

(2015) 04 KAR CK 0240
In the Karnataka High Court
Case No : Criminal Petition No. 3146 of 2014

Shripal Jain and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200
Penal Code, 1860 (IPC) — Section 120(A), 406, 420, 468

Citation : (2015) 2 AKR 754 : (2015) 4 KCCR 3257

Hon'ble Judges : A.N. Venugopal Gowda, J

Bench : Single Bench

Advocate : Hashmath Pasha, for the Appellant; Vijay Kumar Majage, HCGP and Harish H.V., Advocates for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopal Gowda, J.—Respondent Nos. 2 and 3 having filed a complaint on 24.04.2014, under Section 200 of Cr.P.C. registered as PCR No. 9/2014 and the JMFC having referred the said complaint, under Section 156(3) of Cr.P.C. or investigation and to submit final report by 03.06.2014 and the first respondent having registered case in Crime No. 100/2014 for the offences under Sections 120(A), 406, 420, 468 of IPC and submitted the FIR, this petition was filed to quash the entire proceedings initiated in PCR No. 9/2014 and the order of reference dated 24.04.2014 and the consequent registration of FIR in Crime No. 100/2014 by the first respondent. Sri Hashmath Pasha, learned advocate, contended that the complaint filed by respondent Nos. 2 and 3 does not contain any allegation which constitute any offence and the allegations made therein being of civil nature, the order of reference dated 24.04.2014 passed by the JMFC is an abuse of process of law. He submitted that the JMFC has passed a mechanical order and the non-application of mind to the contents of the complaint being apparent, there is abuse of jurisdiction of the criminal court. He contended that before passing an order under Section 156(3) of the Code, the Magistrate ought to have exercised caution to know whether any attempt has

been made by the complainants to give a cloak of criminal case for a civil dispute, inasmuch as the first respondent having no other option, has registered FIR for non-bailable offences, which empowers for investigation, inclusive of arrest. He submitted that the impugned order dated 24.04.2014 having not met the legal requirements and there being abuse of process of law is liable to be quashed.

2. Sri H.V. Harish, learned advocate appearing for respondent Nos. 2 and 3, on the other hand, submitted that the impugned order being only a reference for investigation of the case by the jurisdictional police and the petitioners having not suffered any prejudice, no interference at this stage is called for.

3. Perused the record. The impugned order reads thus: "Complainant present and filed complaint on 24/04/2014. Acting u/S. 156(3) Cr.P.C. case is refer to PI Hiriya Town P.S. for investigation for final report by 03/06/2014."

4. According to the petitioners, one Smt. Puttamma W/o Late Gujjarappa, Anesidri Village, Hiriya Taluk, was the owner of land bearing Sy. No. 119, to an extent of 15 acres of 22 guntas and that she had executed a Will on 10.02.2005 in favour of her two daughters i.e., respondent Nos. 2 and 3 herein. Puttamma having applied for conversion of the land for industrial purpose, Deputy Commissioner, Chitradurga permitted the conversion by an order dated 08.01.2013. Petitioners state that Puttamma cancelled the said Will on 11.02.2013, by execution of a cancellation deed. Petitioners contend that on 11.02.2013, Puttamma sold the said land for valuable consideration and respondent Nos. 2 and 3 also executed the sale deed. Puttamma having died on 23.11.2013, O.S. No. 5/2014 was filed in the court of Senior Civil Judge, Hiriya and in the said suit, respondent Nos. 2 and 3 herein have been impleaded as defendant Nos. 1 and 8. Petitioners contend that to avoid confrontation amongst the family members regarding the actual sale of the property as per sale deed dated 11.02.2013, the complaint in question was filed.

5. The learned Magistrate without even perusing the complaint or hearing the complainant has passed order dated 24.04.2014, extracted supra. The learned Magistrate, while exercising the power under Section 156(3) of Cr.P.C., ought to have kept in view the enunciation of law by the Apex Court in CREF Finance Ltd. Vs. Shree Shanthi Homes Pvt. Ltd. and Another, AIR 2005 SC 4284 : (2005) 100 CLT 638 : (2005) 127 CompCas 311 : (2005) CriLJ 4524 : (2005) 4 CTC 684 : (2005) 8 JT 87 : (2005) 7 SCC 467 : (2005) 2 SCR 873 Supp . It has been held therein as follows:

"When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The Magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being

wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence itself."

6. In Ramdev Food Products Private Limited Vs. State of Gujarat AIR 2015 SC 1742 : (2015) CriLJ 2382 : (2015) 2 JCC 994 : (2015) 2 RCR(Criminal) 372 : (2015) 3 SCALE 622 , while dealing with exercise of power under Section 156(3) Cr.P.C. by the learned Magistrate, Apex Court has held as follows:

".....the direction under Section 156(3) is to be issued, only after application of mind by the Magistrate."

The impugned order when examined in the light of the enunciation of law by the Apex Court, in the decisions, noticed supra, the one and only inference that can follow is, that there is total non-application of mind and there is arbitrary action. Power under Section 156(3), when exercised, there should be application of mind. The same is lacking in the instant case.

In the result, petition is allowed and the impugned order dated 24.04.2014 is quashed.