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In the Bombay High Court

Case No : Criminal Writ Petition No. 2198 of 2005

Mr. Jitendra Chandrakant Mehta — APPELLANT

Vs

Shamrock Impex Pvt. Ltd. and The State of Maharashtra — RESPONDENT

Date of Decision : 03-05-2006

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 159, 190, 195, 195(1)
Penal Code, 1860 (IPC) — Section 461, 471, 476

Citation : (2006) CriLJ 3131 : (2006) 4 MhLj 355 : (2006) 3 RCR(Criminal) 652

Hon'ble Judges : V.K. Tahilramani, J;D.G. Deshpande, J

Bench : Division Bench

Advocate : S.R. Chitnis and V.R. Raje, for the Appellant; A.P. Mundargi P. Badhekar and S.N. Raj for the Respondent No. 1 and D.S. Mhaispurkar, APP, for the Respondent

Final Decision : Dismissed

Judgement

D.G. Deshpande, J.—Heard learned Counsel for the Petitioner and the Respondents, and the learned APP.

2. Criminal Writ Petition No. 2198 of 2005 had come before the Division Bench on 13.1.2006, at that time Mr. Chitnis, counsel for the Petitioner informed that some more petitions on the same issues are pending, and he undertook to furnish number of those petitions and accordingly other petitions, i.e. Writ Petition No. 2901 of 2005 and Writ Petition No. 781 of 2006 were kept along with Writ Petition No. 2198 of 2005.

Thereafter, at the time of arguments, Mr. Chitnis stated that though issues involved are same, but facts may be different, and therefore the Writ Petitions i.e. Writ Petition No. 2901 of 2005 and Writ Petition No. 781 of 2006 should be heard separately.

3. The prayer in Writ Petition No. 2198 of 2005 is that proceedings arising out of C.C. No. 466/M/ of 2004 and the order recorded u/s 156(3) of the Code of

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Criminal Procedure by the Additional Chief Metropolitan Magistrate, 23rd Court Esplanade, Mumbai, and consequent FIR and investigation under MECR No. 14 OF 2004 be quashed and set aside.

4. Respondent No. 1 had filed the complaint before the Additional Chief Metropolitan Magistrate, 23rd Court, at Esplanade, Mumbai, against the petitioner. Prayer in the complaint was that the court be pleased to direct the Senior Inspector of L. T. Marg Police Station or the Crime Branch to conduct enquiry u/s 156(3) of the Criminal Procedure Code and investigate the matter and submit report to the court.

5. The Magistrate on 30.8.2004 passed an order to the following effect :

Read complaint. Heard complainant and his Advocate. Perused documents. In view of the allegations made, it requires proper investigation as allegations of forgery etc. are made. Hence, the complaint is referred u/s 156(3) of the Criminal Procedure Code to Senior Police Inspector, L.T.L.T.L.T. Marg Police Station for investigation Marg Police Station for investigation Marg Police Station for investigation and report r/o 20.11.2004 at 11.00 a.m.

6. The allegations of the complainant in the said complaint were that in R.A.E. Suit (Stamp) No. 2164 of 2004 pending before the Small Causes Court at Mumbai, the accused i.e. petitioner preferred an application for injunction being I.A. No. 3100 of 2004 and relied upon certain documents. The document which was a letter dated 26.3.1988 addressed by Dr. Rustom P. Patel to the Central Bank and Executor and Trustees Ltd. the then landlord of the premises, and, that this letter is forged according to the complainant, and, therefore, it was this forgery for which the complaint came to be filed and the Magistrate passed the aforesaid order.

7. It is the case of the petitioner that pursuant to the said order, the offence of forgery was registered against them. The petitioner was arrested and later on granted bail, his wife was also granted bail but the petition is filed to quash the said complaint and the order of the Magistrate, referred to above, u/s 156(3) of the Criminal Procedure Code.

8. Mr. Chitnis, firstly, contended that there is no prayer in the complaint for punishing the accused according to law and the only prayer is action u/s 156(3) of the Criminal Procedure Code and therefore the complaint does not satisfy the requirements of the Criminal Procedure Code. Secondly, it was contended by him that order u/s 156(3), is, of far reaching consequences, and, therefore the Magistrate cannot pass the said order mechanically. Accordingly, the impugned order is mechanically passed by the Magistrate without requiring the complainant to prove primafacie his case. Thirdly, if the so-called forged letter was in the custody of the Small Causes Court then the Magistrate could not have taken cognizance of the matter unless the complaint in that regard was filed by the court or by some other officer of the court as per the directions of the Court. In other words, according to him, if any offence of forgery is alleged in respect of a

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matter pending before the Court then the private party had no right to file any complaint or proceedings. Mr. Chitnis, also relied upon certain judgments in support of his contentions.

