



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.865 OF 2023

1. Sarjerao s/o Bhagwan Jagtap
Age 42 years, Occu. Service,
Assistant Sub-Inspector,
M.I.D.C. Police Station, Latur, Dist. Latur
R/o 509, Shivaji Nagar, A/P Yedshi,
Osmanabad PIN – 413 405
Having Aadhaar No. 6098 5412 9383
Mobile No. 9823621240
E-mail id : sarjujagtap1240@gmail.com
2. Sanjeevan s/o Vitthalrao Mirkale
Age 55 years, Occu. Service,
Police Inspector, In-charge Police Station,
Shivajinagar since 04.02.2023
Shivaji Nagar Police Station, Latur,
R/o Prayag Niwas, Ambajogai Road,
Near Shivaji Nagar Police,
Latur, Tal. & Dist. Latur
PIN – 413 512 (Maharashtra)
Having Aadhaar No. 7653 3770 4648
Mobile No. 8888824108
E-mail id : sanjivanmirkale@gmail.com

... PETITIONERS

VERSUS

1. The State of Maharashtra
through the Additional Chief Secretary,
(Home Department), Age major,
Occ. Govt. Service (Public Servant),
Home Department, Government of Maharashtra
Mantralaya, Mumbai – 02 Maharashtra
2. The Police Inspector,
MIDC Police Station, Latur, Dist. Latur,
Age major, Occ. Govt. Service (Public Servant)
MIDC Police Station, Latur, Tal. & Dist. Latur
3. Balraj s/o Vishwanath Reddy,
Age 38 years, Occu. Profession,

:: 2 ::

R/o Raje Shivaji Nagar, Barshi Road,
Pakharsangvi, Latur, Tal. & Dist. Latur,
Maharashtra

(Copy of Respondent No.1 and 2 to be served
on the Office of Government Pleader & Public Prosecutor,
Aurangabad Bench of Bombay High Court)

... **RESPONDENTS**

.....
Mr. A.D. Ostwal, Advocate for petitioners
Mr. A.R. Kale, A.P.P. for respondents No.1 and 2
Mr. T.M. Venjane, Advocate for respondent No.3
.....

WITH

CRIMINAL APPLICATION NO2606 OF 2023

Balraj s/o Vishwanath Reddy,
Age 39 years, Occu. Advocate,
R/o Raje Shivaji Nagar, Pakharsangavi,
Tq. & Dist. Latur.

... **APPLICANT**

VERSUS

1. Sarjerao s/o Bhagwan Jagtap,
Age 42 years, Occu. Service,
R/o 509, Shivaji Nagar,
At Post Yedshi,
Tq. & Dist. Latur.
2. Sanjivan s/o Vitthalrao Mirkale,
Age 55 years, Occu. Service,
R/o Prayag Niwas, Ambajogai Road,
Near Shivaji Nagar Police Station,
Latur, Tq. & Dist. Latur

... **RESPONDENTS**

.....
Mr. T.M. Venjane, Advocate for applicant
Mr. A.D. Ostwal, Advocate for respondents
.....

**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

Date of reserving judgment : 11th December, 2023

Date of pronouncing judgment : 3rd January, 2024.

JUDGMENT (PER R.G. AVACHAT, J.) :

Both the Criminal Writ Petition and Criminal Application are decided by this common judgment since they are interconnected.

Criminal Writ Petition under Article 226 of the Constitution of India has been filed for quashing of the order dated 2/6/2023, passed by the Court of learned Judicial Magistrate, First Class, Latur directing registration of F.I.R. and investigation thereof. the said order has been passed in Criminal Misc. Application No.207/2023, preferred by respondent No.3 herein. Being aggrieved by the said order, the petitioners herein preferred revision application, being Criminal Revision Application No.46/2023 to the Court of Sessions, Latur. The learned Additional Sessions Judge, vide his judgment and order dated 14/6/2023, dismissed the same. The petitioners are, therefore, before us.

