

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5948 OF 2019

M/S. DIAVISZ JEWEL CORPORATION)...PETITIONER

V/s.

1) M/S. M.B.SHAH EXPORTS	)
	)
2) MR.HEMANG MUKESH SHAH	)
	)
3) MR.MUKESH BANSILAL SHAH	)
	)
4) MRS.MANJUBEN MUKESHBHAI SHAH @	)
ANJU MUKESHBHAI SHAH	)
	)
5) MRS.SHIKHA HEMANG SHAH	)
	)
6) MRS.JEENALI NEERAV DESAI	)
	)
7) STATE OF MAHARASHTRA	)...RESPONDENTS

Mr.Subhash Jha a/w. Ms.Sanjana Pardeshi i/b. Law Global Advocates, Advocate for the Petitioner.

Mr.A.H.H.Ponda a/w. Mr.Karmavivan, Advocate for Respondent No.3.

Mr.R.M.Pethe, APP for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 11th FEBRUARY 2020

ORAL JUDGMENT :

1 Heard. Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2 Mr.Ponda, the learned counsel appearing for respondents, undertakes to file Vakalatnama on behalf of concerned respondents through learned counsel Mr.Karmavivan.

3 By this petition, the petitioner/original complainant is praying for quashing and setting aside the order dated 13th November 2019 passed below Exhibit 1 in Case No.870/MISC/2019 whereby his prayer for sending the complaint for investigation under Section 156(3) of the Code of Criminal Procedure (hereinafter referred to as Cr.PC. for the sake of brevity) was rejected and the case was directed to be put up for verification and consequent steps.

4 Heard the learned counsel appearing for the petitioner/ original complainant. He drew my attention to the complaint dated 18th February 2019 sent to Police Officers including the Senior Inspector of Police, N.M.Joshi Marg Police Station, Mumbai, and subsequent reminder letter dated 28th May 2019 sent to the Police Officer for insisting them to register an offence against accused persons. With this, it is argued that as despite the judgment of the Hon'ble Apex Court in the matter of Lalita Kumari vs. Government of Uttar Pradesh and Others¹ requisite steps were not taken by the police, the petitioner had chosen to file the complaint. The learned counsel for the petitioner/original complainant further argued that though the complaint lodged by the petitioner/original complainant before the learned Metropolitan Magistrate was disclosing commission of cognizable offence, instead of sending the same for investigation to police by resorting to provisions of Section 156(3) of the Cr.P.C., the learned trial Magistrate had rejected that prayer and directed that the complaint be put up for verification. This, according to the learned counsel for the petitioner/original complainant, is

1 (2014) 2 Supreme Court Cases 1

against the mandate of the judgment in the matter of **Lalita Kumari (supra)**. It is further argue that it was incumbent on the part of the police officer to lodge the First Information Report (FIR) even if they wanted to indulge in conducting preliminary inquiry. For this purpose, reliance is placed on judgment of the Hon'ble Apex Court in the matter of **State of Haryana and Others vs. Bhajanlal and Others**². The learned counsel for the petitioner argued that filing of complaint under the Negotiable Instruments Act, 1881 or initiation of arbitration proceedings cannot elude trial of offences alleged against the respondent and for this purpose, reliance is placed on judgments of the Hon'ble Apex Court in the matters of **Dr.Laxman vs. State of Karnataka and Others**³ and **Trisuns Chemical Industry vs. Rajesh Agarwal and Others**⁴. Therefore, according to the learned counsel for the petitioner, the learned trial court committed error in rejecting the prayer for sending the complaint for investigation under Section 156(3) of the Cr.P.C.

2 1992 Supp(1) Supreme Court Cases 335

3 (2019) 9 Supreme Court Cases 677

4 (1999) 8 Supreme Court Cases 686

5 As against this, in submission of the learned counsel for respondents, it is discretion of the Magistrate whether to send the complaint for investigation by resorting to provisions of Section 156(3) of the Cr.P.C. or to follow the provisions of Sections 200 and 202 of the Cr.P.C. He argued that the discretion is correctly exercised by the learned trial Magistrate, in view of the fact that the dispute is apparently of civil nature as the complaint itself is not demonstrating deception or inducement. It is urged that entire transaction is of civil nature and paragraph 120.6 of **Lalita Kumari (supra)** makes it clear that there should not be a direct FIR in commercial transactions without conducting preliminary inquiry. Reliance is placed on **Rameshbhai Pandurao Hedau vs. State of Gujarat**⁵ to buttress this submission. By pointing out paragraph 14 in the matter of **Ramdev Food Products Private Limited vs. State of Gujarat**⁶ the learned counsel for the respondents argued that the learned trial Magistrate has rightly refused to exercise the power for sending the complaint for investigation under Section 156(3) of the Cr.P.C.

