

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO. 824 OF 2023
WITH
INTERIM APPLICATION NO. 433 OF 2020
IN
CRIMINAL WRIT PETITION NO. 824 OF 2023**

Ramsevak Pandey & Anr. ... Petitioners
Versus
Krishnamurari Jairam Rai & Anr. ... Respondents

Mr. Kafil A Khan a/w Sana K. Khan and Shakir Qureshi i/by KSK
Legal for the Petitioners.

Mr. Krishnakumar Mishra for the Respondent No.1.

Ms. M. H. Mhatre, APP for the Respondent No.2-State.

**CORAM: NITIN W. SAMBRE AND
R. N. LADDHA, JJ.**

DATE : 13th JULY, 2023

P.C. :-

. Heard.

2. The challenge in the present writ petition is to the order dated 20th January 2020 passed by the Sessions Judge, Thane, in Criminal Revision No. 216 of 2019 wherein the following directions are issued by the learned Sessions Judge in exercise of revisional powers:

“ORDER

1) *Criminal Revision Application is allowed.*

2) *Impugned order dt. 05.08.2019 passed by the Ld. Magistrate (2nd Court), Thane below in Cri. M.A. No. 1012/ 2019 is hereby set aside.*

- 3) *Cri.M.A. No. 1012/2019 is allowed.*
- 4) *The matter be sent for investigation under section 156(3) of Cr.P.C. to the concern police station.*
- 5) *Order be communicated to learned trial court for information and further action.”*

3. The facts necessary for deciding the writ petition are as under:

4. The respondent no.1 approached the Police authority with a complaint claiming that same discloses a cognizable offence. The respondent no.2 was not convinced on the issue of disclosure of cognizable offence, issued N.C. resulting into respondent no.1 approaching the Magistrate with a complaint. The said complaint came to be heard by the Magistrate and the matter was posted for recording evidence of the complainant.

5. The petitioner feeling aggrieved, questioned the said order dated 5th August 2019 directing respondent no.1 to adduce evidence under Section 200 of the Cr.P.C. before the Revisional Court under Section 397 of the Cr.P.C.

6. The Revisional Court after hearing the parties had passed the impugned order. The submissions of the learned counsel for the petitioner are that the order impugned whereby the order of the Magistrate passed on 5th August 2019 is set aside, cannot be said to be sustainable. In revisional jurisdiction, the Revisional Court ought not to have issued directions thereby directing sending of the matter for investigation under Section 156(3) of the Cr.P.C. to the concerned Police Station. So as to substantiate aforesaid contention, the counsel

for the petitioner has drawn support from the provisions of Section 193 of the Cr.P.C. and also the law laid down by the Apex Court in the matter of ***Gangula Ashok & Anr. v/s. State of Andhra Pradesh***, reported in ***(2000) 2 SCC 504***, particularly, in paragraphs 10 and 11.

7. While countering the aforesaid submissions, the learned counsel for the respondent no.1-complainant would urge that the Revisional Court was justified in sending the matter for investigation under Section 156(3) of the Cr.P.C. vide impugned order. According to him, the Revisional Court has marked the copy of the order to the Magistrate's Court for further action and as such, it cannot be said or inferred that the Revisional Court has encroached upon the powers of the Magistrate, contrary to the provisions of Section 193 of the Cr.P.C. According to him, though the complaint preferred by the petitioner with a prayer for order under Section 156(3) discloses a cognizable offence, since the Magistrate has erred in not passing an order of investigation in exercise of powers under Section 156(3), the Revisional Court is quite justified in issuing the directions of investigation. As such, he would urge that the present writ petition is liable to be dismissed.

8. We have appreciated the submissions.

9. Against the order of the Magistrate, the revision preferred by the petitioner being Revision No. 216 of 2019 is by taking recourse to the provisions of Section 397 of the Cr.P.C. The Revision is maintainable against an order wherein the rights of the parties are finally decided. In

the case in hand, the Magistrate while passing the order on 5th August 2019 has not decided the rights of the parties finally but has kept the matter for recording evidence of the complainant. As such, the order dated 5th August 2019 cannot be termed as a final order which could have been questioned in revision under Section 397 of the Cr.P.C. The order of the Magistrate thereby directing respondent no.1 to lead evidence under Section 200 of the Cr.P.C., has to be termed as an interlocutory order, as the complaint proceedings have remained pending before the Magistrate in spite of said order and the rights of the parties are not adjudicated finally.

10. In view of the express bar provided under Section 397 of the Cr.P.C., the Revisional Court ought not to have entertained the revision against an interlocutory order. In this backdrop, it has to be held that the revision preferred by respondent no.1 was not maintainable.

11. Apart from above, the fact remains that the Section 193 of the Cr.P.C. puts an embargo on the powers of the Revisional Court unless the Revisional Court is vested with the original jurisdiction to try the offence. As far as the offence alleged in this case is concerned, the fact remains that the power to conduct the trial therein vests with the Magistrate and not with the Sessions Court. As such, the Sessions Court cannot be termed as a Court of original jurisdiction.

12. In the aforesaid legal backdrop, the orders passed by the Sessions Court is in excess of jurisdiction and as such, on aforesaid count also the order of the Sessions Court impugned herein is not

sustainable. In support of the aforesaid observations, reliance can be placed on the judgment of the Apex Court in the matter of **Gangula Ashok & Anr.** (supra), particularly, paragraphs 10 and 11, which read thus:

“10. Section 193 of the Code has to be understood in the aforesaid backdrop. The section imposes an interdict on all Courts of Session against taking cognizance of any offence as a court of original jurisdiction. It can take cognizance only if “the case has been committed to it by a Magistrate”, as provided in the Code. Two segments have been indicated in Section 193 as exceptions to the aforesaid interdict. One is, when the Code itself has provided differently in express language regarding taking of cognizance, and the second is when any other law has provided differently in express language regarding taking cognizance of offences under such law. The word “expressly” which is employed in Section 193 denoting those exceptions is indicative of the legislative mandate that a Court of Session can depart from the interdict contained in the section only if it is provided differently in clear and unambiguous terms. In other words, unless it is positively and specifically provided differently no Court of Session can take cognizance of any offence directly, without the case being committed to it by a Magistrate.

11. Neither in the Code nor in the Act is there any provision whatsoever, not even by implication, that the specified Court of Session (Special Court) can take cognizance of the offence under the Act as a court of original jurisdiction without the case being committed to it by a Magistrate. If that be so, there is no reason to think that the charge-sheet or a complaint can straight away be filed before such Special Court for offences under the Act. It can be discerned from the hierarchical settings of criminal courts that the Court of Session is given a superior and special status. Hence we think that the legislature would have thoughtfully relieved the Court of Session from the work of performing all the preliminary formalities which Magistrates have to do until the case is committed to the Court of Session.”

13. In the aforesaid backdrop, the petition stands allowed.

14. The order impugned dated 20th January 2020 stands quashed and set aside.

15. The respondent no.1 is at liberty to give evidence before the Magistrate as provided under Section 200 of the Cr.P.C.

16. The pending interim application stands disposed of.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]

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