

(2015) 02 GUJ CK 0013
In the Gujarat High Court

Case No : Special Criminal Application (Quashing) No. 1567 of 2014

Dixitkumar Dasrathbhai Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 09-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(3), 173, 190, 192

Penal Code, 1860 (IPC) — Section 406, 417, 426, 497

Citation : (2015) 02 GUJ CK 0013

Hon'ble Judges : V.M. Pancholi, J.

Bench : Single Bench

Advocate : Ankit Shah and J.S. Shah, for the Appellant; H.B. Punani, APP,
Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.M. Pancholi, J.—Rule returnable forthwith. Learned APP Ms. Punani waives service of notice of Rule for the respondents.

2. This petition is filed under Article 226 of the Constitution of India with a prayer to quash and set aside the order dated 19.02.2014 passed by the learned Chief Judicial Magistrate, Mehsana in Police Inquiry No. 614 of 2013, by which, the learned Chief Judicial Magistrate has not accepted the request of the complainant to send the complaint for investigation under Sub-section (3) of Section 156 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code"), and also prayed to direct respondent No. 2 to register the written complaint given by the petitioner as an FIR and to investigate it in conformity with the provisions of Code.

3. The brief facts are as under:

3.1. It is the case of the petitioner that he has given a written complaint dated 27.08.2013 against 5 persons for the offences punishable under Sections 406,

417, 426, 497 of the Indian Penal Code to the Police Inspector of Mehsana "B" Division Police Station. The said complaint was sent by Registered Post. It is the case of the petitioner that the concerned Police Inspector has not recorded the said written complaint as an FIR and therefore he also gave an application to D.S.P., Mehsana on 12.09.2013 in which he had pointed out that the concerned Police Inspector of Mehsana "B" Division Police Station has not recorded the written complaint given by him on 27.08.2013 as an FIR and therefore the action be taken against the said officer. The petitioner also requested the D.S.P., Mehsana to register the FIR and further requested to investigate the said case through independent officer. The petitioner further stated in the petition that when the concerned police authorities have not taken any action in pursuant to the written complaint submitted by the petitioner, he approached before the learned Chief Judicial Magistrate Court, Mehsana by filing written complaint against the proposed accused for the alleged offence. The said written complaint is filed by the petitioner on 16.12.2013 before the Chief Judicial Magistrate, Mehsana. It is the case of the petitioner that the learned Chief Judicial Magistrate, Mehsana, by impugned order dated 19.02.2014, has not sent the complaint filed by the petitioner for investigation under sub-section (3) of Section 156 of the Code and the learned Chief Judicial Magistrate, Mehsana has not assigned any reasons for not sending the matter for investigation under sub-section (3) of Section 156 of the Code. Hence, the impugned order dated 19.02.2014 passed by the learned Chief Judicial Magistrate, Mehsana be quashed and set aside and this Court may direct respondent No. 2 to register the written complaint given by the petitioner as an FIR and to investigate it in conformity with the provisions of Cr.P.C.

4. Heard learned advocate Mr. Ankit Shah with Mr. J.S. Shah for the petitioner and learned APP Ms. H.B. Punani.

5. Learned advocate for the petitioner mainly submitted that the respondent police authorities have failed in discharge of their duty by not registering the written complaint given by the petitioner as an FIR though the allegations are levelled against the proposed accused for the commission of the cognizable offence. It is further submitted by the learned advocate that when the petitioner approached before the learned Chief Judicial Magistrate, Mehsana by filing a written complaint under Section 190 of the Code and when the petitioner - complainant prayed that the complaint be sent for investigation under sub-section (3) of Section 156 of the Code, the learned Magistrate, without assigning any reasons, observed that the complaint is not required to be sent for investigation under sub-section (3) of Section 156 of the Code. The learned advocate for the petitioner further submitted that it is the duty of the learned Magistrate to assign the reasons if he is not inclined to send the said complaint for investigation under sub-section (3) of Section 156 of the Code. Thus, the learned advocate for the petitioner prayed that the impugned order be quashed and set aside and the police authorities be directed to register the written complaint given by the petitioner as an FIR.

