

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1528 OF 2023**

1. Prabhat Ramrichpal Jhunjunwala
Age-53 years, Occ:-Business
R/at:- Flat No. 361, Siddhesh Jyoti,
Building "F" Wing, Balaram Street,
Mumbai-400 005

... Applicant

V/s.

1. The State of Maharashtra

2. Omprakash Ramchrichapal Jhunjunwala
Age-56 years, Occ:- Business
R/at-Parasrampuriah Bhavan
270, Walkeshwar Road,
Mumbai-400 006

... Respondents

Mr. C. K. Pendse a/w Ms. Siddhi Bhosale, Mr. Atharva Jagtap for Applicant.
Ms. Sangita Phad, APP for the Respondent/State.
Mr. Rushikesh Kekane i/by Adv. S. C. Kekane for Respondent No.2.

**CORAM : RANJITSINHA RAJA BHONSALE, J.
RESERVED ON : 8th JULY 2026.
PRONOUNCED ON : 5th OCTOBER 2026.**

JUDGMENT :-

1) By the present Application, under Section 482 of the Code of Criminal Procedure, 1973 (For short 'CrPC') (now 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023), the Applicant seeks to quash and set aside the impugned Orders dated 3rd November 2023 passed by the learned Additional Sessions Judge, Greater Bombay in Criminal Revision Application

No. 271 of 2020 whereby the Applicant's Revision Application was dismissed and the impugned Order of issuance of process dated 19th December 2019 passed by the Metropolitan Magistrate's 40th Court at Girgaon, Mumbai in CC No. 08/SW/2019 was confirmed.

1.1) By an Order dated 12th December 2023, a notice was issued to the Respondents and the proceedings before the learned Magistrate were stayed. The Application is finally heard at the admission stage with the consent of the parties.

2) Heard Mr. C. K. Pendese, learned Counsel appearing for the Applicant, Ms. Sangita Phad, APP for the Respondent/State and Mr. Rushikesh Kekane for Respondent No.2.

3) The facts, as alleged are as under:-

3.1) The Applicant and Respondent No.2 are brothers. In the year 1992, they had formed a company namely "Unicom Skytech Limited". The father of the Applicant namely Mr. Ramrichpal Jhunjhunwala, Respondent No.2 and the Applicant were Directors of the company. Mr. Ramrichpal Jhunjhunwala occupied the position of the chairman. A notice dated 26th November 2014 was issued for a board meeting of the company scheduled to be held on 6th December 2014. It is the case of Respondent No.2 that, the said notice was served upon the Applicant.

3.2) In the proceedings before the National Company Law Tribunal, the Applicant filed an Affidavit dated 27th February 2017, wherein he relied on

the copy of the notice dated 26th November 2014, which notice, according to Respondent No.2 was never issued by the company. That, the notice which was relied upon by the Applicant was a false and fabricated document created by the Applicant.

3.3) That, the original notice dated 26th November 2014 has only 6 items on the agenda. Further, while the notice relied upon by the Applicant does not contained the item at agenda No.4 and that, the item at agenda No.6 has been replaced by agenda No.4. That, the Applicant has caused a signature like that of their father's signature or has caused it with others. That, the forged and fabricated notice was received by the company on 27th February 2017. The Respondent No.2 relied upon the opinion of the hand writing expert Ms. Hiral Mehta.

3.4) That, a written complaint dated 21st June 2017 was filed to Sr. PI Malbar Hill Police Station against the Applicant, wherein after an enquiry being conducted, it was concluded by the Investigating Authorities that, the dispute is of a civil nature and the same is sub-judice before the Company Law Board. Respondent No.2 and his father then addressed a complaint dated 7th November 2017 to the Government of Maharashtra, copies thereof were given to the Commissioner of Police and the Additional Commissioner of Police, Mumbai. The Malabar Hill Police Station after conducting an enquiry vide letter dated 29th December 2017, informed the father of Respondent No. 2 that, the earlier enquiry conducted by the Investigating Authorities was

proper.