FACTS :-

2. The petitioner No.1 was serving as Assistant Sub-Inspector of Police (Constabulary) with M.I.D.C. Police Station,

during relevant period. The petitioner No.2 was the Police Inspector of the very police station during the same time. It is the case of the petitioners that, a crime, being C.R. No.509/2022 was registered with M.I.D.C. Police Station against the respondent no.3 and his father and one Amol Tupensundar for offences punishable under Sections 447, 427, 504, 506 read with Section 34 of the Indian Penal Code. The petitioner No.1 was initially entrusted with the investigation of the said crime. Later, on 4/9/2022, Section 3(1) (f) and Section 3(1)(g) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 came to be additionally invoked in the said crime. Investigation was, therefore, entrusted with the officer in the rank of Deputy Superintendent of Police (S.P.). According to the petitioners, only with a view to create hurdle in the investigation and pressurize them, the respondent No.3 filed the application, wherein the learned Magistrate was pleased to direct registration of F.I.R. against the petitioners for offence punishable under Section 166-A(b) of the Indian Penal Code. It is their further case that, it was obligatory on the part of the learned Magistrate to consider the averments in the said application to find as to whether really prima facie offence is made out. No sooner the order was passed directing registration of the F.I.R., the petitioners preferred revision application. The order passed by the Magistrate was immediately stayed. The respondent No.3 suo moto appeared in the said proceedings. He even tried to

pressurize the learned Additional Sessions Judge since he filed a pursis, alleging therein, learned Judge to have been hand in gloves with the petitioners herein. It is further the case of the petitioners that, not less than 4 applications have been preferred by the respondent No.3 seeking orders under Section 156(3) of the Code of Criminal Procedure. He did not stop at that. In the present Writ Petition as well, he has preferred application, being Criminal Application No.2606/2023 for initiating action against the petitioners, alleging them to have made false statements on affidavit and, therefore, seeking action in terms of Section 340 of the Code of Criminal Procedure.

3. Learned counsel for the petitioners relied on the following judgments of the Apex Court :-

- (1) Lalita Kumari Vs. Government of Uttar Pradesh & ors.
(2014) 2 SCC 1
- (2) Priyanka Srivastava & anr. Vs. State of Uttar Pradesh & ors.
(2015) 6 SCC 287
- (3) Anil Kumar & ors. Vs. M.K. Aiyappa & anr.
(2013) 10 SCC 705

4. According to learned counsel, the present petitioners have received very many awards for their exemplary services. The respondent no.3 is a practicing lawyer of 13 years of standing.

Since both the petitioners were involved in the investigation of the crime registered against him (respondent No.3), he preferred a false complaint to the S.P., alleging the petitioner No.1 to have had summoned him and threatened with dire consequences if he did not settle the matter with the informant in C.R. No.509/2022. According to the learned counsel, the S.P. forwarded the said application to the M.I.D.C. Police Station to make enquiry into the same and inform respondent No.3 result thereof. He would further submit that, based on the very averments in the said complaint, the respondent No.3 had moved an application under Section 156(3) of the Code of Criminal Procedure for registration of a crime against the petitioners.

5. The learned Magistrate rejected the said application. The order passed therein attained finality. The same suggests that the application preferred to the S.P. did not disclose any cognizable offence. Pursuant to the order of the S.P., no crime was registered. Direction was for making enquiry. There was, therefore, no question of registration of a crime and the petitioners entering into investigation thereof. Section 166-A(b) of the Indian Penal Code, therefore, did not get attracted. It was also brought to our notice that, result of the said enquiry was communicated to a person connected with respondent No.3, on an application preferred by

that person under the Right to Information Act. The same would indicate the petitioner had not intentionally omitted to inform the respondent No.3 as to what action was taken on his application pursuant to the directions given by the S.P. Learned counsel ultimately urged for allowing the Writ Petition.

