. 57 of 2016.

2. The applicant is the original informant. She had filed the First Information Report No. 342 of 2016 with Nanalpeth Police Station, Parbhani that, she is Assistant Teacher serving with Faizul Ulum Urdu Primary School, Rahmat Nagar, Parbhani. She was serving there since three years prior to the date of FIR. She went to school as usual around 7.00 a.m. on 26-07-2016 and did her duty till 12.00 p.m. She then met Samiulla Khan who is the president of the school and informed that she has not received salary since ten months. Samiulla Khan told that, firstly she should do the survey of admission. She had done the survey till 02.45 p.m. and then went back to school. She informed Head Master-cum-President, Samiulla that the survey has been done, no student is remaining whose admission is yet to be made. She again requested to draw her salary for approval. Thereupon the Head Master asked her to sit and then misbehaved with her. Thereafter, she went to Police Station and lodged the report. On the basis of the said FIR, offence under Section 354 and 354-A of the Indian Penal Code came to be registered.

3. After the investigation was done, the investigating officer filed 'B' summary before the learned Magistrate First Class, Parbhani. The learned Magistrate accepted the said report on 11-05-2017. The informant intends to challenge this order.

4. It has been contended by the applicant that, the respondent No.2 is a politically influenced person. He has pressurized the police authorities and has not carried out the investigation properly. The respondent No.2 has tried to implicate the applicant and her husband in a frivolous case bearing Crime No. 343 of 2016 which was the counter blast to the FIR lodged by her. The learned Magistrate failed to issue notice to the informant and directly accepted 'B' summary report. There was no application of judicious mind on the part of the learned Magistrate. An opportunity ought to have been given to the informant to make her submissions before acceptance of the summary report. The applicant has therefore prayed for quashing this impugned order and direction to the learned Magistrate to decide the summary afresh by giving opportunity to her to file protest petition.

5. Heard learned advocate Mr. G. R. Syed, appearing on behalf of the applicant and Mr. K.D. Munde, learned Addl. Public Prosecutor on behalf of respondent No.1/ State. It is not necessary to issue any notice to the respondent No.2 – original accused because he was not before the concerned Magistrate when the impugned order was passed. Further till the cognizance is taken in respect of any offence, the accused has no say.

6. The learned advocate appearing for the applicant has submitted that, the order that has been passed by the learned Magistrate without giving an opportunity to the informant is wrong and illegal and against the said principles of law. He relied on the decision in *Bhagwant Singh Vs. Commissioner of Police and another*, reported in *AIR 1985 Supreme Court 1285*, wherein it has been held that,

"Opportunity of being heard should be given by the Magistrate who is deciding not to take cognizance of the offence or drop proceedings against some persons..."

The further reliance has been placed on *Gangadhar Janardhan Mhatre Vs. State of Maharashtra and Ors.*, reported in *2005 ALL MR (Cri) 281 (S.C.)*, wherein the same ratio has been reiterated. Further reliance has been placed on the decision in *Maroti s/o Kaluba More Vs. The State of Maharashtra and Ors.*, reported in *2016 ALL MR (Cri) 960*.

7. It is to be noted from the charge-sheet that was filed in which the investigating officer had recommended the 'B' summary that, upon the investigation it was found by the investigating officer that the FIR that was lodged by the informant on 26-07-2016 is false. Following order is passed on the said charge-sheet,

"Taking into consideration the statement and overall

situation produced, no evidence is found against the accused, and therefore, 'B' summary final is granted."

8. The impugned order does not show that, any notice was given to the informant before accepting the proposal by the investigating officer. It has been held in Bhagwant Singh's case (Supra) as under;

"In a case where the Magistrate to whom a report is forwarded under sub-sec. (2) of S. 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the information and provide him an opportunity to be heard at the time of consideration of the report. However, either from the provisions of the Criminal P.C. Or from the principles of natural justice, no obligation on the Magistrate to issue notice to the injured person or to a relative of the deceased for providing such person an opportunity to be heard at the time of consideration of the report can be spelt out, unless such person is the informant who has lodged the F.I.R. But, even if such person is not entitled to notice from the Magistrate, he can appear before the Magistrate and make his submissions when the report is considered by the Magistrate for the purpose of deciding what action he should take on the report."

"If the magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground

for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and e3ffective action being taken on the First Information Report lodged by him is clearly recognized by the provisions contained in sub-sec. (2) of S. 154, sub-sec. (2) of S. 157 and sub-sec. (2) (ii) of S. 173 in that the officer of the police station has under S. 157 (2) to notify the fact to the first informant that he is not going to investigate the case or cause it to be investigated and under S. 173 (2) (ii), the said officer is obligated to communicate to the informant the action taken by him and the report forwarded by him to the Magistrate, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of S. 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process."

The same ratio in Gangadhar Janardan Mhatre's case also reiterates

that the notice to be given to the informant. Further as regards giving an opportunity to the informant to file protest petition it has been observed in Gangadhar Mhatre's case that,

"There is no provision in the code to file protest petition by informant who lodged the first information report but this has been the practice. Absence of a provision in the code relating to filing of a protest petition has been considered in Bhagwant Sing's case."

Further in *Abhinandan Jha and Another Vs. Dinesh Mishra*, reported in *AIR 1968 SC 117*, it was held that,

"There is no obligation on the part of the Magistrate to accept the report filed by the police if he does not agree with the opinion formed by the police. The power to take cognizance notwithstanding formation of the opinion by the police which is the final stage in the investigation has been provided for in Section 190 (1)(c)."

9. Further this Court had set aside the order of discharging accused without giving notice and hearing informant. Thus the legal position as has been enumerated in *Bhagwant Sing*, *Gangadhar Mhatre* and *Abhinandan Zha* ought to have been followed by the learned Magistrate. Therefore, the said order is required to be set aside and the matter is required to be relegated to the Judicial Magistrate First Class to be dealt with according to the above said authorities. Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) The impugned order passed by learned Judicial Magistrate First Class , Parbhani on 11-05-2017 in final report No. 57 of 2017 is hereby quashed and set aside.
- 3) The learned Magistrate is directed to decide the report No. 57 of 2016, afresh by giving an opportunity to the applicant – informant to file protest petition and also in accordance with the above said authorities.

[SMT. VIBHA KANKANWADI]
JUDGE

vjg/-.