
(2013) 09 BOM CK 0232

In the Bombay High Court

Case No : Criminal Application No's. 2883-2884 of 2013

Dr. Abdul Gaffar Quadri

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 3990 : (2014) 2 BomCR(Cri) 717

Hon'ble Judges : Abhay M. Thipsay, J

Bench : Single Bench

Advocate : S.S. Kazi, for the Appellant; K.S. Patil, APP for Respondent No. 1 and Mr. N.V. Gaware, for the Respondent

Final Decision : Allowed

Judgement

Abhay M. Thipsay, J.—Both these applications can be conveniently decided by this common order. The applicant as also the respondent No. 2, in both these applications, are the same. The questions needing determination are also the same and even the facts are identical. Whenever it would be necessary to refer to the facts, for the sake of convenience, reference shall be made to the facts of the Criminal Application No. 2883/2013 only.

Since notice had already been issued to the respondents, the applications are heard finally. The applicant is one of the accused- i.e. Accused No. 1 -in R.C.C. No. 932/2010 pending in the Court of Judicial Magistrate, First Class, at Aurangabad. The case arises on a complaint filed by the respondent No. 2 herein. After examining the respondent No. 2 herein (hereinafter referred to as "the complainant", for the sake of clarity and convenience), the learned Magistrate postponed the issue of process and directed investigation to be carried out by the police under the provisions of Section 202 of the Code of Criminal Procedure ("the Code"). After receipt of the report of investigation, the learned Magistrate passed an order issuing process against the applicant and other accused in respect of offences punishable u/s 420 of the Indian Penal Code (hereinafter referred to as "IPC"), Section 467 of IPC, 468 of IPC, 471 of IPC read with

Section 34 of IPC. Aggrieved by the order issuing process, the applicant approached the Court of Sessions by filing an application for revision, but the learned Additional Sessions Judge, Aurangabad, who heard the same, dismissed it. It is under these circumstances that the applicant has approached this Court by filing above applications invoking inherent powers of this Court.

2. Only one contention has been advanced on behalf of the applicant. It is that "though issue of process has been postponed and investigation by the Police u/s 202 of the Code had been ordered, the process has been issued without taking into consideration the report of investigation, which had been received.

3. I have gone through the order issuing process. It does not mention anything about the police report. On the contrary one of the sentences in the order reads as "the offences in question have been specifically made out in the "complaint"" (emphasis supplied). This aspect was noticed by the learned Additional Sessions Judge in the Revision proceedings, but the learned Additional Sessions Judge was of the view that though there was no reference in the order to the Police report, it could not be said that the impugned order was not proper. The learned Additional Sessions Judge has observed that "it is settled law that for order of issuance of process, no detailed order is required.

4. I have heard the learned counsel for the complainant at length. He has placed reliance on various pronouncements of the Hon"ble Supreme Court of India.

5. Though arguments have been advanced at length, the substance thereof is only that the order issuing process need not be a speaking order or detailed order, or a reasoned order. There can be no dispute with respect to this proposition. The question that arises in the instant case is entirely different; and it is this:--whether a Magistrate, who has postponed the issue of process and directed an investigation into the Police under the provisions of Section 202 of the Code, can issue process without taking the report submitted by the Police upon investigation into consideration.

6. In my opinion, the Magistrate can not do so. The fact that he postponed the issue of process indicates that at that stage, he had not formed any opinion, as to whether or not, there were sufficient grounds for proceeding. It is because he thinks that he needs aid in the nature of further investigation, that a Magistrate would direct investigation into the matter u/s 202 of the Code. Under these circumstances undoubtedly, when such a report would be submitted to him, the Magistrate would be expected to take the same into consideration and then decide whether or not, a case for proceeding against the persons, named as the accused, is made out or not.

7. The learned counsel for the complainant contended that the Magistrate is not bound by the opinion expressed by the Police. In fact, there is no dispute with this proposition also. As repeatedly made clear to the learned counsel for the complainant in the course of arguments the issue involved is whether the Magistrate is required to take police report into consideration or not. In the

instant case, the Police report does not categorically state that any particular offences are disclosed as a result of investigation, and therefore, at least a brief indication that he had taken into consideration the contents of the said report was expected in the order issuing process. The learned counsel for the applicant then suggested, that since a report was before the Magistrate, it ought to be believed that he had taken the same into consideration. I am afraid, such belief needs to be formed from the order itself; and it would not be open for this Court to presume that the report had already taken into consideration by the Magistrate. This is particularly so because the Magistrate, in the order issuing process, referred to what has been disclosed in the complaint but did not refer to the police report and/or to the statement recorded by the Police during the course of investigation.

8. The learned counsel for the complainant then made reference to the contents of the police report and drew my attention to the relevant parts of the police report and facts of the case in his anxiety to satisfy this Court that from the contents of the police report, commission of offences by the applicant and other accused is disclosed. I am afraid, no such exercise can be undertaken by this Court in the present proceedings. The reason is obvious. It is satisfaction of the Magistrate about the sufficiency of the grounds for proceeding against the accused persons that matters and is contemplated by law. The Magistrate has a certain discretion in the matter. All that is required to be seen is whether, the impugned order indicates that the Magistrate had taken into consideration the entire material that was before him, and that, it is after taking into consideration such material, he formed an opinion that there were sufficient grounds for proceeding. Since the impugned order does not refer to the police report at all, it is not possible to presume that the Magistrate must have been taken the police report into consideration.

9. It is also not for this Court to go through the contents of the police report and examine that "if the same had been taken into consideration by the Magistrate, what order would have been passed by him." The use of inherent powers is to be made only to set right the error apparently committed by the Magistrate in not considering the police report at all while passing the order issuing process.

10. Since on this limited issue, viz:- that the impugned order does not show that the Magistrate has applied his mind to the contents of the Police report, the applicant is bound to succeed, it is not necessary to make any observations as to the merits of the matter and it is also not necessary to "interpret" what the police report actually states. This is specifically mentioned as the learned counsel for the complainant has specifically stated that the police report actually cannot be construed as adverse to the complainant at all though the police have made some what "guarded observations", due to the "influence of the accused persons". It would be for the Magistrate to see what the police report actually discloses, and obviously, nobody can suggest that Magistrate would be bound by the opinion expressed by the police, even if it is adverse.

11. The learned counsel for the complainant submitted that the applicant and other accused are influential persons, and that, clearly the police report indicates that false certificates were issued to certain persons showing that they had some experience of service, though actually such persons had not put in any service. The anxiety expressed by the learned counsel for the complainant viz:- that the accused being influential persons will get "a handle" if the matter is remanded back to the Magistrate" does not seem to be justified, as the Magistrate is to be trusted for deciding the matter objectively and after taking into consideration the averments in the complaint, statements of the complainant and the statements recorded by the police during the investigation. It can not be accepted that the Magistrate would not be able to effectively deal with any obstructive tactics, which, as per the learned counsel for the complainant, may be employed by the applicant and other accused. Since no opinion has been expressed about the merits of the matter by this Court, there would be no scope for the applicant and other accused to use the order of remand as "a handle" to thwart the normal course of justice.

12. In the result, the applications are allowed.

The orders issuing process are set aside. The matters are remanded back to the learned Magistrate for considering the question of issuance of process afresh, after taking into consideration, inter alia, the contents of the police report that is already before him.

The learned Magistrate shall decide the matter afresh expeditiously and preferably within one month from the receipt of this order. The Criminal Applications are disposed of in the above terms.