

HAMANT YASHWANT DHAGE

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v.

STATE OF MAHARASHTRA AND OTHERS

(Criminal Appeal No. 110 of 2016)

FEBRUARY 10, 2016

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[M.Y. EQBAL AND SHIVA KIRTI SINGH, JJ.]

Code of Criminal Procedure, 1973 – s. 156(3) – Police officer’s power to investigate cognizable case – Registration of FIR – Complaint by appellant before the Magistrate for registration of FIR – Rejected by the Magistrate taking note of the order passed by this Court wherein the action of High Court in entertaining writ petition for change of investigating officer was disapproved – In writ petition also the High Court rejected to issue direction for registration of FIR holding that it was open for the petitioner to seek clarification/modification of the order from this Court – On appeal, held: Import of the order passed by this Court is that the registration of an F.I.R. involves only the process of recording the substance of information relating to commission of any cognizable offence in a book kept by the officer incharge of the concerned police station – To enable the police to start investigation, it is open to the Magistrate to direct the police to register an F.I.R. and even where a Magistrate does not do so in explicit words but directs for investigation u/s. 156(3), the police should register an F.I.R. – Because s. 156 falls within chapter XII of the Code which deals with powers of the police officers to investigate cognizable offences, the police officer concerned would always be in a better position to take further steps contemplated in Chapter XII once F.I.R. is registered in respect of the concerned cognizable offence – Thus, direction issued to the Magistrate and the police officer to rectify their mistake by ensuring registration of an appropriate F.I.R. – Direction also issued to the police to complete the investigation fairly and in accordance with law at an early date.

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Mohd. Yousuf v. Afaq Jahan (Smt.) and Another (2006)

1 SCC 627 – relied on.

Case Law Reference

(2006) 1 SCC 627

**relied on
997**

Para 10

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A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 110 of 2016.

From the Judgment and Order dated 13.02.2012 of the High Court
of Judicature at Bombay in Criminal Writ Petition No. 3009 of 2011.

B Ram Jethmalani, R. Venkataramani, Sr. Advs. S.M. Jadhav, Yashraj
Singh Bundela, Ms. Lata Krishnamurti, Ms. P.R. Mala, Chirag Madan,
Anirudh Anand, Shashank Bhandari, Anubhav, Ms. Neelam Singh, Venkita
Subramoniam T. R., Anshuman Animesh, Advs. for the Appellant.

C Salman Khurshid, P. Chidambaram, R.N. Dhorde, Arvind Sawant,
Sr. Advs. Sushil Karanjkar, Antony R. Julian, Dharmendra Kishor, Ms.
Taruna A. Prasad, Aviral Shukla, Ardhendumauli Kumar Prasad, M. Y.
Deshmukh, Shri Kant Deshmukh, Nishant Ramakantrao Katneshwarkar,
Arpit Rai, Sudhakar Dwivedi, Advs. for the Respondents.

The following Order of the Court was delivered

ORDER

D **SHIVA KIRTI SINGH, J.** 1. We have heard learned counsel
for the parties at some length.

2. Leave granted.

E 3. Though the matter has remained pending for long, fortunately
the core issue involved for our consideration is a very simple one.

F 4. The appellant was respondent in two Criminal Appeals bearing
Numbers 766 and 767 of 2010 arising out of a common judgment of the
High Court of Bombay dated September 8, 2009 in CRL.W.P. No. 2482
of 2008.

F 5. This Court disposed of both the appeals vide order dated April
12, 2010. It did not approve the action of High Court in entertaining writ
petitions for change of investigating officer. The relevant parts of that
order read as follows :-

G “We are of the opinion that if the High Courts entertain such writ
petitions, then they will be flooded with such writ petitions and will
not be able to do any other work except dealing with such writ
petitions. Hence, we have held that the complainant must avail of
his alternate remedy to approach the concerned Magistrate under
Section 156(3), Cr.P.C. and if he does so, the Magistrate will

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ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation. A

In view of the settled position in Sakiri Vasu's (supra), the impugned judgment of the High Court cannot be sustained and is hereby set aside. The concerned Magistrate is directed to ensure proper investigation into the alleged offence under Section 156(3), Cr.P.C. and if he deems it necessary he can also recommend to the S.S.P./ S.P. concerned change of the investigation officer, so that a proper investigation is done. The Magistrate can also monitor the investigation, though he cannot himself investigate (as investigation is the job of the police. Parties may produce any material they wish before the concerned Magistrate. The learned Magistrate shall be uninfluenced by any observation in the impugned order of the High court. B C

