

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4775 OF 2014

1. Mr. Pandharinath Narayan Patil
Age 57 years, Occ: Service,
Indian Inhabitant, res. at
Room No.302, Arshana Building,
Sector 15, Kalamboli,
Navi Mumbai.
2. Mr. Sunil Balbhim Darekar
Age 40 yrs, Occ: Service,
Indian Inhabitant, res. at
KHI/18/203, Vastuvihar,
Sector 16, Kharghar,
Navi Mumbai.
3. Mr. Sanjay Shankar Lokhande,
Age 47 years, Occ: Service,
Indian Inhabitant, res. at
B Wing, 4/29, Yogendra Apartment,
Kate Manwali Naka,
Kolsewadi, Kalyan (East)

..Petitioners

v/s.

1. The State of Maharashtra
through Commissiioner of Police,
and DCP Navi Mumbai,
to be served through
Public Prosecutor,
High Court, Bombay.
2. Mr. Vinod Dipchandra Gangwal,
Age 40 yrs, Occ: Reporter/Advocate
R/at. 1/102, Hawre Splendour,
Sector No.20, Kharghar,
Navi Mumbai.

..Respondents

Mr. A.H.Ponda, i/b/ Chate & Co. for the Petitioner.
Mr.Vinod Gangwal Respondent no.2 in person.
Mrs. M.M.Deshmukh, APP for the Respondent/State.

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.
RESERVED ON: FEBRUARY 04, 2015.
JUDGMENT DATED : MARCH 30, 2015.**

JUDGMENT (PER ANUJA PRABHUESSAI, J.):

1. Rule. Rule is made returnable forthwith. Heard finally with the consent of the learned counsel for the petitioners, respondent no.2 and learned APP.
2. The petitioners herein have invoked the jurisdiction of this court under Article 226 of the Constitution of India and Section 482 of Cr.P.C. to quash the FIR No.22 of 2014 registered against them at Kharghar Police Station under Section 367, 467, 468, 195, 406, 506, 420 and 383 of IPC.
3. The petitioner nos. 1, 2 and 3 are attached to Kharghar Police Station as Senior Police Inspector, Police Inspector, and Assistant Police Inspector respectively. Pursuant to the order dated 2.12.2014 passed by the learned Magistrate, 2nd Court, Panvel, on an application filed by the respondent no.2 purported to be under Section 156(3) of Cr.P.C., Crime No.22 of 2014 has been registered against the aforesaid petitioners for offences as stated above. The petitioners have stated

that the Magistrate has passed the impugned order on a copy of the letter addressed to various authorities, without there being any complaint filed before the court and without verifying the veracity or the credibility of the allegations. The petitioners have further stated that the application filed by the respondent no.2 contains vague allegations and does not disclose any cognizable offence.

4. The respondent no.2 has filed affidavit-in-reply as well as additional-affidavit-in-reply, wherein he has reiterated the allegations made by him in the application purported to be under Section 156 (3) OF Cr.P.C. The respondent no.2 has denied that the petitioners are public officers and has claimed that the petitioners have acted in contravention of the provisions of law and guidelines laid down by the Apex Court and the High Court and that they are involved in several crimes such as cheating, forgery, criminal intimidation etc.
5. Heard Mr. Ponda, learned Counsel for the petitioners and the respondent no.2 in person. Shri Ponda, learned Counsel for the petitioners has urged that the respondent no.2 had not filed any complaint or application under Section 156(3) before the Magistrate. He had merely forwarded a copy of the complaint, addressed to the President of India and other Authorities and had called upon the Magistrate to treat the same as an application under Section 156(3) of

Cr.P.C. Learned Counsel Mr.Ponda has further submitted that the learned Magistrate has not verified the authenticity of the complaint and has ordered registration of the FIR without verifying whether the same discloses any cognizable offence. He has submitted that the impugned order reflects total non-application of mind.

