(2017) 1 AIRBomRCri 739 : (2016) 6 MhLJCrl 788

BOMBAY HIGH COURT

Case No: Criminal Application No. 1220 of 2015

Jignesh Patel		APPELLANT
	Vs	
Edrich Miranda		RESPONDENT

Date of Decision: June 13, 2016

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), Section 197(3), Section 482

Citation: (2017) 1 AIRBomRCri 739 : (2016) 6 MhLJCrl 788

Hon'ble Judges: Smt. Anuja Prabhudessai, J.

Bench: Single Bench

Advocate: Mr. S.V. Marwadi, Advocate, for the Applicant; Mr. Edrich Miranda, Advocate, for the Respondent No. 1 in person present; Mrs. P.H. Kantharia, Advocate, for the Respondent No. 2

Final Decision: Allowed

Judgement

Smt. Anuja Prabhudessai, J. (Oral) - This is an application under section 482 of the Criminal Procedure Code whereby the Applicant has challenged the order dated 21.10.2015 passed in the revision application No.12 of 2015 confirming the order dated 28th May, 2015 passed under section 156 (3) of the Criminal Procedure Code in C.C. No.61 of 2015 on the file of J.M.F.C., Silvassa.

2. The Applicant, who is a station house officer at Khanvel Police Station, Kudcha, DNH, Silvasa, has been arrayed as accused No.2 in C.C. No.61 of 2015 filed by Respondent No.1 for offences punishable under sections 3 (iv) and (v) of Scheduled Castes and Scheduled Tribes Act, section 64 of the Bombay Police Act and sections 217 and 218 r/w. 120 B of the IPC. One Nasruddeen Suleman Khutliwala, Haribhai Rohit, the Talati, P.U. Patel, Mamlatdar and Smt. Jasuben Patel, Assistant Superintendent of Civil and Criminal Court at Silvassa, have been arrayed as accused Nos.1,3, 4 and 5 respectively. The case of Respondent No.1 is that accused No.1 Nasruddeen Sulaiman Khutliwala had in connivance with the other accused Nos. 3 and 4 had usurp the property belonging to one

Halpati family. The case of the Respondent No.1 is that the Applicant herein and the other police personnels were reluctant to register the FIR even though the same disclosed the ingredient of cognisable offence. The Respondent No.1 further stated that since the Applicant herein and other police personnel dissuaded him from filing complaint he had addressed several written complaints and thereafter addressed a legal notice to the superintendent of police. The Respondent No.1 claimed that it was incumbent upon the Applicant to make necessary entry in the record and to register the FIR. The Respondent No.1 claimed that the acts committed by the Applicant constitute an offence under section 217 of the IPC. The Respondent No.1 has stated that the Applicant having failed and neglected to register the FIR, he is liable for offence under section 217 of the IPC.

3. By order dated 28.5.2015 under section 156 (3) of the Cr.P.C., the learned Chief Judicial Magistrate, Silvasa directed investigation of the alleged crime. The said order was challenged by all the accused including the Applicant herein in Criminal Revision Application No.7 of 2015 and 12 of 2015. By order dated 21.10.2015 the learned Sessions Judge set aside the order dated 28.5.2015 qua accused No.3 Haribhai Rohit, accused No.4 Prabhubhai Ukadbhai Patel, and accused No.5 Jasuben S. Patel. The revision application as against the accused No.1 Nasruddeen Sulaiman Khutliwala and the present Applicant Jignesh Patel was dismissed. Aggrieved by the said order the Applicant has invoked the powers of this Court under section 482 of the Cr.P.C.

4. I have perused the records and considered the submissions advanced by Mr. Marwadi, the learned counsel for the Applicant and Mr. Edrich Miranda, Respondent No.1 in person.

5. It is not in dispute that the Applicant is a senior inspector of police, who at the relevant time was posted as station house officer, Khanvel Police Station, Silvasa. The substratum of the allegations of the Respondent No.1 herein, as disclosed in para four of the complaint are that the Applicant herein was reluctant to register the FIR lodged by the Respondent No.1. The records reveal that one Shri Bhikhal Khulat had addressed letters dated 3.3.2015 and 9.4.2015 on the letter head of Bahujan Vikas Aghadi to the Administrator and Deputy Collector Dadra, Nagar Haveli at Silvassa regarding fraudulent transfer of land of Halpati family in favour of accused No.1 Nasruddeen Sulaiman Khutliwala. Copies of these applications were forwarded to S.P., Dadra Nagar Haveli at Silvassa. Said Bhikhal Khullat had addressed a letter dated 20.5.2015 on the letter head of Bahujan Vikas Aghadi to the incharge of Khanvel Police Station, Dadra Nagar Haveli at Silvasa, wherein he had alleged that the accused No.1 Nasruddeen Sulaiman Khutliwala had wrongfully transferred the land of Halpati family, who are the members of Scheduled Tribe. The said Bhikhal Khulat therefore, requested the incharge police officer to register the FIR against said Nasruddeen Sulaiman Khutliwala for committing offence under the provisions of Scheduled Castes and Scheduled Tribes Act.