The appeals are allowed in the above terms. D

In view of the aforesaid order, no orders need be passed on the application for intervention and it is disposed of accordingly." E

6. The appellant, in the capacity of complainant, approached the learned Judicial Magistrate F.C. Court No.2, Pune who took notice of this Court's order and issued several directions in RCC No. 0402459/ 2008 as is evident from its order dated February 17, 2011, including relevant directions to the investigating officer. But unfortunately the learned Judicial Magistrate came to a wrong conclusion that in the absence of any specific direction of this Court, the prayer of the complainant for registration of F.I.R. had to be rejected. The complainant then approached the High Court of Bombay through Criminal Writ Petition No. 3009 of 2011 which was disposed of by the impugned order dated February 13, 2012. The High Court declined to issue a direction for registering an F.I.R. by taking the view that it was open for the petitioner to seek clarification/modification of the order from the apex Court. F

7. Mr. Ram Jethmalani, learned senior counsel appearing on behalf of the appellant argued with vigor that investigation into a serious case has been unnecessarily delayed at the instance of vested interests and hence this Court should now take a strong view and in the light of earlier order dated April 12, 2010, the police should be directed to treat the pending case as a police case in view of implications arising from Section G H

- A 156(3) of the Criminal Procedure Code (in short ‘the Code’). He further submitted that without wasting much time, the police should conduct a thorough investigation and complete the same within a reasonable time period such as six months and submit its final views to the learned Magistrate through a proper report.
- B 8. Mr. P. Chidambaram, learned senior counsel appearing for private respondents did not oppose the aforesaid prayer. In fact, according to his submissions, the police could be asked to complete the investigation even in a shorter span of time and submit its final views to the Magistrate without wasting time on the formality of registration of F.I.R.
- C 9. Mr. Arvind Sawant, learned senior counsel appearing on behalf of the State of Maharashtra has drawn our attention to copies of various reports submitted by the investigating officer. He expressed his concurrence with the view that police may be directed to submit its final opinion in the matter through an appropriate report within a reasonable time.
- D 10. In view of the aforesaid broad consensus amongst the counsel for the various parties, it is not necessary for us to go deeper into the relevant issue of law as to whether the earlier order of this Court dated April 12, 2010 warranted registering of F.I.R. by the police before commencing investigation. But we would like to only indicate in brief
- E the law on this subject expressly stated by this Court in the case of Mohd. Yousuf versus Afaq Jahan (Smt.) and another, (2006) 1 SCC 627. This Court explained that registration of an F.I.R. involves only the process of recording the substance of information relating to commission of any cognizable offence in a book kept by the officer incharge of the
- F concerned police station. In paragraph 11 of the aforementioned case, the law was further elucidated by pointing out that to enable the police to start investigation, it is open to the Magistrate to direct the police to register an F.I.R. and even where a Magistrate does not do so in explicit words but directs for investigation under Section 156(3) of the Code, the police should register an F.I.R. Because Section 156 falls within chapter
- G XII of the Code which deals with powers of the police officers to investigate cognizable offences, the police officer concerned would always be in a better position to take further steps contemplated in Chapter XII once F.I.R. is registered in respect of the concerned cognizable offence.

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11. In our considered view, the same was the import of this Court's order passed on April 12, 2010. In the light of the said earlier order; the legal position noticed above and the stand of the parties, we have no difficulty in directing the concerned Magistrate and the police officer to rectify their mistake by ensuring registration of an appropriate F.I.R. The delay in lodging of such F.I.R. occurring after April 12, 2010 shall not have any effect on the investigation already carried out by the investigating officer(s). We also direct the police to complete the investigation fairly and in accordance with law at an early date, preferably within six months. On receipt of appropriate report from the police on conclusion of investigation, the learned Magistrate will deal with the matter strictly in accordance with law on the basis of materials available on record without being influenced by orders passed by different Courts.

12. The appeal is allowed to the aforesaid extent.

Nidhi Jain

Appeal allowed.