9. On the other hand, Mr. Mundargi for the respondent No. 1 - complainant submitted that when the complaint was filed before the Magistrate, the sole object of the complainant was to get the redressal of his grievances and trial of the accused according to law. Therefore, absence of any prayer in that regard, was not at all fatal, and the complainant was fully justified in praying that action u/s 156(3) be taken. Secondly, Mr.Mundargi contended that it was not the case of the complainant that forgery was committed in respect of a document filed before the court i.e. after filing of the documents. The forgery came to be committed but this was a case where the accused had tendered a forged document i.e. document already forged by them in support of their contention, and therefore, in that view of the matter nothing prevented the complainant from filing a complaint directly before the Magistrate and it was not necessary for the complainant to wait till the Small Causes Court decide the issue and come to the conclusion that the said document was forged. Thirdly, according to Mr. Mundargi the order passed by the Magistrate u/s 156(3) was not at all a mechanical order. He has considered all the aspects of the matter that were made available to him at the relevant time and when the Magistrate found that the allegations are about forgery of a document, then rightly the Magistrate ordered an Enquiry u/s 156(3) because the steps required to be taken for tracing out forgery could only be taken during such investigation u/s 156(3). Mr. Mundargi also relied upon certain authorities in support of his contention.

10. We have given our anxious consideration to the submissions made by both the Counsels Mr. Chitnis and Mr. Mundargi. So far as the first objection of Mr. Chitnis is concerned, that is regarding absence of prayer for proceeding against the accused and convicting them for forgery, in our opinion, such a prayer is not at all necessary for filing the complaint. The word "complaint" has been defined in the Criminal Procedure Code u/s 2(d) and the definition is as under:

"Complaint" means any allegation made orally or in writing to Magistrate, with a view of his taking action under this Code, that some person, whether known or unknown, has committed an offence but does not include a police report.

11. In the complaint filed before the Magistrate, the respondent - complainant has given all the facts and stated that accused had used the forged document, and in particular in paragraph (n) of the said complaint, it is that stated from the facts aforesaid, it is apparent that the accused has committed various offences punishable under the Penal Code and under various other provisions of law, as a part of sinister design to trouble and harass the complainant and that the accused has prepared false document within the meaning of Section 464 i.e. the letter dated 26.3.1988 and has committed offence u/s 465 and has used forged document as genuine and committed offence u/s 471, and it was in this back ground therefore that the prayer in ground (q) to conduct enquiry u/s 156(3) of

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the Criminal Procedure Code was made.

12. The definition of the "complaint" as seen above shows that the complaint should be filed "with a view of taking action under the Code". The Code of Criminal Procedure prescribes procedure for criminal cases. All aspects of the criminal cases so far as they relate to prosecution and proceedings are covered by the Code and therefore when a complaint is filed with the allegation that a particular person has committed offence and prayer for 156(3) is made, obviously the object is that the Magistrate should take action against the accused as is prescribed by law i.e. Criminal Procedure Code. Therefore, absence of any prayer of taking action against the accused according to law and/or to punish them according to law, does not affect the legality and validity of the complaint. Similarly, prayer of the complainant for directing investigation u/s 156(3) of the Criminal Procedure Code i.e. for an order u/s 156(3) cannot be said to be in any way illegal. Sub Section (3) of Section 156 reads as under :

Any Magistrate empowered u/s 190 may order such an investigation as above mentioned.

Section 190 which is referred to, is, in Chapter XIV and the heading of the Chapter is "Conditions requisite for initiation of proceedings". Heading of Section 190 "is Cognizance of offences by Magistrates". Sub Section (1)(a) of Section 190 empowers the "Magistrate to take cognizance of such offence upon receiving a complaint of facts which constitute such offence." This will also clarify that the complaint as defined u/s 2(d) of the Criminal Procedure Code to be filed before the Magistrate contain the facts constituting the offence, and, therefore, when the complainant has given all the facts constituting the offence of forgery etc, as stated above, then it cannot be said that the complaint, is, in in any manner defective. Therefore, the first contention and objection of Mr. Chitnis is required to be rejected in this regard.