6. Relying upon the judgment of the Apex Court in the case of ***Rizwan Ahmed Javed Shaikh vs. Jamal Patel (2001) 5 SCC 7***, Learned Counsel for the petitioners has submitted that the petitioners are public servants and that the FIR registered against the petitioners relates to the acts committed by the petitioners while acting in the discharge of their official duties. Learned Counsel for the petitioners has submitted that in the light of judgment of the Apex Court in ***Anil Kumar vs. M.K.Aiyappa (2013) 10 SCC 705***, the Magistrate could not have passed an order under Section 156(3) of Cr.P.C. without a valid sanction by the appropriate authority. He has also relied upon the judgments of the Apex Court in ***Matajog Dubey vs. H.C.Bhandari AIR 1956 SC 44***, ***Nandram Agarwal vs. S.C.Bihari AIR (SC)-1956-054***, ***Omprakash & Ors. Vs. State of Jharkhand (2012) 12 SCC 72***, ***Sankaran Moitra vs. Sadha Das (2006) 4 SCC 584***.
7. The respondent no.2, has urged that the petitioners are not public

servants and hence the bar under Section 197 is not applicable. In support of this contention, he has relied upon the decisions of the Apex Court in ***Fakhruzamma vs. State of Jharkhand [2013 (15) Scale 159]***, and ***Nagraj vs. State of Mysore AIR 1964 SC 269***. He has further submitted that the petitioners had refused to record the complaint lodged by the mother of a rape victim and had further threatened her not to lodge a complaint. He has alleged that the complainant/mother of the rape victim was being questioned by male officers instead of a woman police officer as required under the proviso to Section 154(1) of the Code.

8. The respondent no.2 has further submitted that the petitioners had obtained the signature of Tarabai, the mother-in-law of the complainant, on a blank paper and on the basis which they fabricated a false complaint and implicated and arrested him in the said false case. The respondent no.2 claims that Tarabai does not know the contents of the said FIR and this is evident from her audio-recorded statement. The respondent no.2 has submitted that the petitioners have misused their powers, kidnapped and arrested him and his friend Prakash Bohra and had further failed to inform his family or friends about his arrest.
9. He has submitted that the petitioners had not submitted the FIR

before the Magistrate within the stipulated time and had altered the date of submission of FIR from 27.11.2014 to 24.11.2014. The respondent no.2 has submitted that the petitioners are involved in committing serious crimes. The acts committed by the petitioners were not in discharge of their official duty and as such, the bar of section 197 Cr.P.C. is not applicable. He has relied upon the following decisions: **(1) Shambhunath Mishra vs. State of U.P. (1997)2 SCR-19-1139; (2) Ramanlal vs. State of Rajasthan 2001 Cri.L.J. 800; (3) Choudhury Parveen Sultana vs. State of West Bengal (2009) 3 SCC 398; (4) Pukhraj vs. State of Rajasthan AIR 1973 SC 2591; (5) Bhagwan Prasad Shrivastav vs. M.P.Mishra AIR 1970 SC 1661; (6) Prabhakar V Sinari vs. Shankar Anant Verlekar AIR 1969 SC 686; (7) State of Tamil Nadu vs. Thirukkural Perumal (1995) 2 SCC 449.**

10. We have perused the records and considered the arguments advanced by the learned Counsel for the petitioner and the respondent no.2 in person.
11. At the outset, it is to be noted that Section 156(3) of the Code, which operates at pre-cognizance stage confers powers on Magistrate, who is empowered to take cognizance of offence under section 190, to order investigation into any cognizable case. In the case of **Panchabhai**

Popotbhai Bhutani & ors. vs State of Maharashtra [2010 ALL MR (Cri.) 244] the full bench of this court has held that “ A Petition under Section 156(3) cannot be strictly construed as a complaint in terms of Section 2(d) of the Code and absence of a specific or improperly worded prayer or lack of complete and definite details would not prove fatal to a petition under Section 156(3), in so far as it states facts constituting ingredients of a cognizable offence. Such petition would be maintainable before the Magistrate.”