3.5) Mr. Ramrichpal Jhunhunwala, filed a complaint against the Applicant and one Mr. Jitendra Rathod bearing complaint No. 03/SW/2018. The learned Metropolitan Magistrate, 40th Court, Girgoan by Order dated 27th February 2018 was pleased to dismiss the said complaint. Mr. Ramrichpal Jhunhunwala preferred a Revision Application bearing No. 490 of 2018 challenging the Order dated 27th February 2018. During the pendency of the Revision Application, Mr. Ramrichpal Jhunhunwala passed away. Respondent No.2 filed a Miscellaneous Application with a prayer to conduct the proceedings and for substitution. The said Application was allowed.

3.6) By Order dated 31st December 2018, the Revision Application came to be dismissed. In the said Order, at paragraph 13, the following observations are made:-

“...be that as it may if the complainant wants to file the complaint case then he can do it even now also irrespective of impugned order because, his application for prayer to direct investigation u/s. 156(3) of Cr.P.C. only is rejected. He did not consent for treating the case as complaint case for proceeding under section 200 of the Cr.P.C. As such, in fact there was no complaint case at all. There was only an application to direct investigation u/s. 156(3) of Cr.P.C. and the same is rejected. The complaint is not barred by limitation. Thus, there is no need for this Court to direct the Magistrate to restore the complaint on his file. The revisionist can file fresh complaint case.”

3.7) Respondent No.2 filed a complaint. The Respondent No.2's verification statement came to be recorded on 1st March 2019, after which

the evidence of the Hand Writing Expert was recorded. The learned Magistrate vide Order dated 17th June 2019 directed the Malabar Hill Police Station to conduct an enquiry as per Section 202 of the Code of Criminal Procedure. An enquiry report dated 19th October 2019 was submitted by the Malabar Hill Police Station. Vide Order dated 19th December 2019, learned Metropolitan Magistrate, 40th Court, Girgaon, Mumbai was pleased to issue process against the Applicant for an offence punishable under Section 465, 471 of the Indian Penal Code.

3.8) The Applicant preferred a Criminal Revision Application No. 271 of 2020 challenging the Order dated 19th December 2019. The learned Sessions Court after hearing the parties, by Order dated 3rd November 2023 was pleased to dismiss the Applicant's Criminal Revision Application. The Orders dated 19th December 2019 passed by the learned Magistrate and the Order dated 3rd November 2023 passed by the Sessions Court are impugned in this Application.

4) Mr. C. K. Pendse, learned Advocate appearing for the Applicants submits that:-

4.1) Both the impugned Orders i.e. Order dated 19th December 2019 and 3rd November 2023 indicate a total non application of mind and are unreasoned Orders. That, the Courts below failed to consider the fact that, the father of Respondent No.2 had filed complaint bearing CC No.3/SW/2018 before the Magistrate's Court seeking directions under Section 156(3) of the

Code of Criminal Procedure. By an Order dated 27th February 2018, the learned Magistrate was pleased to conclude that, the allegations arise out of a civil dispute and do not disclose any cognizable offence. The said finding has been confirmed by the Sessions Court vide Order dated 31st December 2018 passed in Criminal Revisions Application No. 490 of 2018 and has attained finality.

4.2) The Order dated 19th December 2019, erred in reversing the findings when no new material is brought on record. That, Order dated 27th February 2018 passed in CC No. 3/SW/2018 had categorically observed that the opinion of the private Hand Writing Expert cannot be considered as same is based on a mere copy of the alleged forged document. That, the original document was not produced for comparison. That, based on the very same hand writing expert's opinion, the learned Magistrate in CC No. 08/SW/2019 while taking a completely contrary view has issued process against the Applicant. The learned Sessions Court while hearing the Revision Application has not considered the said fact. That, the same indicates a total non-application of mind and non-appreciation of the correct facts. The present complaint therefore is nothing but a second complaint filed on the same facts and on the same material. The second complaint on the same facts can be entertained only in exceptional circumstances such as when the previous Order is passed on incomplete record, or on a misunderstanding of the nature of the complaint or the Order is manifestly absurd, unjust or where new facts

which could not, with reasonable diligence have been brought on the record in the previous complaint. That, in the present matter none of the conditions are fulfilled by Respondent No.2. That, on the same material the earlier complaint bearing CC No. 03/SW/2018 was rejected. That, learned Sessions Court has erred in observing that, the first complaint was not dismissed on merits. That, the findings of the learned Sessions Judge are incorrect.