13. Second contention of Mr. Chitnis was that when the document was filed before the court in respect of which forgery is alleged then the Magistrate was not empowered to take cognizance and the only course open was u/s 195 of the Criminal Procedure Code. That Sub-section (1) (b) (iii) of Section 195 is as under:

of any offence described in Section 463, or punishable u/s 471, Section 475 or Section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, except on the complaint in writing of that court or of some other court to which that court is subordinate.

14. Mr. Chitnis, therefore, contended that on the basis of the aforesaid provision if at all any document before the Small Causes Court was forged one, or forgery was committed in respect of any document before the Small Causes Court, then no complaint could be filed excepting upon the complaint in writing by that court. Therefore, according to Mr. Chitnis the complaint filed by the respondent No. 1. was not maintainable and consequently the order of the Magistrate was without

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jurisdiction or in excess of jurisdiction.

15. As against this, Mr. Mundargi relied upon the judgment reported in 2005(3) Scale 93 Iqbal Singh Marwah and Anr. v. Meenakshi Marwah and Anr. It is Five Judge Bench Judgment of the Supreme Court. The facts of the case were that appellant Nos. 1 and 2 were the real brothers of Mukhtar Singh Marwah, while respondent Nos. 1 and 2 are his widow and son respectively. Mukhtar Singh died on 3.6.1993. Appellant No. 1 filed Probate Case before the District Judge, Delhi, in respect of the Will dated 20.1.1993 allegedly executed by Mukhtar Singh. The petition was contested by the respondents on the ground that the Will was forged. Thereafter the original Will came to be filed in Court on 10.2.1994. Respondent moved the court u/s 340 of Criminal Procedure Code to file complaint against the appellant No. 1 as the Will set up by him was forged. The application remained pending. Thereafter respondent filed criminal complaint in May 1996 before the Chief Metropolitan Magistrate, New Delhi, for prosecuting the appellants under different offences including that of forgery. The Magistrate held that as the question whether the Will was genuine document or a forged one was an issue before the District Judge in probate proceedings, Section 195(1)(b)(ii) of Criminal Procedure Code operated as a bar for taking cognizance of offence of forgery etc. The complaint was dismissed The respondent filed revision before the Sessions Court, who relying upon the judgment of the Supreme Court in Sachida Nand Singh v. State of Bihar 1998(2) SCC 493, held that bar would not apply where forgery of a document was committed before the document was produced in court. Revision was allowed and the matter remanded to the Metropolitan Magistrate. The appellant moved the High Court by way of a Petition u/s 482 of the Criminal Procedure Code but the petition was dismissed on the basis of the same Judgment of the Supreme Court. Therefore, matter went to the Supreme Court. In paragraph 6 of this judgment, the Supreme Court discussed the question involved regarding interpretation of Clause (b)(ii) of Sub-section (1) of Section 195, as under:

One possible interpretation is that when an offence described in Section 461 or punishable u/s 471, Section 471 or Section 476 IPC is alleged to have been committed in respect of a document which is subsequently produced or given in evidence in a proceeding in any court, a complaint by the Court would be necessary. The other possible interpretation is that when a document has been produced or given in evidence in a proceeding in any Court and thereafter an offence described as aforesaid is committed in respect thereof, a complaint by the Court would be necessary. On this interpretation if the offence as described in the Section is committed prior to production or giving in evidence of the document in Court, no complaint by Court would be necessary and a private complaint would be maintainable.

The Supreme Court was concerned as to which of these two interpretations should be accepted having regard to the Scheme of the Act and the object sought to be achieved, and, then, ultimately the Supreme Court held that

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Sachida Nand Singh ''s case was correctly decided and the view taken therein was a correct view. Section 195(1)(b)(ii) would be attracted in respect of a document after it is produced or given in evidence in the proceedings in any court. So far as Will in question is concerned, the court found that it was not anybody''s case that offence enumerated u/s 195(b)(ii) was committed in respect of the said Will after it was produced in the court. Therefore, the Supreme Court held that the bar u/s 195(1)(b)(ii) of Criminal Procedure Code would not come into play and there was no embargo on the power of the court to take cognizance of the offence on the basis of the complaint filed by the respondent.

