
(2014) 01 KAR CK 0028

In the Karnataka High Court

Case No : Criminal Petition No. 2340 of 2013

Sri. Muralikrishna, Sri. Mahesh Babu, Sri. Harikrishna and Sri.
Mohan Chabria

APPELLANT

Vs

The Station House Officer Upparpet Police Station Bangalore,
The Police Commissioner off. of Police Commissioner Infantry
Road Bangalore and Sri. Amrutesh N.P.

RESPONDENT

Date of Decision : 06-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3) 173 173(1) 190(1)(a)
190(1)(b)

Penal Code, 1860 (IPC) — Section 268 294 295A 298 499

Citation : (2014) 01 KAR CK 0028

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

**Advocate : A Gopiprakash, for the Appellant; B.J. Eshwarappa, HCGP for R1 and
R2 R-3 SD., for the Respondent**

Final Decision : Disposed Off

Judgement

H.N. Nagamohan Das, J.—Respondent No. 3 filed a private complaint in PCR No. 6109/.2013 on the file of IX Additional City Metropolitan Magistrate, Bangalore city against the petitioners for the offences punishable u/s 268, 294, 295A, 298, 503, 504, 499 IPC. The jurisdictional Magistrate under the impugned order referred the matter to the respondent police u/s 156(3) of Cr.P.C. for investigation and to report. At that stage the petitioners approached this Court in this petition and obtained an order of stay of the order of the trial Court. The Supreme Court in the case of H.S. Bains, Director, Small Saving-Cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State (Union Territory of Chandigarh), has held as under:

The Magistrate is not bound by the conclusions drawn by the Police and he may "decide to issue process even if the Police recommend that there is no sufficient ground for proceeding further. The Magistrate after receiving the Police report,

may, without issuing process or dropping the proceeding decide to take cognizance of the offence on the basis of the complaint originally submitted to him and proceed to record the statements upon oath of the complainant and the witnesses present u/s 200 Criminal Procedure Code and thereafter decide whether to dismiss the complaint or issue process. The mere fact that he had earlier ordered an investigation u/s 156(3) and received a report u/s 173 will not have the effect of total effacement of the complaint and therefore the Magistrate will not be barred from proceeding under Sections 200, 203 and 204. Thus, a Magistrate who on receipt of a complaint, orders an investigation u/s 156(3) and receives a police report u/s 173(1), may, thereafter, do one of three things: (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence u/s 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report: (3) he may take cognizance of the offence u/s 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses u/s 200. If he adopts the third alternative, he may hold or direct an inquiry u/s 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be.

2. In view of the law declared by the Apex Court I find no illegality or error in the order passed by the trial Court. In the investigation if it is found that no case is made out against the petitioners then the respondent police will file a B report. It is also open for the petitioners to produce the evidence available with them before the Investigating Officer. In that event the Investigating Officer to consider the same in accordance with law and to expedite the investigation. With the above observation, the petition is hereby disposed off.