4.3) In the first complaint, it was specifically contended that, the learned Magistrate is required to pass an Order under Section 156(3) and not adopt the other course i.e. examination of the Complainant and witnesses under Section 200 of the Code of Criminal Procedure. The said complaint was dismissed. The said fact has been considered by the Sessions Court in its Order dated 31st December 2018.

4.4) That, there is no prima facie case made out against the Applicant under Section 465 and 471 of the Indian Penal Code. That, the essential ingredients of forgery are not even made out.

4.5) That, there are various civil disputes pending between the parties which are subjudice before the Company Law Board. That, the Respondent No.2 had earlier filed Criminal Complaint bearing CC No. 154/SW/2009 before the Metropolitan Magistrate, 18th Court at Girgaon under Section 409, 461, 468, 471 and 120-B of the Indian Penal Code. That, the said complaint was dismissed by the learned Magistrate vide Order dated 21st February 2009 and has been confirmed by Sessions Court by Order dated 20th March 2010

and by this Court by Order dated 29th June 2011.

5) Mr. Rushikesh Kekane, learned Advocate appearing for the Respondent No.2 submits that:-

5.1) The factual background of the matter including the previous complaint bearing CC No. 3/SW/2018 and the Order passed in Criminal Revision Application No. 490 of 2018 dated 31st December 2018 have been considered by the learned Magistrate while passing Order dated 19th December 2019. That, the complaint was filed on the basis of the liberty granted by the Sessions Court.

5.2) Pursuant to the complaint, recording of the verification of the complainant and the evidence of the hand writing expert, an enquiry was conducted. The Applicant was given an opportunity of being heard, after which, the summons was issued against the Applicant in respect of commission of offence under Section 465 and 471 of the Indian Penal Code.

5.3) The Application of mind of the Magistrate is reflected in the Order. That, the case was dismissed against the Accused No.2 for want of sanction.

5.4) The Order dated 3rd November 2023 also considers the factual aspects and the provisions of law. The Orders specifically hold that, the first complaint was neither dismissed on merits nor the Magistrate proceed with the complaint under Chapter XV of the Code of Criminal Procedure. The learned Sessions Court did not direct the learned Magistrate to treat the

Application under Section 156(3) of CrPC, where the learned Magistrate has issued process.

5.5) It is pertinent to note that, in the first complaint, the Complainant had sought relief under Section 156(3) of the CrPC and whereas in the second complaint he prayed for proceedings against the accused under Chapter XV of the CrPC.

6) Ms. Sangita Phad, learned APP appearing for the State adopted the arguments advanced by Mr. Rushikesh Kekane, learned Advocate for the Respondent No.2.

7) Perused the entire record. The main contention of the learned Advocate for the Applicant is that, after passing the initial Order dated 27th February 2018, where the complaint bearing No. 03/SW/2018 was dismissed, the Complainant was directed to proceed with the complaint under Section 200 of the CrPC, the Complainant had preferred a revision application which was dismissed by Order dated 31st December 2018. The Order dated 31st December 2018 observes that only the application under Section 156(3) of the CrPC is rejected and the Complainant could file a fresh complaint case.

8) Perusal of the Order dated 27th February 2018 rejects the prayer for an Order dated 27th February 2018, rejects the prayer for an Order under Section 156(3) of CrPC and disposed of the proceedings. The operative part of the Order reads as under:-

“1. The prayer for order under section 156(3) of the Code of

Criminal Procedure is hereby rejected.

ii . The proceeding be disposed off accordingly.”

