

(2012) 08 BOM CK 0119

In the Bombay High Court

Case No : Criminal Application (API) No. 531 of 2012

Dilip Khedekar

APPELLANT

Vs

State of Maharashtra and Bhimerao Shriram More

RESPONDENT

Date of Decision : 13-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 156, 156(3), 190, 201

Citation : (2013) BomCR(Cri) 61

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : R.M. Patwardhan and Mr. P.B. Patil, for the Appellant; K.L. Dharmadhikari, APP for respondent No. 1. None for respondent No. 2., for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—Heard. Taken up for final hearing by consent.

2. This is an application u/s 482 of the Code of Criminal Procedure by 14 applicants, who questioned the order passed by the learned Judicial Magistrate First Class, Court No. 2, Chikhali, whereby the learned Magistrate while allowing the petition against these applicants directed that the complaint be forwarded for investigation u/s 156(3) of the Code of Criminal Procedure, with a direction to register F.I.R. and investigate the matter accordingly. The complainant was directed to provide Marathi translation of the petition for the purpose of F.I.R.

3. Learned Advocate for the applicants submitted that the learned Magistrate had no power to pass impugned order in view of Section 201 of the Code of Criminal Procedure, as the offences alleged were under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Learned Advocate also submitted that the learned Magistrate could have directed to move the complaint before proper Court. Learned Advocate for the applicants submitted that pursuant to the impugned order, the police have already registered the offence

bearing case No. M 5/2012.

4. It appears that the impugned order was passed u/s 156 (3) of the Code of Criminal Procedure, which enables any Magistrate empowered u/s 190 of the Code of Criminal Procedure to pass an order for investigation. The applicants are apprehending their prosecution because F.I.R. is lodged and the investigation followed pursuant to the impugned order.

5. Sub-section (3) of Section 156 of the Code of Criminal Procedure empowers the Magistrate, who may not take cognizance of the offence may instead order police inquiry/investigation. At this pre-cognizance stage, there is no application of mind as such to take cognizance of the complaint or information received by the Magistrate. He can direct the police to register a case and conduct investigation and then the police will follow requisite steps under Chapter XII of the Code of Criminal Procedure under the heading "Information to the police and their powers to investigate". The contention that the learned Magistrate has no power to issue such order in view of Section 201 of the Code of Criminal Procedure is not acceptable, as it is a provision made in Chapter XV relating to the "complaints to the Magistrate" in which the Magistrate at post-cognizance stage of the proceedings on the basis of complaint. At that stage, if the Magistrate feels that he is not competent to take cognizance of the offence, he shall return the complaint for presentation to the proper Court or direct the complainant to move the complaint before proper Court. According to law, any person, who is accused in respect of the complaint or information sent to police for investigation by the Magistrate has no right to appear before the Magistrate at the pre-cognizance stage because the accused cannot be in picture in the proceeding until the stage the accused are summoned by the Magistrate concerned. A suspected offender may be called by Investigating Officer for investigation/inquiry. It cannot be said that there is any proceeding against the accused merely because an order u/s 156 (3) of the Code of Criminal Procedure is made. It is in the nature of an administrative order directing the police to exercise their plenary power to investigate cognizable offence, if any. The accused have no right to object F.I.R. lodged against them at pre-cognizance stage when inquiry is ordered u/s 156(3) of the Code of Criminal Procedure.

6. Learned Advocate for the applicants also referred the observations made by the learned Magistrate in his order dated 4.7.2012, which read as under:-

Compliance of Section 154 of the Cr.P.C. is a pre condition for the application & Section 156(3) of Cr.P.C. The prayer is for application and section 156 (3) of Cr.P.C. by this Court.

7. Section 154 of the Code of Criminal Procedure relates to information relating to the commission of cognizable offence and order u/s 156(3) of the Code of Criminal Procedure is in the nature of administrative order as already observed by me. Be that as it may, since the applicants cannot be allowed to prevent investigation by the police pursuant to the impugned order, their prayer cannot

be allowed. For the above reasons, the applicants have no right to question the order u/s 156 (3) of the Code of Criminal Procedure passed by the learned Magistrate, Court No. 2, Chikhali on 9.7.2012 below Misc. Application No. 199/2012. Police are bound to register crime and investigate. It is their statutory right which cannot be interfered with by the High Court by using inherent powers which are to be exercised in rarest of the rare case. Hence, in my opinion, the application u/s 482 of the Code of Criminal Procedure is not maintainable. The applicants apprehending their arrest may have remedy elsewhere to apply for pre-arrest or if arrested for post-arrest bail as the case may be. Hence, the application is dismissed. Steno copy is allowed.

Steno copy is allowed.