

(2015) 03 BOM CK 0278

In the Bombay High Court

Case No : Criminal Writ Petition No. 163 of 2015

Shriram

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(3), 190, 2(d)
Penal Code, 1860 (IPC) — Section 420, 463, 465, 468, 471

Citation : (2015) ALLMR(Cri) 2484 : (2016) 1 BomCR(Cri) 217

Hon'ble Judges : Sadhana S. Jadhav, J

Bench : Single Bench

Advocate : J.M. Murkute, for the Appellant; S.G. Nandedkar, APP and U.B. Bilolikar, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sadhana S. Jadhav, J—Heard, Rule. Rule made returnable forthwith with the consent of the parties. The petitioner herein happens to be the original complainant. On 13th October, 2014, the petitioner herein had filed a complaint before the Chief Judicial Magistrate at Nanded, alleging therein that, he happens to be the Life member of National Integrated Medical Association (hereinafter referred to as "NIMA" for the sake of brevity). It is alleged in the complaint that, the association is the owner of property bearing Municipal No. 1-8-932. That, respondent No. 2 herein without consulting the other members of the association had rented the said premises in favour of the Post Office. He had retained all the documents with him. The rent which was paid by the Post office was accepted in cash by respondent No. 2. In short, the complainant had alleged that respondent No. 2 has misappropriated the funds of the association and liable for offence punishable under Sections 420, 463, 465, 468 and 471 of the Indian Penal Code. By an order Dt. 5th November, 2014, learned 3rd Judicial Magistrate First Class, Nanded (herein after shall be referred to as "JMFC"), had given directions under Section 156(3) of the Code of Criminal Procedure. It appears from the order passed by JMFC that the said order in the nature of direction was not passed for

the purpose of asking but the learned JMFC had applied his judicial mind.

2. Pursuant to the said order, crime No. 158 of 2014 was registered at Shivaji Nagar Police Station, Nanded, against respondent No. 2 for offence punishable under Sections 420, 463, 465, 468 and 471 of the Indian Penal Code. Respondent No. 2 challenged the order passed under Section 156(3) of the Code of Criminal Procedure by filing Criminal Revision No. 117 of 2014. The learned Sessions Judge, Nanded, vide judgment and order dated 17th January, 2015, has been pleased to allow the revision and has quashed the order passed by learned JMFC issuing directions under Section 156(3) of the Code of Criminal Procedure. The learned Sessions Judge has considered that the petitioner herein had no locus standi to file the complaint as the property allegedly misappropriated belongs to registered organizations and those organizations have right to take action if their property is misappropriated. In fact, this observation itself is unwarranted. Section 2(d) of the Code of Criminal Procedure contemplates as follows:

"2(d). "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report."

3. In view of this, it can be said that the petitioner had the locus to file a complaint before learned JMFC and seek directions under Section 156(3) of the Code of Criminal Procedure. For the purpose of initiating criminal prosecution, the locus of the complainant cannot be questioned. Section 156 of the Code of Criminal Procedure reads thus:

"156. Police officer's power to investigate cognizable case.-(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned."

Needless to say that, an order passed under Section 156(3) of the Code of Criminal Procedure is in the nature of direction. That, the said order is not a revisable order. It is only a direction to the Police Station to register an offence and investigate into the case in accordance with law. Hence, the revision challenging the said order was not maintainable. However, it appears from the order passed by the learned Sessions Judge that the maintainability of the said revision was not considered.

The learned Sessions Judge has further observed that, the said order is passed without application of mind as the learned Magistrate has simply considered the report of the three members showing that the petitioner has committed fraud. According to the learned Sessions Judge, on the basis of single sentence, the learned Magistrate has passed an order with a presumption that the matter is very serious and needs to be taken cognizance of. The learned Sessions Judge has failed to make discrimination between the taking of cognizance and passing of an order under Section 156(3) of Code of Criminal Procedure, which is directory in nature. Learned Magistrate had not taken cognizance of the offence but had only directed investigation into the said offence. The observations of the learned Sessions Judge that, considering the merits of the complaint or making an attempt to ascertain the truthfulness and genuineness of the complaint was unwarranted. In fact, the revision was not maintainable and ought to have been dismissed as it was not an order issuing process but only an order issuing directions for investigation. Learned APP submits that, respondent No. 2 was granted pre-arrest bail. There was a formal arrest on 15th December, 2014 and he has been enlarged on bail. The investigating officer has further filed a report that the present respondent No. 2 has filed a complaint before the Dy. S.P. Anti Corruption Bureau against the Investigating Officer -Ramesh Suryakar and, hence, the matter is being investigated. The report prima facie shows that there is incriminating material against the respondent No. 2. Learned APP upon instructions submits that, respondent No. 2 has not cooperated with the Investigating Agency. Be that as it may, the order passed by learned Sessions Judge, Nanded, dated 17th January, 2015, deserves to be quashed and set aside. The petition deserves to be allowed and is accordingly allowed. Order dated 17th January, 2015, passed by learned Sessions Judge, Nanded, is hereby quashed and set aside. Rule is made absolute in above terms. No order as to costs.