

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3057 OF 2018

Raja Basu

Petitioner

versus

The State of Maharashtra

Respondent

Mr.Rajeshwar G. Panchal with A.Jaiswar, Pramod Yadav, Mohan Rawat for petitioner.

Mr.Y.M.Nakhwa, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 14th August 2018

PC :

1. The petitioner is the original complainant, who filed a private complaint before the Court of learned Metropolitan Magistrate. Learned Magistrate by order dated 27th March 2018 directed the petitioner to obtain permission u/s 197 of Code of Criminal Procedure within nine months.

2. The complaint was filed alleging offences u/s 403, 405, 406, 409 read with Section 34 of Indian Penal Code as well as Sections 166, 166A, 167 of Indian Penal Code against accused no.4. The petitioner had sought directions u/s 156(3) of Cr.P.C. The complaint contained several allegations which allegedly constitute the said offence.

3. It is submitted that the learned Magistrate had committed an error in passing the impugned order directing the petitioner to obtain permission u/s 197 of Cr.P.C within nine months. It is submitted

that the order exhibits total non application of mind on the part of Trial Court. It is submitted that time limit as stipulated in the impugned order was not warranted. Apart from that, for the direction u/s 156(3) and for nature of offences alleged in the complaint, sanction was not necessary. Learned Magistrate has not applied mind to the factual matrix and has mechanically passed the impugned order.

4. I have perused the complaint which is annexed to this petition. The complainant has sought directions u/s 156(3) of Cr.P.C. The Trial Court while passing the impugned order has not assigned any reason for directing the petitioner to obtain permission u/s 197 of Cr.P.C within stipulated time. From the tenor of the order it appears that the Trial Court has not applied its mind to the factual aspects of the matter. It is not clear from the order whether the sanction is necessary, whether the Court has applied its mind to the factual matrix of the matter requiring sanction to proceed against the accused in the said complaint. The order also does not reflect whether the applicant has shown any merit to entertain the complaint and proceed in accordance with law. Before issuing such directions, the Trial Court was required to apply mind to consider the merits of the case and whether the complaint can be entertained or whether it is necessary to obtain sanction u/s 197 of Cr.P.C. In the circumstances, the order reflects total non application of mind.

5. In the light of the nature of order passed by the Trial Court, it would be appropriate to direct the Trial Court to consider the complaint afresh and deal with it in accordance with law. Hence, I pass following order :

ORDER

- (i) Impugned order dated 27th March 2018 passed by Metropolitan Magistrate, 8th Court, Esplanade, Mumbai in Private Criminal Case No.64 of 2018 is quashed and set aside;
- (ii) The Trial Court is directed to decide the complaint afresh and deal with the same in accordance with law considering the factual aspects, merits and sanction under Section 197 of Code of Criminal Procedure, 1973;
- (iii) Criminal Writ Petition No.3057 of 2018 stands disposed of.

(PRAKASH D. NAIK, J.)

MST