6. The respondent No.3 filed his detailed affidavit-in-reply. According to him, if a cognizable offence is made out, F.I.R. (Crime) has to be registered. Police officers failing in their duty to register a crime are liable for departmental action besides face the prosecution for offence under Section 166-A of the Indian Penal Code. Reliance was placed on the judgment of the Apex Court in Lalita Kumari's case (supra). It is also his case that, the revision application was preferred by a Public Prosecutor when the crime was directed to be registered against the petitioners. Public Prosecutor ought not to have preferred such application. He, therefore, raised an objection as to maintainability of the said application. he never intended to make any allegations against the judicial officer. Relying on the judgment in case of **M/s Neeharika Infrastructure Pvt. Ltd. Vs. The State of Maharashtra (AIR 2021 SC 1918)**, it was submitted that, Courts would not thwart any investigation into the cognizable offences, police has a statutory right and duty under the relevant provisions of the Code of Criminal Procedure to investigate into a cognizable offence. Relying on the

judgment in case of Calcutta High Court in **Re : Abdul Khaleque (Calcutta) (DB) 2019 (3) CriLR 217** , it was submitted that, failure on the part of police officers to register a crime pursuant to a direction under section 156(3) of the Code of Criminal Procedure, the concerned police officer is to be prosecuted for offence under Section 166-A of the Indian Penal Code.

7. Objection as to the maintainability of the Revision petition has also been raised. The petitioners had preferred Criminal Revision Application against the order passed by the learned J.M.F.C. The said order was interlocutory and, therefore, not revisable, as was held by the Full Bench of the Allahabad High Court in case of **Father Thomas Vs. State of U.P. & anr. (Criminal Revision No.1640/2001, decided on 22/12/2010)**. According to learned counsel for respondent No.3, it was obligatory on the part of the petitioners to register F.I.R. and make investigation of the crime. He would further submit, if the petitioners closed the matter without intimating the respondent No.3 about the same, they are liable to face prosecution for offence under Section 166-A(b). A strong reliance has been placed on the judgment of the Apex Court in case of Lalita Kumari (supra). Our attention has also been adverted to Section 157 of the Cr.P.C. in that regard with an ultimate prayer for dismissal of the Writ Petition.

8. So far as regards Criminal Application No.2606/2023 is concerned, it was submitted by the learned counsel for respondent No.3 that, false and misleading statements on oath have been made in paragraphs No.10 and 14 of the Writ Petition and, therefore, the petitioners are liable to be prosecuted for offence punishable under Section 193 of the Indian Penal Code and even action under Contempt of Courts Act. To be precise, Section 340 of the Cr.P.C. read with 195 (1)(a)(i) was adverted to. Reliance on the following judgments has also been made to ultimately urge for allowing the Criminal Application No.2606/2023.

- (1) Sciemed Overseas Inc. Vs. BOC India Limited & ors.
(2016) 3 SCC 70
- (2) ABCD Vs. Union of India [2020 ALL MR (Cri) 1781 (S.C.)]
- (3) In Re : Perry Kansagra (Suo Motu Contempt Petition (Civil) No.3 of 2021 [2022 ALL SCR 1525]
- (4) The State of Punjab Vs. Jasbir Singh
2022 LiveLaw (SC) 776

9. We propose to take the Writ Petition first. Considered the submissions advanced. Perused the documents relied on. The matter has a background.

The petitioner No.1 is a member of a Constabulary. He was serving as Assistant Sub-Inspector with M.I.D.C. Police Station

during the relevant time. The petitioner No.2 was Police Inspector, Incharge of the said Police Station. The respondent No.3 herein is a practicing Advocate of 13 years standing. A crime vide C.R. No.509/2022 was registered against him (respondent No.3), his father and one another person for offences punishable under Sections 447, 427, 504, 506 read with Section 34 of the Indian Penal Code. The petitioner No.1 was initially entrusted with the investigation of the said crime. Section 3 of the S.C. & S.T. Act came to be invoked later on in the said crime. The investigation of the crime, therefore, came to be entrusted with the officer in the rank of the Deputy S.P. The record indicates, the respondent No.3 was initially served with a notice under Section 41-A of the Cr.P.C. He was summoned to the Police Station in connection with the investigation of the said crime. His statement came to be recorded.