6. It is pertinent to note that the Respondent No.1 had not lodged any report before the Khanvel Police Station, Silvassa under section 154 (1) of Cr.P.C. Shri Bhikhal Khulat, who had addressed the letters on the letter head of Bahujan Vikas Aaghadi had also not taken recourse to file any application under section 154 (3) of the Cr.P.C. The copy of the said letter, which is placed on record indicates that said Bhikhal Khulat had merely complained that Nasruddeen Sulaiman Khutliwala had usurp/encroached upon the land of Halpati family, who are the members of Hindu Adivasi Tribe. Apart from this statement, the said letter did not contain any other particulars. This being the case the Officer, Incharge of the concerned police station was certainly could not have registered the FIR on the basis of vague statement made in the said letter. It is also pertinent to note that said Khulat had also not sent substance of information to the superintendent of police as required under section 154 (3) of Cr.P.C. On the contrary the records reveal that a legal notice was sent to the superintendent of police on behalf of Respondent no.2, who is stated to be an activist. Undisputedly, the Respondent No.2 had not lodged any report under section 154 (1) of the Cr.P.C.

7. The records reveal that since said Bhikal Khullat had not given any details of the property and further particulars of the offence allegedly committed by Nasruddeen Sulaiman Khutliwala, the concerned police officers had undertaken a preliminary enquiry and thereafter registered a crime and upon investigation of the said crime submitted the report to superintendent of police. In the meantime the Applicant, who had neither filed a report under section 154 (1) nor an application under section 154 (3) of the Cr.P.C., filed an application before the learned Magistrate under section 156 (3) of Cr.P.C. The records reveal that the Magistrate without application of mind directed registration of crime against the Applicant for offence under sections 217 and 218 of the IPC.

8. It may be mentioned that in the case of **Anil Kumar Yadav v. M.K. Aiyappa (2013) 10 SCC 705** the Apex Court while examining the scope of section 156 (3) of Cr.P.C. has held thus:

"The scope of the above mentioned provision came up for consideration before this Court in several cases. This Court in Maksud Saiyed case (supra) examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where a jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 Cr.P.C., the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) Cr.P.C., should be reflected in the order, though a detailed expression of his views is neither required nor warranted."

9. In a more recent case of **Priyanka Srivastava & Anr. v. State of U.P (Criminal Appeal No.781 OF 2012)** the Apex Court after-considering its previous pronouncements has held that :

"24. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order.

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26. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if some body is determined to settle the scores. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

10. After having considered the aforesaid principles, the Division Bench of this Court in **Pandharinath Narayan Patil & Ors. v. State of Maharashtra & Anr. in criminal writ petition no.4775 of 2014** has held that" The powers under section 156(3) of the Code cannot be exercised mechanically but are required to be exercised judiciously. The Magistrate is not required to embark upon an indepth roving enquiry as to the reliability or genuineness of the allegations, nonetheless, he has to arrive at a conclusion that the application discloses necessary ingredients of the offence for which investigation is intended to be ordered. Furthermore, the reasons for arriving at such conclusion should be clearly reflected in the order."

11. In the instant case, as stated earlier the Respondent No.1 had not filed any application under section 154 (1) or 154 (3) of the Criminal Procedure Code. The Respondent No.1 had also not filed any affidavit in support of the application under section 156 (3) of the Cr.P.C. The learned Magistrate had ordered registration of crime against the Applicant herein, who is a senior police inspector on the basis of bold and spacious statement made by the Respondent No.1, without even verifying whether the concerned police officer had in fact registered any crime or whether he had undertaken any preliminary enquiry prior to registration of the crime.

12. It may be mentioned that in the case of Anil Kumar Yadav (supra) the Apex Court has held that the Special Judge /Magistrate cannot refer the matter under section 156 (3) of Cr.P.C. against the public servant without a valid sanction order. In the case of Pandharinath Narayan (supra) the Division Bench of this Court after considering the principles laid down by the Apex Court in Rizwan Ahmad has held that members of Bombay Police Force though do not fall in the category of public servant specified in sub section 1 of section 197 of the Cr.P.C. by virtue of notification dated 2.6.1979 they are entitled for benefit of sub section 3 of section 197 of the Cr.P.C.

13. In the instant case, the Applicant is a member of a police force of Dadra and Nagar Haveli. The learned counsel for the Applicant has placed on record a notification by virtue of which the members of the police force; Dadra and Nagar Haveli, though not public servants within the meaning of section 197(1) of Cr.P.C., are also entitled for protection under section 197(3) of Cr.P.C. The material on record reveals that the acts alleged against the Applicant were performed by him in discharge of official duties and are reasonably connected with his official duties. In the light of the said circular and in view of the principles laid down by the Apex Court in Rzwan Ahmad as well as Anil Kumar Yadav (supra) the Applicant would be entitled for the benefit of sub section 3 of section 197 of the Cr.P.C. Undisputedly in the instant case there is no sanction order and hence the learned Magistrate was not justified in issuing the order under section 156 (3) of Cr.P.C.

14. At this stage it is also advantageous to consider the decision of the Division Bench of this Court in **Pandharinath Narayan Patil & Ors. v. State of Maharashtra & Anr.** (supra), wherein it is held that subjecting the police officers to criminal prosecution on such vague allegations will affect the morale and effective functioning of the police

machinery which in turn have serious and far reaching adverse impact on the interest of society. The learned Magistrate as well as the learned Sessions Judge have failed to consider this material aspect and have ordered registration of crime against the police officers mechanically, without application of mind and without scrutinising the relevant material and ascertaining whether the facts disclosed, constitute cognisable offence. Under the circumstances, the orders dated 28.5.2015 and 21.10.2015 cannot be sustained qua the Applicant.

15. Hence, the application is allowed. The orders dated 28.5.2015 and 21.10.2015 are quashed and set aside qua the Applicant.