

(1998) 10 BOM CK 0044

In the Bombay High Court

Case No : Criminal Writ Petition No. 1235 of 1991

V.K. Mohan (Retd.)

APPELLANT

Vs

Shri Arun Dattatraya Bhand and Another

RESPONDENT

Date of Decision : 06-10-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 197, 200, 202
Penal Code, 1860 (IPC) — Section 420

Citation : (1999) 101 BOMLR 1

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T.K. Chandrashekhara, J.—This arises out of a summons issued by the Metropolitan Magistrate 23rd Court, Esplanade Bombay against the petitioner under Sections 420 and 422A of the IPC. Before the learned Magistrate first respondent has filed a complaint against the petitioner who "was at the relevant time General Manager, Indian Navy Colaba, Bombay alleging various mal practices in the management of the canteen by the petitioner. The said complaint was filed on 27th July 1987. On receipt of the complaint the learned Magistrate by his order dated 26.8.87 referred the matter to the police for investigation u/s 156(3) of Cr.P.C. After detailed investigation by the police all the charges levelled against the petitioner was found to be unsubstantiated by the police. The police made that report on 7.4.1988. Nevertheless a strange procedure has been adopted by the Magistrate that on 12.9.90 the complainant was examined and recorded his statement and issued the impugned process against the petitioner.

2. The learned Counsel Mrs. Teja Katdare submits that the procedure adopted by the Magistrate was quite irregular. She also submits that the petitioner being a public servant the sanction required u/s 197 of the Cr.P.C. was not taken, before the petitioner was prosecuted. The learned Counsel also submits that first respondent has no authority to prosecute the petitioner, and on this ground also

the Magistrate has committed illegality in issuing summons to the petitioner.

3. I also heard Ms. Kantharia APP for the State. On hearing the parties I find that there is substance in the contention made by the counsel for the petitioner. The Magistrate has committed a serious illegality in entertaining the complaint. The Magistrate did not follow the mandatory procedure laid " down u/s 200 of the Cr.P.C. while entertaining a private complaint. Section 200 of the Cr.P.C. lays down certain preliminary steps to be followed by the Magistrate before proceeding further. It lays down that, first of all, on receipt of the complaint the Magistrate should examine on oath the complainant. If the witnesses are present he should also examine those witnesses. Carrying out all these preliminary steps the Magistrate can either issue summons or refer, the matter to the police u/s 156(3) or Section 202 of the Cr.P.C. or without waiting for the report the Magistrate can straight way dismiss the complaint. Here, as pointed out earlier a peculiar procedure has been followed by the Magistrate. After he referred the matter to the police for report, and the police found that none of the allegations was substantiated then the Magistrate again examined the complainant and issued summons. I fail to understand under what provisions the Magistrate could examine the complainant at that stage, that too, after two years, of filing of the complaint.

4. I also find substance in the contention of the learned Counsel for the petitioner that no sanction has been obtained as envisaged u/s 197 of the Cr.P.C. The complainant has not produced any authority authorizing him to file a complaint before the Magistrate. On these grounds I am satisfied that the Magistrate has acted illegally and erroneously in issuing summons against the petitioner.

5. In the result the writ petition is allowed. The rule is made absolute in terms of prayer Clause (a). No order as to costs.

Prayer Clause (a):

That the R & P Criminal Case No. 103/S of 90 pending on the file of Learned. Metropolitan Magistrate's 23rd Court, Esplanade, Bombay, be called for and after perusing the record and proceedings, the order dated 12.9.1990 be set aside and quashed.