

(2013) 09 BOM CK 0018

In the Bombay High Court

Case No : Criminal Writ Petition No. 733 of 2013

Smt. Savitrabai Sureshchandra Khatod

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 24-09-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 3880 : (2014) 3 BomCR(Cri) 152

Hon'ble Judges : Abhay M. Thipsay, J

Bench : Single Bench

Advocate : Kalani Pravin N, for the Appellant; K.S. Patil, APP, for the Respondent

Final Decision : Dismissed

Judgement

Abhay M. Thipsay, J.—Rule. By consent, Rule made returnable forthwith. By consent heard finally. The petitioner has filed a complaint in the Court of Chief Judicial Magistrate, Aurangabad against four persons alleging commission of offences punishable u/s 406 of Indian Penal Code (IPC), Section 409 of IPC and Section 420 of IPC by them. In the complaint, the petitioner prayed that an order u/s 156(3) of the Code of Criminal Procedure (Hereinafter referred to as "the Code") be passed. The learned Magistrate, after considering the averments in the complaint, came to the conclusion that it was not proper to direct investigation into the matter as contemplated u/s 156(3) of the Code but, it would be sufficient, if the complaint is proceeded further by examining the complainant on oath as contemplated u/s 200 of the Code.

The petitioner was not happy with this view of the Magistrate and challenged the Magistrate's order by approaching the Court of Sessions in Revision. The Additional Sessions Judge, Aurangabad, who heard the Revision, found the order passed by the Magistrate to be proper and dismissed the Revision.

Being aggrieved thereby the petitioner has approached this Court invoking its constitutional jurisdiction and praying that the orders passed by the Chief Judicial Magistrate and by the Additional Sessions Judge be set aside; and that a

direction may be given to the Police to register a crime and commence the investigation.

2. I have heard Mr. P.N. Kalani, the learned counsel for the petitioner and Mr. K.S. Patil, the learned A.P.P. for Respondent. The learned A.P.P. has shown to me the papers made available to him by the Police in connection with the complaint that had been filed with the Inspector of Police, Kranti Chowk Police Station by the petitioner on 28.12.2012.

3. The contention of the learned counsel for the petitioner is that since the complaint/report made by the petitioner disclosed the commission of a cognizable offence, it was incumbent on the Police to have registered a crime and commenced investigation. That, since the police did not do it, it was incumbent on the Magistrate, on the prayer of the petitioner to that effect, to direct investigation u/s 156(3) of the Code. According to him, the reasons given by the learned Magistrate, as also by the Additional Sessions Judge in holding that there was no necessity of ordering investigation into the matter are not proper or legal.

4. With the assistance of the learned counsel for the petitioner, I have gone through the Petition and the Annexures thereto. I have gone through the complaint/report lodged by the petitioner with Kranti Chowk Police Station and also the complaint lodged by her before the Magistrate.

5. It is true that entire reasonings adopted by the Chief Judicial Magistrate cannot be accepted as correct. Particularly, there is substance in the contention of the learned counsel for the petitioner that the Chief Judicial Magistrate's interpretation of the observations made in the case of Popatbhai Panchambhai Bhutani V/s State of Maharashtra (2010 All M.R.(Cri.) 244) is not correct. It appears that the Chief Judicial Magistrate was of the view that an order for investigation, as contemplated in Section 156(3) of the Code, should not be passed unless the aggrieved person has approached a superior officer of the police against the refusal by the Incharge of the Police Station to register a crime. The decision in Popatbhai's case (supra) nowhere says so. All that it says is that, ordinarily, the Police should be approached first; and this approaching of police is meant to be approaching the Inspector of Police of the concerned Police Station with a report of commission of a cognizable offence. In case of refusal to register a crime on the basis of such report by the Officer Incharge of a Police Station, the superior officer of the police, may or may not be approached by the informant; and approaching such a superior officer cannot be said to be a condition precedent for approaching the Magistrate for seeking an order u/s 156(3) of the Code. As a matter of fact, the decision clearly lays down that there is no legal bar for approaching a Magistrate directly- i.e. even without invoking provisions of Section 154 of the Code but, it has been laid down that normally a person should invoke the provisions of Section 154 of the Code before taking recourse to the powers of a Magistrate. Thus, ordinarily, a report should be made to the officer Incharge of the police station before approaching a Magistrate but, this requirement cannot be further stretched to mean that in case of refusal by

an officer in-charge of a police station, a superior officer of the police must necessarily be approached before a Magistrate is approached for an order u/s 156(3) of the Code.

6. Be that as it may, in the instant case, there appears to be civil dispute pending between the petitioner and the persons against whom the complaint was lodged with the police and before the Magistrate. I have carefully gone through the letter dated 28.12.2012 addressed by the petitioner to the Inspector of Police, Kranti Chowk Police Station and I am unable to hold that it is such, that the police were bound to treat it as the "first information of commission of a cognizable offence" and register the same.

7. It is not that the Magistrate has come to the conclusion that there is no case for proceeding against the persons against whom the complaint is lodged and he is considering that aspect of the matter. He has kept the matter for examination of the complainant i.e. the petitioner under the provisions of Section 200 of the Code. The petitioner's contention that the Magistrate was obliged to order an investigation, and that he could not have decided to proceed in accordance with the provisions of Chapter XV of the Code, is unreasonable.

8. This is not a case where there is any patent illegality or perversity in the order passed by the learned Magistrate, or by the Additional Sessions Judge. Consequently, there is no case for invocation of the constitutional jurisdiction of this Court which is of an extraordinary nature.

9. The petition is dismissed. Rule is discharged.