By the said Order proceeding CC No. 3/SW/2018 was disposed of.

9) The original complainant, i.e. Ramrichapal B. Jhunjhunwala, filed a Revision Application No. 490 of 2018, during the pendency of which he expired and therefore the Respondent No. 2 was brought on record. Learned Sessions Judge, after hearing the parties, by an Order dated 31st December 2018, was pleased to dismiss the Revision Application with the following observations:-

“13. When a complaint is filed before the Magistrate, he has two options i.e. 1) to direct investigation u/s. 156(3) of Cr.P.C. or, 2) to take cognizance of the offence and to proceed under section 200, 202 of Cr.P.C. etc. I have held that in this case, the investigation by police is not necessary and hence, the Magistrate has rightly exercised his discretion not to send the complaint for investigation by the police. The other course was to treat the complaint as complainant case. However, the impugned order recites that the complainant himself was not willing for that course. In such circumstances, there was no other course for the Magistrate except to drop the proceedings. Before this court, the revisionist is raising hue and cry that the Magistrate should have considered the legal position that the rejection of the prayer to direct the investigation u/s. 156 (3) of Cr.P.C., does not interdict to take the recourse of section 200 or 202 of Cr.P.C. However, the impugned order shows that the complainant himself was not ready for that course and now he is making retreat. Be that as it may, if the complainant wants to file the complaint case then he can do it even now also irrespective of impugned order because, his application for prayer to direct investigation u/s. 156(3) of Cr. P.C. only is rejected. He did not consent for treating the case as complaint case for proceeding under section 200 of Cr. P. C. As such, in fact there was no complaint case at all. There was only an application to direct

investigation u/s. 156(3) of Cr. P. C. and the same is rejected. The complaint is not barred by limitation. Thus, there is no need for this Court to direct the Magistrate to restore the complaint on his file. The revisionist can file fresh complaint case. In view of these observations, I answer this point in the affirmative and pass the following order-

ORDER

The revision is dismissed.”

10) While dismissing the Revision Application, it is observed that, the Complainant himself was not ready for taking recourse under Sections 200 or 202 of CrPC. It is further observed that, if the Complainant wants to file a complaint case, he can do so irrespective of the impugned Order dated 27th February 2018 because only his application for prayer to direct investigation under Section 156(3) of the CrPC was rejected. It is further observed that the Complainant did not consent for treating the case as a complaint case for proceeding under Section 200 of the CrPC and that, as such, there was no complaint case at all. It is further observed that, as the complaint was not barred by limitation, there was no need for the Court to direct the Magistrate to restore the complaint to file. It was observed that the Complainant could file a fresh complaint case. In this background, the present Complainant, i.e. Omprakash Jhunjhunwala (Son of the Original Complainant), preferred complaint case No. 08/SW/2019.

11) The Statement of the Complainant was recorded on oath as per Section 200 of CrPC. The evidence before process of CW-1, i.e. Mr. Hiralal A. Mehta (handwriting expert), was also taken. After considering the statement

of the Complainant, the evidence before process, and after hearing the Advocate for the Complainant, the Metropolitan Magistrate's Court directed an enquiry under Section 202 of CrPC to ascertain the role of Accused No. 1 in respect of the crime of forgery. The following Order was passed:-

“ORDER

Malbar Hill Police station is directed to enquire into role of accused no.1 as regards alleged crime of forgery.

Further Order

It is directed by way of caution that enquiry as regards alleged crime be entrusted to any police officer other than accused no.2 of this case. The concerned clerk shall forward copy Exh.1 in this case to the Malbar Hill Police Station.”

12) The enquiry report, being Exhibit-6, was filed on 19th October 2019. The Complainant was heard. After hearing the parties, the learned Magistrate was pleased to issue summons to Accused No. 1 in respect of commission of offences punishable under Sections 465 and 471 of the IPC.

