
(2013) 03 MP CK 0020
In the Madhya Pradesh High Court
Case No : M.Cr.C. No. 12249 of 2012

Ajay Goenka (Dr.) and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 01-03-2013

Acts Referred:

Citation : (2013) ILR (MP) 1759

Hon'ble Judges : Anil Sharma, J

Bench : Single Bench

Advocate : Ajay Gupta, for the Appellant; Pratibha Mishra, P.L. for the non-applicant No. 1/State, for the Respondent

Judgement

Anil Sharma, J.—By invoking the inherent jurisdiction of this Court, the instant petition has been filed by the petitioners u/s 482 of Code of Criminal Procedure, 1973 for quashing the proceedings of FIR registered at crime No. 68/12 at Police Station Talaiya District Bhopal and also for quashing the subsequent proceedings initiated thereupon being abuse of process of law. The brief facts in narrow compass are that respondents No. 2 & 3 against the petitioners alleging commission of offence punishable under Sections 420, 406, 415 and 120B of IPC stated that they have done the construction work of Hospital Building of Chirayu Medical College and Hospital which belongs to Chirayu Charitable Trust located at Village Bhainsakhedi, Tahsil Huzoor District Bhopal. It has been further stated that the work of construction was got executed by petitioner No. 1--Dr. Ajay Goenka, Secretary Trustee on behalf of the Trust and the work of construction has been executed by Mr. Vipin Goel. Complainant has farther stated that against whom it has been alleged that he has brought certain plant, machinery and construction material from the site. In the month of July, 2010, the complainant has stopped the work of construction and left it due to non-payment. Complainant has left the plant and machinery at the site for being used in construction work. It has been alleged by the complainant that the accused persons are not returning the plant and machinery despite being asked by the

complainant and complainant has alleged that they have come to know that one Greaves Concrete Pump Type 350-D machine has been sold by the accused persons to the L.I.C. Construction Co. Pvt. Ltd. Copy of the complaint preferred by the complainant is attached with this petition as Annexure P/3.

2. Petitioners' counsel submitted that the allegations are absolutely false in fact the excess amount has been paid by the petitioners to the complainant of which no proper account has been submitted by the complainant. Thus, it is not the petitioners who have committed fraud with the complainant but it is the complainant who has committed fraud with the petitioners. In the month of July, 2010, complainant has started demanding more money without providing accounts for the amount which had already been paid by the petitioners to the complainant. It has been further submitted that supervisors were also not performing the duties satisfactorily due to which the construction work was hampered badly. On the one hand, the complainant are avoiding to submit the accounts for settlement and on the other hands they are adopting such illegal tactics only to create undue pressure on the petitioners to succumb to their illegal demands. Learned counsel for the petitioners further submitted that no case of cognizable offence is made out against the petitioner. The bare perusal of complaint does not make out any case of criminal nature, hence prayer for quashing the complaint and other proceedings has been made.

3. Learned counsel for the petitioners drew attention of this Court towards the order dated 10-02-2012 passed in unregistered complaint case by learned JMFC, Bhopal whereby the complaint filed by respondents has been referred to police investigation u/s 156(3) of Cr.P.C. for registration of case. The aforesaid order has been put to challenge by the petitioners availing the remedy of revisional jurisdiction before learned revisional Court which was registered as Criminal Revision No. 127/2012 in the Court of First Additional Sessions Judge, Bhopal, who vide impugned order dated 14-03-2012 has dismissed the revision filed by the petitioners without considering the material aspects of the matter.

4. Learned counsel for the petitioners submitted that both the Courts below have committed grave error in registering the complaint against the petitioners without considering the fact that the dispute between the parties are of civil nature which connotes with regard to settlement of accounts and even bare perusal of complaint does not smell with regard to any cognizable offence against the petitioners. It has been further submitted that while referring the matter u/s 156(3) of Cr.P.C. to police investigation, learned Magistrate has totally failed to apply its mind and he sent the complaint for police investigation without assigning any cogent and plausible reason. On perusal of Annexure P/2, the order passed by learned Magistrate, it is apparent that no application u/s 156(3) has been filed by the complainant for referring the matter to police investigation since there is no reference made by learned Magistrate at the time of passing the order impugned. The order passed by learned Magistrate, referring the matter to police investigation is reproduced, below:

5. Learned counsel for the petitioners submitted that learned trial Court has not applied its mind as to what kind of cognizable offence is made out against the petitioners at the time of referring the matter to police investigation. In order to strengthen his contention, learned counsel for the petitioners placed reliance on the decision of Andhra Pradesh High Court in the matter of D.K. Pattanaik and Another Vs. The Station House Officer, Nallabelly Police Station and Another, in which it has been held that before a Magistrate orders for investigation by police u/s 156(3) of Cr.P.C. he has to apply his mind to know whether allegations in complaint, prima facie, make out a case. It has been further held that the complaint filed against the petitioners for the offence u/s 420 of Penal Code there is no allegation in the complaint that petitioners intentionally induced respondent to attend the interview. The grievance of respondent that Selection Committee in interview has not awarded the marks as prescribed by the guidelines, such allegation even if true by itself, does not constitute an offence of cheating. Allegations contained in the complaint filed by respondent do not disclose commission of any offence, much less an offence of cheating hence quashed the complaint u/s 482 of Cr.P.C.