12. It is thus well settled that the law neither prescribes any particular format for application under section 156 (3) Cr.P.C. nor contemplates verbatim reproduction of the factual allegations or all the ingredients of the alleged offence. Nevertheless, it is imperative that the application under section 156 (3) Cr.P.C should contain facts disclosing cognizable offence and further that the police has failed to exercise powers under section 154 Cr.P.C despite intimation, whereupon the magistrate in exercise of powers conferred under Section 156(3) Cr.P.C. can order investigation of the crime.
13. In the case of Anil Kumar Yadav (supra) the Apex court while examining whether the Magistrate exercising powers under Section 156(3) Cr.P.C., could act in a mechanical or casual manner, has held thus:

"The scope of the above mentioned provision came up for consideration before this Court in several cases. This Court in Maksud Saiyed case (supra) examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where a jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 Cr.P.C., the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) Cr.P.C., should be reflected in the order, though a detailed expression of his views is neither required nor warranted."

14. In a more recent case of **Priyanka Srivastava & anr vs. State of U.P (CRIMINAL APPEAL NO.781 OF 2012)** the Apex Court after considering its previous pronouncements has held that :

"24. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper

application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order.

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26. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if some-

*body is determined to settle the scores. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in **Lalita Kumari** are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."*

15. It is thus well settled that the powers under section 156(3) of the Code cannot be exercised mechanically but are required to be exercised judiciously. The magistrate is not required to embark upon an in-depth roving enquiry as to the reliability or genuineness of the

allegations, nonetheless, he has to arrive at a conclusion that the application discloses necessary ingredients of the offence for which investigation is intended to be ordered. Furthermore, the reasons for arriving at such conclusion should be clearly reflected in the order.

16. Reverting to the facts of the present case, it is not in dispute that the respondent no.2, who is an advocate, had not filed any complaint or an application under section 156 (3) Cr.P.C. He had addressed a complaint to the various authorities, viz. the President of India, Chief Justice of Supreme Court of India, Chief Justice of the Bombay High Court, the Human Right Commission, Mumbai, Chief Secretary, Maharashtra Government, Home Secretary, Maharashtra Government, Director General of Police, District Magistrate, Alibag and Chief Judicial Magistrate Panvel Court and Commissioner of Police, Navi Mumbai, attributing certain acts, alleged to be offences, to the petitioners. The respondent no.2 had forwarded a copy of the said complaint, which was on his letterhead, to the magistrate, with a hand written note as - "Treat this application under Section 156(3) and give direction to register FIR against accused in the below sections, 367, 467, 468, 195, 504, 506, 420, 383. Since influential police persons are involved FIR may be registered at Crime Branch, Mumbai or Navi Mumbai, or as Hon'ble Court deems fit". Below the said note, names of the alleged

accused persons were given as "P.P.Patil, Darekar, Mr. Lokhande and 11 Ors."

17. A bare look at the copy of the application reveals that the respondent no.2, who is an advocate and is well versed with the legal provisions and procedure, has invoked the judicial process in a most casual manner. He had not filed any application before the Magistrate but had forwarded a copy of a complaint on his letterhead, addressed to several authorities and called upon the magistrate to act upon it. He had not produced prior application made by him under section 154 (1) and 154 (3) of Cr.P.C. Though the respondent no. 2 had alleged that the petitioners had fabricated a false complaint against him and tampered with the date of submission of the FIR, he had not produced the copy of the said FIR or the documents which were allegedly tampered with. Suffice it to say that the mere fact that the application under section 156 (3) Cr.P.C does not require any specific format certainly does not justify such casual approach.

18. The next question that arises is whether the application purported to be under section 156 (3) Cr.P.C discloses any cognizable offence warranting registration of the First Information Report against the present petitioners, who are the police officers of the Kharghar Police station.

