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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4516 OF 2019**

Mrs. Savita Chhagan Vidhate and Ors. Petitioners.

V/s

The State of Maharashtra and Anr. Respondents.

Mr. Sachin B. Chandan for Petitioners.

Mr. Ajay Patil, APP for Respondent/State.

Mr. Deepak Patare, PSI Bhadrakali Police Station, Nashik City, present.

**CORAM: NITIN W. SAMBRE &
RAJESH S. PATIL, JJ.**

DATE: SEPTEMBER 07, 2023

P.C.: (*Per Nitin W. Sambre, J.*)

1] All the five Petitioners are seeking quashing of the proceedings No.583 of 2019 and FIR No.420 of 2015 registered with Bhadrakali Police Station for the offence punishable under Sections 363, 143, 323, 504, 506 read with Section 34 of the Indian Penal Code.

2] Facts necessary for deciding the present Petition are as under:-

3] Respondent No.2 preferred complaint to Respondent No.1-Police Station, alleging that while she was in the Shatabdi Hospital alongwith her mother, Petitioners have kidnapped, assaulted and

threatened her, resulting into registration of the aforesaid offence. Pursuant to the investigation carried out, police authorities in the aforesaid Crime No.420 of 2015 submitted N.C. Final Summary to the Court of learned Magistrate. The Court of learned Magistrate accordingly caused notice to the complainant, calling upon her say. After considering say of Respondent-complainant on 25.07.2018, learned Magistrate passed an order, thereby declining to accept the closure report submitted by Respondent No.1-Police Station and directed that case be registered as regular criminal case and further directed issuance of process against accused Nos. 1 to 4 for the aforesaid offence.

4] It is claimed that copy of the said order was made available to the police authorities and police authorities mistaking the same to be an order to investigate, carried out investigation and submitted charge-sheet against the Petitioners, which is questioned in the present Petition.

5] At this stage, Counsel for the Petitioners has sought leave to

amend so as to restrict prayer of quashing to the extent of the Petitioners who are chargesheeted in the aforesaid offence being Crime No.420 of 2015. Prayer is allowed, since the same is not objected. We direct the Petitioners to carry out amendment forthwith.

6] Pursuant to earlier orders, report is placed on record by the Principal District Judge, Nashik dated 22.06.2023 based on the report submitted by the Chief Judicial Magistrate, Nashik on 22.06.2023. In this backdrop, response was called from police authorities i.e. Respondent No.1. An affidavit on behalf of Respondent No.1 is sworn on 31.08.2023, thereby stating that after investigation since cognizable offence cannot be inferred N.C. Summary was submitted before the learned Magistrate. It is further stated that said Summary was rejected by the Magistrate vide order dated 25.07.2018, observing that there is ample material against the accused. The Magistrate has issued further directions to register regular criminal case and also directed issuance of process against accused Nos.1 to 4. The aforesaid order of the Magistrate is misconceived and misunderstood to mean that they were directed to carry out further

investigation and submit chargesheet and accordingly chargesheet is submitted. Filing of chargesheet in the trial court since goes contrary to the order dated 25.07.2018 passed by the Magistrate, the concerned Investigating Officer has tendered an unconditional apology. In this backdrop, fact remains that there exists an order of the Magistrate passed on 25.07.2018, as could be inferred from report of the Principal District & Sessions Judge, Nashik, so also report of the Chief Judicial Magistrate dated 22.06.2023 of issuance of directions to register regular criminal case against the Petitioners/accused. Fact remains that till this date, no regular criminal case is registered against the Petitioners/accused. However, police have submitted chargesheet in the matter, that too without there being any authority. In case if the Magistrate rejects closure summary submitted by police authorities, it is not open for the Magistrate to direct further investigation and chargesheet the accused persons. Remedy provided in such an eventuality is that of proceeding to examine the complaint under Section 200 and issue process which is already done in the case in hand.

7] In this backdrop, once Respondent No.1 has submitted closure report, they ought not to have chargesheeted the Petitioners in absence of specific directions to that effect from the Court of Magistrate. Entire act of Respondent No.1 of submitting chargesheet is without authority and same is contrary to the order of Magistrate passed on 25.07.2018. Once the police authorities have formed an opinion and submitted report under Section 169 of the Code stating that no case is made out for sending the accused for trial, it is not open for the Magistrate to substitute his views, thereby compelling police authorities to change their opinion and substitute his view of chargesheeting the accused persons.

In support of the aforesaid observations, reliance can be placed on the judgment of the Apex Court in the matter of *Vasant Dubey vs. State of Madhya Pradesh* reported in **2012 DGLS (SC) 42**. Paras 13, 14, 15, 16, 17 and 18 of the said judgment read thus :

“13. However, the learned Single Judge completely missed the ratio laid down in *Abhinandan Jha* (supra) which had been relied upon by the learned Single Judge of the High Court on an earlier occasion also when the order of the Special Judge refusing to accept closure report and directing submission of charge-sheet was quashed and the entire legal position was summed up in unequivocal terms as follows:-

.There is no power, expressly or impliedly conferred under the Code, on a Magistrate to call upon the police to submit a charge-sheet, when they have sent a report under Section 169 of the Code, that there is no case made out for sending up an accused for trial. The functions of the Magistrate and the police are entirely different, and though, the Magistrate may or may not accept the report, and take suitable action according to law, he cannot impinge upon the jurisdiction of the police, by compelling them to change their opinion, so as to accord with his view..

