



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 CRIMINAL WRIT PETITION NO. 409 OF 2023

Ram Narhari Ratnaparkhi

VERSUS

The State of Maharashtra and others

...

Advocate for the Petitioner : Mrs. Rani Bharuka-Bora h/f Mr. Satyajit S. Bora

APP for Respondent No.1: Mrs. Rani R. Tandale

Advocate for Respondent Nos. 2 and 3 : Mr. R.V. Gore

.....

CORAM : SHIVKUMAR DIGE, J.

DATED : 30th JULY, 2024.

PER COURT :-

1. The petitioner is challenging the order dated 21.11.2022 passed by the learned Additional Sessions Judge, Basmathnagar in Criminal Revision Application No. 3 of 2021, whereby the learned Additional Sessions Judge was pleased to dispose of the revision application by setting aside and modifying the order dated 8.2.2021, passed by the learned J.M.F.C. Basmathnagar in Criminal Misc. Application No. 455 of 2020 and further directing the learned Magistrate to take the cognizance of the offence and examine the complainant and proceed further.

2. It is the contention of the learned counsel for the petitioner that the petitioner had filed a complaint under Section 156(3) of

Cr.P.C. before the J.M.F.C. at Basmathnagar (for short “the trial court”) under section 307, 323, 447, 452, 504, 506 r.w. 34 of I.P.C. against respondent No. 2 and 3. After hearing all parties, the learned trial court directed the police to register the F.I.R. against respondent Nos. 2 and 3 under sections 307, 323, 447 r.w. 34 of I.P.C. Thereafter, the said order was challenged before the Sessions Court by respondent Nos. 2 and 3 by filing Criminal Revision Application. The learned Additional Sessions Judge, partly allowed the criminal revision application and modified the order and directed the trial court to take cognizance of the offence and examine the complainant and other witnesses and proceed further as per law. The learned counsel further submitted that the order passed by the Additional Sessions Judge is erroneous as already F.I.R. was registered as per the directions of the trial court and after registering the F.I.R. the order passed by the trial court cannot be considered as legal and valid order. Hence, requested to allow the writ petition. The learned counsel relied on the judgment of the Full Bench of this Court in the case of **Arun P. Gidh and others vs. Chandraprakash Singh and others**, reported in MANU/MH/2292/2024.

3. It is the contention of the learned counsel for the respondent Nos. 2 and 3 that when respondent Nos. 2 and 3 filed criminal revision application, the learned Additional Sessions Judge

had stayed the impugned order passed by the trial court and thereafter final order is passed. When the order was stayed, the F.I.R. should not have been registered. The order passed by the Additional Sessions Judge is legal and valid. No interference is required in it and requested to dismiss the writ petition.

4. The learned A.P.P. submits that appropriate order may be passed.

5. I have heard all the learned counsel. Perused the impugned orders passed by the courts below. Admittedly, after the order of the trial court passed under Section 156(3) of Cr.P.C. the F.I.R. is registered against respondent Nos. 2 and 3. After registering the F.I.R. the Additional Sessions Judge has passed the stay order. When the F.I.R. is registered, then the Additional Sessions Judge should not have modified the order and should not have directed for issue process order, as already the order of the trial court was complied with. But this fact is not considered by the Sessions court. The Full Bench of this Court in the case of ***Arun P. Gidh and others vs. Chandraprakash Singh and others (supra)*** in para 126(c) has observed that 'if the F.I.R. has already been registered, before the revisional court passes an interim order, then the nature of the infirmity in the impugned order may become relevant'. But this fact is

not considered by the Sessions Court. In view of the above, I pass the following order:-

O R D E R

- I. The writ petition is allowed.
- II. The order dated 21.11.2022 passed by the learned Additional Sessions Judge, Basmathnagar in Criminal Revision Application No. 3 of 2021 is quashed and set aside.

(SHIVKUMAR DIGE, J.)

rlj/