13) The Order dated 19th December 2019 was challenged by the present Applicant by filing a Criminal Revision Application No. 271 of 2020. The learned Sessions Court, after hearing the parties, by Order dated 3rd November 2023, dismissed the Revision Application with the following observations:-

“11. It is matter of record that the first complaint of complainant was not dismissed on merits therein the learned Magistrate refused investigation to be done by police. Learned Magistrate in the first complaint itself could have proceeded under Chapter XV of the Code of Criminal Procedure but he failed to do so. Sessions Court

also did not direct the learned Magistrate to treat application under Section 156(3) of the Code of Criminal Procedure as a complaint case. Thereafter, complainant filed complaint case under Chapter XV of the Code of Criminal Procedure wherein learned Magistrate was pleased to issue process against applicant/accused under Sections 465 and 471 of IPC as the court prima facie found sufficient ground to proceed against accused in the said complaint case. The argument of applicant/revisionist that second complaint on same fact is not tenable, is devoid of merits in as much as in first complaint, complainant sought relief under Section 156(3) of Cr.PC. whereas in second complaint he prayed for proceedings against accused under Chapter XV of Cr.PC. Learned Magistrate did not commit any error in proceeding against accused under Section 200 of Cr.PC. Further the order of issuance of process against applicant/accused under Sections 465 and 471 of IPC does not appears to be erroneous. Applicant/revisionist has every right to seek his discharge under Section 245 of Cr.PC. In view of above said, the instant revision is liable to be dismissed. Hence, I answer point No.1 in affirmative and proceed to pass the following order:

ORDER

Criminal Revision Application No.271 of 2020 is dismissed.”

14) The learned Sessions Court recorded a finding that, in the first complaint, relief was sought under Section 156(3) of the CrPC, whereas in the second complaint, prayers for proceeding against the accused were under Chapter XV of CrPC. In that view of the matter, it was observed that the Order dated 19th December 2019 was proper and in accordance with law. The said Order dated 3rd November 2023 is challenged by the Applicant before this Court.

15) At this point, it is necessary and would be extremely useful to refer to certain judgments of the Hon’ble Supreme Court and Allahabad High

Court in this regard.

15.1) The Hon'ble Supreme Court in the case of *Devarapally Lakshminarayana Reddy v. V. Narayana Reddy*, reported in (1976) 3 SCC 252 has observed that :-

“17. Section 156(3) occurs in Chapter XII, under the caption : “Information to the Police and their powers to investigate”; while Section 202 is in Chapter XV which bears the heading: “Of complaints to Magistrates”. The power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by Section 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3). It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173. On the other hand, Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under Section 202 to direct, within the limits circumscribed by that section an investigation “for the purpose of deciding whether or not there is sufficient ground for proceeding”. Thus the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the

Magistrate in completing proceedings already instituted upon a complaint before him.

18. *In the instant case the Magistrate did not apply his mind to the complaint for deciding whether or not there is sufficient ground for proceeding; but only for ordering an investigation under Section 156(3). He did not bring into motion the machinery of Chapter XV. He did not examine the complainant or his witnesses under Section 200 CrPC, which is the first step in the procedure prescribed under that chapter. The question of taking the next step of that procedure envisaged in Section 202 did not arise. Instead of taking cognizance of the offence, he has, in the exercise of his discretion, sent the complaint for investigation by police under Section 156.*

19. *This being the position, Section 202(1), first proviso was not attracted. Indeed, it is not necessary for the decision of this case to express any final opinion on the ambit and scope of the first proviso to Section 202(1) of the Code of 1973. Suffice it to say, the stage at which Section 202 could become operative was never reached in this case. We have therefore in keeping with the well established practice of the Court, decided only that much which was essential for the disposal of this appeal, and no more.”*

15.2) The Hon’ble Allahabad High Court in the case of *Jagannath Verma v. State of U.P.*, 2014, reported in AIR 2014 ALL 214 has observed that:-

