

(1996) 01 BOM CK 0020

In the Bombay High Court

Case No : Criminal Application No. 3279 of 1995

P.K. Ramkrishna and others

APPELLANT

Vs

Neelkanth M. Kamble and another

RESPONDENT

Date of Decision : 24-01-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 482
Penal Code, 1860 (IPC) — Section 114, 166, 409, 418

Citation : (1996) 5 BomCR 438 : (1996) CriLJ 2119 : (1996) 2 MhLj 328

Hon'ble Judges : Vishnu Sahai, J

Bench : Single Bench

Advocate : G.R. Rege, for the Appellant; A.P. Munderggi and V. Gurumurthy and Mrs. J.S. Pawar App., for the Respondent

Judgement

1. Heard Mr. G. R. Rege for the petitioners, Mr. A. P. Munderggi with Mr. V. Gurumurthy for Respondent No. 1 and Mrs. J. S. Pawar, APP for Respondent No. 2.

Rule, returnable forthwith by consent Counsel for respondents waive service.

2. This application u/s 482 Cr.P.C. arises in the circumstances stated hereinafter :

On 26-9-1991 a complaint was filed by Respondent No. 1 against the eight petitioners and others in the court of Judicial Magistrate, First Class (JMFC) 2nd Court, Kalyan for offences u/s 418/ 409/166 IPC read with 114 IPC. The same day the JMFC recorded the statement of respondent No. 1 u/s 200 Cr.P.C. However, after perusing the papers and bearing counsel for the Respondent No. 1 he took the view that the question of issuing of process should be deferred till the police has enquired in the matter and consequently, called a police report u/s 202 Cr.P.C.

The matter again came up before the JMFC., Kalyan on 25-10-1991 by which date, police report had not been received. Since the complainant was pressing for issuing process against the petitioners and others the learned Magistrate felt

that it was not necessary in the interest of justice to wait for a police report. Accordingly after hearing the counsel for the complainant (resident No. 1) he issued process against the eight petitioners and some others under Sections 418/409/166 of IP, read with 114 of IPC.

The order issuing the process was challenged by the petitioners and others before the VIth Additional Sessions Judge, Thane by means of a Criminal Revision which was dismissed on 21-8-1995 on the grounds that it was not maintainable and the pleas canvassed in the revision could be taken up before the Magistrate who under law could also recall the order issuing process.

3. It is in these circumstances that the order of the Magistrate dated 25-10-1991 issuing process against the petitioners and others has been challenged by means of the present petition. The sheet anchor of Mr. Rege's submission is that inasmuch as the learned Magistrate felt on 26-9-1991 that the material for summoning the eight petitioners and some others was not sufficient, he thought it necessary to call for a police report u/s 202 Cr.P.C. Mr. Rege contends that admittedly on 25-10-1991, when the impugned order issuing process against the petitioners and some others was passed by the Magistrate the police report had not been received. He urged that in the absence of any additional material before him on 25-10-1991 the norms of fair play, on the part of the learned Magistrate to have issued process against the petitioners and others. Hence he contended that the order cannot be sustained in law and warrants to be quashed.

Mr. Rege invited my attention to a decision of the Apex Court reported in Mohammad Ataullah Vs. Ram Saran Mahto, , wherein the proposition that after calling for a police report, in the absence of any additional material in the police report, if an order issuing process is passed by a Magistrate, the same cannot be sustained in law, has been laid down by the Apex Court. In that case the Magistrate had called for a report u/s 202 Cr.P.C. from the Executive Officer of Samastipur Municipality, who the Apex Court was told was a Magistrate. The Executive Officer of Samastipur Municipality submitted a cryptic report on the basis of which process was issued against three persons by the Magistrate. The Apex Court quashed the process holding that there was no additional material warranting the issuance of process. It did not consider the cryptic report to be additional material.

Mr. Rege also placed reliance on a decision of a learned Single Judge of our Court wherein the aforesaid decision of the Apex Court has been followed and in which the facts were identical to that of the present case. That decision was rendered by R. G. Vaidyanatha J, on 2-12-1995 in Criminal Writ Petition No. 255 of 1989.

In that case also the Magistrate had not straight away summoned the accused persons on the basis of the complaint and the statement of the complainant recorded u/s 200 Cr.P.C. but instead had called for a police report u/s 202 Cr.P.C. and without waiting for the same had issued process against the accused persons which this Court quashed on the basis of the decision reported in Mohammad

Ataullah Vs. Ram Saran Mahto, .

4. Mr. Mundergi learned counsel for the respondent No. 1 placed reliance on a decision of a Division Bench of our Court reported in 1980 Mh LJ 765, Shriram Damodar Muley v. Ratanlal Mathuradas Kedia. wherein it has been laid down by this Court that even in a case where a Magistrate calls for a police report and no police report has been received for a long time, the order of the Magistrate straight away directing the issue of process cannot be faulted with as being without jurisdiction.

There can be no quarrel with the ratio laid down in the aforesaid decision of our Division Bench. But the question is not one of jurisdiction. Instead it is one of sufficiency of material. What is that "additional material" to use the expression used in Mohammad Ataullah Vs. Ram Saran Mahto, , warranting the issuance of process. In the present case the answer unhesitatingly has to be none.

5. In the above factual matrix in view of the ratio laid down in Mohammad Ataullah Vs. Ram Saran Mahto, , the order of the Magistrate dated 25-10-1991 issuing process against the eight petitioners and others u/s 418, 409, 166 read with Section 114 IPC. is bad and unsustainable in law. I accordingly quash it.

6. The learned Magistrate would direct the police to submit a report within a period of eight weeks from receipt of a copy of this order. The Magistrate on the basis of the said report and or after complying with such other procedure enjoined by law to which recourse is open shall decide the question whether the petitioners should be summoned or not.

In case no police report is received within the stipulated time, the Magistrate would independently apply his mind on this issue bearing in mind the material on record and such other material as may be open to him to adduce in law.

6. Rule is disposed off in the manner stated above.

Certified copy expedited.

7. Order accordingly