19. The grievance of the petitioner as voiced in the said application was that on 23.11.2014, on receipt of information of rape of a three years old child, he had visited Kharghar Police Station. He claims that the mother of the rape victim who was at the police station with the victim was being threatened by the petitioner no.3 not to lodge a complaint. He had informed the petitioner no.3 that it was the primary duty of the police to register the FIR and send the victim for medical examination. He claims that in total violation of the guideline of the Supreme Court and the High Court, the mother of the victim was being questioned by a male officer instead of only a lady officer and that he has recorded such questioning on his mobile phone. He subsequently made calls to his journalist friends to inform them about the incident and asked the officer to register a complaint against the petitioners herein. Since no action was taken, he mailed a complaint to the Commissioner of Police, but got no response.

20. The respondent no.2 has further alleged that thereafter the petitioner no.2 came rushing towards him and stated that such evidence would put all the officers in trouble and told him that he had been arrested. He has stated that in total misuse of power, the petitioners arrested and kidnapped him and his friend. He has alleged

that the petitioners had not informed him of his legal rights and had not informed his family or friends about his arrest.

21. The respondent no.2 has further stated that the petitioners had obtained the signature of Tarabai, the mother-in-law of the complainant on a blank paper, which was subsequently used by the police to fabricate a false complaint. Based on the said false and fabricated complaint crime No.346 of 2014 was registered against him and his friend. He claims that initially the crime was registered for offences under Section 353, 354, r/w. 34 of IPC however, at the time of remand sections 504 and 506 IPC were added. The respondent no.2 alleged that the mother-in-law of the complainant does not know the contents of the complaint and that he has audio as well as video proof of the same.

22. He has further stated that it was mandatory to forward the FIR to the court within 24 hours. Having failed to comply with this mandatory requirement, the police altered the date of submission of FIR from 27th to 24th November 2014. He has alleged that he was kidnapped, arrested, and remanded to three days police custody. While he was in custody, he was kept in lock up along with criminals, murderers, and robbers. He was threatened to sign a statement accepting the charge

however, he had refused to sign the same and that this fact can be ascertained from the video recording of lockup room.

23. The respondent no.2 has stated that his phone was confiscated and he was beaten and threatened that he would be trapped and implicated in cases under the prevention of Atrocities Act. The respondent no.2 has expressed apprehension that the police may tamper with CCTV footage. He claimed that the petitioners are involved in committing forgery, kidnapping, threatening, tampering with evidence etc. Hence, by this letter the respondent had requested the concerned authorities to order an independent enquiry or a judicial enquiry as regards the incident that took place on 23.11.2014.

24. Based on the said allegations, the learned Magistrate has passed the order dated 2.12.2014, which reads as follows: "Perused the complaint. Heard the complainant in person. The complainant has alleged about the cognizable offence against the accused who are the Senior PI of Kharghar Police Station, PI Crime Branch etc. Hence, the copy of the complaint be sent to concerned police station through the concerned DCP for treating the same as FIR and the PSO of the concerned police station is directed to investigate the matter under 156 (3) of Criminal Procedure Code. However in the present matter, the complainant has alleged about the cognizable offences against the

concerned Senior P.I. of Kharghar Police Station, therefore the concerned D.C.P. is directed to investigate the matter either himself or through by deputing separate investigation officer or P.S.O. as per rule and submit the report accordingly. The Complainant is directed to produce copies of complainants' application dt. 2.12.2014 and documents on record within two days to send the same to the concerned police station through the concerned DCP."

25. Pursuant to the order passed under section 156 (3) Cr.P.C., FIR no. 22 of 2014 has been registered against the petitioners herein at Kharghar Police Station for offences under section 367, 467, 468, 195, 504, 506, 420 and 383 IPC.

26. A perusal of the order dated 2.12.2014 clearly reveals that the learned Magistrate has not made any endeavor to ascertain whether the application purported to be under section 156 (3) Cr.P.C. disclosed any cognizable offence. On the contrary, the order reveals that the learned Magistrate has ordered investigation only because "the complainant has alleged about the cognizable offence against the concerned PI of Kharghar Police Station." Suffice it to state that in exercising powers conferred under section 156 (3) Cr.P.C., the court cannot act as a post office and transmit every application for investigation. The legal mandate requires judicial application of mind

to ascertain whether the facts alleged disclose cognizable offence. In the instant case the order is bereft of any reasons and reflects total non-application of mind.