“43. *An Order which determines matters of moment or which affects valuable rights is not an Interlocutory Order. An Order passed by the Magistrate declining to entertain an Application under Section 156(3), is a matter of moment for the Complainant or the informant because such an order has the effect of declining to issue a direction to the Police to register an FIR and investigate the case. That avenue of a Police investigation is foreclosed by the passing of an Order under Section 156(3). The remedy of a Complainant under Section 200, stands in a distinct and independent sphere and is subject to the discharge of statutory obligations which a Complainant, who brings focus on the commission of a cognizable offence, may not be able to bear....”*

15.2) The Hon'ble Supreme Court in the case of *Ahmad Ali Quraishi v. State of U.P.*, reported in (2020) 13 SCC 435 has observed that:-

“19. In the criminal revision filed against the said order of the Sessions Judge, this Court did not interfere with the rejection of an application under Section 156(3) CrPC, however, observed that the complainant has remedy to file appropriate application. The complainant thereafter had filed Complaint No. 1 of 2017. It is true that rejection of an application under Section 156(3) CrPC in no manner preclude a complainant to file a complaint under Section 200 CrPC.”

15.3) Learned Advocate for the Applicant placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Poonam Chand Jain v. Fazru*, in (2004) 13 SCC 269 wherein it is observed as under :-

“7. In Pramatha Nath Talukdar v. Saroj Ranjan Sarkar [AIR 1962 SC 876 : 1962 Supp (2) SCR 297 : (1962) 1 Cri LJ 770] Kapur, J. speaking for himself and Hidayatullah, J. as he then was, observed (AIR at p. 899, para 48) : (SCR p. 354)

“Therefore if he has not misdirected himself as to the scope of the enquiry made under Section 202 of the Criminal Procedure Code, and has judicially applied his mind to the material before him and then proceeds to make his order it cannot be said that he has acted erroneously. An order of dismissal under Section 203 of the Criminal Procedure Code, is, however, no bar to the entertainment of a second complaint on the same facts but it will be entertained only in exceptional circumstances, e.g., where the previous order was passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or foolish or where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings have been adduced. It cannot be said to be in the interests of justice that after a decision has been

given against the complainant upon a full consideration of his case, he or any other person should be given another opportunity to have his complaint enquired into Allah Ditta v. Karam Bakhsh [AIR 1930 Lah 879 : 31 Cri LJ 1180] , Ram Narain Chaubey v. Panachand Jain [AIR 1949 Pat 256 : 50 Cri LJ 524] , Hansabai Sayaji Payagude v. Ananda Ganuji Payagude [AIR 1949 Bom 384 : 51 Cri LJ 39] , Doraisami Aiyar v. T. Subramania Aiyar [AIR 1918 Mad 484 : ILR 41 Mad 188 (FB)] . In regard to the adducing of new facts for the bringing of a fresh complaint the Special Bench in the judgment under appeal did not accept the view of the Bombay High Court or the Patna High Court in cases abovequoted and adopted the opinion of Macleam, C.J. in Queen Empress v. Dolegobind Dass [ILR (1901) 28 Cal 211 : 5 CWN 169] affirmed by a Full Bench in Dwarka Nath Mondul v. Beni Madhab Banerjee [ILR (1901) 28 Cal 652 : 5 CWN 457] . It held therefore that a fresh complaint can be entertained where there is manifest error, or manifest miscarriage of justice in the previous order or when fresh evidence is forthcoming.”

S.K. Das, J. delivering the minority judgment also observed (AIR p. 887, para 21) : (SCR pp. 324-26)

“The question was then considered by a Full Bench of the Calcutta High Court in Dwarka Nath Mondul v. Beni Madhab Banerjee [ILR (1901) 28 Cal 652 : 5 CWN 457] and it was held by the Full Bench (Ghose, J. dissenting) that a Presidency Magistrate was competent to rehear a warrant case triable under Chapter XXI of the Code of Criminal Procedure in which he had earlier discharged the accused person. Nilratan Sen case [Nilratan Sen v. Jogesh Chundra Bhattacharjee, ILR (1896) 23 Cal 983 : 1 CWN 57] and Komal Chandra Pal case [Komal Chandra Pal v. Gour Chand Audhikari, ILR (1897) 24 Cal 286 : 1 CWN 185] were referred to in the arguments as summarised in the report, but the view expressed therein was not accepted. Dealing with the question Prinsep, J. said:

