

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Cr1.R.C.No. 385 of 2017

JUDGMENT:-

This Criminal Revision Case arises out of the Docket Order dated 30.08.2010 in C.F.No. 281 of 2010 passed by the Chief Judicial Magistrate, Machilipatnam.

2. The impugned docket order reads as under:

"Complaint perused. Complaint forwarded to SHO, Mandavalli P.S. for investigation under Section 156(3) of Cr.P.C. The S.H.O. is directed to investigate expeditiously and file report before J.F.C.M., Kaikalur."

3. The petitioners-A1 to A3 have filed the present Revision Case on 01.02.2017. They have also filed a petition seeking for condonation of delay, and the same was ordered by this Court on 10.02.2017.

4. Brief facts of the complaint filed on behalf of the complainant under Section 191 Cr.P.C. are that:

The complainant is the husband of one Suvarna Kuamri, who had taken a property on lease on 06.03.2010, situated in Nutchumilli village of Mandavalli Mandal, for an extent of Ac 59.91 cents from various ryots in R.S.Nos.197 to 207. The complainant obtained permission from the Government to do fishy culture therein after obtaining due permission from the Government. A-1 had claimed the said property, by virtue of a Power of Attorney Deed dated 18.03.2010 said to have been executed by A-2, and a lease

agreement dt. 22.11.2006. That A-2 without taking possession from the original landlords and without doing cultivation had left the property, as such, the original landlords having no other alternative had executed year wise lease agreement in favour of the complainant's wife on 06.03.2010 by delivering possession of the property to her. The wife of the complainant after examining the documents of Power of Attorney and Lease Deed found that B.K.M. Varma was the A.2, but not A-3, and the document was obtained from the landlords in the name of A-2 by impersonating A-3 as Varma, in collusion with A-1. A-2 though he was not the man shown in the photograph affixed in document No.1499/2006 dated 22.11.2006, he had executed a General Power of Attorney on 13.08.2010 in favour of A-1, as if he is the person, who had obtained registered lease deed. He had executed a collusive Power of Attorney to knock away the lease property, which is under the enjoyment of the wife of the complainant. That all the accused fabricated the documents intentionally, thereby, the accused committed an act of cheating, impersonation, using the fabricated documents as genuine one, as such they are liable for punishment under Sections 420, 417 and 471 read with 34 IPC.

5. The complaint was forwarded by the learned Magistrate on 30.08.2010 to the S.H.O. under Section 156(3) Cr.P.C. for investigation and for a report.

6. At this stage, the present Criminal Revision Case is filed challenging the impugned order.

7. Heard the learned counsel for the petitioners, and the 2nd respondent and perused the material placed on record.

8. The learned counsel for the petitioners placing reliance on two judgments of the Hon'ble Apex Court rendered in **Pepsi Foods Ltd. v. Special Judicial Magistrate**¹ and **Anil Kumar v. M.K.Aiyappa**², submits that the order of the learned Magistrate under Section 204 Cr.P.C., summoning of accused should reflect the application of mind to the facts of the case and law. The learned Magistrate should carefully scrutinize the evidence brought on record and may himself put questions to the complainant and his witnesses to find out the allegations. The said proposition was laid down in Pepsi Foods case (1st cited supra).

9. In **Anil Kumar** case, the power of Magistrate under Sections 200, 202 and 156(3) Cr.P.C. is to order investigation upon private complaint and there is requirement of the application of mind of the Magistrate while exercising powers under Section 156(3) Cr.P.C.. The Apex Court clearly held in the said judgment that the Magistrate, while exercising powers under Section 156(3) Cr.P.C. is required to apply his mind which should be reflected in his order though a detailed

¹ (1998) 5 Supreme Court Cases 749

² (2013) 10 Supreme Court Cases 705

expression of his views is neither required nor warranted. It was held in Paragraph 11 of this case as under:

“The scope of Section 156(3) Cr.P.C. came up for consideration before this Court in several cases. This Court in Maksud Saiyed case examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 Cr.P.C., the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) Cr.P.C., should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.”

10. In **Pepsi Foods** case, the Apex Court held as under:

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind of the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the

accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused.”

11. Before proceeding further, it would be appropriate to refer to the provision contemplated under Section 156(3) Cr.P.C. which reads as under:

“Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned.”

12. In this regard, Section 190 Cr.P.C. makes it clear that upon receiving a complaint on facts which constitute such offence, the Magistrate may take cognizance of any offence. It is obvious that the learned Magistrate, while taking cognizance of an offence has to look into the facts of the case whether they constitute any offence.

13. In view of the decisions referred above and the provision under Section 156(3) Cr.P.C., when a Magistrate is referring the case to the police for investigation, he has to apply his mind to the facts mentioned in the complaint whether they constitute any offence or not and if there is any offence, then he can refer the complaint for investigation to the police.

14. From the facts recorded above, it is obvious that the learned Magistrate has mechanically forwarded the complaint to the police for investigation, vide impugned Docket Order. The learned Magistrate did not examine the complaint, no sworn statement was recorded and no witness was examined. The order of the Magistrate does not disclose that he had exercised properly the judicial discretion ... forwarding the complaint to the police station for investigation. Therefore, the Docket Order is liable to be set aside. Further, in view of the fact that the complaint was lodged in the year 2010, the matter has been stayed by this Court for sometime.

15. In view of the foregoing reasons, the impugned Docket Order passed by the learned Magistrate is an order passed mechanically without application of mind and giving reasons.

16. Hence, the docket order dated 30.08.2010 is set aside and the trial Court is directed to pass appropriate order as contemplated under Section 156(3) read with Section 200 Cr.P.C. by following the ratio laid down in the above referred judgments.

17. With the above observations, the Criminal Revision Case is disposed of.

Miscellaneous Petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J.

Date : 28-11-2018.

Bcj/Gvl