6. On the other hand, learned APP Ms. Punani submitted that prima facie the cognizable offence is not made out from reading the written complaint given by the petitioner and therefore the police authorities have rightly not registered the written complaint given by the petitioner as an FIR. Learned APP further submitted that the petitioner has exercised his option of filing a private complaint before the Magistrate Court and therefore now the police authorities may not be directed to register the FIR on the basis of the written complaint given by the petitioner. The learned APP further submitted that when the complaint is filed before the learned Magistrate, the learned Magistrate can send the said complaint for investigation under sub-section (3) of Section 156 of the Code or he can pass an order of inquiry under Section 202 of the Code or the learned Magistrate may directly issue the process to the accused. In the present case, when the learned Magistrate has not found any substance in the allegations levelled in the complaint and chosen not to send the written complaint of the petitioner for investigation under sub-section (3) of Section 156 of the Code, it cannot be said that the learned Magistrate has committed any error. The petitioner complainant can give his verification before the learned Magistrate and thereafter the learned Magistrate would pass an appropriate order. Thus, the learned Magistrate has committed no error and therefore this petition may be dismissed.

7. Having heard the learned advocates for the respective parties and having gone through the record and the evidence produced on record and the order impugned in this petition, it appears that initially the petitioner gave an application on 27.08.2013 against the five persons for the offences punishable under Sections 406, 417, 426, 497 of the Indian Penal Code to the Police Inspector of Mehsana "B" Division Police Station. However, the said officer has not recorded the said complaint as an FIR and therefore the petitioner sent the said written complaint to respondent No. 3, District Superintendent of Police, Mehsana on 12.09.2013. However, since no steps were taken by the respondent police authorities, petitioner approached the learned Magistrate, Mehsana by filing private complaint on 16.12.2013. Initially, the learned Magistrate, by an order dated 16.12.2013, called for the police report from the Police Sub Inspector, Mehsana "B" Division Police Station with regard to the steps taken by him in pursuant to the written complaint given by the petitioner and thereafter, by an the impugned order dated 19.02.2014, the learned Magistrate refused to send the said complaint for investigation under sub-section (3) of Section 156 of the Code. In the impugned order, the learned Magistrate has specifically stated that he has read the complaint and heard the learned advocate for the complainant. However, looking to the facts of the complaint, he was of the opinion that the said complaint cannot be sent for investigation under sub-section (3) of section 156 of the Code. He has further stated in the impugned order that if the complainant is inclined to give his verification, he shall remain present before the Court on 10.03.2014. Thus, from the impugned order, it is clear that the learned Magistrate has initially called for the report from concerned P.S.I. and thereafter

after reading the contents of the complaint and after hearing the arguments of the learned advocate for the petitioner, he formed an opinion that the said complaint is not required to be sent for investigation under sub-section (3) of section 156 of the Code. He has further specifically stated in the impugned order that the complaint given by the petitioner is required to be proceeded further after following the procedure prescribed under Section 200 of the Code and therefore he observed in the order that if the complainant is inclined to give his verification, he shall remain present on 10.03.2014.

8. In this factual background of the present case, the only contention which has been taken by the learned advocate for the petitioner is required to be considered in this petition. The sole contention of the learned advocate for the petitioner is that the learned Magistrate has not assigned any reason for not sending the matter for investigation under sub-section (3) of section 156 of the Code and therefore the impugned order is required to be quashed and set aside. In support of such contention, learned advocate for the petitioner has relied upon the decision of the Hon''ble Supreme Court rendered in the case of Anil Kumar and Others Vs. M.K. Aiyappa and Another, . in the said decision, the Hon''ble Supreme Court, in para 8, has observed as under:

"8. We may first examine whether the Magistrate, while exercising his powers under Section 156(3) Cr.P.C., could act in a mechanical or casual manner and go on with the complaint after getting the report. The scope of the above mentioned provision came up for consideration before this Court in several cases. This Court in Maksud Saiyed case (supra) examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where a jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 Cr.P.C., the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3)Cr.P.C., should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation." 9. Thus, from the aforesaid observations of the Hon''ble Supreme Court, it is clear that the question for consideration before the Hon''ble Supreme Court was whether the learned Magistrate while exercising his powers under Section 156(3) of the Code, could act in a mechanical or casual manner and go on with the complaint after getting the report, and looking to the facts of the said case, the Hon''ble Supreme Court held that after going through the complaint, documents and hearing the complainant what weighed with the Magistrate to order investigation under Section 156(3) of the Code should be reflected in the order,

though a detailed expression of his views is neither required nor warranted.