This position has been further reiterated and reinforced in a recent judgment of this Court delivered in the matter of Ram Naresh Prasad v. State of Jharkhand [(2009) 11 SCC 299, wherein it has been held that when the police submitted a final report of investigation of the case which in colloquial term is called “closure report”, the Magistrate cannot direct the police to submit the charge-sheet. However, on the basis of the material in the charge-sheet, he may take cognizance or direct further investigation. In fact, this position is clearly laid down under Section 190 read with Section 156 of the Cr.P.C. itself and the legal position has been time and again clarified by this Court in several pronouncements viz. in the matter of Bains v. State AIR 1980 SC 1883 = 1980 (4) SCC 631, wherein Their Lordships have summarised the position as follows:-

- “1. When a Magistrate receives a complaint, he may, instead of taking cognizance at once under Section 190(1)(a) direct a police investigation under Section 156(3) ante;
2. Where, after completion of the investigation, the police

sends an adverse report under Section 173(1), the Magistrate may take any of the following steps:

(i) If he agrees with police report, and finds that there is no sufficient ground for proceeding further, he may drop the proceeding and dismiss the complaint.

(ii) He may not agree with the police report and may take cognizance of the offence on the basis of the original complaint, under Section 190(1)(a) and proceed to examine the complainant under Section 200.

(iii) Even if he disagrees with the police report, he may either take cognizance at once upon the complaint, direct an enquiry under Section 202 and after such enquiry take action under Section 203. However, when the police submits a final report or closure report in regard to a case which has been lodged by the informant or complainant, the Magistrate cannot direct the police to straightway submit the charge-sheet as was the view expressed in the matter of *Abhinandan Jha* (supra) which was relied upon in *Ram Naresh Prasad* (supra)..”

“14. Thus it is undoubtedly true that even after the police report indicates that no case is made out against the accused, the Magistrate can ignore the same and can take cognizance on applying his mind independently to the case. But in that situation, he has two options (i) he may not agree with the police report and direct an enquiry under Section 202 and after such enquiry take action under Section 203. He is also entitled to take cognizance under Section 190 Cr.P.C. at once if he disagrees with the adverse police report but even in this circumstance, he cannot straightway direct submission of the charge-sheet by the police.”

“15. In the light of the aforesaid legal position, when we examined the merit of the instant matter, we noticed that the order dated 18.5.2004 passed earlier by the Special Judge straightway directing the police to submit charge-sheet was quashed by the learned Single Judge of the High Court and liberty was left open to him either to take cognizance under Section 190(c) of the Cr.P.C. or direct the Lokayukta Police for further investigation. In spite of this order, the Special Judge did not pass an order taking cognizance which he could have done under Section 190(c) of the Cr.P.C. However, he chose to direct office of the Lokayukta to enter into further investigation which after further investigation assigned reasons given out hereinabove, stating that in view of the statement of the complainant that he had complained at the instance of a rival of the accused as also the fact that entire payment had already been made by the complainant prior to the lodgement of complaint, no case was made out against the complainant. In spite of this, if the Special Judge considered it legal and appropriate to proceed in the matter, he could have taken cognizance upon the complaint and could have proceeded further as per the provision under Section 200 of the Cr.P.C. by examining the complainant and if there were sufficient ground for proceeding, he could have issued process for attendance of the accused. However, such process could not have been issued, unless the Magistrate found that the evidence led before him was contradictory or completely untrustworthy. Conversely, if he found from such evidence that sufficient ground was not there for proceeding i.e. no prima facie case against the accused was made out, he had to dismiss the complaint, since the complaint did not disclose the commission of any offence. But instead of taking any steps either by issuing the process or dismissing the complaint at once, he could have taken immediate step as a third alternative to

make an enquiry into the truth or falsehood of the complaint or for an investigation to be made by the police for ascertaining whether there was any prima facie evidence so as to justify the issue of process. In short, on receipt of a complaint, the Magistrate is not bound to take cognizance but he can without taking cognizance direct investigation by the police under Section 156(3) of the Cr.P.C. Once, however, he takes cognizance he must examine the complainant and his witnesses under Section 200. Thereafter, if he requires police investigation or judicial enquiry, he must proceed under Section 202. But in any case he cannot direct the police to straightaway file charge-sheet which needs to be highlighted as this point is often missed by the Magistrates in spite of a series of decisions of this Court including the case of Abhinandan Jha (sura) and Ram Naresh Prasad (supra) referred to hereinbefore.”