“There is no bar to further proceedings under the law, and,

therefore, a Magistrate to whom a complaint has been made under such circumstances, is bound to proceed in the manner set out in Section 200, that is, to examine the complaint, and, unless he has reason to distrust the truth of the complaint, or for some other reason expressly recognised by law, such as, if he finds that no offence had been committed, he is bound to take cognizance of the offence on a complaint, and unless he has good reason to doubt the truth of the complaint, he is bound to do justice to the complainant, to summon his witnesses and to hear them in the presence of the accused.'

The same view was expressed by the Madras High Court in Malayil Kottayil Koyassan Kutty, In re [AIR 1918 Mad 494 : 18 Cri LJ 329] and it was observed that there was nothing in law against the entertainment of a second complaint on the same facts on which a person had already been discharged, inasmuch as a discharge was not equivalent to an acquittal. This view was reiterated in Kumariah Naicker v. Chinna Naicker [AIR 1946 Mad 167 : 47 Cri LJ 595] where it was held that the fact that a previous complaint had been dismissed under Section 203 of the Code of Criminal Procedure was no bar to the entertainment of a second complaint. In Hansabai Sayaji Payagude v. Ananda Ganuji Payagude [AIR 1949 Bom 384 : 51 Cri LJ 39] the question was examined with reference to a large number of earlier decisions of several High Courts on the subject and it was held that there was nothing in law against the entertainment of a second complaint on the same facts. The same view was also expressed in Ram Narain Chaubey v. Panachand Jain [AIR 1949 Pat 256 : 50 Cri LJ 524] , Rama Nand v. Sheri [AIR 1934 All 87 : 35 Cri LJ 1062] and Allah Ditta v. Karam Bakhsh [AIR 1930 Lah 879 : 31 Cri LJ 1180] . In all these decisions it was recognised further that though there was nothing in law to bar the entertainment of a second complaint on the same facts, exceptional circumstances must exist for entertainment of a second complaint when on the same allegations a previous complaint had been dismissed.

... I accept the view expressed by the High Courts that there is nothing in law which prohibits the entertainment of a second complaint on the same allegations when a previous complaint had been dismissed under Section 203 of the Code of Criminal Procedure. I also accept the view that as a rule of necessary caution and of proper exercise of the discretion given to a Magistrate under Section 204(1) of the Code of Criminal Procedure, exceptional circumstances must exist for the entertainment of a second complaint on the same allegations; in other words, there must be good reasons why the Magistrate thinks that there is 'sufficient ground for proceeding' with the second complaint, when a previous complaint on the same allegations was dismissed under Section 203 of the Code of Criminal Procedure."

16) The ratio laid down by the Hon'ble Supreme Court in the case of *Poonam Chand Jain v. Fazru*, (*Supra*) is well settled law. The observations of the Hon'ble Supreme Court in the case of *Ahmad Ali Quraishi* (*Supra*) and the observations of Allahabad High Court in the case of *Jagannath Verma* (*Supra*) are squarely applicable to the present case.

17) In the present case, the first complaint, i.e. 03/SW/2018, was disposed of when the prayer under Section 156(3) of the CrPC was rejected. In revision, which was filed challenging the said Order dated 27th February 2018, the Sessions Court had specifically observed that the Original Complainant could file a complaint irrespective of the impugned Order because only the prayer under Section 156(3) was rejected and he had not consented for treating the case for proceeding under Section 200 of CrPC.