10. Let us now turn to the issue at hand. The respondent No.3 submitted to the S.P. a written application (complaint) on 18/8/2022. For better appreciation, the averments in the said application are reproduced below :-

"माझे वैयक्तिक मिळकती बाबत प्रकरण न्यायालयात प्रलंबित असून त्याचा प्रकरण नं. **RCS No.562/2022** असा आहे. सदरील मिळकती बाबत माझ्या मिळकत भागातील बीट अंमलदार **ASI** जगताप साहेब हे त्यांच्या पदाचा गैर वापर करून माझ्या प्रकरणातील प्रतिवादी यांच्याशी हातमिळवणी करून मला सदरील प्रकरण काढून घेण्यासाठी यम.आय.डी.सी. पोलीस ठाणे येथे बोलावून सतत दबाव टाकत

आहे. त्यानुसार मी त्यांना सदरील प्रकरण न्यायप्रविष्ट असल्याबाबत विनंती केली असता, मला खोटे जबाब नोंदउन खोटे गुन्हे दाखल करण्याबाबत धमकी देत आहेत. सदरील श्री जगताप साहेब यांच्या अश्या बेकायदेशीर कृत्यामुळे मला माझे काम करणे अशक्य होत आहे.

तरी मा. साहेबांनी माझ्या तक्रारी अर्जाचा गांभीर्याने दखल घेऊन योग्य ती कार्यवाही करून मला न्याय मिळवून द्यावा हे नम्र विनंती.”

11. The S.P., in turn, forwarded the said application to the head of the M.I.D.C. Police Station, directing him to make enquiry into the matter. He was also directed to record statement of respondent No.3. A further direction was given to intimate the respondent No.3 about the action taken on his application. For better appreciation, the directions given by the S.P. are reproduced below in verbatim:

“यात आपण स्वतः चौकशी करून अर्जदार यांचा जवाब नोंदवून योग्य ती कार्यवाही करावी, व अर्जदार यास परस्पर उत्तर देवून मुळ अर्ज व संबंधीताचे जाब—जवाब व चौकशीतील इतर कागदपत्रे अहवाल व अर्जदारास दिलेले समज पत्र या सर्वांची एक प्रत आपल्या अभिलेखावर ठेवावी भविष्यात सदर कागदपत्रांचे अभिलेख वर्गीकरण करून त्या बाबतचे रेकॉर्ड व्यवस्थित ठेवावे.

यात आपण स्वतः चौकशी करून अर्जदार यांचा जवाब नोंदवून योग्य ती कार्यवाही करावी, व अर्जदार यास परस्पर उत्तर देवून केलेल्या कार्यवाहीचा अहवाल, मुळ अर्ज, जाब, जवाब व अर्जदारास दिलेल्या समज पत्राची एक प्रतिसह (७) दिवसांत या कार्यालयात सादर करावे.”

12. The grievance of respondent No.3 is that, the present

petitioners did not register F.I.R. based on directions given by the S.P. on his application nor did they inform him about closure of the matter. The petitioners have, therefore, committed an offence under Section 166-A(b) of the Indian Penal Code. The respondent No.3 appears to have had approached the concerned Police Station with his grievance. Since his grievance was not redressed, he filed application, being Criminal Application No.207/2023. The learned Magistrate allowed the said application with a direction to register F.I.R. The learned Magistrate allowed the said application with the following reasons :

“8. The complainant has brought to the notice of this Court that despite intimation to the police Section 154(1) and 154(3) to P.S.O., M.I.D.C. Police Station, M.I.D.C. Police Station and Superintendent of Police, Latur, have failed to act and investigate a cognizable offence in accordance with law. Both the aspects have been clearly spelt out in the application and necessary documents to that effect are filed on record.

9. Upon reading of the complaint, I find that the allegations in the complaint/ application disclose cognizable offence and forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice. Thus, there is justification to direct the police to register crime under Section 156(3) Cr.P.C. More so when the documentary evidence placed on record clearly establishes the credibility and genuineness of the complainant's allegations against the accused persons.”

13. The petitioners immediately preferred a Revision, being No.46/2023 against the said order. The respondent No.3 suo motu appeared in the said proceedings. It appears, that, the learned Additional Sessions Judge passed interim order in favour of the petitioners, granting stay of the order of the Magistrate. The revision application was drafted by learned Additional Police Prosecutor, Latur. He represented the petitioners therein. It was the objection of respondent No.3 that, State has to be a party respondent in such proceedings, the office of the Police Prosecutor ought not to have filed such application. The respondent No.3, therefore, filed a pursis before the Court of learned Additional Sessions Judge seized of the said Criminal Revision Application. The revisional Court dismissed the Revision Application within 4 days of filing of the pursis (by respondent No.3). The averments made in the said pursis would be referred to later on.

