

(2000) 11 GUJ CK 0073
In the Gujarat High Court

Case No : Criminal Revision Application No. 332 of 1993

State of Gujarat

APPELLANT

Vs

Parshottam Narsibhai Chauhan and Another

RESPONDENT

Date of Decision : 14-11-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(1), 156(3), 190, 204
Penal Code, 1860 (IPC) — Section 114, 120

Citation : (2001) 1 GLR 913 : (2001) 2 RCR(Criminal) 680

Hon'ble Judges : H.H. Mehta, J

Bench : Single Bench

Advocate : B.Y. Mankad, app, for the Appellant;

Judgement

1. The State of Gujarat has, by preferring this Criminal Revision Application under Sec. 397 of the Criminal Procedure Code, 1973 (for short the "Cr.P.C."), challenged the correctness, legality and propriety of order dt. 29th May, 1993 passed below complaint lodged by Parshottam Narsibhai Chauhan who is a revision -opponent no.1 in this Criminal Revision Application against accused Ramesh Patel who is a revision-opponent no.2 and others. On or about 29th May, 1993 that complaint came to be registered as Court Inquiry No.279 of 1993 on the file of the Chief Judicial Magistrate, Rajkot.

2. The facts leading to this present Criminal Revision Application, in a nut shell, are as follows:-

The complainant lodged his complaint against accused for offences punishable under Secs. 406, 520-504 , 120-B read with Sec. 114 and 506(2) of the Indian Penal Code. On the date on which the complainant lodged his complaint, the learned Chief Judicial Magistrate, Rajkot instead of taking cognizance of offences, under Sec. 204 Cr.P.C. 1973 passed an order dated 29.5.1993 directing the office to send the said complaint to Deputy Commissioner of Police for inquiry under Sec. 156(3) of the Criminal Procedure Code, 1973 (for short " the Cr.P.C.") and with further direction to complete the investigation within 30 days.

3. Being aggrieved against and dissatisfied with said order dt. 29th May, 1993, the State Government has preferred this Criminal Revision Application.

4. Heard Shri B.Y. Mankad, the learned APP for the revision petitioner -State of Gujarat. The revision opponents have thought fit to remain absent, though duly served with the Rule of this Court.

4. I have gone through the order challenged in this Criminal Revision Application. Shri B.Y. Mankad, the learned APP has argued that the learned Chief Judicial Magistrate, Rajkot has passed an order under Sec. 156(3) of Cr.P.C. for investigation to be carried out by the Deputy Commissioner of Police. He has further argued that looking to Sec. 156(3) of Cr.P.C. such investigation can only be ordered to be carried out as per sub-sec.(1) of Sec. 156 of Cr.P.C. Sec. 156(1) of Cr.P.C. reads as follows:

" 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 the provisions of Chapter XIII".

Sub-sec.(3) of Sec. 156 speaks that any Magistrate empowered under Sec. 190 may order such an investigation as above mentioned, i.e. as mentioned in sub-sec.(1) of Sec. 156 of Cr.P.C. Hence the Magistrate can order only any officer in charge of Police Station for investigation to be carried out. He has then argued that Deputy Commissioner of Police who is referred to in the impugned order is not an officer in charge of Police Station. He is a merely a Supervisory Officer for different Police Stations in the area over which he has to supervise the Police Stations. By referring this Sec. 156(3) of Cr.P.C. he has argued that the learned Magistrate has seriously erred in law by ordering the Deputy Commissioner of Police to investigate the case. When Sec. 156(1) of Cr.P.C. clearly states that such an investigation can be carried out by an officer in charge of Police Station, then no other officer can be ordered to investigate the case. Under the circumstances, order with regard to direction to investigate the case is legal one but the officer to whom the investigation is ordered is not in accordance with the provisions of Sec. 156(3) read with Sec. 156(1) of Cr.P.C. and that part of order can not be said to be a legal order, and therefore, so far as part of order relating to order to investigate the case is not required to be disturbed, but so far as the officer to whom the investigation is ordered, is required to be modified.

5. In view of the discussion made hereinabove, impugned order so far as it relates to ordering of investigation to Deputy Commissioner of Police is illegal and the same is required to be set aside and instead of ordering Deputy Commissioner of Police, the investigation is required to be ordered to Police Inspector of Bhaktinagar Police Station, Rajkot.

6. In view of what is stated above, impugned order dated 29/5/1993 is ordered to be modified to the following extent:

(i) Complainant's complaint is ordered to be investigated under Sec. 156(3) read with sub-sec.(1) of Sec. 156 of Cr.P.C. by Police Inspector, Bhaktinagar Police Station, Rajkot.

7. In view of what is stated hereinabove, this Criminal Revision Application deserves to be partly allowed, and accordingly it is partly allowed. The learned Chief Judicial Magistrate, Rajkot is directed to send copy of complaint to the Police Inspector, Bhaktinagar Police Station, Rajkot at the earliest, preferably within 15 days from the date of receipt of order of this Court for investigation under Sec. 156(3) of Cr.P.C. giving direction to Police Inspector, Bhaktinagar Police Station, Rajkot to investigate the case and complete the same within 30 (Thirty) days from the date of receipt of order from the learned Chief Judicial Magistrate, Rajkot. Rule is made absolute to the aforesaid extent. Interim relief granted on 24.9.1993 earlier stands vacated forth with.