
(2011) 07 BOM CK 0097
In the Bombay High Court
Case No : Criminal Application No. 156 of 2011

Satish Sharma

APPELLANT

Vs

The State of Maharashtra and Dr. Subhash Sharma

RESPONDENT

Date of Decision : 12-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(3), 169, 173, 200
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471

Citation : (2011) 07 BOM CK 0097

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

Bench : Single Bench

Advocate : Firdos Mirza, for the Appellant; A.S. Parihar, Assistant Public Prosecutor for Respondent No. 1 and R.D. Bhuibhar, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—Heard Mr. Firdos Mirza, Adv. for the Applicant, Mr. A.S. Parihar, A.P.P. for Respondent No. 1 and Mr. R.D. Bhuibhar, Adv. for Respondent No. 2.

2. By this application u/s 482 of the Code of Criminal Procedure, the Applicant has prayed for quashing and setting aside the order dated 2nd February, 2011 passed by the learned Judicial Magistrate, First Class, Kelapur, Distt. Yavatmal in Criminal Complaint Case No. 14 of 2011. The learned J.M.F.C. appears to have directed police to conduct investigation in view of power u/s 156(3) of the Code of Criminal Procedure.

3. The learned Advocate for the Applicant has contended that the trial Court failed to consider that the complaint is not maintainable and if entertained, it would amount to abuse of the process of law. It is also submitted that the procedure as contemplated u/s 200 of the Code of Criminal Procedure in Chapter XV of the Code ought to have been followed instead of directing the police to investigate u/s 156(3) of the Code of Criminal Procedure. It is further contended that the dispute is of purely civil nature - between the family members, therefore, the complaint ought not to have been entertained. The learned

Advocate, therefore, prayed for quashing and setting aside the impugned order u/s 156(3) of the Code of Criminal Procedure passed by the learned J.M.F.C., Kelapur.

4. It appears that complaint dated 1st February, 2011 was lodged by Mr. Subhash Dwarkaprasad Sharma (Jangid) against 13 persons complaining that they had prepared bogus document purportedly in respect of relinquishment of right dt.4.6.2003. Relinquishment of right is purportedly in respect of agricultural land Gat No. 199 and agricultural land Gat No. 200. In fact, according to the complainant, the right was never relinquished. In view of these accusations u/s 420, 467, 468, 471 r/w. Section 120-B of the Indian Penal Code, the learned Magistrate thought it proper to direct police to conduct investigation in view of exercise of power u/s 156(3) of the Code of Criminal Procedure.

5. Mr. R.D. Bhuibhar, Adv. for Respondent No. 2 opposed the application and submitted that the learned Magistrate was not obliged to record verification of the complainant at recognizance stage of the proceedings. The learned Magistrate is required to satisfy himself about sufficiency of grounds to proceed further and for that purpose, he may direct police to investigate and wait for police report. When such an order u/s 156(3) of the Code of Criminal Procedure is passed, the order enables police to record the FIR and to investigate into the allegations or accusations and then to submit report pursuant to investigation done by the police. It may be a report u/s 169 or 173 of the Code of Criminal Procedure which enables the Magistrate concerned to pass an appropriate order to drop proceedings or to take cognizance of the offences. When a private complaint is filed, it is discretion of the learned Magistrate to direct police to investigate.

6. In support of the submissions, reference is made to the ruling in the case of Mohd. Yousuf Vs. Smt. Afaq Jahan and Another, . The Apex Court in para six of the ruling made it clear that Section 156 falling within Chapter XII deals with powers of Police Officers to investigate cognizable Offences. The chapter contain provisions relating to information to police and their powers to investigate. At precognizance stage, the Magistrate who is supposed to take cognizance of offences may, if he thinks it fit, direct police to investigate by exercising power u/s 156(3) of the Code of Criminal Procedure. Cognizance of the offences may be taken after receiving police report. The provisions of Chapter XV of the Code come into play when Magistrate has decided to take cognizance of the offence or offences by applying his mind with a view to proceed u/s 200 and subsequent sections of the Code of Criminal Procedure and if sufficient ground is found to proceed further, he may issue process u/s 204 of the Code of Criminal Procedure. Thus, distinction has been pointed out in the ruling of Mohd. Yousuf (cited supra) followed by ruling in the case of Mr. Panchabhai Popotbhai Butani, Bhanubhai Ravjibhai Talaviya, Jitendra L. Chheda and Jay Enterprises and Others Vs. The State of Maharashtra, Satyam Shelters Pvt. Ltd. and Others, . It is made clear by the Full Bench of this Court that the law cast abundant statutory duty upon the

police Officer, in-charge of Police Station to register the case whenever commission of cognizable offence is brought to his notice in any form. Therefore, No. fault can be found with the police if they decide to register offence pursuant to the direction by the Magistrate u/s 156(3) of the Code of Criminal Procedure.

7. Considering the ruling cited, therefore, with clear distinction made out in respect of pre-cognizance and postcognizance stages as contemplated in Chapters XII and XV of the Code of Criminal Procedure, it has to be concluded that the learned Magistrate who receives a complaint is not obliged to examine the complainant by recording his verification if he decides to take some other action i.e. to say ordering police to investigate in view of exercise of power u/s 156(3) of the Code of Criminal Procedure. That being so, copy of the judgment (ruling) annexed with this application in Criminal Application No. 1371 of 2008, dt. 1 s t September, 2008, wherein it is observed that " the provisions contained in Section 200 of Code of Criminal Procedure, requiring statement of the complainant to be recorded when filed by the private person are mandatory" appears per incuriam in this regard because the Magistrate is not under any compulsion nor it is mandatory for him to record verification of the complainant at pre-cognizance stage as he can decide to take some other actions such as ordering police to investigate or issuance of warrant etc. as permissible under law. No. case is made out for interference with the impugned order. Hence, the application is dismissed.