

(2013) 07 BOM CK 0284

In the Bombay High Court

Case No : Criminal Application (Apl) No. 463 of 2012

Shri B.H. Patil and Others

APPELLANT

Vs

Shri Chandrashekhar

RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Citation : (2014) ALLMR(Cri) 188

Hon'ble Judges : P.D. Kode, J

Bench : Single Bench

Advocate : A.D. Dangore, for the Appellant; N.D. Khamborkar, for the Respondent

Judgement

P.D. Kode, J.—Heard. Rule. Returnable forthwith. Heard finally by consent of parties.

2. The applicants seek for exercising powers u/s 482 of the Code of Criminal Procedure for quashing and setting aside the order dated 9th August, 2011 passed by the learned Judicial Magistrate First Class, Kuhi in Criminal Case No. 53/2010 issuing the process u/s 465 read with Section 34 of the Indian Penal Code against the applicants, upon the complaint made by respondent to the said Court for the applicants along with one more person having committed the offence under Sections 406, 415, 420 and 465 of I.P.C. Considering the short controversy involved in the matter, it is unnecessary to recite in the detail regarding the matters stated in the said complaint.

3. Mr. A.D. Dangore, the learned counsel for the applicants has submitted that after the said respondent had presented the complaint, the learned Magistrate was pleased to order inquiry u/s 202 of the Code of Criminal Procedure and in accordance with the said order passed, Police Station Officer Veltur submitted the report. It is contended that as per the said report, no offence was made out against any of the applicants and so also against the accused No. 5 in the said complaint. The learned counsel submitted that once the learned Magistrate to call

the report, then it was his bounden duty to take into consideration the matters stated in the said report later on while considering question of issuing process. It is submitted that though it was open for the learned Magistrate to disagree with the matters stated in the report and the learned Magistrate was competent to issue the order of process, in the instant case the order impugned does not reveal that he has taken into consideration the negative report given by the Investigating Agency. It is submitted that same is apparent as the order impugned fails to disclose any reason given therein for which the learned Magistrate disagreed with the matters stated in the said report. It is urged that in such circumstances, the order of process being passed without the application of mind, the same cannot be legally sustained and may be quashed and set aside and the matter may be relegated back to the trial Court for deciding the same in accordance with law. The learned counsel also relied upon the decision in the case of Vaidya Kuldip Raj Kohil Vs. State of Maharashtra and Another, in support of his submission regarding the necessity of the learned Magistrate recording the reasons for disagreeing with the said report submitted by the Investigating Agency.

4. Mr. N.D. Khamborkar, the learned counsel for the respondent though fairly submitted that the legal position as pointed out is emerging from the decision relied, he urged that the order impugned does not reveal that there was non-application of mind. It is submitted that recitals in the said order revealed that the learned Magistrate has taken into consideration entire record of the case. It is thus submitted that there are no merits in the petition and the same be dismissed.

5. Thoughtful considerations were given to the submissions advanced by both the sides. After considering the provisions of Section 203 of the Cr.P.C., it is crystal clear that the learned Magistrate who had opted for sending the matter for the investigation, was bound to take into account the report submitted by the Investigating Agency. Though the reference to the order reveals a bald recital of all the record of the case has been taken into consideration i.e. as pointed out by the learned counsel for the respondent, still considering the duty cast upon the learned Magistrate u/s 203 of the Cr.P.C., it is difficult to perceive that a faithful compliance with the said provision was made by the learned Magistrate. Such a conclusion is apparent as the entire order fails even to whisper the reason because of which the learned Magistrate disagreed with the negative report given by the Investigating Agency. Such a requirement is also seen from the decision referred by the learned counsel for the applicants.

6. The learned counsel for the respondent also submitted that ordinarily the remedy for challenging an order of issue of process is by preferring an application for revision and the applicants having not availed the said remedy, they may be directed to adopt such a course. Though there is substance in the earlier part of the submission canvassed, still considering the purpose for which the powers u/s 482 of the Cr.P.C. are exercised, it is difficult to accede with the

said submission. It needs no saying that the powers u/s 482 of the Cr.P.C. are to be sparingly used, still the same are required to be exercised in event of a flagrant error or gross abuse of the process of law is brought to the notice of the Court. It can be further added that initiation of proceedings of criminal nature which puts fetters upon the rights of the citizen can be permitted only after due application of mind and in accordance of law. In the instant case, the learned Magistrate having ignored the negative report in favour of the applicants, nor gave any reasons for not agreeing with the matters stated in the same, clearly shows that the order impugned was mechanically passed without any application of mind. Thus from the said angle, the present case appears to be the fit case for exercising the powers u/s 482 of the Cr.P.C. for serving the ends of justice.

7. Resultantly, the order impugned dated 9th August, 2011 passed by the Judicial Magistrate First Class, Kuhl is hereby quashed and set aside and the matter is relegated back to the learned Magistrate for deciding the same in accordance with the law. Since the order impugned was passed on 9th August, 2011, the learned Magistrate is directed to decide the relevant issue i.e. whether process deserves to be issued or otherwise, within four weeks from the date of receipt of this order. The bail bonds and surety bonds, if any, executed by the applicants stand cancelled. Rule made absolute in the above terms.