

(2015) 03 KAR CK 0001

In the Karnataka High Court

Case No : Criminal Petition Nos. 1301, 1302, 1303, 1304, 1305, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1401, 1403, 1404, 1405, 1406, 1407, 1408, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1298, 1299, 1409, 1287, 6866, 6868, 6869, 6870, 6872, 6873

C. Gurunath and Others

APPELLANT

Vs

Vyalikaval House Building Co-Operating Society Ltd. and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 173, 190(1)(a), 190(1)(b), 200

Penal Code, 1860 (IPC) — Section 120-B, 34, 420, 465, 467

Citation : (2015) 03 KAR CK 0001

Hon'ble Judges : A.N. Venugopal Gowda, J.

Bench : Single Bench

Advocate : H.C. Shivaramu, Advocate, for the Appellant; K. Suman, Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopal Gowda, J.—Legality of several orders passed in several PCRs by the learned VII Addl. CMM, Bengaluru, taking cognizance and issuing process against the petitioners has been assailed in these petitions.

2. The complainant and accused Nos. 1 to 3 in all the PCRs are the same. However, accused No. 4, in each of the PCR is different. The offences alleged in each of the complaint against the petitioners/accused are the same. The orders passed by the learned Magistrate, impugned in these petitions, though independent, are identical. Therefore, these criminal petitions were heard together and are being disposed of by this common order.

3. Separate but identical complaint/s were filed by respondent No. 1, under S. 200 Cr.P.C. against the petitioners, alleging that they have committed the

offences which are made penal under Ss. 465 , 467 , 468 , 471 , 472 , 420 read with Ss. 34 and 120-B of IPC. The complaint/s were referred, under S. 156(3) of Cr.P.C. for investigation. The Police having filed "B" report/s, complainant filed protest petition(s), alleging that the investigation conducted is faulty, in that, the Police did not even secure original documents nor referred the originals and the questioned documents to the FSL, etc. Sworn statement(s) of the complainant - PW-1 having been recorded, by hearing the arguments and on perusal of the record, learned Magistrate being of the opinion, that prima facie case exists to proceed against the accused, has ordered that criminal case(s) against the accused for the offences punishable under Ss. 465 , 467 , 468 , 471 , 472 , 420 read with Ss. 34 and 120-B of IPC be registered and summons issued. Assailing the said order(s), these petitions were filed.

4. Learned advocate for the petitioners contended that there being mechanical action on the part of the learned Magistrate, the impugned orders being cryptic, exhibiting non application of mind and also being against the well settled principles of law enunciated in catena of decisions of the Apex Court in the matter of taking cognizance and issue of process, interference is called for. He submitted that the complaint/s having not made out any cognizable offence(s) against the petitioners and the police having submitted "B" report(s) and the complainant having not produced any additional material/s during the course of recording of sworn statement(s), the impugned orders are bad in law. Learned advocate further submitted that lack of application of mind to the facts alleged in the respective complaint/s being apparent and there being no prima facie case to take cognizance and for issue process, the impugned orders are liable to be set aside.

5. Sri K. Suman, learned advocate, on the other hand submitted that the police having failed to conduct meaningful investigation and the report(s) submitted being wholly illegal, protest petition/s were filed and thereafter, PW-1 deposed in each case. He submitted that by making reference to the documents produced, the protest petition/s filed by the complainant was rightly allowed, cognizance was taken and process was issued. He submitted that in the facts and circumstances of the case(s), even though in the impugned order/s there is certain confusion with regard to the exhibits, there being enough material on record, apart from the sworn statement/s of PW-1, no interference at this stage is warranted.

6. Perused the record and considered the rival contention.

7. The power of the Magistrate to take cognizance of an offence on a complaint or a protest petition on the same or similar allegations even after submission of the final report of investigation by the police was not disputed by the learned advocate appearing for the petitioners. It is trite that when a complaint is filed and sent to police, under S. 156(3) of Cr.P.C., for investigation and after the report is received, which, when notified to the complainant and is questioned by filing a protest petition, learned Magistrate has the power to deal with the protest

petition.

8. In *H.S. Bains, Director, Small Saving-Cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State (Union Territory of Chandigarh)*, , Apex Court has held that after receipt of police report under S. 173 , the Magistrate has three options. The relevant portion reads as follows:

"6..... (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence under S. 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report; (3) he may take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200 . If he adopts the third alternative, he may hold or direct an inquiry under Section 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be."

9. In *Gangadhar Janardan Mhatre Vs. State of Maharashtra and Others*, , it has been held as follows:

"9....The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also. [See *India Carat Pvt. Ltd. Vs. State of Karnataka*]"

10. In the instant cases, the learned Magistrate, after recording the sworn statement/s of the complainant - PW 1 has passed the impugned orders. Undoubtedly, the impugned orders are cryptic. Thus, lack of application of mind and consideration of the record of the respective PCRs is apparent. Since the record has not been examined in the manner contemplated under law and decision arrived at, with regard to taking of cognizance and issue of process, which is crucial, the impugned orders being vitiated are liable to be quashed.

In the result, these petitions are allowed and the impugned orders are set aside. The cases stand restored to the file of the learned Magistrate for consideration afresh. The learned Magistrate shall proceed with the cases in the most expeditious manner.