
(2000) 11 BOM CK 0057
In the Bombay High Court
Case No : Criminal W.P. No. 386 of 1993

Tushar Vajubhai Gaglani

APPELLANT

Vs

Jagdeesh J. Vaswani and others

RESPONDENT

Date of Decision : 10-11-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 202
Penal Code, 1860 (IPC) — Section 34, 406, 408, 420

Citation : (2000) 11 BOM CK 0057

Hon'ble Judges : S.S. Parkar, J

Bench : Single Bench

Advocate : Shirish Gutpe instructed by M/s A.S. Dayal S. Associates, for the Appellant; V.B. Rajure for Respondent No. 1, Respondents Nos. 2 to 5 absent, though served and Ms. P.H. Kantharia, Assistant Public Prosecutor for Respondent No. 6-State, for the Respondent

Final Decision : Allowed

Judgement

S.S. Parkar, J.—The short question which is involved in this petition is whether the learned Magistrate could issue the notices to the proposed accused to show cause why the process be not issued against them for the alleged offences under sections 406, 408 and/or 420 read with section 34 of Indian Penal Code.

2. The respondent No. 1 - complainant had filed private complaint in the Magistrate's Court being RCC No. 154 of 1992 alleging the commission of offences under sections 406, 408 and/or 420 read with section 34 of Indian Penal Code against five accused. The learned Magistrate recorded the verification statement of the complainant. After going through the verification statement the learned Magistrate was of the view that it was necessary to issue show cause notices to the proposed accused as to why the process be not issued against them. Hence, the impugned order was passed issuing show cause notices to the proposed accused. That order is under challenge in this petition filed by the petitioner original accused No. 5.

3. Mr. Gupte the Learned Counsel appearing on behalf of the petitioner rightly contended that the impugned order could not be passed in law as the courses open to the learned Magistrate were only, either to issue process, if prima facie case is made out or postpone the same or in the third place for the matter for enquiry u/s 156(3) of Criminal Procedure Code. The course adopted by the learned Magistrate is not open under the Criminal Procedure Code and, therefore, the show-cause notice is liable to be quashed.

4. I find substance in the argument advanced on behalf of the petitioner. The learned Magistrate is bound by the procedure laid down under Criminal Procedure Code as regards the criminal cases right from the stage of entertaining complaints to holding enquiries, making investigations, conducting trials and ultimately passing orders. The learned Magistrate could not have evolved new procedure which is not contemplated by law. The accused has no locus standi in the matter before issuing process against him and therefore, he is not entitled to be heard before process is issued against him. The learned Magistrate has to consider the question of issuing process purely from the point of view of the complainant without reference to any defence that the accused may have. At the stage of issuing process, the Magistrate cannot enter into a detailed discussion on the merits or demerits of the case, but has to find out whether complaint makes out a prima facie case, in which case he can issue the process otherwise he can decline to issue the process and dismiss the complaint unless he adopts the course of referring the matter for investigation u/s 156(3) of the Criminal Procedure Code. Reference may be made in this connection to the decision of the Supreme Court in the case of Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, . In the said case Supreme Court has unequivocally held that the scope of the inquiry u/s 202 of Criminal Procedure Code is limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint on the materials placed by the complainant before the Court to find out whether prima facie case for issuing process has been made out and in the said inquiry the accused has got no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not. The counsel for the Respondent No. I is not in a position to justify the impugned order. In my view the impugned order issuing show-cause notice to the accused is unwarranted in law and, therefore, is liable to be quashed.

5. In the result, the petition is allowed. The impugned order is quashed and set aside and the rule is made absolute in terms of prayer clause (c) only of the petition. The matter is remanded to the learned Magistrate to consider the complaint in accordance with law as per the aforesaid discussion.