14. A short question that arises for consideration in this Writ Petition is as to whether the learned Magistrate was justified in passing order under Section 156(3) of the Cr.P.C. The petitioner being prospective accused, would only be allowed to urge that from the averments made in the application soliciting order under Section 156(3) of the Cr.P.C. no cognizable offence was made out.

15 The gist of the averments in the application is as under :-

२. हे कि, तक्रारदार यांनी दिनांक १८.०८.२०२२ रोजी पोलीस अधिक्षक, लातूर यांच्या कार्यालयात तक्रारी अर्ज दाखल केला होता. सदरील अर्जावर संबंधित पोलीस अधिकारी यांच्या मार्फत काय कार्यवाही करण्यात आली या बाबत कोणतीही सूचना तक्रारदारास मिळाली नाही. सदरील तक्रारी अर्जावर काय कार्यवाही करण्यात आली या बाबत माहिती घेण्यासाठी तक्रारदार यांनी माहिती अधिकार अधिनियम अंतर्गत अर्ज दिला होता. त्यानुसार तक्रारदार यांना दि. २७.०१.२०२३ रोजी माहिती प्राप्त झाली.

३. हे की, माहिती अधिकार अंतर्गत प्राप्त माहिती नुसार तक्रारदार यांना असे समजले की, सदरचा तक्रारी अर्ज पोलीस अधिक्षक यांनी त्यांचे दुय्यम अधिकारी पोलीस निरीक्षक (आरोपी क्रमांक २) एम.आय.डी.सी पोलीस ठाणे, लातूर यांची प्रतिनियुक्ती करून पुढील कार्यवाही साठी लेखी आदेशासह पाठवला होता.

त्यानुसार सदरील तक्रारी अर्ज पोलीस निरीक्षक एम.आय.डी.सी पोलीस ठाणे, लातूर यांनी त्यांचे दुय्यम अधिकारी सहा.फौ.सर्जराव जगताप (आरोपी क्रमांक १) यांना पुढील कार्यवाही साठी दिला. तसेच सहा. फौ. सर्जराव जगताप आरोपी क्र.१ यांनी सदरील अर्ज चुकीच्या पध्दतीने निकाली काढल्याचे कळाले. तक्रारी अर्ज व चौकशी अहवाल पुरावा कामी न्यायालयात दाखल केले आहे.

४. हे की फौजदारी प्रक्रिया संहिता च्या कलम १५७ नुसार व ललिता कुमारी वी स्टेट ऑफ उत्तर प्रदेश मधील मा. सर्वोच्च न्यायालयाच्या अनिवार्य दिशानिर्देश अनुसार सदरचा अर्ज हा १५ दिवसात निकाली काढून त्यामध्ये पुढे चौकशी करणार नसल्यास त्याची सविस्तर लेखी सूचना तक्रारदार यांना देणे अनिवार्य आहे.

तसेच मा. पोलीस अधिक्षक, लातूर यांनी अन्वेषण बाबत फौजदारी प्रक्रिया संहिता च्या कलम १५७ ला अधीन राहून तक्रारदार यांचा जबाब नोंदवून तक्रारीवरती केलेल्या कार्यवाहीची नोंद अभिलेखा वर ठेवून तक्रारदार यांना

लेखी कळवण्याबाबत आदेश केला होता. सदरील आदेशाची प्रत पुरावा कामी तक्रारीसोबत दाखल केली आहे.

16. It was informed at the bar that, the application moved by the respondent No.3 soliciting orders under Section 156(3) of the Cr.P.C. for registration of the crime against the petitioners herein, alleging them to have had threatened him of dire consequences with a view to compel him to settle the matter with the informant of C.R. No.509/2022 registered against him and his father and one more person, has been rejected by the learned Magistrate observing that the averments in the application did not make out a cognizable offence. The said order appears to have attained finality. Be that as it may.

Vide order dated 2/6/2023, ya Crime for offence under Section 166-A(b) has been directed to be registered against the petitioners. It is, therefore, necessary first to advert to the Section to find as to whether the averments in the application prima facie make out an offence under the Section.

