

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1184 OF 2014

Datta S/o Manikrao Bhadekar,
Age : Major, Occ. Pensioner,
R/o. Sneha Nagar, Nanded,
District Nanded.

...Petitioner

Versus

1. The State of Maharashtra,
through Police Station Airport,
Dist. Nanded.
2. Gajanan S/o Ramchandra Kadam,
Aged : 38 yrs., Occ. Agri,
R/o. Phule Nagar, Nanded
Tq. Nanded, Dist. Nanded.
3. Sudhakar S/o Ramchandra Kadam,
Age : 25 years, Occu. Agri,
R/o. Phule Nagar, Nanded,
Tq. Nanded, Dist. Nanded.
4. Ramchandra s/o Vithalrao Kadam,
Age : 60 years, Occu. Agri,
R/o. Phule Nagar, Nanded,
Tq. Nanded, Dist. Nanded.
5. Keshavrao s/o Nagorar Wankhede,
Age : 35 years, Occu- Agri,
R/o. Vasant Nagar, Nanded.
6. Rajendrasingh s/o Jogindarsingh Nambardar,
Age : 50 years, Occu. Business and Agri,
R/o. Gurudwara gate No. 3,
Badpura Nanded.

...Respondents

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Shri. Ganesh Shinde, Advocate for the petitioner
Shri. S. M. Jadhav, APP for respondent/State

Shri. C. S. Deshmukh, Advocate for respondent Nos. 2 to 5
Shri. G. R. Syed, Advocate for respondent No. 6

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ALONG WITH

CRIMINAL WRIT PETITION NO. 1183 OF 2014

Datta S/o Manikrao Bhadekar,
Age : Major, Occ. Pensioner,
R/o. Sneha Nagar, Nanded,
District Nanded.

...Petitioner

Versus

1. The State of Maharashtra,
through Police Station Airport,
Dist. Nanded.
2. Rajendrasingh s/o Jogindersingh Nambardar,
Age : 51 years, Occ. Business & Agril,
R/o. Badapura Gurudwara Gate No. 3,
Nanded, Dist. Nanded.

...Respondents..

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : MAY 7TH, 2015

ORAL JUDGMENT: -

. Heard. Rule. Rule made returnable forthwith with
the consent of the parties.

2. As the facts of both the applications are similar, the
same are being disposed of by this common judgment. For
convenience, the facts of Criminal Writ Petition No. 1184 of
2014, are taken into consideration. The petitioner herein

questions the correctness and validity of the order dt. 17th July, 2014 passed by Sessions Judge, Nanded in Criminal Revision Application No. 25 of 2014, thereby setting aside the order dt. 3/2/2014, passed by 8th Judicial Magistrate First Class, Nanded (hereinafter shall be referred to as "JMFC, Nanded") thereby giving directions under Section 156(3) of the Code of Criminal Procedure.

3. The petitioner herein happens to be the original complainant. The petitioner had filed a complaint before the JMFC, Nanded, seeking directions to prosecute the present respondents for the offences punishable under Sections 420, 468, 471, 447 r/w 34 of the Indian Penal Code. The petitioner had specifically made averments in the complaint that, the petitioner had approached the Police Station and filed complaints against the present respondents. The complaints were filed at Vimantal Police Station, Nanded, against the respondents on 30/01/2012, 25/02/2012, 22/03/2012 and 13/04/2012. However, the police had not taken any cognizance of the said complaints. The petitioner had lastly approached the police station on 15/12/2013 and 5/1/2014. The Police had not paid any heed to his complaints but, had directed him to approach the Court of law and, therefore, the petitioner had

filed complaint before the JMFC, Nanded along with the documents. The learned Magistrate by an order dt. 3/2/2014, had, upon an application of mind, arrived at a subjective satisfaction that the contents of the application revealed the commission of cognizable offences in respect of immovable property and had issued directions under Section 156(3) of the Cr.P.C., and further directed the concerned police station to submit the compliance report.

4. Pursuant to the directions issued by the Magistrate on 3/2/2014, Crime No. 26 of 2014 was registered at Vimantal Police Station, Nanded on 16/02/2014, against the present respondents for offence punishable under Sections 406, 420, 468, 471, 447, 448 of the Indian Penal Code.

5. Being aggrieved by the registration of the said offence, the accused had filed Criminal Revision Application before the Sessions Court, seeking relief of quashing of the order issuing directions under Section 156(3) of the Cr.P.C. The revision was filed on 25th February, 2014 i.e. after registration of the offence. The learned Sessions Judge had considered the merits of the case and had arrived at a conclusion that the dispute between the parties is exclusively of civil nature and

that the civil litigations are pending before the Civil Court and, therefore, no case for investigation by police machinery is made out. By inference, it could be said that the revisional Court by quashing the order under Section 156(3) of Cr.P.C. has quashed the investigation in Crime No. 26 of 2014.

6. An order under Section 156(3) of Cr.P.C. is, in fact, in the nature of direction. Section 156 of Cr.P.C. reads as follows:

156. Police officer's power to investigate cognizable cases

- (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.*
- (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.*
- (3) Any Magistrate empowered under section 190 may order such an investigation as abovementioned.*

7. In the present case, it is apparent on the face of record that the petitioner had approached the concerned Police Station on several occasions and had requested the Police to

register an offence and investigate the same. However, the police machinery had not paid any heed to the complaints and had directed the complainant to approach the Court of law.

