

(2024) 05 BOM CK 0005

In the Bombay High Court

Case No : Criminal Application No. 1310 Of 2016

Deepak Bajaj And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 02-05-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 154(1), 154(3), 156, 156(3), 482
Indian Penal Code, 1860 — Section 34, 120(B), 406, 420, 471

Citation : (2024) 05 BOM CK 0005

Hon'ble Judges : A. S. Gadkari, J;Shyam C. Chandak, J

Bench : Division Bench

Advocate : Karansingh Rajput, Shailesh, S.V. Gavand

Final Decision : Allowed

Judgement

Shyam C. Chandak, J

1) Present Application filed under Section 482 of the Criminal Procedure Code (for short 'Cr.P.C.'), is seeking for quashing of an Order dated 27th April 2016, passed under Section 156 (3) of Cr.P.C. by the learned J.M.F.C, Khadki, Pune in M.A.No.124/2016 (for short 'the Application') and the consequent F.I.R. bearing No.101 of 2016 dated 19th May 2016 registered against the Applicants and 2 others with Vishrantwadi Police Station, Pune for the offences punishable under Section 420, 406, 471, 120B r/w. 34 of IPC.

2) Heard learned Advocate Mr. Karansingh Rajput for the Applicant and Mr. Gavand, learned A.P.P. for the Respondent-State. Perused the record.

3) Record indicates that, by an Order dated 17th February 2017, rule was issued and the learned APP for Respondent No.1-State and Mr.Filjee Fredrick and Ms. Prateeti Thakur for Respondent No.2 waived notice. Further, as an interim relief, it was directed that, investigation shall continue. However, charge-sheet shall not be filed as against the Applicants without leave of this Court. Yet, none appeared for the Respondent No.2, when the Application was taken up for final hearing.

4) The facts giving rise to this Application are as under:-

4.1) That, Respondent No.2 is Director of M/s.Sharda Integrated Systems Private Limited and he has been doing the business of Computer and peripherals etc. That, Vikas Tyagi and Madan Singh are respectively owner and Manager of M/s. Vertex IT Solutions Pvt. Ltd., at Gurgaon, Haryana, (for short, 'Ms.Vertex Co.'). The Applicants, Vikas Tyagi and Madan Singh are respectively shown as accused Nos.1 to 4 in the Application.

4.2) It is alleged that, between 10th December 2014 to 14th December 2014, the Applicants repeatedly called the Respondent No.2, and requested him to supply on credit 168 laptops to M/s. Vertex Co., by giving assurance that the payment of said goods will be made within agreed 21 days. Respondent No.2 trusted the Applicants he was silver partner of M/s.Hewlett-Packard India Sales Pvt. Ltd. the Applicants were its representative, hence he agreed to supply the laptops. On 15th December 2014, accused No.3 and 4 placed the purchase order. In turn, Respondent No.2 purchased 168 laptops from M/s. Iris Computers and supplied it to M/ s. Vertex Co. on 18th December 2014 and 30th December 2014, and also sent its bill. Accused No.4 acknowledged the receipts of the goods by an e-Mail. Thereafter, giving a pretext of urgency, the accused No.4 requested the Respondent No.2 to supply additional 73 laptops to M/s. Vertex Co. and promised that, its purchase order will follow. Respondent No.2 agreed to supply the additional laptops with intent to make the business relations strong. Then, Respondent No.2 purchased 73 laptops from M/s. Ingram Micro India Pvt. Ltd. and, on 3rd January 2015 supplied it to M/s.Vertex Co. alongwith the necessary bill there. Thereafter, between 17th January 2015 to 2nd March 2015, M/s. Vertex Co. paid Rs.26,50,000/- towards the 241 laptops and avoided to pay the balance bill amount of Rs.43,20,216.40/-. It is stated that, the cheques drawn by M/s.Vertex Co. in favour of M/s.Iris Computer Pvt. Ltd. and M/s. Ingram Micro India Pvt. Ltd. towards supply of the laptops on the say of Respondent No.2, dishonoured. Consequently, the said companies stopped doing business with the Respondent No.2 and his 'Good will' lost. Thus, the Applicants with accused Nos.3 and 4 deceived the Respondent No.2 and dishonestly induced him to supply total 241 laptops to M/s. Vertex Company but without any intention to pay the price thereof.

Therefore, on 16th January 2016, Respondent No.2 filed a complaint with Deputy Commissioner of Police, Economic Offence Detection Department, Crime Branch, at Pune. Said complaint was referred to Vishranwadi Police Station, however, no action was taken thereon. Hence, the Respondent No.2 filed the M.A.No.124 of 2016, against the four accused.

4.3) In view of the aforesaid allegations the learned Magistrate passed the impugned Order dated 27th April 2016, which reads as under:

"Perused complaint, copies of complaint filed with police, alleged offences are cognizable, no action taken by police, which needs investigation, hence

complaint be sent for investigation u/s. 156(3) of the Cr.P.C. with direction to submit report within 2 months.”

4.4) Pursuant to the aforementioned Order, Vishrantwadi Police Station registered the said F.I.R. No. 101 of 2016. Hence this Application.

