

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.11.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.784 of 2014

1.N.Kumar

2.S.Ramesh Babu

.. Petitioners

Vs

1.Mukundchand Bothra

2.State rep. by

The Inspector of Police,

Law & Order,

C-2 Elephant Gate Police Station,

Chennai.

.. Respondents

Criminal Revision Appeal filed under Section 397 and 401 of Cr.P.C. praying to call for the records in respect of the impugned order of the learned VIII Metropolitan Magistrate, George Town at Chennai in CMP.No.2448/2014 dated 09.06.2014 and set aside the same.

For Petitioners	:	Mr.A.Thirumaran
For R1	:	Mr.M.Gagan Bothra, Party in person
For R2	:	Ms.P.Kritika Kamal, Government Advocate (Crl.Side)

O R D E R

Mukundchand Bothra submitted a petition in M.P.No.2448 of 2014, under Section 156(3) Cr.P.C before the Metropolitan Magistrate, George Town, Chennai, making certain allegations against Kumar, the Assistant Commissioner of Police, Ramesh Babu, Inspector of Police and Banumathi, W-10, Inspector of Police, Chennai, based on which, a direction has been issued to register an FIR, challenging which, the proposed accused are before this Court.

2.Heard Mr.Vivekanandan, learned counsel for the petitioners and Gagan Bothra, representing his father Mukundchand Bothra.

3.At the outset, Mr.Gagan Bothra submitted that the present

revision petition is not maintainable, since the order passed by the learned Magistrate is an interlocutory order and is not revisable. Though there appears to be much force in his submission, yet the facts obtaining in this case compels this Court to interfere in exercise of powers under Section 482 Cr.P.C.

4.The crux of the allegations in the complaint in M.P.No.2448 of 2014, reads as follows:

"5)The complainant states that on the instigation of the 1st accused, Meena wife of said mohan lodged a complainant with the commissioner of police on 08.01.2013 alleging that on 06.01.2013 the complainant and his son Sandeep harassed her sexually by wrongfully confining them on 06.01.2013 and on a complainant lodged to the C-2 police station the police has not taken any action and seeking the commissioner of police to take the appropriate action as against the complainant and his son. The said complaint is contrary to the complaint given to the 2nd accused herein, C-2 Police Station on 06.01.2013 and the Commissioner of Police forwarded the same to the Deputy Commissioner of Police for investigation and the same has been forwarded to the 1st accused herein and the 1st accused without making any enquiry or investigation directed the third accused herein, W-10, Police Station to register the complaint immediately. The complainant submits that the complainant himself as party in person appeared and told all the facts and truth and obtained anticipatory bail immediately before the Hon'ble High Court."

5.It is the case of Mukundchand Bothra that, two of his borrowers had approached the Assistant Commissioner of Police and had sought his help for settling certain financial matters and since he did not accede to the demand, the Police have set up Meena and had registered an FIR illegally, for which, criminal action requires to be taken. It is true that one Meena had lodged a complaint alleging that Mukundchand Bothra and Srichand Bothra had sexually harassed her to the Commissioner of Police, Chennai, which was referred to W-10, All Women Police Station for enquiry.

6.Banumathi, who was then Inspector of Police, W-2 All Women Police Station, registered a regular FIR in Crime No.1 of 2013 against Mukundchand Bothra and his son Srichand Bothra for the offences under Section 354 IPC & Section 4 of TNPWH Act, since the allegation of Meena disclosed the said offences. Investigation in Crime No.1 of 2013 was conducted and Final Report in C.C.No.2994 of 2013 was filed before the III

Metropolitan Magistrate, George Town, Chennai, against Mukundchand Bothra and Srichand Bothra for the aforesaid offences. Challenging the Final Report, Mukundchand Bothra has filed a quash petition under Section 482 Cr.P.C. and has obtained stay of further proceedings.

7. Under such circumstances, the present complaint under Section 156(3) Cr.P.C against the officers who had registered the FIR in Crime No.1 of 2013 and had filed the Final Report in C.C.No.2994 of 2013 is indeed an abuse of process of law and the learned Magistrate ought not to have issued a direction under Section 156(3) Cr.P.C in such a cavalier manner against them. Under normal circumstances, this Court would not interfere in an order passed by a Magistrate under Section 156(3) Cr.P.C. and would give liberty to the suspect to challenge the FIR after the case is registered.

8. In this case, the facts are so notorious that the learned Magistrate should have borne in mind, the law laid down by the Supreme Court in Priyanka Srivastava and another Vs. State of Uttar Pradesh and others [(2015) 6 SCC 287], before passing the order under Section 156(3) Cr.P.C. Extraordinary cases require extra ordinary remedy. Under such circumstances, this revision petition is treated as a petition under Section 482 Cr.P.C and the same is allowed and the order dated 09.06.2014 in M.P.No.2448 of 2018 stands quashed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gya/dua

To

1. The VIII Metropolitan Magistrate,
George Town, Chennai.
2. The Inspector of Police,
Law & Order, C-2 Elephant Gate Police Station,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

+2cc to Mr.S.Mukandchand Bothra P in P, Advocate, S.R.No.80312

+2cc to Mr.K.Sendhil Naathan, Advocate, S.R.No.80042

CRL.R.C.No.784 of 2014

GJII (Co)

CS/03/12/2018