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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 236 OF 2015**

Sunali Roopkumar Rathod ... Applicant

Versus

State of Maharashtra ... Respondent

Mr. Shyam Dewani along with Mr. Chirag Chanani i/by M/s. Dewani & Associates for the applicant.

Smt. P.P. Bhosale, A.P.P. for State.

**CORAM : M.L. TAHALIYANI, J.
DATED : APRIL 07, 2015**

P.C.

Heard Mr. Devani learned counsel for the applicant and learned A.P.P. for the State.

2. Admit. Heard finally by consent of the learned counsel for the applicant and learned A.P.P. for State.

3. The applicant had filed petition under section 156(3) before the Judicial Magistrate First Class, Mawal, Wadgon seeking directions to the police to investigate offence under section 147, 148, 448,

451, 380, 323, 294, 506(b) read with 34, 166, 201, 217 and 218 of Indian Penal Code and other sections. The incident in question had occurred on 1st December, 2014. The incident was reported to Police Inspector, Lonavala Police Station by Mr. Sunil Kumbhar who was working as security guard of the applicant Sonali Rathod, at Bungalow No. 20, Raheja Hill Resort, Tungarli Village, Lonavala. The offence is alleged to have been committed by one Sameer Sheth, his wife and 7/8 unknown persons. The police did not take any action on the complaint. Therefore, petition was filed before the Magistrate under section 156(3) of the Code of Criminal Procedure for issuance of directions to the police to investigate the matter and submit report under section 170 of the Code of Criminal Procedure. Learned Magistrate dismissed the petition on the ground that the names of the persons, who allegedly have committed the offence, were not mentioned in the application.

4. Learned counsel Mr. Dewani submits that it was not necessary for the applicant to mention names of the accused. As a matter of law, I agree with Mr. Dewani. There may be a case where aggrieved persons may not be knowing the names of the persons who have committed the offence. In that event the complaint will be against the unknown persons. However, in the

present case, the complaint lodged by Sunil Kumbhar on behalf of the applicant, clearly stated that the alleged offence is committed by one Sameer Sheth, his wife and 7/8 other persons. In the circumstances, it would have been just and proper that the names of Sameer Sheth, his wife could have been mentioned in the complaint as accused. In so far as unknown persons are concerned, it becomes duty of the police to investigate and find out other persons involved in the alleged offence.

5. The view taken by the Magistrate that it was necessary for the applicant to file application under section 200 of Code of Criminal Procedure is not correct in as much as there is no definite proforma for the petition under section 156(3) and such a petition cannot be rejected only because the names of the accused have not been mentioned in the cause title. In the body of the complaint, it is disclosed that some persons were known to the petitioner, and some persons were unknown to the petitioner. It was sufficient for the Magistrate to decide as to whether cognizable offence was made out to refer the complaint to the police for investigation. In the present case, the Magistrate was under an obligation to examine whether the allegations made in the complaint filed by the complainant could make out commission of cognizable offence. Instead of examining the issue in question,

the Magistrate had unnecessarily diverted his mind towards formalities of the complaint under section 200 of the Code of Criminal Procedure. The Full Bench of this court in the matter of Panchbhai Popatbhai Butani and Ors. Versus State of Maharashtra and Ors. Reported in 2010(1) Mh.L.J. Page 421 has stated thus :

“However, keeping in view the principles of criminal jurisprudence again no stringent format can be provided or is necessary in relation to a prayer clause. It is for the complainant or the aggrieved person to decide whether he wishes to refer the matter to investigation under Section [156\(3\)](#) of the Code or whether his application is to be treated as a regular complaint under Section [200](#) of the Code. We have no hesitation in holding that no particular format of the application or petition to Magistrate under Section [156\(3\)](#) is provided or is required to be made. Suffice it for the complainant or aggrieved person to bring it to the notice of the Court under Section [156\(3\)](#) that despite intimation to the police it has failed to act and investigate a cognizable offence in accordance with law or that in the fact situation of the case it was necessary to directly approach the Court. Once such a petition is presented, the learned Magistrate is free to exercise appropriate jurisdiction in accordance with law and at the request of complainant. But a petition cannot be rejected by the Court merely on the ground that it does not contain a proper prayer clause insofar as it discloses commission of a cognizable offence.”

6. In view of the Full Bench judgment of this court, the learned Magistrate could not have insisted for a particular format of petition under section 156(3) of the Code of Criminal Procedure.

7. For all these reasons, this petition is allowed. The order passed by

the learned Magistrate is set aside. The learned Magistrate is directed to consider the petition filed under section 156(3) afresh and decide the same in accordance with law.

8. Petition filed before the Magistrate by the applicant shall be decided within a period of two weeks from the date of receipt of this order. Learned Magistrate is directed to act on authenticated copy of this order. Criminal Application stands disposed of.

(JUDGE)