

(2004) 01 RAJ CK 0011

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 790 of 2002

Anil Sharma and Others

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 05-01-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 482

Citation : (2005) CriLJ 713

Hon'ble Judges : N.N. Mathur, J

Bench : Single Bench

Advocate : M.K. Garg, for the Appellant; D.D. Kalla, PP, for the Respondent

Final Decision : Allowed

Judgement

N.N. Mathur, J.—By the impugned order dated 24-9-2002, the learned Chief Judicial Magistrate, Bikaner has directed enquiry u/s 156 of the Code of Criminal Procedure against the petitioners for offence u/s 323, 341, 392 and 182 I. P. C.

2. The first petitioner herein Anil Sharma is the Branch Manager of M/s. Mahendra and Mahendra Co. Ltd. at Bikaner. The petitioner No. 2 and 3 Raghuvir Singh and Chhatrashal Singh are the employees of the said company. The said company lodged a First Information Report at the Police Station Kotegate to the effect that one Sahajad Ali was financed a sum to the tune of Rs. 80,000/- for the purchase of a 3-Wheeler. He was required to repay the loan on the monthly instalment or Rs. 3,650/-. As there was a default in the payments of instalment, he on his own left the 3-Wheeler with the complainant company. It is alleged that while the vehicle was parked in the premises of the company, the accused Sahajad Ali forcibly took away the same. During the investigation, the accused was arrested and produced before the learned Magistrate. The vehicle was also seized. When the accused was produced before the learned Magistrate, he made a complaint that he was severely beaten by the complainant party and the police. The learned Magistrate got the accused medically examined. He found substance in the complaint made by the accused. On consideration of entire material on

record, he found that there was absolutely no case against Sahajad Ali. In his opinion, the seizure of the vehicle was also illegal. He quashed the entire proceedings and directed for investigation against the petitioners.

3. I have heard learned counsel for the petitioner and perused the record. In my view, simply on the basis of the statement of the accused before the Court, the learned Magistrate could not have given any direction for investigation u/s 156(3) of the Code of Criminal Procedure. A Magistrate empowered u/s 190 of the Code of Criminal Procedure has a power to direct for investigation under Sub-clause (3) of Section 156 Cr. P. C. A Magistrate can take cognizance u/s 190 of the Code of Criminal Procedure upon receiving a complaint of facts which constitute an offence; or upon a police report of such facts; or upon an information received from any person other than a police officer or upon his own knowledge to the fact that such an offence has been committed. It is of course true that in the instant case, the complaint was made by the accused, but that in itself was not sufficient. The statement of the accused has not been recorded and the procedure u/s 200 and 202 of the Code of Criminal Procedure has not been followed. Thus, in my view, the direction for investigation u/s 156(3) of the Code of Criminal Procedure is not sustainable.

4. Consequently, the misc. petition is allowed. The order of the learned Chief Judicial Magistrate, Bikaner dated 24-9-2002 so far as it relates to direction u/s 156(3) Cr. P. C. to investigate the allegations made by the accused against the petitioners is quashed and set aside.