

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1393 OF 2018

Ganesh s/o Hiranman Pimple

Petitioner

Versus

Omkant A. Chincholkar & another

Respondents

Mr. G. K. Muneshwar, Advocate for the petitioner.

Mr. V. S. Badakh, APP for the State.

Mr. S. S. Gangakhedkar, Advocate for respondent No. 1.

CORAM : R. M. JOSHI, J.

RESERVED ON : 27th JULY, 2023.

PRONOUNCED ON : 3rd AUGUST, 2023.

ORDER

1. This petition takes exception to the order dated 11th December, 2017, passed in RCC No. 109/2017 by Judicial Magistrate First Class, Hadgaon, rejecting the application under Section 156(3) of the Code of Criminal Procedure and order dated 4th June, 2018 confirming the order in RCC No. 109/2017.

2. It is the contention of petitioner that he filed complaint about the fair price scam against Digamber Damkondwar and 21 others. The said complaint was registered as RCC No. 19/2017 and pursuant to the order of Judicial Magistrate First Class, investigation was directed therein. The investigation therein was conducted by respondent No. 1 herein. It is alleged against respondent No. 1 that he used the powers illegally and in collusion with others prepared false report and submitted the same in RCC No. 19/2017. It is alleged that respondent No. 1 has shared the information received from the petitioner to the accused in the said case in order to benefit them. There is specific allegation that the petitioner was slapped by respondent No. 1. On these allegations, an application came to be filed under Section 156(3) of the Code of Criminal Procedure which was registered as RCC No. 109/2017. It is the grievance of the petitioner that the learned Magistrate instead of passing order of investigation under Section 156(3) of the Code of Criminal Procedure, has considered the said application as complaint under Section 200 of the Code of Criminal Procedure. Being aggrieved by the said order, Criminal Revision No. 22/2018 came to be filed before the Additional Sessions Judge, Nanded. The said revision was dismissed by order dated 3rd February, 2018.

3. Learned counsel for the petitioner states that the learned Trial Court has committed error in not referring the complaint for investigation as cognizable offence was made out on bare perusal of the complaint. It is his contention that no option was left for the learned Magistrate to direct investigation into the crime as contemplated by Section 156(3) of the Code of Criminal Procedure. It is further contended that having regard to the nature of allegations and the evidence required to be produced for proof thereof, police investigation is must. According to him, since CCTV footage of the concerned police station was essential for the purpose of proof, it cannot be called upon to be produced by him but it could be only possible to collect the evidence during investigation by police.

4. Learned counsel for respondent No. 1 has opposed the said submission on two grounds. Firstly, according to him, there is no prejudice caused to the complainant as the application has not been dismissed but an opportunity is given by the Magistrate to the complainant to prove the contention by leading evidence. Secondly, it is contended that respondent No. 1 is a police officer and allegations against him are pertaining to the acts done in discharge of his duties

while investigating the crime. It is also contended that said proceeding i.e. RCC No. 19/2017 is subjudice and until it is held by the said Court that respondent No. 1 herein has not conducted proper investigation of the said crime, it is not open for any Court to hold so at this stage. It is also submitted that for want of sanction under Section 197 of the Code of Criminal Procedure, even otherwise, no cognizance could have been taken of the complaint under Section 156(3) of the Code of Criminal Procedure in view of proviso to Section 156(3) by Maharashtra Amendment Act 33 of 2016.

5. Both sides relied upon case law. This Court has carefully gone through the same.

6. Respondent No. 1 is a police officer. Perusal of the complaint being RCC No. 109/2017 indicates that there are allegations against respondent No. 1 about not performing his duty diligently while investigating crime in RCC No. 19/2017. It is also alleged that the information received from the petitioner in the said crime was shared with the accused in order to benefit them. As far as these allegations are concerned, the same are done purportedly in discharge of his duties as Police Officer and hence it is duly covered

under Section 197 of the Code of Criminal Procedure. Proviso to Section 156(3) of the Code of Criminal Procedure by Maharashtra Amendment act, 2016, reads thus :

156. Police officer's power to investigate cognizable case :

“Provided that, no Magistrate shall order an investigation under this section against a person who is or was a public servant as defined under any other law for the time being in force, in respect of the act done by such public servant while acting or purporting to act in the discharge of his official duties, except with the previous sanction under section 197 of the Code of Criminal Procedure, 1973 (2 of 1974) or under any law for the time in force :

Provided further that, the sanctioning authority shall take a decision within a period of ninety days from the date of the receipt of the proposal for sanction and in case the sanctioning authority fails to take the decision within the said stipulated period of ninety days, the sanction shall be deemed to have been accorded by the sanctioning authority.”

7. Admittedly, respondent No. 1 is a public servant and without sanction being obtained under Section 197 of the Code of Criminal Procedure, complaint could not have been maintained. In

this regard, reference can be made to the judgment of Hon'ble Apex Court in the case of D. Devaraja vs. Owais Sabeer Hussain, 2020 AIR (SC) 3292. Thus, assuming these allegations to be true, there could not have been direction to investigate crime under Section 156(3) of Code of Criminal Procedure without obtaining sanction from the competent authority.

8. As far as remaining allegations regarding slapping complainant and offence punishable under Section 323 of Indian Penal Code is concerned, learned Magistrate has recorded reasons for not accepting the allegations made by complainant and called him to substantiate the same by leading evidence. Thus, this is not the case wherein cognizable offence is made out and was not directed to be investigated into. The said finding not being perverse cannot be interfered in the writ petition.

9. This is not a case where the petitioner is denied his right of agitating the grievance against respondent No. 1. It is always open for the complainant to lead appropriate evidence in order to substantiate the said allegation before the concerned Magistrate.

Having regard to these facts, there is no merit in the petition. Hence, petition stands dismissed.

10. Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

dyb