8. An order under Section 156(3) of Cr.P.C. is in the nature of a direction reminding the police of their duty to register an offence and inquire into the same wherever the allegations levelled in the complaint *prima facie* disclose commission of a cognizable offence. That, pursuant to the directions issued by the Magistrate, an offence was registered and, therefore, there was no scope for hearing the revision on merits and ascertain as to whether a cognizable offence was made out or not.

9. An order u/s 156(3) is an interlocutory order and no revision would be maintainable against the same. In fact, the accused has no locus whatsoever to ascertain his rights at the stage of registration of offence and, therefore, it is not open for an accused to challenge an order under Section 156(3) of Cr.P.C., which is *prima facie* in the nature of a direction. The Hon'ble Apex Court in a catena of decisions has held that a Revision Application u/s 397 of Cr.P.C., challenging an interlocutory order is not maintainable.

10. In the case of V. C. Shukla v. State through C.B.I. reported in AIR 1980 SC 962, the Hon'ble Apex Court has held that:

“as the non-obstante clause expressly excludes the provisions of the Code of Criminal Procedure, Section 397(2) of the Code cannot be invoked because that would frustrate the very object which Section 11 seeks to sub-serve”. That, "The word "interlocutory", as applied to rulings and orders by the trial court, has been variously defined. It refers to all orders, rulings, and decisions made by the trial court from the inception of an action to its final determination. It means, not that which decides the cause, but that which only settles some intervening matter relating to the cause. An interlocutory order is an order entered pending a cause deciding some point or matter essential to the progress of the suit and collateral to the issues formed by the pleadings and not a final decision or judgment on the matter in issue”.

11. The Hon'ble Apex Court has further held that:

“unless an order results in a final termination of the proceeding in any way it is decided, the order is of an interlocutory nature”.

12. Needless to say that, an order u/s 156(3) of Cr.P.C. is not in any way a final order and therefore no rights would be accrued upon any party to challenge the same in a revision application u/s 397 of Cr.P.C. Section 397 of Cr.P.C. specifically contemplates the examination of record of any proceeding before any inferior Criminal Court by the High Court or the Sessions Court to satisfy itself as to the correctness, legality or propriety of any finding. Section 397(2) of the Cr.P.C. specifically contemplates as follows:

“The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.”

13. In a case u/s 156(3) of the Cr.P.C., this Court is of the opinion that it is a peremptory reminder to the Police to exercise their plenary powers to register an offence whenever the allegations disclose the cognizable offence. The result of the said enquiry could be a subject matter of a challenge but, intention of an enquiry / investigation does not determine the rights of any proposed accused person and, therefore, an accused cannot pray for quashing of an order u/s 156(3) of Cr.P.C. It may be open for an accused to seek the relief of quashing of the FIR u/s 482 of Cr.P.C. after demonstrating that,

no offence is made out. In fact, once an offence is registered pursuant to the directions u/s 156(3) of Cr.P.C., the complaint would be terminated and the enquiry would commence upon registration of the offence and, therefore, an order quashing the directions u/s 156(3) of Cr.P.C. would be a nullity.

14. In the case of Col. B. S. Khatri Vs. State of Maharashtra & Anr. reported in 2003 ALL MR (Cri) 1925, the Division Bench of this Court has held that, after considering the catena of decisions of the Hon'ble Apex Court has held that, the supreme Court has sounded a word of caution and stated that such power (under Article 226 of the Constitution of India or Section 482 of Cr.P.C.) should be sparingly and cautiously exercised only when the Court is of the opinion that otherwise there will be gross mis-carriage of justice. It is therefore necessary for us to follow this caution and examine whether any miscarriage of justice is likely to be caused by not quashing the proceedings.

15. It will be seen that what is impugned before us is the order passed under Section 156(3) of the Code which directs investigation into the complaint by a particular wing of the police. What is going to be the outcome of that investigation is

not known. Everything that can happen thereafter can be scrutinised and re-scrutinised by judicial authorities mentioned in the Code and there is therefore no question of miscarriage of justice being caused by not quashing of the complaint and order.

16. In the present case, there was no occasion for the revisional Court to go into the genuineness of the allegations levelled in the complaint as, at that stage the complaint was under scrutiny and the outcome would be filing of a report u/s 173 of Cr.P.C. In the eventuality no offence was made out, the proceedings would be terminated after a fair and impartial enquiry is held. It would not be proper for any Court to interfere with the course of investigation and stall the powers of the investigating agency. It would be necessary to have faith in the investigating agency and in any case, the outcome would be a subject matter of scrutiny. This Court is of the opinion that the learned Sessions Court has committed a grave error in quashing the order which was in the nature of a direction u/s 156(3) of Cr.P.C. Hence, the order dt. 17/07/2014 passed by Sessions Judge, Nanded, deserves to be quashed and set aside and is accordingly quashed and set aside.

17. The investigating agency shall not be influenced by any observations made herein above. In the eventuality that the accused chooses to file a petition u/s 482 of Cr.P.C. seeking relief of quashing of FIR, all contents would be kept open. This Court has only quashed and set aside the order passed by Sessions Judge, Nanded, allowing the revision filed by the accused and setting aside the order passed u/s 156(3) of Cr.P.C. The applications are allowed in terms of prayer clause 'B' and disposed of. Rule made absolute in above terms with no order as to costs.

(SMT. SADHANA S. JADHAV, J.)