

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4506 OF 2019

ANUJ KASHISH JAIN

)...PETITIONER

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Amod Kumar a/w. Dr.S.S.Karmarkar i/b. Karmarkar and Associates, Advocate for the Petitioner.

Mr.A.R.Patil, APP for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 9th JANUARY 2020

P.C. :

1 Heard the learned counsel appearing for the petitioner. He argued that prayer was made in the private complaint filed by the petitioner to the effect that the complaint be sent for investigation under Section 156(3) of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C. for the sake of brevity). However, in submission of the learned counsel for the petitioner, the learned trial Magistrate had chosen to take

cognizance after recording verification statement by directing the complainant to lead additional evidence. He further argued that in pursuant to directions dated 27th July 2018 of the learned trial Magistrate, the complainant adduced his evidence and also examined one witness. However, thereafter, the learned trial Magistrate had directed to call for report from police and as per learned counsel for the petitioner, this course of action is not permissible.

2 I have considered the submissions so advanced and also perused the record made available. The complaint is an outcome of matrimonial dispute. While passing the order dated 27th July 2018 directing the complainant to appear for verification and to lead further evidence, the learned trial Magistrate in paragraph 2(c) has categorically mentioned that, if required, there is further option as contemplated under Section 202 of the Cr.P.C. which can be exercised as and when found necessary. Ultimately, after considering evidence adduced by the complainant, the learned trial Magistrate came to the conclusion that admittedly

there are various litigations pending in his court as well as the Appellate court. The learned trial Magistrate further recorded that in order to decide the matter, it is necessary to verify whether the incident mentioned in the complaint is the incident or cause of action for another litigation or not. With this, the learned trial Magistrate thought it fit to call for report from police under Section 202 of the Cr.P.C. instead of directing issuance of process.

3 The learned trial Magistrate, even after recording verification and taking evidence of the complainant is not bound only to limit his discretion with that material itself. He is at liberty to postpone issuance of process by calling report from police. The learned trial Magistrate was alive of this fact while passing first order on 27th July 2018 itself, and therefore, it cannot be said that the learned trial Magistrate has committed any error of law in directing the concerned police station to sent the report under Section 202 of the Cr.P.C. after recording verification and evidence of the complainant.

4 The petition, as such, is devoid of merits and the same
is therefore dismissed.

(A. M. BADAR, J.)