

(2013) 02 BOM CK 0010

In the Bombay High Court

Case No : Criminal Application (Apl.) No. 516 of 2012

Sharadkumar Bansilal Bhala and Others

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 01-02-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 3827

Hon'ble Judges : A.P. Lavande, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : J.B. Kasat, for the Appellant; K.S. Joshi, APP for the non Applicant No. 1 and Shri Rugved, Counsel for the non Applicant No. 2, for the Respondent

Judgement

A.P. Lavande, J.—Heard Shri Kasat, learned counsel for the applicants, Smt. Joshi, learned Assistant Public Prosecutor for the respondent No. 1 and Shri Dhore, learned counsel for the non applicant No. 2. Rule. Rule made returnable forthwith by consent of counsel for the parties.

2. By this application filed u/s 482 of the Criminal Procedure Code, the applicants take exception to order dated 19th July 2012, passed by the learned Judicial Magistrate First Class Chikhli, in Criminal Case No. 43 of 2012 by which police have been directed to register the First Information Report u/s 156(3) of Criminal Procedure Code.

3. Respondent No. 2 filed Criminal Case No. 43 of 2012 in the Court of Judicial Magistrate First Class Chikhli against 11 accused/applicants against whom allegation of having committed offences under Sections 420, 468, 471, 120B read with Section 34 of Indian Penal Code is made in the complaint filed by respondent No. 2.

4. The learned Magistrate by order dated 16th April 2012 directed that the matter would proceed u/s 200 of Criminal Procedure Code and kept the matter for verification. Thereafter by order dated 19th July 2012 which is impugned in the present application, the learned Magistrate directed the police to register

F.I.R. in terms of Section 156(3) of Criminal Procedure Code. Aggrieved by the said order the accused have filed the present application.

5. We have heard Shri Kasat, learned counsel for the applicants, Smt. Joshi, learned APP for the respondent No. 1 and Shri Dhore, learned counsel for respondent No. 2.

6. According to Shri Kasat, the learned Magistrate having passed an order to proceed u/s 200 Criminal Procedure Code upon complaint filed by respondent No. 2 could not have passed another order u/s 156(3) Criminal Procedure Code since the same would amount to review of the earlier order which power the learned Magistrate did not have. He, therefore, contended that the impugned order dated 19th July 2012 deserves to be quashed and a direction deserves to be given to the Magistrate to proceed u/s 200 Criminal Procedure Code.

7. On behalf of the respondent No. 1 it has been fairly conceded that the learned Magistrate could not have passed the impugned order after having passed an order to proceed u/s 200 Criminal Procedure Code.

8. Shri Dhore, the learned counsel appearing for respondent No. 2 submitted that the learned Magistrate was justified in passing the impugned order having regard to the offences alleged as against the applicants.

9. Having heard the learned counsel for the parties and having perused the record, we are of the considered opinion that it would be in the interest of justice to quash both the orders namely the order dated 16th April 2012 passed by the learned Magistrate as well as impugned order dated 19th July 2012 which is impugned in the present application. No doubt the Magistrate having passed an order to proceed u/s 200 Criminal Procedure Code, he thereafter could not have passed order directing investigation u/s 156(3) Criminal Procedure Code.

10. Be that as it may, considering the allegations made in the complaint by respondent No. 2, we are of the considered opinion that it would be in the interest of justice to direct the Magistrate to decide afresh, whether to proceed u/s 156(3) or to proceed u/s 200 of Criminal Procedure Code. In the result, therefore, orders dated 16th April 2012 and 19th July 2012 are quashed and set aside and the learned Magistrate is directed to decide as to whether to pass order u/s 156(3) or to proceed u/s 200 of Criminal Procedure Code. Consequently, the F.I.R. registered on 27.07.2012 by respondent No. 1 pursuant to order u/s 156(3) of Criminal Procedure Code is also quashed.

Respondent No. 2 to appear before the learned Magistrate on 28th February 2013 at 11 a.m.

Rule is absolute in the aforesaid terms.