
(2013) 11 BOM CK 0107

In the Bombay High Court

Case No : Criminal Writ Petition No. 817 of 2013

Balaji

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 13-11-2013

Acts Referred:

Citation : (2014) ALLMR(Cri) 994

Hon'ble Judges : A.M. Thipsay, J

Bench : Single Bench

Judgement

A. M. Thipsay, J.—Rule. By consent, Rule made returnable forthwith. By consent, heard finally. The petitioner made an application before the Judicial Magistrate, First Class, Loha alleging commission of offences punishable u/s 420 of the Indian Penal Code (IPC), Section 467 of IPC, Section 468 of IPC, Section 471 of IPC, Section 406 of IPC, Section 408 of IPC, Section 409 of IPC and Section 120B of IPC read with Section 34 of IPC by certain persons, named as accused therein, and praying that investigation as contemplated u/s 156(3) of the Code of Criminal Procedure (hereinafter referred to as "the Code") be ordered in the matter. On this, the learned Magistrate by his order dated 28.08.2013 directed a regular case to be registered in the matter and kept the same for examination of the complainant under the provisions of section 200 of the Code. The petitioner is aggrieved by the said order, as according to the petitioner, all that he had asked for was an order for investigation into the alleged offences and he had no intention to have himself examined on oath which could be only with the object of proceeding with the matter in a manner provided in Chapter XV of the Code. The petitioner has, therefore, approached this Court invoking its jurisdiction under Article 227 of the Constitution of India.

2. I have heard the learned counsel for the petitioner. He submits that considering the nature of the alleged offences, what was necessary was investigation into the matter. He submits that examining the complainant on oath would not be sufficient in the facts and circumstances of the case. He further

submits that since the petitioner had approached the Magistrate with a specific prayer, though it was open to the Magistrate to grant or refuse the prayer, it was not open to the learned Magistrate to adopt a third course in the matter viz:- directing the petitioner to be examined on oath, though the petitioner never wanted such a course to be adopted.

3. I decline to express any opinion on "whether in no case where a person approaches the Magistrate with a prayer to order investigation into the alleged case of cognizable offences, the Magistrate can, instead, direct his examination on oath as contemplated u/s 200 of the Code." However, without expressing any final opinion on the legal question that is involved, it needs to be observed that in such cases i.e. where the prayer is only for an order for investigation as contemplated u/s 156(3) of the Code, the Magistrate must, if he intends to decline to exercise his powers u/s 156(3) of the Code, categorically state so, and record brief reasons for his decision.

4. In the instant case, since the petitioner, as aforesaid, was not willing to have himself examined on oath, it appears proper to me that the Magistrate should have been categorical on, whether or not, a case for ordering investigation into the matter had been made out or not; and ought not to have adopted a third course.

5. In the result, the Petition is allowed.

The impugned order is set aside.

The learned Magistrate shall consider the application made by the petitioner afresh and keeping in mind that the petitioner is not ready to adopt the course of having himself examined under the provisions of section 200 of the Code.

6. It is made clear that no opinion on the merits of the application made by the petitioner before the Magistrate has been expressed by this Court. Rule is made absolute in the aforesaid terms.