

(2014) 04 BOM CK 0227

In the Bombay High Court

Case No : Criminal Application (APL) No. 761 of 2012

Prakash Banduji Mundale

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 161, 173, 173(2), 190(1)(a)

Citation : (2014) ALLMR(Cri) 2414

Hon'ble Judges : M.L. Tahaliyani, J

Bench : Single Bench

Advocate : J.B. Gandhi, Advocate for the Appellant; P.V. Bhoyar, A.P.P, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

M.L. Tahaliyani, J.—Heard learned counsel for the applicant and learned Additional Public Prosecutor for Respondent/State. ADMIT. Heard finally by consent of the learned counsel for the parties.

2. The applicant is aggrieved by the order passed by Judicial Magistrate First Class on 23rd April, 2012 and the judgment passed by Additional Sessions Judge, Akot on 27th August, 2012 in Criminal Revision Application No. 25 of 2012.

3. The applicant had filed complaint for seeking orders u/s 156(3) of the Code of Criminal Procedure from the learned Judicial Magistrate First Class. The applicant had prayed for directions to the police to investigate into the complaint filed by him against the accused named in the said complaint. The Magistrate granted prayer and forwarded the complaint to the police for investigation. The police registered First Information Report bearing Crime No. M-33/2011 on 28th July, 2011 and investigated the case.

4. It appears that the applicant was not satisfied with the investigation carried out by the investigating Officer and he, therefore, approached the Sub Divisional Police Officer. The Sub Divisional Police Officer herself recorded statements of the

witnesses and forwarded the same to the Investigating Officer. The Investigating Officer took statements recorded by him into consideration and also considered the statements recorded by the Sub Divisional Police Officer and submitted "B" summary in the Court of the Magistrate.

5. The applicant was not satisfied with the report submitted by the police and therefore, he filed Protest Petition in view of the judgment of the Hon'ble Supreme Court in the matter of Bhagwant Singh Vs. Commissioner of Police and Another, The said Protest Petition was dismissed and "B" summary submitted by the police was accepted. The applicant therefore, filed revision petition against the said order passed by the Magistrate. The revision petition has also been dismissed. Therefore, the applicant is before this Court and seeks indulgence of this Court to invoke powers u/s 482 of the Code of Criminal Procedure.

6. In the first place, let it be stated here that the statements recorded by the Sub Divisional Police Officer were signed by the witnesses and therefore, they could not be treated as the statements recorded u/s 161 of the Code of Criminal Procedure. Those statements could not have been considered by the Investigating Officer for the purposes of filing a report u/s 173 of the Code of Criminal Procedure. As such the Investigating Officer was left with the statements recorded by him only. The applicant was not satisfied with the investigation carried out by the Investigating Officer. That has been stated in the protest petition also. The question, therefore, arises as to what the Magistrate could have done in these circumstances.

7. Learned counsel Mr. Gandhi has submitted that the Magistrate could have proceeded u/s 200 of the Code of Criminal Procedure despite the fact that the police had submitted "B" summary after investigation of the first information report. Mr. Gandhi has relied upon a judgment of the Hon'ble Supreme Court in the matter of Gangadhar Janardan Mhatre Vs. State of Maharashtra and Others, The observations made by the Hon'ble Supreme Court in this regard can be found at paragraph 9 of the said judgment. The view expressed by the Supreme Court in the case of Gangadhar Mhatre was reiterated in the case of Minu Kumari and Another Vs. The State of Bihar and Others, The above stated two judgments of the Hon'ble Supreme Court are based on the judgment of the Hon'ble Supreme Court in the matter of India Carat Pvt. Ltd. Vs. State of Karnataka and Another, The observations made in the said judgment of India Carat can be found at paragraph No. 16, which read as under: 16. The position is, therefore, now well settled that upon receipt of a police report u/s 173(2) a Magistrate is entitled to take cognisance of an offence u/s 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognisance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the

accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers u/s 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case u/s 190(1)(a) though it is open to him to act u/s 200 or Section 202 also.

(Emphasis supplied)

As such in the peculiar facts and circumstances of this case, the Magistrate instead of giving a finding that there are contradictions in the statements recorded by the Investigating Officer and the Sub-Divisional Police Officer should have proceeded u/s 200 of the Code of Criminal Procedure. The learned Magistrate should have realised that the statements recorded by the Sub Divisional Police Officer were not the statements recorded u/s 161 of the Code of Criminal Procedure and could not have been taken into consideration while submitting report u/s 173 of the Code of Criminal Procedure. Keeping in view this legal situation, it was just and proper for the Magistrate to proceed u/s 200 of the Code of Criminal Procedure.

As such, the order passed by both the Courts below will have to be set aside and it is necessary to direct the learned Magistrate to proceed with the complaint u/s 200 of the Code of Criminal Procedure. Hence, I pass the following order:

- i. The order passed by learned Magistrate on 23rd April, 2012 in Regular Criminal Case No. 133 of 2011 is set aside.
- ii. The judgment and order passed by learned Additional Sessions Judge in Criminal Revision Application No. 25 of 2012 is also set aside.
- iii. Learned Judicial Magistrate First Class, Akot is directed to consider the complaint of the applicant u/s 200 of the Code of Criminal Procedure.

The application stands disposed of accordingly.