166-A. Public servant disobeying direction under law :- Whoever being a public servant,

(a)

(b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such

investigation, or

(c)

17. Reading of the aforesaid provision would indicate, a public servant, who knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, shall be liable to be prosecuted and punished.

18. Admittedly, both the petitioners being police officials, are the public servants. At the cost of repetition, it is to be stated that, the grievance of the respondent No.3 is that he made complaint to the S.P. The S.P. forwarded the same to the M.I.D.C. Police Station with a direction to make enquiry into it and inform the result of enquiry to the respondent No.3. The said direction of the S.P. in no way be termed to be a direction under law for breach of which the concerned official is liable for prosecution under Section 166-A(b) of the Indian Penal Code. Close reading of the said application would indicate, the respondent No.3 had expected the S.P. to have some other way action taken against the erring police official namely the petitioner No.1. The said application in no way could be termed to be an application under Section 154(3) of the Cr.P.C., whereunder a person aggrieved by refusal on the part of officer incharge of a police station to record information referred to

in sub-section (1) of Section 154, may send the substance of such information, in writing and by post to the S.P. concerned, if he is satisfied that such information discloses commission of a cognizable offence, shall either investigate the case himself or direct investigation to be made by any police officer subordinate to him, in the manner provided by Cr.P.C. The S.P. had directed the officer concerned to enquire into the matter and report him compliance under intimation to the respondent No.3.

19. The terms “inquiry” and “investigation” have been defined in Section 2(g) & (h) of the Cr.P.C. For better appreciation, both the terms are reproduced below :

(g) “inquiry” means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;

(h) “investigation” includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.

20. True, in view of definition of the term “inquiry”, the same is not made by a police officer. The term “inquiry” if taken with literal interpretation, a police officer, in certain circumstances, is authorised to make a preliminary inquiry into allegations before registration of a crime/ F.I.R. While the term “investigation” is

inclusive. It includes all the proceedings under Cr.P.C. for collection of evidence by police officer. It ends with the formation of the opinion as to whether on the material collected, there is a case to place the accused before a Magistrate for trial and if so, taking the necessary steps for the same by filing of a charge-sheet under Section 173 [Union of India Vs. Prakash P. Hinduja, (2003) 6 S.C.C. 195 at p. 205 : 2003 Cr.L.J. 3117 : A.I.R. 2003 S.C. 2612].

21. The investigation commences on registration of F.I.R. Chapter VII of the Cr.P.C. pertains to information to the police and their powers to investigate. Section 154 is first Section under the said Chapter. It speaks of registration of F.I.R. in cognizable cases. Section 155 pertains to information as to non-cognizable cases and investigation of such cases. While Section 156 pertains to police officers' powers to investigate cognizable case. Whereas Section 157 speaks of procedure for investigation. A glance at provisions of Section 157 of the Cr.P.C. is a must. The Section is, therefore, reproduced below :

157. Procedure for investigation :-

(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in

person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:

Provided that—

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub-section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.

22. It is true that, in case of Lalita Kumari (supra), the Apex Court issued following directions :-

“120. In view of the aforesaid discussion, we hold:

120.1. Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend

on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- (a) Matrimonial disputes/ family disputes
- (b) Commercial offences
- (c) Medical negligence cases
- (d) Corruption cases
- (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/ Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”

23. The application under Section 156(3) moved by respondent No.3 is silent to state what direction of law relating to the manner in which the petitioners were expected to conduct the

investigation, has been knowingly disobeyed by them. Failure to register F.I.R. in respect of certain offences given in sub-clause (3) of Section 166-A is a punishable offence. The said provision is not sought to be invoked in this case, rightly so. As seen above, Section 157, the concerned police officer has to state in his report, his reasons for not fully complying with the requirements of Section 5(1) and in case of sub-clause (b) of the proviso, the said officer is under obligation to forthwith notify to the informant. It is reiterated that, failure to notify respondent No.3 in terms of Section 157(2) cannot be termed to be a direction of the law regulating the manner in which the investigation is to be conducted, because, the term “investigation” takes into its sweep all proceedings under the Cr.P.C. for collection of evidence conducted by the police officer. Failure to notify the informant in compliance of Section 157(2) of Cr.P.C., therefore, cannot entail penal consequence under Section 166-A(b).