6. Learned counsel for the petitioners further placed reliance on the decision of Gujrat High Court in the matter of Dr. Anil K. Khandelwal and Others Vs. Shri Maksud Saiyed and Another, in which it has been held that the order impugned reveals that the Magistrate has not gone through the complaint and straight way issued the direction u/s 156(3) of Cr.P.C. to investigate into the matter which was not just and proper in the facts of the case. Further reliance has been placed by petitioners' counsel on the decision of Gujrat High Court in the matter of Arvindbhai Ravjibhai Patel Vs. State of Gujarat and Others, in which while considering the provisions of Section 156(3) of Cr.P.C. it has been laid down that the allegation in complaint simple and could be investigated by Court itself and the action of Magistrate in mechanically directing police to investigate case has been deprecated. Such passing of buck to police for doing needful is improper and amounts to abdication and dereliction of duty. Paragraph 5 of the judgment is relevant as it has always been seen in State of Madhya Pradesh that almost all the Magistrates are frequently using the power for referring the matter u/s 156(3) of Cr.P.C. without any application of mind merely on the ground that the complaint contains the allegations of cognizable offence, ignoring the riders which have been mentioned by the Apex Court for quashing the FIR and criminal proceedings if the dispute is of civil nature for which the civil suit is pending or the complaint does not disclose any cognizable offence. Paragraph 5 reads as under:

Further still, while dismissing this petition what is quite disturbing is the most indiscreet manner in which the learned Magistrate has mechanically directed the PI of the concerned police station to investigate the case u/s 156(3) of the Code and submit his report. In fact, if we peruse the allegations in the complaint, they are too simple requiring any assistance worth the name of the police to investigate into the matter!! And yet the fact remains that the learned Magistrate

has quite curiously directed police to investigate u/s 156(3) of the Code and report back. As a matter of fact, instead of directing the PI to investigate u/s 156(3) of the Code, it was the duty of the learned Magistrate of his own to straightway take the cognizance of alleged offences and decide the case after recording the oral and documentary evidence as the case may be as lead by the complainant and hearing the defence version. In fact having regard to the facts and circumstances of the case, this is not at all the case where by any stretch of imagination, the learned Magistrate needed any police assistance to inquire into the case. One can quite understand some such complex, complicated cases wherein a Judge/Magistrate sitting in the Court-room cannot go out of it to various places and persons to collect the data, and accordingly seize some, muddamal articles, documents in possession of accused or his associates, etc. which requires investigation and because of which in absence of police investigating u/s 156(3) of the Code ultimately the cause of justice would suffer. Accordingly, it is indeed here in such cases only where the Investigating Agency is required to be called in assistance and will figure into the picture to supplement its role as one of the important components/functionary of the administration of justice to assist the Court. In this view of the matter, all the learned Magistrates of the State are hereby specifically directed to be henceforth be quite discreet enough in not mechanically directing the police to investigate the case u/s 156(3) of the Code. When the allegations in the complaint are simple enough and further where the Court undoubtedly can straightway proceed to conduct the trial, in such cases the Court before which the complaint is filed, shall never mechanically abandon its sacrosanct duty of recording the evidence and doing justice by passing a buck to the police for doing the needful. This is clear abdication and dereliction of duty. In fact, this Court in number of such cases have noticed quite unfortunate growing tendency on the part of some of the learned Magistrates to direct the police to investigate u/s 156(3) of the Code and report reflecting total armchair relaxed attitude and non-application of mind!! This is required to be curbed in the overall interests of justice. When the complainant approaches the Court making a grievance disclosing cognizable offence, it is the duty of every Court in the first instance to carefully examine the complaint and find out whether it prima facie discloses the offence worthy of issuing the process, in the second instance, whether the allegations in the complaint are such which involve quite complex and complicated investigation of the case which without the active and expertize assistance of the police cannot be undertaken, then in that case, in the third instance, it would be quite desirable to serve notice along with a copy of the complaint to the concerned P.I. or P.S.I. to remain personally present before the Court, appraise him of the situation and take a stock of the situation as to within what time bound period, he would be in a position to complete the investigation and submit his report u/s 156(3) of the Code, and in the fourth instance; when it is of the view that having regard to the nature of allegations in the complaint calling of the police report u/s 156(3) of the Code is unavoidable, then in that case while ordering for the same, it shall make it time bound that is to say report to be submitted within