5) Mr. Rajput, learned Advocate for the Applicants submitted that, the complaint does not constitute the alleged offences. The Respondent No.2 has not complied with the provisions of Section 154 (1) and (3) of Cr.P.C. before filing said Application u/Sec.156 (3) of Cr.P.C. For these defects, according to the learned Advocate, the impugned Order and said F.I.R are illegal, hence the same may be quashed.

6) Mr.Gavand, learned A.P.P. has resisted the Application strongly claiming that there is no shortcoming as argued by the learned Advocate.

7) In the case of Priyanka Srivastava and Anr. Vs. State of Uttar Pradesh and Ors., reported in (2015) 6 SCC 287, it is held that, there has to be prior application under Section 154 (1) and 154 (3) of Cr.P.C. while filing a petition under Section 156 (3) of Cr.P.C. Both the aspects should be clearly spell out in the application and necessary documents to that effect should be filed.

8) In the case in hand, on 16th January 2016, the Respondent No.2 had filed a complaint with the Deputy Commissioner of Police, Economic Offence Detection Department, Crime Branch, at Pune. Said complaint was sent for necessary action to Vishrantwadi Police Station, Pune. The impugned Order shows that, copy of a complaint filed with the police was enclosed with the Application. Therefore, according to us, there was compliance with Section Section 154 (1) of Cr.P.C. by the Respondent No.2. In the Application it was clearly stated that, the police did not act on the said complaint. This fact is also mentioned in the impugned Order.

9) Section 154 (3) of Cr.P.C. requires that, any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in Sub-Section (1) may send the substance of such information in writing and by post, to the Superintendent Police concerned for the needful. However, in the said Application, Respondent No.3 has not mentioned that as Vishranwadi Police Station refused to register a crime and investigate on his said complaint dated 16th January 2016, he sent the substance of the information stated in his said complaint, in writing and by post, to the higher Police Authority concerned, as provided under Section 154 (3) of Cr.P.C., to redress his grievance. As such, it is clear that, there was no compliance with Section 156 (3) of Cr.p.C. before filing of the said Application. However, the learned Magistrate overlooked this fact before passing the impugned Order.

10) Bare look at the impugned Order shows that, said Order has been passed by the learned Magistrate only for the reason that, the Application disclosed the commission of a cognizable offences and no action was taken by the police on

the complaint of Respondent No.2. However, not a single reason is recorded by the learned Magistrate as to why he is satisfied that, there is a case of a cognizable offence of cheating, criminal breach of trust and criminal conspiracy committed by the Applicants against Respondent No.2. Similarly, from the impugned Order it is not intelligible as to how the learned Magistrate verified the veracity of the allegations in the Application. According to us, considering the narration and allegations in the complaint, the learned Magistrate was expected to record some reasons as regards the prima facie case of the cognizable offence and veracity of the complaint.

11) In the backdrop, in our opinion, before passing the impugned Order the learned Magistrate failed to properly consider the Application and the documents enclosed therewith and that, there is non compliance with Section 154 (3) of Cr.P.C. by the Respondent No.2. Thus, the learned Magistrate acted mechanically and passed the impugned Order. In the backdrop, the impugned Order is not sustainable in law.

12) It is the settled position of law and as has been enunciated by this Court in the case of Sayed Anwar Ahmed & Anr. vs. The State of Maharashtra & Anr., reported in 2017 SCC OnLine 3972 that, "While dealing with a complaint seeking an action under Sub-Section (3) of Section 156 of Cr.P.C, the learned Magistrate cannot act mechanically. He is required to apply his mind to the contents of the Complaint and the documents produced along with the Complaint. An Order passed on the said complaint must record reasons in brief which should indicate application of mind by the Magistrate. However, it is not necessary to record detailed reasons. The power under Sub-Section (3) of Section 156 is discretionary. Only because on plain reading of the complaint, a case of commission of cognizable offence is made out, an Order of investigation should not be mechanically passed. In a given case, the learned Magistrate can go in to the issue of the veracity of the allegations made in the complaint. The learned Magistrate must also consider the other relevant aspects such as the inordinate delay on the part of the Complainant. The nature of the transaction and pendency of civil proceedings on the subject are also relevant considerations. Necessary averments regarding compliance with Sub-Sections (1) and (3) of Section 154 of the Cr.P.C. should be incorporated with material particulars. Moreover, the documents in support of the said averments must be filed on record".

13) Upshot of the above discussion is that, the impugned Order dated 27th April 2016, passed under Section 156 (3) of Cr.P.C. by the learned J.M.F.C, Khadki, Pune in M.A.No.124/2016 and the consequent F.I.R. bearing No.101 of 2016 dated 19th May 2016 registered against the Applicants and 2 others with Vishrantwadi Police Station, Pune for the offences punishable under Section 420, 406, 471, 120B r/w. 34 of IPC. are liable to be quashed qua the Applicants and accordingly, are quashed and set aside.

14) Writ Petition is allowed in terms of prayer clause (B).

14.1) Rule is made absolute.