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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4480 OF 2016

Abhishek Sen & Anr.

..Petitioners.

V/s.

State of Maharashtra & Ors.

..Respondents.

Ms.Shilpa Kapil for the petitioners.

Mr.Y.Y.Dabke, APP for the respondent-State.

Mr.Ameya Deshpande for respondent No.3.

Mr.Omprakash Lad, P.S.I., R.A.Kidwai Marg police station, Mumbai – present.

Mr.Bojraj Vishnu Misal, A.P.I. Trombay Police Station, Mumbai – present.

CORAM: NITIN W.SAMBRE, J.

DATE : APRIL 23, 2018

PC.:-

Heard the learned counsel for the petitioner, respondent No.3 and the learned APP for the respondent-State.

2. Inquiry Officer, pursuant to oral directions is present in the Court and has produced the inquiry papers for perusal of this Court.

3. Criminal Complaint No.95/SW/2013 came to be lodged for alleged commission of offences punishable under sections 120B, 441, 379, 420, 406 read with 34 of the Indian Penal Code. On the said complaint, the learned Magistrate was not satisfied in ordering investigation under section 156(3) of the Code of Criminal Procedure and directed the respondent-complainant to give his statement of verification along with witnesses.

4. Thereafter, having noticed that the alleged accused who was named by the complainant was residing outside the jurisdiction of the Metropolitan Magistrate, directed the police officer to conduct an inquiry and submit a report under section 202 of the Code of Criminal Procedure.

5. Pursuant to the said directions issued by the learned Metropolitan Magistrate on January 22, 2016, it is claimed by the petitioner that the petitioner is served with a notice under section 91 read with section 160 of the Code of Criminal Procedure calling upon the petitioner to produce certain documents in relation to the transactions in question. Relying upon the judgment of the

Calcutta High Court in the case of *Ramesh Sobti @ Ramesh Sobyi V/s. State of West Bengal and another* [C.R.R. 897 of 2017 and C.R.A.N.2056 of 2017] decided on June 23, 2017, the learned counsel for the petitioner submits that the police officer has exceeded the jurisdiction in issuing summons to the petitioner who is arrayed as an accused. Referring to the catena of judgments of the Apex Court. In the said judgment, it is observed as thus :-

*“Hence, there is no dispute that a Magistrate holding enquiry under Section 202 Cr.P.C. cannot call upon an accused to participate in such enquiry or pose any question to him or his witnesses. It is only upon conclusion of such enquiry if the Magistrate is satisfied on the basis of materials on record that there is sufficient ground to proceed against the accused he shall issue process for his appearance in the case. He cannot permit the accused to participate and canvass his defence in the course of the pre-summoning enquiry and convert it to a ‘mini trial’ even before the commencement of the trial itself. It is another thing that in some cases, specific defence of the accused like private defence, may emanate from the unconverted allegations in the complaint itself or the materials adduced in the course of such enquiry. In such cases, the Magistrate would certainly take cognizance of such facts to decide whether sufficient ground to proceed against the accused is made out or not (See **Vadilal Panchal vs.***

Dattatraya Dulaji Ghadigaonker, AIR 1960 SC 1113). The aforesaid authority cannot be construed to justify examination of the accused and / or consideration of the defence version beyond the four corners of the petition of complaint in the course of enquiry under Section 202 of Cr.P.C. Police officer conducting investigation under Section 202 Cr.P.C. is a delegatee of the Magistrate and his powers of investigation are, therefore, circumscribed by the limitations imposed upon the principal, that is, the Magistrate himself. Since the Magistrate in the course of enquiry under Section 202 Cr.P.C. is not entitled to issue notice upon the accused to appear and participate in the proceeding, the police officer as his delegatee cannot claim higher powers and issue notice upon the accused and interrogate him in the course of investigation under Section 202 Cr.P.C. No doubt, the police officer may exercise other powers of investigation e.g. proceed to the spot, interrogate the complainant and his witnesses, collect evidence by effecting searches and seizures for the purpose of determining the intrinsic truth in the allegations in the complaint but he cannot in course of such investigation issue notice to the accused and interrogate him to elicit his responses to the allegations in the complaint. If he does so, he would be enlarging the scope of enquiry under Section 202 Cr.P.C. wherein an accused is precluded from participating and raising his defences in rebuttal to the allegations in the petition of complaint.”

