

(2001) 07 KAR CK 0090
In the Karnataka High Court
Case No : Criminal Petition No. 178 of 2001

R.N. Shetty

APPELLANT

Vs

Vijaya Bank, Kasarakod Branch, Honnavara, Uttara Kannada
and another

RESPONDENT

Date of Decision : 25-07-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156
Penal Code, 1860 (IPC) — Section 120, 34

Citation : (2001) 5 KarLJ 505

Hon'ble Judges : Mohamed Anwar, J

Bench : Single Bench

Advocate : Sri S.G. Bhagawan, for the Appellant; Sri Urval N. Ramanand and Sri N.V. Prakash, Additional State Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

The Court

1. Heard both sides.

2. Petitioner is accused 2 in C.C. No. 37 of 1997 pending on the file of the learned Magistrate. Respondent 1-Bank is the complainant therein. The petitioner-accused prays that the order dated 23-12-2000 of the learned Magistrate referring the complaint of respondent 1, u/s 156(3) of the Cr. P.C., to the Superintendent of Police, Fraud Section, Corps of Detectives, Bangalore, for reinvestigation and report, may be quashed, since the learned Magistrate has no jurisdiction under subsection (3) of Section 156 of the Cr. P.C. to refer the complaint to the Corps of Detectives (the C.O.D., for short), Bangalore, who is respondent 2 herein.

3. The complaint alleging commission of offences under Sections 406, 409, 417, 418, 420, 465, 467, 468, 471 and 477-A read with Sections 120-B and 34 of the IPC was presented before the learned Magistrate by the complainant against

petitioner and another accused praying that the complaint may be referred to the Superintendent of Police, Karwar u/s 156(3) of the Cr. P.C. for investigation and report. As prayed by the complainant, the complaint was referred by the learned Magistrate to the Superintendent of Police, Karwar, who after investigation into the complaint allegations, tiled his "B" report before the learned Magistrate stating that the investigation did not reveal commission of any of the offences by the accused. Thereupon, the complainant on 2-1-1998 filed a protest petition against the said "B" report and at subsequent stage of the proceeding, he requested that his complaint may be referred to the C.O.D, for reinvestigation and their final report. The learned Magistrate has, accepting this request, has passed the impugned order.

4. Mr. S.G. Bhagavan, learned Counsel for petitioner, relying on a recent decision of this Court in State Vs. Thammaiah and Others, , has rightly contended that under sub-section (3) of Section 156 of the Cr. P.C., the learned Magistrate has the jurisdiction to refer a private complaint u/s 200 of the Cr. P.O., only to a Police Officer in charge of the jurisdictional Police Station as contemplated in sub-section (1) of Section 156 of the Cr, P.C. This proposition also finds support from a recent decision of the Supremo Court i.e., Central Bureau of Investigation Vs. State of Rajasthan and Another, . Therefore, Mr. Urval N. Ramanami, learned Counsel for 1st respondent could not successfully meet this objection.

5. However, Mr. Urval N. Ramanand proposed to place reliance on a Single Bench decision in the case of G.H. Nagarajaiah Setty and Another Vs. State, , to support the impugned order. In that case, the question for decision before the Court-was: "Whether the Magistrate has jurisdiction to direct the investigating agency to reinvestigate the matter?" The private complaint of the complainant therein was, in the first instance, referred by the learned Magistrate u/s 156(3) of the Cr. P.C. to the C.O.D. for investigation. After investigation into the allegations of that complaint, "B" report was filed by the C.O.D. Thereafter, in view of the additional information furnished to the learned Magistrate, he passed an order directing the C.O.D. to reinvestigate the case and submit its report, In that context of development the-run, the said question had arisen for Court's determination, which has been answered in the affirmative with reference to the relevant provisions of the Cr. P.C. It could be seen that the affirmative finding on the said question does not lay down a ratio that the Magistrate has the jurisdiction u/s (sic)56(3) of the Cr P.C. to refer the complaint to the C.O.I), police and direct them for investigation and report. Therefore, the decision in G.H. Nagarajaiah Setty's, case, supra, does not support the contention of Mr. Ramanand since the question involved in this case i.e., whether the Magistrate has jurisdiction u/s 156(3) of the Cr. P.C. to refer a complaint to the C.O.D. for investigation and report, was not the question for decision of the Court in that case. Therefore, without more, the impugned order of the learned Magistrate is unsustainable in law.

6. But, then the question arises whether the Magistrate whose power is so

fettered u/s 156(3) of the Cr. P.C. is not competent to refer a private complaint to any Police Officer other than the one who is the officer in charge of the particular Police Station. If such a narrow construction of Section 156(3) of the Cr. P.C., is accepted as a binding law on the Magistrates, then it may lead to frustration of justice in certain situations where the investigation of a crime by the officer in charge of a Police Station would not at all be warranted. For instance, if a private complaint before a Magistrate is made u/s 200 of the Cr, P.C. against the very Police Officer in charge of a Police Station, or if such Police Officer has vested interest in the alleged crime, or for that matter, if any allegation of his being hands in glove with the accused is made, then in these circumstances, the dictate of justice warrants that such a complaint must be investigated by the Police Officer other than the one who is in actual charge of the Police Station. To meet such exigencies, the Legislature has provided the solution in Section 36 of the Cr. P.C., which states.-

"Police Officers superior in rank to an officer in charge of a Police Station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station".

This significant provision conjointly read with sub-sections (1) and (3) of Section 156 of the Cr. P.C. makes the legal position abundantly clear that for the purposes of investigation and report u/s 156(3) of the Cr, P.C., every Police Officer who is superior to the Police Officer in charge of the particular Police Station shall also be deemed to be the Police Officer in charge of that Police Station, having authority to investigate into the alleged crime and submit his report to the jurisdictional Magistrate.

7. However, while exercising their discretion u/s 156(3) of the Cr. P.C., the Magistrate should hear in view that this discretion is also required to be exercised in a judicious and reasonable manner. In that context, it becomes incumbent on the part of the Magistrate to decide first if the allegations in complaint made u/s 200 of the Cr. P.C. require and call for investigation and report by the police. Necessarily, this exercise involves scrutiny of the complaint allegations. If they do not involve any complicated questions of law or facts for determination, such a complaint should ordinarily be enquired into and the offence alleged therein be tried by the Magistrate himself instead of referring the complaint to the police u/s 156(3) of the Cr. P.C. On the other hand, if the complaint allegations are of very serious nature of public importance necessitating investigation of the grave and complicated questions of facts in that event a Magistrate would be justified in referring the complaint to the police u/s 156(3) of the Cr. P.C. For such a decision, it is necessary for a Magistrate to record the reasons in brief in support thereof. In the instant case, we find that the learned Magistrate has not taken any pains to apply his mind to the nature of allegations made in the complaint and has not assigned any reason for his accepting the prayer of the complainant to refer the complaint to the Superintendent of Police, Karwar. What further aggravates the situation is, the

impugned order of the learned Magistrate is again passed by him in a similar fashion after the "B" report was submitted by the said Superintendent of Police, without assigning any reason whatever which weighed with the Magistrate to pass the same order directing investigation of the case by the C.O.D.

8. Therefore, for the reasons stated above, the petition is allowed. The impugned order dated 23-12-2000 is set aside and the matter is remitted to the learned Magistrate with a direction to proceed further in accordance with law and in the light of the observations made here-in above.