
(2015) 06 BOM CK 0145

In the Bombay High Court

Case No : Criminal Writ Petition No. 1166 of 2010

The Superintendent of Police

APPELLANT

Vs

Satish and Others

RESPONDENT

Date of Decision : 18-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 11, 13, 14, 156, 156(3)
Prevention of Corruption Act, 1988 — Section 4

Citation : (2016) ALLMR(Cri) 472 : (2015) 4 BomCR(Cri) 587 : (2016) CriLJ 1150

Hon'ble Judges : R.M. Borde, J;P.R. Bora, J

Bench : Division Bench

Advocate : Alok Sharma, Asstt. Solicitor General of India, for the Appellant; P.B. Shirsath, Advocates for the Respondent

Judgement

P.R. Bora, J.—Heard. Rule. Rule made returnable forthwith with consent of parties.

2. A question that arises for consideration in the present petition is,

"Whether the directions given by the learned Special Judge, Aurangabad under Section 156(3) of Code of Criminal Procedure, directing CBI, i.e. the present petitioner to make an investigation into the complaint filed by Respondent No. 1 and to submit report thereof, is legal and within the powers of the learned special Judge.?"

3. Respondent No. 1 herein had preferred an application/complaint bearing Criminal Misc. Application No. 170/2010 before the Special Court at Aurangabad, dealing with anti-corruption cases and had sought in the said application/complaint, a direction against CBI, i.e. present petitioner to investigate into the said complaint under Section 156(3) of Code of Criminal Procedure (for short, the Code).

4. The learned Special Judge, vide impugned order has accordingly directed such

investigation under Section 156(3) of the code by the present petitioner. By order passed on 6th January, 2011, this Court has stayed the implementation and operation of the impugned order.

5. In the present petition, it is the contention of the petitioner that the order so passed by the learned Special Judge is patently illegal, unsustainable and without jurisdiction.

6. Shri Deshpande, learned Assistant Solicitor General of India (ASGI) appearing for the petitioner submitted that the Central Bureau of Investigation (CBI) is an independent investigating agency, established under the Delhi Special Police Establishment Act, 1946 (for short, DSPE Act) and is controlled solely by the Union of India. The learned ASGI has further submitted that from the provisions of Sections 5 and 6 of DSPE Act, it is clear that the officers of CBI cannot operate within the territory of the state without notification and consent of the State Government. The learned ASGI further submitted that the CBI is not a local police station within the jurisdiction of the concerned Special Judge, Aurangabad, so as to issue directions under Section 156(3) of Cr.P.C. The learned ASGI further submitted that Section 193 of Cr.P.C. Bars the Sessions Court from taking direct cognizance of the offences and Section 190 of Cr.P.C. Also contemplate that the Judicial Magistrate, First Class can only take cognizance of offence on a complaint filed before him. The learned ASGI reiterated that since the office of the petitioner is not situated within the local jurisdiction of the learned Special Judge, the order passed by the learned Special Judge, directing investigation under Section 156(3) Cr.P.C. by the petitioner is patently illegal and in excess of the jurisdiction vested in the said Court.

7. The learned ASGI, in support of his contentions, relied upon two Judgments of the Hon'ble Apex court; first in the matter of Central Bureau of Investigation Vs. State of Rajasthan and Another, AIR 2001 SC 668 : (2001) CriLJ 968 : (2001) 1 JT 624 : (2001) 1 SCALE 250 : (2001) 3 SCC 333 : (2001) 1 SCR 472 : (2001) 1 UJ 441 : (2001) AIRSCW 305 : (2001) 1 Supreme 263 and the another in the case of Sakiri Vasu Vs. State of U.P. and Others, AIR 2008 SC 907 : (2008) 106 CLT 354 : (2007) 13 JT 466 : (2008) 2 SCC 409 : (2007) 12 SCR 1100 : (2008) AIRSCW 309 : (2008) 8 Supreme 226 and prayed for setting aside the impugned order.

8. The learned counsel appearing for Respondent No. 1 supported the impugned order. The learned Counsel submitted that it was well within jurisdiction of the learned Special Judge to direct investigation by the present petitioner under Section 156(3) Cr.P.C. He, therefore, prayed for dismissal of the writ petition.

9. We have carefully considered the submissions advanced on behalf of the petitioner as well as Respondent No. 1. We have also perused the impugned order. We have also gone through the relevant provisions in Cr.P.C. And the Prevention of Corruption Act as well as the provisions of Delhi Police Special Police Establishment Act.

10. We would first deal with the argument of the learned ASGI that the Special Judge is not a "Magistrate" and, therefore, cannot pass order under Section 156(3) of the Code. This controversy is set at rest long back by a decision of five-judges Bench of the Hon'ble Apex Court in the case of A.R. Antulay Vs. Ramdas Srinivas Nayak and Another, AIR 1984 SC 718 : (1984) CriLJ 647 : (1984) 1 Crimes 547 : (1984) 1 SCALE 239 : (1984) 2 SCC 500 : (1984) 2 SCR 914 . In paragraph 27 of the said decision, the Hon'ble Apex court has ruled as under, -

"The Court of a Special Judge is a Court of original criminal jurisdiction. As a Court of original criminal jurisdiction in order to make it functionally oriented some powers were conferred by the statute setting up the Court. Except those specifically conferred and specifically denied, it has to function as a Court of original criminal jurisdiction not being hidebound by the terminological status description of Magistrate or a Court of Session. Under the Code it will enjoy all powers which a Court of original criminal jurisdiction enjoys save and except the ones specifically denied."