6. She would then urged that in view of the fact that the police officer is carrying out his duties under the Criminal Procedure Code as an inquiry officer, pursuant to the orders passed under section 200 and 202 of the Code of Criminal Procedure, he has no powers to call or interrogate the accused persons. The police officer is required to restrict himself to the extent of contents in the complaint. He can do all such act as are permissible under the Code of Criminal Procedure. The police officer need not go into the defence of accused persons which is exactly sought to be done by the police officer in this case.

7. The learned counsel would then urge that the proceedings against the present petitioner is liable to be quashed and set aside for reason that the petitioner was extending services / provide facilities to persons like the complainant for purchase of vehicles which are available for sale On-line. According to her, the petitioner has neither received any amount nor the beneficiary in the alleged transaction between the complainant and Tata Capital Limited. The fraud or breach of trust as such cannot be attributed to the petitioner and as such

prays for quashing of the summons.

8. Learned APP and Mr.Deshpande, the learned counsel appearing for respondent No.3 submit that the petition preferred by the petitioner is pre-mature and this Court need not go into all facets of this case at this stage. According to them, the petition is devoid of any merits and be rejected.

9. At the outset, it is required to be noted that the Apex Court in the matter of *Manharibhai Muljibhai Kakadia V/s. Shaileshbhai Mohanbhai Patel*¹ has observed that an accused person particularly like the petitioner cannot intervene at the stage of inquiry under section 202 of the Code of Criminal Procedure for the reason that at that stage no prejudice is caused to the accused as neither an offence is registered nor he is otherwise proceeded against.

10. In that view of the matter, the claim of the petitioner for quashing of the proceedings is pre-mature, need not be gone into and examined at this stage for the reason, neither any offence is registered against the petitioner nor he is proceeded against

¹ (2012) 10 S.C.C. 517

except for summons, pursuant to the provisions of section 91 of the Code of Criminal Procedure.

11. So far as the next submission of the petitioner *qua* the issuance of summons is concerned, it is worth to note that the inquiry as contemplated under section 202 of the Code of Criminal Procedure as is sought to be set out from the judgment of *Ramesh Sobti (cited supra)* if appreciated, the language in the summons speaks that if he fails to appear, he shall submit a report pursuant to the provisions of section 202 of the Code of Criminal Procedure, as directed vide order dated January 22, 2016. It appears from the summons issued to the petitioner pursuant to the provisions of section 91 of the Code of Criminal Procedure and from the contents of the complaint that the petitioner has certain role to pay in the transaction.

12. Apart from above, fact remains that under section 91 of the Code of Criminal Procedure, issuance of summons to any persons viz. may be an accused or person custodian of the documents, which are necessary or desirable for the purposes of submitting appropriate report to the Court. The document which

is sought to be relied upon by the petitioner styled as summons under section 160 is merely a notice and not summons as informed by the Inquiry Officer.

13. Apart from above, notice issued to the petitioner calls upon him to remain present and produce information, if any, of which he is in possession of. The notice does not speak of any penal action against the petitioner as the officer who is directed to conduct an inquiry under section 202 of the Code of Criminal Procedure is duty bound to submit a report, pursuant to the order of the Magistrate.

14. In the aforesaid background, the judgment cited by the learned counsel for the petitioner in the matter of Ramesh Sobti cited supra will not have any bearing over the issue. Learned counsel for the petitioner is not in a position to deal with the provisions of section 91 of the Code of Criminal Procedure. The act on the part of the Investigating Officer, *prima facie*, appears to be only in aid of compliance of the order passed by the learned Magistrate calling report under section 202 of the Code of Criminal Procedure.

15. That being so, no interference is called for. The petition lacks merits and is dismissed.

16. At this stage, the learned counsel for the petitioner submits that if in case an offence is registered against the petitioner, liberty be granted to the petitioner to approach this Court. This prayer is objected to by the learned counsel for respondents.

17. However, having regard to the observations made, it will appropriate, in my opinion, to grant liberty to the petitioner to approach this Court in case the Magistrate proceeds to register an offence against the petitioner, as this Court while dealing with the prayer of the petitioner for quashing has not examined the merits of the matter.

(NITIN W.SAMBRE, J.)