(2011) 08 BOM CK 0176

In the Bombay High Court

Case No : Criminal Application No. 1770 of 2010

Rajendra Randal Jaiswal and Others APPELLANT

Vs

State of Maharashtra and Another RESPONDENT

Date of Decision : 11-08-2011

Acts Referred:

Bombay Money Lenders Act, 1946 — Section 32(b)
Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 173(8), 202(1), 397(2), 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471

Citation : (2012) BomCR(Cri) 242

Hon'ble Judges : Bhangale A.P., J

Bench : Single Bench

Advocate : F.T. Mirza, for the Appellant; M.K. Pathan, Assistant Public Prosecutor, for respondent No. 1/State and S.V. Sirpurkar, for respondent No. 2., for the Respondent

Final Decision : Dismissed

Judgement

Bhangale A.P., J.—Heard Mr. F.T. Mirza, Advocate for the applicant, Mr. M.K. Pathan, A.P.P. for respondent No. 1/State and Mr. S.V. Sirpurkar, Advocate for respondent No. 2. The applicants, by this application, have questioned the order dated 17.9.2010 passed u/s 156(3) of the Code of Criminal Procedure by the learned 2nd Joint Judicial Magistrate Chandrapur, Whereby the police were directed to register the offences u/s 120-B read with sections 420, 467, 468, 471 of the Indian Penal Code and to investigate in detail in respect of the allegations made by the Complainant against three persons by taking effective steps of the investigation.

2. The facts according to the Complainant (respondent No. 2) are as under :-

A complaint was lodged by respondent No. 2 Mohan and his wife Chaya against the Applicants on the ground that the Complainant had taken the loan about six years back from applicant No. 1 Rajendra @ Prakash Ramlal Jaiswal (professional money lender) in total sum of Rs Two lacs with interest payable @10% p.a. The loan amount was paid by the money lender by installments and for each installment of money lent, he had insisted from the Complainant to give him a Cheque as security. Thus, five blank Cheques bearing Nos. 27217 to 27221 drawn upon the District Co-operative Bank, Chandrapur were given to him. The money lender had also insisted upon security of two blank stamp papers signed by the Complainant and his wife by way of security. Complainant had continued to pay interest@ 10% p.a. to Prakash Jaiswal, but, since August 2007, he could not pay interest and the loan amount as repayable. Hence, said Prakash Jaiswal started threatening the Complainant. The Complainant was prosecuted on the basis of misused and forged blank cheques given by way of security to the money lender applicant No. 1 Prakash Jaiswal, who, along with his two brothers Ravindra and Omprakash indulged in to the offences of cheating, fraud, forgery etc. The money lender, with the help of his brothers, started to lodge false, bogus and vexatious prosecutions by resorting to Summary Criminal Case Nos. 1757 of 2008, 1758 of 2008 and 1759 of 2008 purportedly filed by Omkumar, while Summary Criminal Case Nos. 1316 and 1317 of 2008 were purportedly filed by Ravindra u/s 138 of the Negotiable Instruments Act. Therefore, it is case of the complainant that the Police were duty bound to take cognizance of the offences and ought to have registered the complaint made by the Complainant under sections 420, 467, 468, 471 read with section 120-B of the Indian Penal Code and u/s 32(b) of the Bombay Money Lenders Act but, the police had recorded the Offence only u/s 32(b) of the Bombay Money lenders Act overlooking other specific allegations made by the complainant in his complaint. The learned Magistrate, under the circumstances, on the ground that it was the duty of the police to investigate in detail to find out the truth and go to the roots of the facts, ordered the investigation u/s 156(3) of the Criminal Procedure Code at pre-cognizance stage of the proceeding in respect of the offences alleged by the Complainant.

3. On behalf of the applicants, it is submitted that the learned Magistrate committed an error of law to order investigation by Police in a Pending criminal Case No. 626 of 2008, which was pending on the basis of same facts and allegations. The learned Advocate for the Applicants argued that there can not be second FIR in respect of the same facts. He sought to rely upon the ruling in the case of T.T. Antony Vs. State of Kerala and Others, .

4. On the other hand, the learned Advocate for the respondent No. 2 (Ori. Complainant) submitted that since no police action was initiated despite the accusations made in the complaint which were of cognizable nature, the Complainant was constrained to approach the Magistrate having jurisdiction, who had rightly directed investigation by the Police in to the complaint for to discover the truth against the influential accused. He submitted that the rule against double jeopardy stated in T.T. Antony''s case is not attracted in this case as no investigation was done by the police at all in respect of the accusations made by the Complainant due to influence of the money lender with the politicians and the

Police. According to the learned Advocate for the respondent No. 2/Complainant, it is well within the judicial discretion of the learned Magistrate to order investigation u/s 156(3) and/or further investigation u/s 173(8) of the Criminal Procedure Code. The Magistrate is entitled to ignore the police report if it is to the effect that no case is made out against the accused. The Magistrate can apply his mind independently to the facts emerging from the investigation. The order u/s 156(3) of the Code of Criminal Procedure is at the pre-cognizance stage as police are ordered to investigate. Such order is interlocutory in nature in aid of investigation which is not revisable in view of the bar u/s 397(2) of the Cri.P. Code. The bar cannot be circumvented by moving an application u/s 482 of the Cr.P. Code. Reliance is placed upon the ruling in Father Thomas Vs. State of U.P. and Another, . Reference is also made to the decision of the Apex Court in Mohd. Yousuf Vs. Smt. Afaq Jahan and Another, , where it has been held that when a Magistrate orders investigation under Chapter XII of the Code, he does so before he takes cognizance of the offence. Once he takes cognizance of the offence, he has to follow the procedure envisaged in Chapter XV of the Code. The inquiry contemplated u/s 202(1) or investigation by a Police Officer or by any other person is only to help the Magistrate to decide whether or not there is sufficient ground for him to proceed further on account of the fact that cognizance had already been taken by him of the offence disclosed in the complaint but issuance of process had been postponed.

5. Mr. M.K. Pathan, learned A.P.P. fairly submitted that the Police were directed to investigate in to the allegations made by the complainant. Police were, therefore, expected to obey the order of the Court and to report about their investigation. The investigation is under progress and necessary steps are being taken to complete the investigation. Under the circumstances, no prejudice can be caused to the applicants as they are not yet accused in respect of the allegations made in the complaint under the investigation as no process is yet issued against them in respect of those allegations made by the Complainant. The order passed behind their back at pre-cognizance stage would not affect the liberty of the applicants, because the applicants have no right of hearing at the pre-cognizance stage while the Magistrate has merely directed the Police to investigate in view of the provision u/s 156(3) of the Cri. P. Code. The order u/s 156(3) of the Code is in the nature of administrative order directing Police to exercise their plenary powers to investigate in to Cognizable offences. The principle is that any complaint or application complaining of the commission of cognizable offence must be investigated so as to book the real culprits. The application by the applicants if allowed would have the effect to thwart the investigation by the Police at its nascent stage. Until summoned, there is no proceeding qua the applicants. The challenge is premature. No case is made out for to quash and set aside the impugned order. The application is dismissed with costs.