In view of the aforesaid Supreme court dicta, it becomes abundantly clear that the Special Judge has power to pass order under Section 156(3) of the Code as a Court of original criminal jurisdiction. His this power is not restrained or specifically denied by any statute.

11. Moreover, in view of the fact that the complaint was pertaining to the offences under the Prevention of Corruption Act, the only court which has jurisdiction to take cognizance of such offences is the Special Court. This is clear from Section 4 of the Prevention of Corruption Act, 1988, which says that notwithstanding anything contained in the Code, the offences specified in the Act shall be tried only by a Special Judge. The Prevention of Corruption Act, provides that only a person who is or has been a Sessions Judge shall be qualified for appointment as a Special Judge. The cumulative effect of such provisions is that only a Special Judge is competent to take cognizance of the offences specified in the Act. No Magistrate can therefore take cognizance of such offences. If a Magistrate cannot take cognizance of certain offences, he has no power to order investigation under Section 156(3) of the Code in respect of such offences.

12. In the instant case, thus only the Special Judge was competent to take cognizance of the complaint filed by Respondent No. 1 involving allegations pertaining to the offences under the Prevention of Corruption Act. The objection raised by the learned ASGI therefore must be rejected.

13. Now, regarding the second and main controversy raised in the matter as about the competence of the Special Judge, Aurangabad to direct investigation under Section 156(3) of the Code by CBI. As has been submitted by the learned ASGI, the learned Special Judge could not have directed CBI to carry out the investigation under Section 156(3) of the Code. To substantiate his said contention, the learned ASGI has relied upon the judgment of the Hon'ble Apex court in the case of Central Bureau of Investigation through S.P. Jaipur v. State

of Rajasthan (cited supra). In the said matter, the facts were thus : a complaint was filed before the Magistrate alleging serious offences, whereupon the concerned Magistrate ordered investigation to be conducted by CBI and on completion of the investigation, final report was required to be filed. The CBI challenged the order of the Magistrate before the High Court of Delhi, contending that the Magistrate has no jurisdiction to order CBI to conduct investigation at least without obtaining the consent of the State Government concerned, as required under Section 6 of the Delhi Special Police Establishment Act, 1946. The Division Bench of the Delhi High court held that the Magistrate has power to do so. Thereafter the matter was taken to the Apex Court. The Hon"ble Apex Court, after having interpreted the powers of the Magistrate under Section 156(3) of the Code, set aside the order passed by the Magistrate as well as by the High court and ruled that it was not within the competence of the Magistrate to direct the investigation by CBI.

14. As observed by the Hon"ble Apex court in the Judgment (cited supra) what is contained in subsection (3) of Section 156 of the Code is the power to order the investigation referred to in sub-section (1) because the words "order such an investigation as above mentioned" in sub-section (3) are unmistakably clear as referring to the other sub-section. Thus, the power is to order an "officer in charge of a police station" to conduct investigation.

15. For better appreciation, we would like to reproduce Section 156 of the Code, which 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."

16. It is also necessary to look into the definitions of "police station and 1 office in charge of a police station" as provided in the Code.

Section 2(o) of the Code defines "officer in charge of a police station" as under, -

"officer in charge of a police station" includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present; "

Section 2(s) of the Code defines a "police station" as under, -

"police station" means any post or place declared generally or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf"

From the conjoint reading of the aforesaid definitions, it is evident that the primary responsibility of conducting investigation into offences in cognizable cases, vests with "officer in charge of a police station". Section 156(3) of the Code empowers a Magistrate to direct such officer in charge of the police station to investigate any cognizable case over which such Magistrate has jurisdiction. As provided under Section 14 of the Code, "subject to control of the High Court, the Chief Judicial Magistrate may, from time to time, define local limits of the areas within which the Magistrate appointed under Section 11 or under Section 13, may exercise all or any of the powers with which they may respectively be invested under this Code. The magisterial power thus cannot be stretched under sub-section (3) of Section 156 of the Code beyond directing the officer in charge of the police station falling within the jurisdiction of the said Magistrate. In other words, the Magistrate cannot order any police officer, other than one, who is in-charge of the police station within his jurisdiction to conduct the investigation. Such powers of the Magistrate under sub-section (3) of Section 156 of the Code, does not authorize the Magistrate to give direction to any other officer to cause inquiry.

17. It need not be stated that the principles involved in so far as powers of the Magistrates under Section 156(3) of the Code are concerned, the same as well would apply to the Special Judge dealing with the anti-corruption matters as the court of original criminal jurisdiction.

18. After having considered the relevant provisions of the Code, we have no doubt in our mind that the Special Judge, Aurangabad exceeded his jurisdiction in directing investigation under Section 156(3) of the Code by CBI by the impugned order. The learned Special Judge failed in appreciating that CBI is an independent establishment created under the provisions of Delhi Special Police Establishment Act and in view of the provisions of Section 5 and 6 of the said Act, he was not empowered to direct investigation by it. The learned Special Judge further did not appreciate that CBI is not a local police station within his jurisdiction so as to invoke section 156(3) of the Code in directing investigation by it. The impugned order is, therefore, liable to be set aside and the same is accordingly set aside. However, the original complainant, i.e. respondent No. 1 in the present petition, is at liberty to move again to the Special Court, if he so desires, for appropriate orders for investigation of the offences alleged by him in the said complaint against Respondent Nos. 2 to 6 in the present petition. Rule is made absolute in above terms.