10. In the present case, the learned Magistrate has not sent the complaint for investigation under Section 156(3) of the Code and therefore the learned Magistrate is not required to assign the reasons for not sending the said matter for investigation under the aforesaid section.

11. At this stage, provisions of Section 156(3) and Section 202 of the Code are required to be considered. Sub-section (3) of Section 156 provides thus:

"156. Police officer's power to investigate cognizable cases. -

(1) xxxx

(2) xxxx

(3) Any Magistrate empowered under section 190 may order such an investigation as above mentioned."

12. Now, the provisions of Section 202 of the Code read thus:

"202. Postponement of issue of process. -

(1) Any Magistrate, on receipt of a complaint of an offence which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by, a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made, -

(a) Where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions or Where the complaint has not been made by a court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200. (2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath. (3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Court on an officer in charge of a police station except the power to arrest without warrant."

13. From the aforesaid provisions, it appears that Section 156 of the Code falls under Chapter XII. The said Section deals with the powers of police officer to investigate the cognizable offences, whereas, investigation envisaged under Section 202 contained in Chapter XV is different from the investigation contemplated under Section 156 of the Code. The investigation contemplated under Chapter XII can be commenced by the police even without the order of the

Magistrate but that does not mean that when a Magistrate orders an investigation under Section 156(3), it would be a different kind of investigation. Such investigation must also end up only with the report contemplated under Section 173. However, the important point to be noticed is, when a Magistrate orders investigation under Chapter XII, he does so before he takes cognizance of the offence. However, a Magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he took cognizance of the offence, he has to follow the procedure envisaged under Chapter XV of the Code.

14. Thus, if the Magistrate is passing an order of investigation under Section 156(3) of the Code, the said stage can be said to be a pre-cognizance stage. If the Magistrate passes an order of investigation under Section 156(3) of the Code, the concerned police authority is required to register the said complaint as an FIR and thereafter he has to proceed with the investigation. Thus, though it is a pre-cognizance stage, as per the order passed by the Hon''ble Supreme Court in the case of Anil Kumar (Supra), the Magistrate has to assign brief reasons which should suggest why the investigation is required. Hence, registration of the FIR on the basis of the investigation ordered by the learned Magistrate is a serious matter and therefore the Hon''ble Supreme Court has held that brief reasons are required to be assigned by the learned Magistrate.

15. However, if the learned Magistrate is not inclined to pass an order of investigation under Section 156(3) of the Code and if he is of the opinion that after recording of the verification of the complainant he will proceed with the complaint under Chapter XV of the Code, in my humble opinion, the learned Magistrate is not required to assign reasons for the said purpose. In the present case, as observed earlier, the learned Magistrate has specifically stated in the impugned order that he has perused the contents of the complaint and heard the arguments of the learned advocate of the complainant and from the contents of the complaint, he is of the opinion that the said complaint is not required to be sent for investigation under Section 156(3) of the Code and therefore if the complainant wants to give his verification, he shall remain present on 10.03.2014. Thus, in the facts of the present case, learned Magistrate has assigned brief reasons from which it is culled out that the learned Magistrate was not inclined to send the matter for investigation and the complaint filed by the petitioner is required to be proceeded under Chapter XV of the Code. Thus, the learned Magistrate has not committed any illegality.

16. In the case of U.P. Pollution Control Board Vs. M/s. Mohan Meaking Ltd. and Others, , the Hon''ble Supreme Court has held that the legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. However, there is no such legal requirement imposed on a magistrate for passing detailed order while issuing summons. Similar view is taken by the Hon''ble Supreme Court in another decision in the case of Jagdish Ram Vs. State of Rajasthan and Another, .

17. Thus, in the facts and circumstances of the present case, when the learned

Magistrate has decided to proceed further under Chapter XV of the Code, verification of the complainant is required and therefore the learned Magistrate would proceed further under the said Chapter and therefore it is not proper on the part of the petitioner to contend that the learned Magistrate is required to record detailed reasons for not sending the matter for investigation under Section 156(3) of the Code. Hence, such contention is required to be discarded.

18. In view of the aforesaid discussion, the learned Magistrate has not committed any error, which calls for interference by this Court. Hence, the petition deserves to be dismissed and is, accordingly, dismissed. Rule is discharged.