24. Close reading of the judgment in Lalita Kumari (supra) would indicate that, the Apex Court observed that the police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. It directed that, action must be taken against erring police officer who does not register the F.I.R. if the information received by him discloses a cognizable offence. It is again to be stated hereat that, failure to register certain offences is made an

offence under Section 166-A(c). Therefore, in our considered view, if the complaint made to the S.P. disclose non-cognizable offence, failure to register F.I.R. on the basis thereof is not an offence under the Indian Penal Code. At the cost of repetition, it is to be stated that, what is made punishable under Section 166-A(b) is knowingly disobeying any of the direction of law regulating the manner in which he shall conduct such investigation. When in the case in hand no F.I.R. was registered pursuant to the written complaint made by respondent No.3 to the S.P. nor the S.P. had directed in so many words to register crime and investigate the same as he could have done so under Section 154(3) of the Cr.P.C., the averments in the application under Section 156(3) of the Cr.P.C. do not make out a case for issuance of directions to register an F.I.R. for offence under Section 166-A(b) of the Indian Penal Code. The learned Magistrate has erred in issuing such an order. The revisional Court also failed to take the said aspect into consideration.

25. It is to be stated that, the respondent No.3 was one of the accused in the Crime No.509/2022. The said crime was being investigated by petitioner No.1. The petitioner No.2 was the head of the concerned police station. It has been stated in this Writ Petition that, the respondent No.3 has filed 4 applications under Section 156(3) of the Cr.P.C., seeking registration of crime against

police officials concerned with the investigation of C.R. No.509/2022. The records further indicate that the respondent No.3 tried to browbeat. The learned Additional Sessions Judge, who decided the revision application. The respondent No.3 had suo motu appeared in the said application and filed the pursis. The revisional Court had granted stay to the order passed by learned J.M.F.C. It was a judicial order. In paragraph No.4 of the pursis, the respondent No.3 (a practicing Advocate) made following allegations against the learned Judge :

“4) That, the act of the Hon’ble Court clearly shows that the Hon’ble Court’s bias state of mind, in favour of Revision Petitioner, against the Respondent. The act of learned Presiding Officer gets presumption that there is a case of Presiding Officer having **hands in gloves** with the Revision Petitioner.

5) That, the Revision Petitioner presume itself as he state without applying its own mind to the order passed by learned J.M.F.C., Latur in Cri.M.A. No.207/2023, in which the learned Court specifically treated a Revision Petitioner as accused against whom the State is supposed to conduct the matter. The prosecution cannot enter into two different pair of shoes at once.”

26. In this petition as well, the respondent No.3 has moved a separate application under Section 340 of the Cr.P.C., seeking directions to register complaint against the petitioners herein for having made a false statement on oath.

27. Since, in our view, the averments in the application did not even make out a prima facie case to invoke Section 166-A(b) of the Indian Penal Code, the learned Magistrate erred in issuing directions under Section 156(3) of the Cr.P.C. and the learned Additional Sessions Judge ought not to have upheld the said order. We are, therefore, inclined to interfere with those orders. In the result, the Writ Petition would succeed.

Criminal Application No.2606/2023.

28. There can be no dispute over what has been averred by learned counsel for respondent No.3 that if intentionally a false or misleading statement is made on affidavit or pleadings, the same would entail invocation of Penal Section besides action under the Contempt of Courts Act. We, therefore, do not propose to advert to the facts and observations of the Apex Court in the aforesaid three cases relied on behalf of respondent No.3.

29. Section 340 of the Cr.P.C. reads thus :

340. Procedure in cases mentioned in section 195.—

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of Justice that an inquiry should be made into any offence referred to in clause

(b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, —

- (a) record a finding to that effect;
- (b) make a complaint thereof in writing;
- (c) send it to a Magistrate of the first class having jurisdiction;
- (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and
- (e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,—

- (a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;
- (b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may

authorise in writing in this behalf.

(4) In this section, “Court” has the same meaning as in section 195.”