some stipulated period, as warranted by the facts and circumstances of the particular case, directing the concerned police officer to submit the periodical progress report of the investigation every two weeks on affidavit till the final report is submitted on the given date. This is absolutely necessary to keep the investigating agency alert, efficient and under the control of the Court to avoid, in some cases, lethargy and avoidable delay in investigation of the case. In substance, while passing any order pursuant to the complaint, it must reflect the total application of mind by the learned Magistrate.

7. Learned counsel for the petitioners further placed reliance on the Full Bench decision of Allahabad High Court in the matter of Ram Babu Gupta and Another Vs. State of U.P. and Others, in which it has been held that on receipt of complaint Magistrate has to apply its mind to the allegations made in the complaint and he may at once proceed to take cognizance and may order it to go to police station for being registered and investigated. The Magistrate's order must indicate application of mind. Further reliance has been placed by petitioners' counsel on the decision of Gujrat High Court in the matter of Suresh Kumar Gupta Vs. State of Gujarat, in which while considering the provisions of Section 156(3) of Cr.P.C. it has been held that the parties dealing in business transaction of purchase and sale of commodity, accused indebted to complainant and has allegedly hurled filthy abuses and slapped the complainant when the demand of money was made. The incident take place at the shop of complainant and there is no medical evidence of injury, no independent witness has been examined and no reason explained as to why the accused visit the complainant particularly when he was indebted to him. Paragraph 11 of the judgment is reproduced below:

The above issue is required to be considered and determined in view of the present trend of the litigants, professionals (legal) to go for criminal complaints and of the learned Magistrates to order investigation u/s 156(3) of the Code indiscriminately without inquiring and applying mind whether facts stated constitute offence or dispute between the parties is not of the civil nature. It is not the job of the Postman that the Magistrate has to do on receipt of a complaint that without application of mind straightaway to order investigation u/s 156(3), unless there is a clear case which needs investigation to assist the learned Magistrate to do justice. Before he orders or directs investigation u/s 156(3), he has to notionally decide that investigation through Police agency is needed in this case and the enquiry by himself may not be sufficient. Investigation consists generally of (1) proceeding to the spot; (2) ascertainment of facts and circumstances; (3) discovery and arrest of suspected offender; (4) collection of evidence which may consists of (a) examination of persons, including accused, and recording statement, if thought fit, (b). search of place and seizure of incriminating things: (c) consideration whether the materials are enough for submitting charge-sheet. Such and other things if needed to investigate into the matter, then the question is what is that evidence to prove case cannot be procured by the Court itself and complainant cannot produce it

before the Court without the help of investigating agency and help of the concerned Police Officer to proceed in the matter is needed. There are cases, more particularly non-cognizable offences, and some of the cognizable ones where the complainant may produce the whole of the evidence to prove the case. The learned Magistrate himself through complainant can collect necessary evidence to prove guilt. For example, in number of cases, it may not be necessary to proceed to the spot, ascertainment of facts and circumstances can be gathered by the Magistrate himself by calling the witnesses, discovery and arrest of suspected offender may not be necessary and necessary evidence to prove the case may be produced by the complainant himself with or without the assistance of the Court. There may be no necessity of any search of place or seizure of the things. In such a situation, when the necessary material to prove guilt can be produced before the Court with or without the help of the Court by the complainant, why direction for investigation u/s 156(3) of the Code? So, when a complaint is received be it for an offence cognizable or non-cognizable, the learned Magistrate has to look at the complaint or the information received, apply his mind and has to come to a tentative decision whether necessary material to prove the guilt of the accused can be gathered by him without any difficulty through the complaint or it is necessary to take assistance of investigating agency. If for the proof of guilt it is felt necessary to go to spot, to discover and seize some incriminating article, to search a place, etc., then direction to investigate stands justified. In all cases where the complainant approaches the Court by private complaint, anything needed to prove case can be and has to be done by complainant. For example, in facts of the case on hand, though cognizable offence is alleged to have been committed, why was it necessary to direct the Police to investigate?