27. Be that as it may, the respondent no 2 had sought registration of FIR against the petitioners, on the allegations, which can be broadly stated as follows:

- a. The Petitioner no.3 had refused to record the complaint lodged by the mother of the rape victim and had threatened her against lodging such complaint.
- b. The complainant/ mother of the rape victim was being questioned by a male officer.
- c. The petitioners had obtained signature of the mother-in-law of the complainant on a blank paper and fabricated a false case against him.
- d. The petitioners had kidnapped and arrested him in a false case.
- e. The petitioners had altered the date of submission of the FIR in the court.
- f. That he was beaten and threatened while in police custody.

28. The factual matrix of the present case would reveal that, the petitioners are the police officers who were on duty at Kharghar police

station on 23.11.2014. The grievance of the respondent no.2, as voiced in the said application, pertains to the acts performed by the petitioners in discharge of their official duties. At this stage, it would be apt to note that Section 197(1) Cr.P.C. affords protection to Judges, Magistrates and Public servants not removable from office save by or with sanction of the Government. This section bars the court from taking cognizance of an offence alleged to have been committed by public servants in discharge of official duty or purported to be in discharge of official duty, except with the previous sanction of the appropriate government.

Explanation to Sub-Section (1) of Section 197, which has been inserted by 2013 amendment, removes the bar, when the public servant is accused of any offence under Section 166A, Section 166B, Section 354, Section 354A, Section 354B, Section 354C, Section 354D, Section 370, Section 375, Section 376, Section 376A - Section 376C - Section 376D and Section 509 of IPC.

Sub-section 2 of Section 197 bars cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

Whereas Sub-section 3 of section 197 provides that the State Government may by notification direct that the provisions of sub-section 2 shall apply to such class or category of the members of the Forces charged with the maintenance of the public order as may be specified therein and upon such notification being issued, the provisions of Sub-section (2) will apply as if for the expression 'Central Government' occurring therein, the expression 'State Government' were substituted.

Undisputedly, the Government of Maharashtra has issued notification dated 2.6.1979, which reads as: "Notification Home Department Mantralaya, Bombay - 400 032 No. CR.P.O./78/9845/POL-3. In exercise of the power conferred by sub-section (3) of section 197 of the Code of Criminal Procedure, 1973 (II of 1974), the Government of Maharashtra hereby directs that the provisions of sub-section (2) of that Section shall apply to the following categories of the members of the force in the State charged with the maintenance of public order wherever they may be serving, namely:-

(1) All police officers as defined in the Bombay Police Act, 1951 (Bom. XXII of 1951), other than the Special or Additional Police Officers appointed under section 21 or 22 of that Act;

(2) All Reserve Police Officers as defined in Bombay State Reserve Police Force Act, 1951 (Bom. XXXVIII of 1951)."

29. The question whether the bar under Section 197(3) Cr.P.C. is applicable to the members of Bombay Police Force was considered by the Apex Court in the case of Rizawan Ahmed v. Jamal Patel (supra). The Apex Court after considering the said notification has held that the said notification applies to the members of Bombay Police Force. It is further held that once it is held that the members of Bombay Police Force are the persons to whom the notification under Section 197(3) of the Code applies, and if the act which is alleged to be an offence was done in discharge or purported discharge of the duty of the accused persons, they will be entitled to the protection extended by sub-section 2 of Section 197 of the Code.

30. In the instant case, the petitioners are undisputedly the members of Bombay Police Force. Hence, even though they do not fall in the category of public servants specified in sub section (1) of 197 Cr.P.C, by virtue of notification dated 2.6.1979 the petitioners are entitled for the benefit under sub section (3) of 197 Cr.P.C. Under the circumstances, the decision of the Apex Court in the case of Fakhruzamma vs. State of Jharkhand (supra) is distinguishable and is not applicable to the facts of the present case.