5 (2010) 4 Supreme Court Cases 185

6 (2015) 6 Supreme Court Cases 439

6 I have considered the submissions so advanced and also perused the material placed before me including the impugned order. Relevant portion of the impugned order dated 13th November 2019 reads thus :

“It was necessary for the complainant/applicant that firstly to file report before the concern police station under section 154(1) of the Code of Criminal Procedure and if the concern police station does not take any cognizance, then only to file complaint application with superior of the police station vide section 154(3) of the Code of Criminal Procedure and prayed that necessary direction be given to the said police station for taking cognizance. In this case, there is no report to police station, but it is a common application to police station alongwith its superior authority. It appears that the complainant/applicant has not complied the provisions of section 154(1) and (3) of the Code of Criminal Procedure. The record further shows that the complainant/applicant has issued letter/notice to the Commissioner of Police, Additional Commissioner of Police, Deputy Commissioner of Police and N.M.Joshi Marg Police Station as like Civil case. The complainant/applicant has to put his grievance

before the competent authority as per Law but he has not followed the process of Law. Hence, in my view, in this case, it would be just and proper to issue directions to concern police station to register the offence. But, in my view, one opportunity will have to be given to the complainant/applicant to put his case.”

7 It is, thus, clear that the learned trial Magistrate had formed an opinion that directions, as sought for by the complainant, are justified. However, the learned trial court went on an assumption that there is no compliance of provisions of Section 154(1) and 154(3) of the Cr.P.C. for exercising its jurisdiction. The learned trial court proceeded on assumption that there is no written report in respect of commission of cognizable offence submitted to the officer in-charge of the police station for taking necessary action as envisaged by Section 154 of the Cr.P.C. Further, perusal of the above quoted paragraph of the impugned order makes it clear that the learned trial Magistrate presumed that Section 154(3) of the Cr.P.C. is not followed by the original complainant by sending the substance of such information in

writing to the Superintendent of Police concerned for necessary action.

8 It needs to be kept in mind that procedural law is handmaid of justice. Perusal of the report dated 18th February 2019 makes it clear that information of commission of cognizable offence was sent in writing to the Senior Inspector of Police, N.M.Joshi Marg Police Station, Mumbai, which seems to be the jurisdictional police station for taking necessary action in the matter. Addressing that report to other higher authorities does not take it outside the purview of Section 154(1) of the Cr.P.C. Similarly, vide communication dated 28th May 2019, the Commissioner of Police, Mumbai, Assistant Commissioner of Police, Mumbai, as well as the Deputy Commissioner of Police of Zone III, under whose jurisdiction N.M.Joshi Marg Police Station, Mumbai falls, were informed of substance of such information, which was earlier provided to the Senior Inspector of Police, N.M.Joshi Marg Police Station, Mumbai, vide letter dated 18th February 2019. Both these communications are at Exhibits D and

G to the petition and both these communications contain acknowledgment of the concerned Officers. Though the letter communicating is also addressed to the Senior Inspector of Police, N.M.Joshi Police Station, Mumbai, this fact by itself could not take out the said communication from out of the purview of requirement of Section 154(1) of the Cr.P.C.

9 To conclude, totally on wrong assumption, the learned trial Magistrate proceeded to infer non-compliance of Section 154(1) and 154(3) of the Cr.P.C. This, apparently, is a reason for refusing to exercise powers under Section 156(3) of the Cr.P.C. by the learned trial Magistrate.

10 In this view of the matter, there is no necessity to go into other aspects of the matter. The impugned order needs to be quashed and set aside and the matter need to be remitted to the learned trial Magistrate for fresh consideration. Therefore, the order :

ORDER

i) The petition is partly allowed.

- ii) The impugned order dated 13th November 2019 passed below Exhibit 1 in Case No.870/MISC/2019 between the parties is quashed and set aside.
- iii) The complaint is remitted to the learned trial court for fresh consideration according to law.
- iv) Needless to mention that all observations made in this order are prima facie observations and shall have no bearing on consideration of the matter by the learned trial court.
- v) The learned trial Magistrate to expedite the hearing of the complaint.
- vi) Parties to act on authenticated copy of this order.

(A. M. BADAR, J.)

Arti V.
Khatate

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