8. Learned counsel for the petitioners submitted that the judgment passed by the Gujrat High Court in the matter of Dr. Anil K. Khandelwal and others (supra) has been affirmed by the Apex Court in the appeal filed by Maksud Saiyed in the title of Maksud Saiyed Vs. State of Gujarat and Others, and held that while considering the provisions of Section 482 and 156(3) of Cr.P.C. for quashing of proceeding by High Court that the allegations in the complaint petition have to be examined with regard to correct statutory provisions vis-?-vis conduct of parties. The Magistrate ordering police investigation u/s 156(3) of Cr.P.C. without application of mind on these principles and the Magistrate not considering bona fide mistake of director in publishing the prospectus of company, quashing of proceedings by High Court has been upheld. Relevant paragraph No. 13 of the judgment is reproduced below:

Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. Indian Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz as to whether the complaint

petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.

9. Learned counsel for the petitioners further placed reliance on the decision of Apex Court in the matter of *Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others*, in which it has been held that while considering the question that when the criminal proceedings can be quashed at preliminary stage by High Court u/s 482 of Cr.P.C. in that case summons issued on a complaint filed by a trustee alleging that Secretary and Manager of the trust property in conspiracy with the co-trustee and his wife created tenancy in respect of the property in favour of the co-trustee's wife. Defence case that the property intended for tenancy and accordingly co-trustee's wife being an independent person having her own income inducted as tenant at the rate of rent which outgoing tenant was paying as higher rent was not chargeable under existing law. Tenant's wife volunteering to surrender the tenancy in response to a notice. On facts and in view of the strained relationship between settlor of the trust and the co-trustee and his wife, held the High Court justified in quashing the proceedings as ingredients of criminal offence punishable under Sections 406, 467 read with Section 34 and 120B of IPC are wanting.

10. Learned P.L. for the respondent/State submitted that according to case-diary, the machinery which is alleged to be sold by the complainant in his complaint was found intact and no machinery has been sold by the petitioner as it is reflected from the investigation.

11. On perusal of record and case-diary it is clear that the dispute between the complainant and petitioner is regarding settlement of account which is a civil dispute. The machinery and plant of complainant has been kept in the premises of petitioners under mutual understanding of complainant and petitioner No. 1 and learned JMFC is not justified in referring the matter without assigning any reason and without considering the complaint, to the police investigation u/s 156(3) of Cr.P.C. The power conferred u/s 156(3) of Cr.P.C. on the Judicial Magistrate are to be exercised with due caution as exercising of power against the person i.e. opposite party exposes the accused to the highhandedness of investigating agency by fulfilling the intention of harassment of accused by the complainant, therefore, considering the citations mentioned above, learned trial Court is not justified in referring the complaint to police investigation u/s 156(3) of Cr.P.C. and learned revisional Court is also not justified in upholding the order passed by learned trial Court. Considering the overall conspectus of facts and circumstances of the case, the petition filed by the petitioners is hereby allowed.

Order passed by learned both the Courts below are hereby quashed and the FIR registered at Crime No. 68/12 at Police Station Talaiya District Bhopal in pursuance to the order of trial Court is hereby quashed and further proceedings thereto are also quashed being abuse of process of law.

Registry of this Court is directed to forward the copy of this judgment to all the Judges of State of Madhya Pradesh and to the director of Judicial Officer Training and Research Institute, Jabalpur for guidelines as it has always been seen that all the Judicial Magistrates are passing the similar orders without giving cogent and plausible reason prior to referring the matter to police investigation in exercise of power vested u/s 156(3) of Cr.P.C. which has resulted in harassment of opposite party.

Following measures are to be adopted by the Judicial Magistrate prior to referring the matter by invoking the provisions u/s 156(3) of Cr.P.C. to police investigation:

- i-Whether any cognizable offence is made out from perusal of complaint or not.
- ii-Whether the complaint is not misuse of provisions of Jaw to drag the innocent person under the threat of criminal law.
- iii-Sometimes the complaints are filed after registration of FIR by the police for addition of some more offences and the complainant alleges after 3-4 months certainly after getting advice that the police has not written certain facts which form the graver offence such as offence of theft has been registered and the ingredients of robbery has not been mentioned by the police or the offence related to outraging of modesty of woman has been registered and ingredients of rape was not mentioned.
- iv-Sometimes the civil litigation regarding document is pending between the parties which has been mentioned in the complaint and genuineness of document is to be proved in the civil suit but the complainant alleges that the forged document has been produced by the other parties before the civil Court.
- v-To avoid such misuse of Court, the Courts below are required to consider the complaint in the light of above-mentioned measures so that the innocent person cannot be dragged to criminal complication by obtaining the order of the Court which has certainly misused the process of law and court both.

Necessary orders from Hon"ble The Chief Justice be obtained by the Registry prior to circulating this judgment to all the members of District Judiciaries.