16. In view of this judgment, the objection of Mr. Chitnis, is required to be rejected. It is not the case of the complainant that forgery in respect of the said letter was committed after the document was produced before the Small Causes Court and therefore the bar u/s 195 would not apply and complainant was justified in moving the Magistrate and the Magistrate was justified in passing further order.

17. The third submission of Mr. Chitnis was that order u/s 156(3) of the Criminal Procedure Code passed by the Magistrate was a mechanical order. He also contended relying upon the judgment of the Supreme Court reported in S.N. Sharma Vs. Bipen Kumar Tiwari and Others, , and invited our attention to paragraph 5, which reads as :

It may also be further noticed that, even in Sub-section (3) of Section 156, the only power given to the Magistrate, who can take cognizance of an offence u/s 190, is to order an investigation, there is no mention of any power to stop an investigation by the power. The scheme of these sections, thus, clearly is that the power of the police to investigate any cognizable offence is uncontrolled by the Magistrate, and it is only in cases where the police decide not to investigate the case that the Magistrate can intervene and either direct an investigation, or, in the alternative, himself proceed or depute a Magistrate subordinate to him to proceed to enquire into the case." Great emphasis was led by Mr. Chitnis upon this part of the observations of the Supreme Court and he went to the extent of saying that filing the complaint before the Magistrate in respect of a cognizable offence without approaching the police was not proper and not permissible. When, questioned, in this regard, Mr. Chitnis contended the person desiring that any action against a person involved in the offence cannot directly go to the Magistrate. He must go to the police first and if the police refuse to take cognizance, then only he can move the Magistrate.

18. We are afraid, this argument of Mr. Chitnis is stretched beyond limit. If this argument is accepted, then the entire scheme of the Criminal Procedure Code and the right is given to an aggrieved person to move the Magistrate will get curtailed, abridged and ultimately made futile. In this Judgment of the Supreme Court, question that was involved before the Supreme Court was the Order of the Magistrate stopping investigation by the police and deciding to hold enquiry himself. First information report was lodged by one Vijay Shankar Nigam in Police

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Station Cantonment, Gorakhpur, in respect of an assault upon one Bipin Kumar Tiwari by goondas and the principal accused named in that report was S.N. Sharma, Additional District Magistrate (Judicial) Gorakhpur. The allegation against the Magistrate were that the attack was at his instigation. When Vijay Shankar Nigam lodged the report, police registered an offence and started investigation. Thereafter, the said Vijay Shankar Nigam moved the Magistrate having jurisdiction to take cognizance of the offence that the false report has been lodged against him and therefore by invoking the powers u/s 159 of the Code of Criminal Procedure that investigation may be stopped and the Magistrate may make further preliminary enquiry. The Magistrate allowed that prayer. The matter went to the High Court. The High Court quashed the order of the Magistrate and held that police were at liberty to conclude the investigation and submit their report to the Magistrate. In that background, the matter went to the Supreme Court. Obviously, the issue before the Supreme Court was whether the Magistrate has powers u/s 159 of the Criminal Procedure Code to stop investigation, as prayed. In view of this background, the aforesaid observations of the Supreme Court heavily relied upon by Mr. Chitnis, are of no use to him. We, do not agree with his submissions and his contention that before filing of the complaint before the Magistrate in respect of cognizable offence without approaching the police, is required to be rejected, and is hereby rejected.

19. Mr. Chitnis also tried to drew our attention to the powers of the Magistrate about taking cognizance with reference to the other provisions of the Criminal Procedure Code, but that is not the controversy, before us. The impugned order of the Magistrate is u/s 156(3) of the Criminal Procedure Code and the Magistrate passed that order after being empowered u/s 190 of the Criminal Procedure Code. We, have already quoted, the relevant provisions of Section 190 of the Criminal Procedure Code, which directs that subject to the provisions of this Chapter any Magistrate may take cognizance of any offence after upon receiving a complaint of facts which constitute such offence.

20. The Magistrate before whom the complaint in question was filed was empowered to take cognizance. It was for him to take cognizance of the offence upon receiving a complaint of facts constituting offences and therefore he was fully empowered to order an investigation u/s 156(3) of the Criminal Procedure Code. We, clarify that the interpretation of the word "taking cognizance" is not involved in this matter, and, therefore, we are not going into that aspect of the matter.

21. Considering therefore all the submissions, we do not find any merit in Writ Petition No. 2198 of 2005, the same is dismissed. Rule is discharged.

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