
(2002) 11 BOM CK 0042

In the Bombay High Court

Case No : Criminal Writ Petition No. 56 of 1998

Shri Rameshbhai Dayalal Pandya and Another

APPELLANT

Vs

Sou. Padmadevi S. Jain and Another

RESPONDENT

Date of Decision : 28-11-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)

Negotiable Instruments Act, 1881 (NI) — Section 138

Penal Code, 1860 (IPC) — Section 190, 34, 406, 420

Citation : (2003) 2 ALD(Cri) 67 : (2003) 2 ALD(Cri) 113 : (2003) BomCR(Cri) 1158

Hon'ble Judges : J.G. Chitre, J

Bench : Single Bench

Advocate : K.V. Saste, app, S.A. Ingawale, for the Appellant;

Final Decision : Dismissed

Judgement

J.G. Chitre, J.—Heard Shri Ingawale and Shri Saste. The petitioners are hereby assailing correctness, propriety and legality of the order passed by J.M.F.C. Ichalkaranji in the matter of Criminal Case No. 404 of 1997.

2. Shri Ingawale submitted that the respondent/original complainant did not issue a notice to the petitioners, as contemplated by provisions of Section 138 of Negotiable Instruments Act and filed the said complaint and hence the said complaint is bad in law. He submitted that the learned Magistrate did not notice this glaring infirmity and directed the police to make the enquiry in view of provisions of Section 156(3) of Criminal Procedure Code 1973. Shri Saste, A.P.P. appearing for the prosecution, submitted that the said complaint is revolving around the provisions of Section 420 of Indian Penal Code and not around Section 138 of Negotiable Instrument Act and therefore, there is no need of seeing, whether the said notice has been issued or not. He justified the said order as correct, proper and legal and prayed for dismissal of this writ petition.

3. The complaint shows that the original complainant alleged that the petitioner

committed offence punishable under provisions of Sections 406, 420 r/w Section 34 of Indian Penal Code. Section 406 is not spelled out by the allegations made in the complaint but prima facie case has been made out in respect of an offence punishable u/s 420 of Indian Penal Code. Section 190 of Code of Criminal Procedure 1973 (hereinafter referred to as Code for convenience) empowers a Magistrate to take cognizance of offence:

1. Upon receiving a complaint of facts which constitute such offence;
2. Upon a police report of such facts;
3. Upon information received from any other person than a police officer upon his own knowledge, that such offence has been committed.

Section 156(3) empowers a Magistrate to order such an investigation, as contemplated by provisions of Section 156 of the Code. Here the satisfaction of the Magistrate, that said investigation is necessary in the interest of justice is sufficient for an action to be taken. If the Magistrate takes an action in that context, it cannot be throttled at the threshold the accused mentioned therein can wait for arrival of the report of the investigation from the concerned Police Officer. Thereafter such accused would be entitled to put a challenged to veracity of that before such Magistrate who thinks of taking cognizance or issuing the process in that context. The process started by legal exercise of the power cannot be strangulated for no reasonable cause at premature stage.

Thus, petition stands dismissed.

The parties are directed to act upon the copy of this order duly authenticated by the Sheristedar/Court Stenographer of this Court.