
(2014) 09 RAJ CK 0048

In the Rajasthan High Court

Case No : Criminal Misc. Petition No. 2200/2014

Gauri Shankar Jeengar

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 190(1) (a), 200, 202
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2014) 09 RAJ CK 0048

Hon'ble Judges : Nisha Gupta, J

Bench : Single Bench

Advocate : Pankaj Gupta, Advocate for the Appellant; Jitendra Shrimali, Public Prosecutor and Manju Surana, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Nisha Gupta, J.—S.B. Criminal Misc. Application No. 8818/2014 dated 25/08/2014 has been filed on behalf of the accused-petitioner for taking additional documents on record and, thereafter, to suitably amend the prayer clause of the main petition.

2. Contention of the learned counsel for the applicant-petitioner is that on 14/12/2011, the complaint filed by complainant-Ms. Manju Surana has been sent u/S. 202 Cr.P.C. to the Anti Corruption Bureau and, thereafter, on 19/11/2012, the learned Special Court has ordered the investigation u/S. 156(3) Cr.P.C. hence, both these orders, which were not in the knowledge of the petitioner be kept on record and his further contention is that entire proceedings are abuse of process as the order dated 19/11/2012 is illegal and it is liable to be quashed and consequently, the FIR lodged on the strength of this order being FIR No. 39/2013 be also quashed.

3. Heard learned counsel for the applicant-petitioner, learned Public Prosecutor, the complainant, who is present in person and perused the other material

available on record.

4. Both the orders seem to be relevant and necessary for consideration of the present petition.

5. Hence, S.B. Criminal Misc. Application No. 8818/2014 dated 25/08/2014 is allowed. Both these orders dated 14/12/2011 and 19/11/2012 are kept on record. The petitioner is allowed to amend his prayer accordingly. The amended cause title and the amended petition has already been filed by the petitioner, which has been kept on record.

6. The contention of the learned counsel for the petitioner is that he is in government service since 1995 and discharging his duty with utmost sincerity and devotion. Earlier, FIR No. 458/2011 has been lodged against him, which is pending investigation. Thereafter, complainant-Ms. Manju Surana has filed a complaint before the concerned court and on 14/12/2011, the concerned court has sent the complaint for investigation u/S. 202 Cr.P.C. to the Anti Corruption Bureau, who has submitted its report on 05/06/2012 before the Special Court. Thereafter, on 19/11/2012, the Special Court has passed the unique and illegal order of lodging the FIR on the said report. The only contention of the learned counsel for the petitioner is that once the cognizance has been taken on the complaint and matter has been sent for investigation u/S. 202 Cr.P.C., the court cannot revert back to invoke the jurisdiction u/S. 156(3) Cr.P.C. and order dated 19/11/2012 being per-se illegal, is liable to be quashed.

7. Per contra, the contention of the learned Public Prosecutor and the complainant is that the matter is under investigation, prosecution sanction has been received and they are about to file charge-sheet. Hence, the impugned FIR should not be quashed.

8. Heard the learned counsel for the petitioner, learned Public Prosecutor, the complainant and perused the impugned-orders.

9. It is not in dispute that FIR No. 39/2013 has been lodged on the direction of the concerned court dated 19/11/2012 and it is also not in dispute that prior to this order, on 14/12/2011, the matter was sent to the Anti Corruption Bureau for investigation u/S. 202 Cr.P.C. and counsel for the petitioner has rightly pointed out that the court has committed illegality in directing the FIR to be lodged vide order dated 19/11/2012. He in support of his argument, has placed reliance upon the judgment of the Supreme Court in *Madhao and Another Vs. State of Maharashtra and Another*, wherein the Supreme Court held in paras 18 and 19, as under:-

"18. When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The Magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation u/s 156(3) will be conducive to

justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence itself. As said earlier, in the case of a complaint regarding the commission of cognizable offence, the power u/s 156(3) can be invoked by the Magistrate before he takes cognizance of the offence u/s 190(1) (a). However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156(3).

19. Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives:

(a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightway issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.

(b) The Magistrate can postpone the issue of process and direct an enquiry by himself.

(c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police."

10. Reliance has also been placed on another judgment of the Supreme Court in Rameshbhai Pandurao Hedau Vs. State of Gujarat,

11. In the light of the above, it can safely be concluded that once the powers u/s 202 Cr.P.C. have been invoked by the Special Court, it was not within the jurisdiction of the court to revert back to the provisions of Section 156(3) Cr.P.C. and consequently, the order dated 19/11/2012 is illegal and without jurisdiction and it is liable to be quashed and consequently, FIR No. 39/2013 is also liable to be quashed. Needless to say that prior to the order of 19/11/2012, the matter was ceased with the Special Court and vide order dated 14/12/2011, the matter was sent to the Anti Corruption Bureau for investigation u/S. 202 Cr.P.C.

12. Hence, the matter is remanded back to the Special Court to proceed as per law.

13. With that direction, this misc. petition is disposed off. The FIR No. 39/2013 registered at Police Station Anti Corruption Bureau, Jaipur for offence u/Ss. 13(1) & 13(2) of the Prevention of Corruption Act, 1988 and Sections 420, 467, 468, 471 and 120B IPC and the order dated 19/11/2012 passed in Criminal Complaint No. 9/2011 are quashed and set-aside.