31. At this juncture, it may be mentioned that the crime registered against the petitioners does not include sections referred to in the

Explanation to Sub section (1) of 197 of the Code. The grievance voiced by the respondent no.2 in the application and the offences registered against the petitioners relate to the acts performed by the petitioners in the discharge of their official duty and are reasonably connected with their official duties and would therefore attract the bar of section 197 of the Code. The decisions relied upon by the respondent are therefore distinguishable and are not applicable to the facts of the case.

32. In the case of Anil Kumar, the Apex Court after considering the principles laid down by the Constitution Bench in the case of State of ***U.P. vs. Parasnath Singh (2009) 6 SCC 372*** and in ***Subramaniam Swami vs. Manmohan Singh (2012) 3 SCC 64***, has held that the word "cognizance" has a wider connotation and is not merely confined to the stage of taking cognizance of the offence. The Apex Court has held that the Special Judge/Magistrate cannot refer the matter under section 156 (3) against a public servant without a valid sanction order. In the instant case undisputedly, there is no such sanction order hence, the learned Magistrate was not justified in issuing order under Section 156(3) of the Code.
33. Be that as it may, the respondent no. 2 had sought investigation against the petitioners mainly on the ground that they had implicated

and arrested him in a false and fabricated case. If the respondent no. 2 was in fact aggrieved by such action, his remedy was to challenge such proceedings/FIR by filing appropriate proceedings. Instead of resorting to the remedy available under the law, the respondent no. 2 has sought to register FIR against the petitioners for registering a FIR against him. The FIR registered against the respondent no.2 is still under investigation. Subjecting the police officers to unwarranted criminal prosecution for having registered a crime will certainly peril the fair investigation of the said crime. Moreover, allowing the aggrieved or disgruntled persons to hold the police machinery at ransom by unjustifiable vexatious persecution will affect the morale and effective functioning of the police machinery which in turn will have serious and far-reaching adverse impact on the interest of the society. A situation like this therefore demands more cautious and serious judicial scrutiny of all relevant materials and meticulous application of mind to the entire facts and circumstances of the case to ascertain whether facts disclosed constitute cognizable offence.

34. At this juncture it would be advantageous to refer to the decision in the case of ***Lalita Kumari vs. Govt. of U.P. (2014)2 SCC 1*** wherein the Apex Court has emphasized the need to hold preliminary inquiry in certain cases, not to verify the veracity or otherwise of the information received but only to ascertain whether the information

reveals any cognizable offence. The Apex Court has given the following category of cases in which preliminary inquiry may be made:

- (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.

35. The Apex Court has held that the aforesaid categories are only illustrative and not exhaustive of all conditions which may warrant preliminary inquiry. The judgment of the Apex Court therefore makes it crystal clear that in appropriate cases the magistrate can order preliminary inquiry to ascertain whether the information reveals any cognizable offence. Thus, the endeavor of the magistrate should be to weed out frivolous and vexatious complaints and send only the deserving cases for investigation.

36. In the instant case, the magistrate has passed the order mechanically without referring the case for preliminary inquiry, without examining the facts of the case and the nature of the allegations and without

ascertaining whether the information revealed any cognizable offence. Nevertheless, in our considered view, the allegations made in the application, even if taken at face value and accepted in its entirety; do not disclose ingredients of offences under sections 367, 467, 468, 195, 406, 506, 420 and 383 of IPC. Under the circumstances and in view of the discussion supra, the order dated 2.12.2014 and the consequent FIR No.22 of 2014 registered against the petitioners at Kharghar Police Station under Section 367, 467, 468, 195, 406, 506, 420 and 383 of IPC deserves to be quashed. This however will not preclude the Respondent no.2 from making a representation, if he so desires, before the Superintendent of Police, in respect of the grievances raised by him in the application. If such representation is received, the Superintendent of Police shall consider the same and take appropriate decision thereon strictly on its own merits and in accordance with law. This shall be done as expeditiously as possible.

37. In the result, Rule is made absolute in terms of prayer clauses (a) and (b).

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)