18) It was pursuant to these directions that the Second complaint, i.e. 08/SW/2019, was filed. It is in this case, for the first time, that the enquiry

under Section 202 of the CrPC was initiated. The rejection in the first complaint was only in respect of proceedings under Section 156(3) of the CrPC. The complaint case was not proceeded with. It is only in the second complaint, i.e. 08/SW/2019, that for the first time an enquiry under Section 202 of the CrPC was initiated to ascertain the role of Accused No. 1. Based on the report which was submitted on 19th October 2019, the Order of issuing summons was passed on 19th December 2019. The said Order is passed on the enquiry report dated 19th October 2019. The said Order has proceeded on the merits of the matter. The Applicant preferred a revision application against the said Order, which was dismissed by the Order dated 3rd November 2023. In the said Order, the Sessions Judge has observed that the first complaint only sought relief under Section 156(3), whereas the second complaint was under Chapter XV of the CrPC.

19) Considering the facts of the present case and the Judgments as referred to hereinabove, it appears that the observation and reasoning of the learned Sessions Judge in the Order dated 3rd November 2023 is the correct proposition of law. I have noted that, the Hon'ble Supreme Court in the case of *Ahmad Ali Quraishi v. State of U.P. (Supra)*, in para 19, has specifically observed that rejection of an Application under Section 156(3) of CrPC in no manner precludes a complainant from filing a complaint under Section 200 of the CrPC. Also, the Full Bench of the Allahabad High Court in the case of *Jagannath Verma (Supra)* has observed that, the right to seek an Order under

Section 156(3) and the remedy of the complainant under Section 200 of the CrPC stand in distinct and independent spheres.

20) Section 156(3), which occurs in Chapter XII of the CrPC, deals with information to police and their powers to investigate, while Section 200 and enquiry under Section 202 come under Chapter XV of the CrPC under the heading of complaints to Magistrates. The power of police investigation under Section 156(3) is different from the power to direct an investigation under Section 202(1) of the CrPC. The power under Section 156(3) is a power exercisable at the pre-cognizance stage, while the power under Section 200 is a power exercisable at a post-cognizance stage when the Magistrate is in seisin of the case.

21) It is settled law that the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of an offence under Section 190 of the CrPC. Once cognizance is taken and the procedure under Chapter XV (Sections 200 to 204 of CrPC) is invoked and proceeded with, then one cannot switch back to the pre-cognizance stage and avail of Section 156(3) of the CrPC. As observed by the Hon'ble Supreme Court, an Order made under Section 156(3) is in the nature of a peremptory reminder and intimation to the police to exercise their powers of investigation under Section 156(1), which investigation begins with the collection of evidence under Section 156(3) and ends with the report and charge-sheet under Section 173 of the CrPC. Section 202 of the CrPC is invoked and comes into play only

when some evidence is available before the Magistrate in a proceeding under Chapter XV but which appears to be insufficient to take a decision. It is in such a situation that the Magistrate initiates an enquiry under Section 202 of the CrPC. The said enquiry is held and conducted obviously within the limits of Section 202 of the CrPC, i.e. for the purpose of deciding whether or not there is sufficient ground for proceeding. Section 202 is assistance provided to the Magistrate under the CrPC for completing the procedure already initiated. Once the report under Section 202 is received, the Magistrate has the option either to proceed under Section 203 or 204.

22) In the facts of the present case, at the initial stage, what was rejected only was the prayer under Section 156(3), and the proceeding was disposed of. The said proceeding was not revived. It was only in the Order dated 31st December 2018 that there is an observation made that the Complainant could file a complaint case irrespective of the rejection under Section 156(3) of the CrPC, which was done by Order dated 27th February 2018. It was in these facts that the second complaint was filed. As noted earlier, in the first complaint, no steps were taken under Chapter XV of the CrPC.

23) Considering the aforesaid facts and the law as laid down by the Hon'ble Supreme Court, the Order dated 3rd November 2023 is an Order which is in accordance with law, and no fault can be found with the same.

24) In view thereof, the present Application is dismissed.

25) The dispute/issues between the Complainant and the Accused (who are related and happened to be family members) had commenced before the year 2008. The present complaint is of the year 2019. In that view of the matter, the Metropolitan Magistrate, 40th Court, Girgaon, is requested to take up the matter as expeditiously as possible.

(RANJITSINHA RAJA BHONSALE, J.)

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