

Kapila Type Foundry Vs. Cuttack Type Foundry and ors.

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Court : Orissa

Decided On : Apr-17-1995

Reported in : 1996(1)ALT(Cri)5; 1995(II)OLR9

Judge : A. Pasayat, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 156(3)

Appeal No. : Criminal Revision No. 327 of 1993

Appellant : Kapila Type Foundry

Respondent : Cuttack Type Foundry and ors.

Advocate for Def. : R.K. Prusty and D.K. Swain For opp. party No. 10, ;D. Panda and C.R. Behera For opp. parties 1, 2, 5, 6 and 8

Advocate for Pet/Ap. : B.C. Patry, A.K. Mishra, B.C. Rout, D.P. Mohapatra and P. Tripathy

Judgement :

A. Pasayat, J.

1. Order dated 17-4-1993 passed by learned Sub-Divisional Judicial Magistrate, Sadar, Cuttack (in short 'SDJM') in ICC, Case No. 134 of 1992 staying further proceedings of that case till disposal of O.S. No. 2 of 1992 pending in this Court is

under challenge.

2. According to learned counsel for petitioner, order passed by learned SDJM is indefensible because prayer in the complaint case was to direct the Inspector-in-charge, Purighat P.S. to forward copy of petition under Section 156(3) of the Code of Criminal Procedure, 1973 (in short, the 'Code'), register the case, investigate and seize certain articles under Section 64 of Copyrights Act, 1937. The impugned order came to be passed because Inspector-in-charge wanted instruction from the learned SDJM as to whether he should proceed with investigation or return the case as mistake of law, till disposal of M.C. No.95 of 1992. Further proceedings in O.S. No.3 of 1989 pending before the learned District Judge, Cuttack were stayed by this Court by the said order dated 3-9-1992 in M.C. No. 95 of 1992. Learned SDJM held that question involved in O.S. No. 3 of 1989 before the learned District Judge, Cuttack, and O.S. No. 2 of 1989 pending before this Court, and the Criminal Courts was same i.e., whether letters and numeral used by concerned parties were exclusively owned by complainant, or by one Dipak Kumar Das.

3. Learned counsel for petitioner submits that learned SDJM failed to notice that by the impugned order investigation was stayed. There is no bar for continuance of investigation during pendency of proceedings before this Court or District Judge. Order of stay passed by this Court in M.C. No. 52 of 1992 related to proceedings before District Judge and had nothing to do with the complaint filed by petitioner. Learned, counsel for opp. parties however, submits that there is no specific direction for staying investigation or staying further proceedings in the complaint case.

4. Section 156(3) of the Code empowers the Magistrate to direct the police to investigate a cognizable offence. Once the Magistrate gives such a direction under that sub-section the police is obligated to investigate. The Magistrate having directed such investigation cannot tinker with or hamper investigation started by police pursuant to his order. He cannot recall it. If he does so, that would be in excess of his jurisdiction and not in accordance with law. Before Section 156(3) is pressed into service by a Magistrate he has to be satisfied that an offence has been committed and that he may take cognizance of an offence on such

complaint.

5. The legal propositions that emerge on a reading of Section 156(3) are as follows :

(1) That a Magistrate can order investigation under Section 156(3) only at the pre-cognizance stage, that is to say, before taking cognizance under Sections 190, 200 and 204 of the Code and where a Magistrate decides to take cognizance under the provisions of Chapter-XIV, he is not entitled in law to order any investigation under Section 156(3) though in cases not falling within the proviso to Section 202 he can order an investigation by the police which would be in the nature of an enquiry as contemplated by Section 202 of the Code.

(2) Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives.

(a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightway issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.

(b) The Magistrate can postpone the issue of process and direct an enquiry by himself.

(c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.

(3) In case the Magistrate after considering the statement of the complainant and the witnesses or a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceeding he can dismiss the complaint.

(4) Where a Magistrate orders investigation by the police before taking cognizance under Section 156(3) of the Code and receives the report thereupon he can act on the report and discharge the accused or straightway issue process against the accused or apply his mind to the complaint filed before him and take action under

Section 190 of the Code as described above. These aspects have been highlighted by the apex Court in Tula Ram and Ors v. Kishore Singh, AIR 1977 SC 2401.

6. Keeping in view the aforesaid principles and the background facts, I feel interest of justice would be best served if investigation is continued, and investigating agency submits its report before the learned SDJM. On receipt of the report, learned SDJM shall proceed further in accordance with law.

The Criminal Revision is disposed of.

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