“16. When the facts of the instant matter is further tested on the anvil of the aforesaid legal position, we find that the Special Judge instead of following the procedure enumerated in the Cr.P.C. appeared to insist on rejecting the closure report given by the Special Police Establishment, Lokayukta Office and in the process consistently committed error of law and jurisdiction not only once, but twice. On the first occasion when the order of the Special Judge was quashed and set aside by the High Court granting liberty to the Special Judge either to take cognizance under Section 190(c) or order for further investigation as he had committed an error of jurisdiction by directing the police to straightaway submit the charge-sheet against the accused-petitioner, the Special Judge did not consider it appropriate to take cognizance but ordered for further investigation by Lokayukta Police and when the matter was reinvestigated by the Special Police Establishment of the Lokayukta Office, the Special Judge in spite of the finding of the investigating

agency holding that no further material to proceed in the matter was found, refused to accept the closure report and this time it further realized that it could not proceed in the matter as there was no sanction for prosecution, which the Special Judge obviously noticed since he was not in a position to take cognizance directly under Sections 7, 13(1)(d) of the Prevention of Corruption Act in absence of sanction which was a statutory requirement. In spite of this, he refused to accept closure report but recorded a direction to obtain sanction for prosecution of the appellant and thereafter ordered for reinvestigation of the complaint for the second time creating a peculiar and anomalous situation which is not in consonance with the provision of the Code of Criminal Procedure enumerated under the Chapter relating to conditions requisite for initiation of proceedings.”

“17. It may be worthwhile to highlight at this stage that the enquiry under Section 200 Cr.P.C. cannot be given a go-bye if the Magistrate refuses to accept the closure report submitted by the investigating agency as this enquiry is legally vital to protect the affected party from a frivolous complaint and a vexatious prosecution in complaint cases. The relevance, legal efficacy and vitality of the enquiry enumerated under Section 200 Cr.P.C., therefore, cannot be undermined, ignored or underplayed as non compliance of enquiry under Section 200 Cr.P.C. is of vital importance and necessity as it is at this stage of the enquiry that the conflict between the finding arrived at by the investigating agency and enquiry by the Magistrate can prima facie justify the filing of the complaint and also offer a plank and a stage where the justification of the order of cognizance will come to the fore. This process of enquiry under Section 200 Cr.P.C. is surely not a decorative piece of legislation but is of great relevance and value to the complainant as well as the accused.”

“18. It is no doubt possible to contend that at the stage of taking cognizance or refusing to take cognizance, only prima facie case has to be seen by the court. But the argument would be fit for rejection since it is nothing but mixing up two different and distinct nature of cases as the principle and procedure applied in a case based on police report which is registered on the basis of the first information report cannot be allowed to follow the procedure in a complaint case. A case based on a complaint cannot be allowed to be dealt with and proceeded as if it were a case based on police report. While in a case based on Police report, the Court while taking cognizance will straightaway examine whether a prima facie case is made out or not and will not enter into the correctness of the allegation levelled in the F.I.R., a complaint case requires an enquiry by the Magistrate under Section 200 Cr.P.C. if he takes cognizance of the complaint. In case he refuses to take cognizance he may either dismiss the complaint or direct the investigating agency to enter into further investigation. In case, he does not exercise either of these two options, he will have to proceed with the enquiry himself as envisaged and enumerated under Section 200 Cr.P.C. But, he cannot exercise the fourth option of directing the Police to submit a charge-sheet as such a course is clearly not envisaged under the Cr.P.C. and more so in a complaint case. As already stated, this position can be clearly deduced from the catena of decisions including those referred to hereinbefore but needs to be reinstated as time and again this magisterial error reaches up to this Court for rectification by judicial intervention.”

The aforesaid view is based on the judgment of the Apex Court in the

matter of *Abhinandan Jha & Ors vs. Dinesh Mishra*, reported in **AIR 1968 SC 117** which is also followed in *Randhir Singh Rana vs. State (Delhi Administration)* reported in **1996 DGLS (SC) 2145**.

8] As a sequel of above, it has to be observed that submission of charge-sheet by Respondent No.1 against the Petitioners is without authority of law and same is hereby quashed and set aside.

9] As far as order of Magistrate dated 25.07.2018 directing registration of criminal case is concerned, same cannot be quashed and set aside, as same is passed in exercise of powers vested in the learned Magistrate pursuant to the provisions of Sections 202 and 203 of the Criminal Procedure Code. From the report of the Principal District & Sessions Judge, Nashik, it has to be inferred that in spite of there being directions, regular criminal case has not been registered against the accused persons on the file of Judicial Magistrate, First Class.

10] It is the duty of the Principal District & Sessions Judge, Nashik to ensure that order of the Magistrate dated 25.07.2018 is taken to its

logical end by registering regular criminal case against the accused persons as was directed.

11] However, submission of chargesheet which has given rise for registration of RCC No. 583 of 2019 in the light of the aforesaid observations cannot be held to be sustainable and as such said proceedings are quashed and set aside. It is made clear that it shall be open for the learned Magistrate while dealing with criminal case which is to be registered in compliance with its order dated 25.07.2018 to consider the chargesheet to be the police report, if so required in accordance law, particularly having regard to the Provisions of Chapter XV and XVI of the Criminal Procedure Code.

12] Writ Petition stands allowed in terms of prayer clause (a) with liberty as observed hereinabove.

(RAJESH S. PATIL, J.)

(NITIN W. SAMBRE, J.)