

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON. SHRI JUSTICE ALOK VERMA,J

M.Cr.C. No.288/2015

Radheshyam

Vs.

Dr. Ranjan

Shri Rajendra Samdani, learned counsel for the applicant.

Shri Anuj Bhargav, learned counsel for the respondent.

ORDER

(Passed on 05/08/2015)

This application under section 482 Cr.P.C. is directed against the order passed by the learned 10th Additional Sessions Judge, Ujjain in Criminal Revision No.23/2014 dated 18.10.2014 whereby the learned Additional Sessions Judge dismissed a revision filed by the present applicant/complainant which in its turn directed against order passed by the learned Judicial Magistrate First Class, Tarana, District Ujjain in unregistered complaint No.0/2013 (**Radheshyam vs. Dr. Ranjan**) dated 04.01.2014.

2. The facts relevant for disposal of this application are that the complainant filed a criminal complaint before the Judicial Magistrate First Class, Tarana, District Ujjain stating therein that the complainant was running a firm which was dealing in supply

of building material along with his son Shashikant and wife Hansa. They suffered some loss in the business and as they had good relationship with the respondent, they obtained loan from him. While obtaining loan, the applicant gave certain blank cheques and also blank stamp papers to the respondent. Subsequently, according to the complaint, the loan was paid of on 1st March, 2010 and a receipt was issued on the back of the blank stamp paper. The respondent admitted that loan was paid back and he returned five cheques in all for rupees 9 lacs. Subsequent to this, according to the complainant, the respondent filed a criminal complaint under section 138 Negotiable Instruments Act by filling the blank places on cheques bearing Nos.0063304 to 0063307 and dated them as 03.09.2012. According to the complainant, the respondent committed forgery and cheating by not returning all the cheques to him while the matter was settled between them and then utilizing the same cheques for filing a complaint under section 138 Negotiable Instruments Act.

3. The Magistrate after going through the averments made in the complaint passed an order directing the concerning police station to register an FIR under section 156(3) Cr.P.C. The concerning police station after making a brief enquiry submitted its report without registering an FIR stating therein that prima-facie an offence under section 420 IPC was made out.

4. When the report reached to the Magistrate, the Magistrate proceeded to consider the same and after considering the report in detail including the statement of the complainant under section 200 Cr.P.C., he passed a detailed order and dismissed the complaint. Against this order, a revision was filed which was disposed of by the impugned order. In this revision, the revisional court observed in para 8 of the order that there is no 'rule' that the Magistrate is not bound by the report submitted by the police and he is free to form his own opinion.

5. He further observed that if the police charge-sheet under section 173 Cr.P.C. even then the Magistrate had power to reject the final report and refuse to take cognizance on the charge-sheet and in this view of the matter, the learned Additional Sessions Judge refused to interfere in the revision and dismissed the revision. Against this order, this application under section 482 Cr.P.C. is filed on the ground that the learned Magistrate erred while not accepting the report submitted by the police under section 156(3) Cr.P.C.. Concerning police station was under an obligation to register an FIR and investigate the matter, instead, a brief enquiry was conducted which was not a regular investigation and, therefore, the learned Judicial Magistrate First Class as well as the revisional court erred in not issuing process against the respondent.

6. Learned counsel for the respondent cites judgment of the Hon'ble Apex Court in **Minu Kumari and another vs. State of Bihar and others; (2006) 4 SCC 359** where it was held that under section 482 Cr.P.C. inherent jurisdiction though wide has to be exercised sparingly. He also cites judgment of Hon'ble Apex Court in **Kailash Verma vs. Punjab State Civil Supplies Corporation and another; (2005) 2 SCC 571** in which it was held that use of section 482 Cr.P.C., second revision should not be allowed and power should be exercised only when the High Court feels that mistake committed by the revisional court is likely to result in abuse of process of Court.

7. So far as this case is concerned, prima-facie, there appears to be reason to interfere because once the Magistrate proceeded to direct the concerning police station to register an FIR under section 156(3) Cr.P.C., the police station is under an obligation to register an FIR and proceed to conduct regular investigation and only when charge-sheet is filed, the Magistrate can exercise its power under section 190 Cr.P.C., to see whether any prima-facie case is made out for taking cognizance and issuing process against the respondent or not. However in this case, the order of the Magistrate was not complied with and the Magistrate while considering the report failed to insist that when once directed by him, an FIR should have been registered and regular investigation

should have been conducted and, therefore, the learned Judicial Magistrate as well as the revisional court failed to apply the law correctly in this case and, therefore, interference is called for.

8. The learned counsel for the respondent also cites judgment of Hon'ble Apex Court in case of **Purushottam vs. Manohar K. Deshmukh and another; 2007(1) Mh.L.J. 210** in which it was held that under section 20 of Negotiable Instruments Act the drawee of the cheque has all the power to fill blank places and date before submitting the cheque for encashment.

9. Going through all the relevant case law cited by the respondent in this case in considered opinion of this Court, the procedure under section 156(3) Cr.P.C. was not followed properly. As observed earlier, when the Magistrate earlier directed to register the crime under section 156(3) Cr.P.C., there is no discretion left with the investigating officer but to register an FIR and proceed to conduct an investigation. An investigation and a brief enquiry has different connotations and, therefore, when the Magistrate took recourse to section 156(3) Cr.P.C. he should have insisted that an FIR should be registered and a regular investigation should be conducted. Accordingly, this application is allowed. The order passed by the learned Judicial Magistrate First Class dated 04.01.2014 and order passed by the learned Additional Sessions Judge in Criminal Revision No.23/2014 dated 18.10.2014

are set aside. The matter is remanded back to the Judicial Magistrate with direction that he should issue a direction to the concerning police station to register an FIR against the respondent as directed by him earlier and conduct a regular investigation and submit charge-sheet/final report (closure) as the case may be.

10. With this direction and observation, this application stands disposed of.

**(ALOK VERMA)
JUDGE**