
(2014) 06 MP CK 0104
In the Madhya Pradesh High Court
Case No : M.Cr.C. No. 8486/2013

Punit Govil

APPELLANT

Vs

Omaxe Ltd.

RESPONDENT

Date of Decision : 25-06-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 173, 190, 200, 202

Citation : (2014) 06 MP CK 0104

Hon'ble Judges : M.C. Garg, J

Bench : Single Bench

Advocate : R.S. Chhabra, learned counsel, Advocate for the Appellant;
Anshuman Shrivastava, learned counsel, Advocate for the Respondent

Judgement

M.C. Garg, J.—This application filed u/s 482 of Cr.P.C. has arisen on account of dismissal of the Revision Petition filed by the applicant before the Sessions Court assailing the order dated 17.4.2013 whereby, the JMFC while dealing with the complaint filed by the applicant u/s 190 of Cr.P.C., instead of directing the police to investigate the matter u/s 156(3) of Cr.P.C. as prayed for by the applicant, passed the following order:-

2. Learned counsel for the applicant not agreeing with the aforesaid order filed the Revision Petition. The same came up for consideration before the Additional Sessions Judge and Special Judge, Indore in Cr.R. No. 434/2013.

3. The revisional court dismissed the revision petition by making the following observation:-

7. It is now well settled that if first information report is not registered in a cognizable offence by the police, after observing certain proceedings, a complaint can be filed before the Magistrate. It is also well settled that Magistrate has two courses open for handling the complaint. The first one is proceedings u/s 200/202 Cr.P.C. and inquiring the matter himself or send the complaint u/s 156(3) Cr.P.C. to the police who in consequence will register the matter and

investigate and filed the final report u/s 173 Cr.P.C. It is also well settled that once the Magistrate has taken cognizance and started inquiring the matter the option for sending the complaint u/s 156(3) Cr.P.C. is gone. So, an order for inquiry u/s 156(3) Cr.P.C. can be given only before the Magistrate has taken cognizance. In the present case the Magistrate did not send the complaint u/s 156(3) Cr.P.C. but has taken cognizance and recorded evidence u/s 200 Cr.P.C. so, as per the law settled by the Hon"ble Apex Court recourse to 156(3) Cr.P.C. is unavailable. It is not open to the complainant to ask for a particular line of action. What he should be interested in is a proper remedy for his grievance and that is fulfilled by taking action which could be either way.

4. Apparently, it seems to be an order passed without considering the real facts inasmuch as, in this case, it was not that the trial Court had recorded the evidence and the complaint u/s 200 of Cr.P.C. but, had only decided the matter on such evidence. It seems that the Sessions Court has not appreciated the impugned order of Magistrate properly.

5. Counsel for the applicant says that in view of the aforesaid, the said order is required to be set aside.

6. Since there seems to be apparent error in the order of the Sessions Court, which seems to be not in accordance with law, the order passed by the JMFC, the said order is set aside and the case is remanded back to the Sessions Court to reconsider the matter and decide the Revision Petition on merits in the light of the order passed by the JMFC.

7. Parties to appear before the concerned Sessions Court on 15.07.2014. A copy of this order alongwith the record be sent to the Sessions Court forthwith. It is made clear that nothing stated in my order, will have any aspersion on the merits of this case, which may be decided by the Sessions Court in accordance with law.

8. C.c. as per rules.