30. Close reading of Section 340 would indicate that for invoking the same, the Court must be of the opinion that it is expedient in the interest of justice that an enquiry should be made into any offence referred to in clause (b) of sub-section (1) of Section 195. In the aforesaid factual backdrop of this case, we are not of that opinion. The respondent No.3 has a grievance about the averments in paragraphs 10 and 14 of the Writ Petition. We, therefore, reproduce both the paragraphs No.10 and 14.

“10. That, respondent No.3 on 18/08/2022 raises a complaint by way of an application with the Superintendent of Police, Latur, against the petitioner No.1 claiming that the petitioner No.1 has registered a false complaint/ FIR against him. That the said complaint was transferred to petitioner No.2, who then after conducting preliminary inquiry/ inquiry in the said case and finding no merits in the complaint filed by the respondent No.3 closed the investigation in the said case along with petitioner No.1. That, the respondent No.3 came to know about the same after obtaining information under Right to Information Act, 2005 on 27/01/2023.

.....

14. That, the petitioners most humbly submit that, respondent No.3 in an attempt to create hurdles in the investigation of a case registered against him, i.e. F.I.R. No.509/2022, have made the said complaints against

the Investigating Officer and other police officials of the said case and concerned police station. That, the respondent No.3 is alleging charges under Section 166A(b) of the Indian Penal Code, 1860, which are not attracted in the present case at all. That, the learned Judicial Magistrate, Latur and learned Additional Sessions Judge, Latur without proper application of mind passed the impugned orders dated 02/06/2023, and 14/06/2023. Thus, left with no alternative the petitioners are constrained to approach this Hon'ble Court invoking its extraordinary powers under Article 226 of the Indian Constitution, and inherent powers under Section 482 of the Code of Criminal Procedure, 1973, thereby, humbly requesting and praying this Hon'ble Court to quash and set aside impugned order dated 02/06/2023 and 14/06/2023.”

31. According to learned counsel for respondent No.3, the F.I.R. No.509/2022 was registered on 2/9/2022 against the respondent No.3 and not on 18/8/2022. While according to respondent No.3, there is no relevancy of application dated 18/8/2022 and F.I.R. lodged against him, being F.I.R. No.509/2022 registered on 2/9/2022 as this was the only F.I.R. registered against respondent No.3. Here the respondent No.3 (applicant) candidly admits that, his application dated 18/8/2022 addressed to the S.P. was not for invoking action under Section 154(3) of the Cr.P.C. The record indicates that, even before registration of the F.I.R. (No.509/2022) against respondent No.3 on 2/9/2022, the informant therein preferred an application to the concerned police station, being Application No.689/2022. A station diary entry to that effect

was made on 25/8/2022. The same indicates that, even before registration of the F.I.R. against respondent No.3 on 2/9/2022, the grievance of the informant therein against the respondent No.3 had already been reported to the concerned police station on 25/8/2022 or even therebefore.

32. So far as regards pleadings in para No.14 are concerned, the charge sheet pursuant to the F.I.R. No.509/2022 was filed on 16/11/2022 and therefore, there was no question of respondent No.3 indulging into pressurising the present petitioners. We have to read the pleadings in their entirety. The petitioners have consistently been contending since taking exception to the order by filing Revision Application that the respondent No.3, only with a view to pressurize them, preferred application to the S.P. and filed four applications under Section 156(3) of the Cr.P.C. for registration of F.I.R. against the officials involved in connection with the crime registered against respondent No.3. By no stretch of imagination, the averments in para Nos.10 and 14 could be termed to have been made with an intention to mislead this Court. We, therefore, find it to be not a fit case to have recourse to Section 340 of the Cr.P.C. The application, therefore, deserves to be rejected. With this, both the proceedings are disposed of in terms of the following order :

ORDER

(i) Criminal Writ Petition No.865/2023 is allowed in terms of prayer clause (B). The impugned order dated 2/6/2023, passed by learned Judicial Magistrate, First Class, Latur in Criminal Misc. Application No.207/2023 and the order dated 14/6/2023, passed by the learned Additional Sessions Judge, Latur in Criminal Revision Application No.46/2023 are quashed and set aside.

(ii) Criminal Application No.2606/2023 is rejected.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

fmp/-