

(2017) 06 KAR CK 0028
In the Karnataka High Court
Case No : 7034 of 2016

Ganesh Krishnan, S/o. Sri. Sthanu Krishnan	APPELLANT
Vs	
Ramesh Nanjund Shastri, S/o. Sri. Nanjunda Appaji Shastry, & Anr.	RESPONDENT

Date of Decision : 02-06-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 156\(3\)](#) - Police officers power to Investigate cognizable case

Citation : (2017) 06 KAR CK 0028

Hon'ble Judges : K.N.Phaneendra

Bench : SINGLE BENCH

Advocate : S.G. Bhagavan, K.R.Krishnamurthy

Final Decision : Allowed

Judgement

1. Heard the learned counsel for the petitioner and the respondent.
2. A short question that arises in this case is that: "whether the order referring the private complaint under Section 156(3) Cr.P.C. for investigation to the jurisdictional police without being supported by any affidavit is bad and further that "whether the learned Magistrate after posting the case for sworn statement, can refer the matter under Section 156(3) Cr.P.C.?"
3. On careful perusal of the records, the complainant had filed a complaint in the year 2015, in PCR No.4020/2015 has sought for referring the complaint to police investigation in the year 2016. But, the said request is not supported by any affidavit. In view of the decision of the Apex Court, reported in 2015, AIR SCW, 2075, in the case of Priyanka Sreevatsa & another Vs. State of Uttar Pradesh and others, the Apex Court has observed that " direction for investigation, application of power under Section 156(3) warrants application for judicial mind. Litigant cannot at his own whim invoke authority of the Magistrate. Thus, applications under Section 156(3) of Cr.P.C. are to be supported by an affidavit duly sworn to by the applicant invoking the jurisdiction of the Magistrate under Section 156(3)

Cr.P.C." Admittedly, in this case, such an affidavit has not been filed along with request for referring the complaint to the police for investigation. Therefore, the order passed by the learned Magistrate under Section 156(3) is bad.

4. So far as, the 2nd ground urged by the learned counsel is that immediately after filing of the complaint there is no whisper whether the Magistrate has actually taken cognizance of the offence or not. Unless the Magistrate takes cognizance of the offence, he cannot post the case for sworn statement. In view of the answer to the first point, there is no need so far as the second point, because the Magistrate has to apply his judicious mind regarding relevant provisions of Cr.P.C. and the Magistrate is at liberty to pass appropriate orders in accordance with law.

5. In view of the above said observation, the following order is passed:

Petition is allowed. The order passed by the Magistrate in P.C.R.No.4020/2015 dated 2.11.2016 pending on the file of IV Addl. Chief Metropolitan Magistrate, Bengaluru, referring the matter to the police for investigation under Section 156(3) of Cr.P.C. is hereby set aside. The complaint stands restored to the file of the Learned Magistrate to pass appropriate orders in accordance with law on the basis of the observations made above.