

vks

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.183 OF 2015..

Manisha Prakash Jadhav	] .. <u>Petitioner</u>
residing at : Nimsod, Tal. Khatav	] (Original
District: Satara	] applicant.

V/s.

1. State of Maharashtra	]
	]
2. Prakash Anandrao Jadhav	] <u>Respondents</u>
age: adult Occn. Business	] (Respondent
residing at: Dhananand Bungalow,	] No.1 original
plot No.112, Sector No.30/32,	] opponent)
Walhekarwadi, Chinchwad	]
Pune 411033	]

Mr. S. V. Kotwal, I/by Mr. K. U. Patil, for the petitioner

Mrs. Anamika Malhota, APP for the respondent State.

Mr. Saurab Butala a/w Harshwardhan Salgaonkar, for respondent No.2.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 13th JANUARY, 2016.

ORAL JUDGMENT: [Per: Dr. Shalini Phansalkar Joshi, J.]

1. By this petition, the order passed by Judicial Magistrate First Class, on 14th November, 2014, in M.A. No.207 of 2014, is challenged. By the said order, the application moved by the petitioner

for investigation under Section 156(3) of the Code of Criminal Procedure, came to be rejected and the matter was kept for recording verification of complainant on 29th November, 2014.

2. According to petitioner, the opponent in M.A. No.194 of 2012, which was filed under Domestic Violence Act, has prepared and produced false and bogus certificates in respect of service and hence it was necessary to send the said matter for investigation under Section 156(3) of the Code of Criminal Procedure. The trial Court, however, found that M.A. No.194 of 2012, was yet fixed for recording evidence, there was no cross examination of the opponent in respect of the certificates which he has produced and in such circumstances it would not be just and proper to give any opinion at that stage regarding those certificates. The trial Court, was, therefore, pleased to hold that said complaint application cannot be sent for investigation under Section 156(3) of Code of Criminal Procedure. The trial Court, hence kept the matter for recording verification of complainant, on the next date i.e. 29th November, 2014.

3. It is submitted by learned counsel for the petitioner that since the impugned order of the trial Court, no further progress has taken place in the matter. No verification of the complainant is recorded on

the next date i.e. 29th November, 2014 or on any date subsequent thereto and therefore, now the trial Court can reconsider the application given by the petitioner for sending case for investigation under Section 156(3) of the Code of Criminal Procedure, as the hearing of M.A. No.194 of 2012, is now complete and judgment is also pronounced.

4. As per office noting, notice of this Writ Petition was duly served on the respondent No.2, however, he has failed to remain present. I find much substance in the submission advanced by learned counsel for the petitioner because trial Court found that the application given by the petitioner for sending case for investigation under Section 156(3) of the Code of Criminal Procedure 'premature' on the ground that evidence was yet not complete till then. However, as M.A. No.194 of 2012 has now been disposed of after recording of evidence, the trial Court can give fresh consideration to the prayer of the petitioner for sending the case for investigation under Section 156(3) of the Code of Criminal Procedure.

5. While dictation of the order was in progress, learned counsel for respondent No.2 appeared and advanced his submissions. According to learned counsel for respondent No.2, once the trial Court has exercised its discretion and directed recording of verification of the

complainant under Section 202 of the Code of Criminal Procedure, the trial Court cannot revert to the stage of section 156(3) of Code of Criminal Procedure. Secondly, it is submitted that discretion exercised by the trial Court in directing enquiry under Section 202 of the Code of Criminal Procedure need not be interfered with by this Court as the discretion is exercised judiciously. Thirdly, it is submitted that if at this stage, such investigation under Section 156(3) of the Code of Criminal Procedure is directed, it would cause prejudice to respondent No.2. Moreover, it is urged that the documents on the basis of which investigation under Section 156(3) of Code of Criminal Procedure is sought are not produced. Therefore, according to learned counsel for respondent No.2, this Court should not interfere in the discretion as exercised by the trial Court of ordering enquiry under Section 202 of the Code of Criminal Procedure.

6. Facts of **Pinni Co-op Housing Society & ors-vs- Maruti Mathu Gaikwad and ors, 2013 (3) Bom. C.R. (Cri) 313**, on which reliance is placed by learned counsel for respondent No.2 in support of his submission that once the trial court has ordered investigation or enquiry under Section 202 of the Code of Criminal Procedure, this Court should be slow in interfering in the said discretion and ordering

investigation under Section 156(3) of the Code of Criminal Procedure, are totally different from the facts of the present case. It is true that High Court, in its writ jurisdiction should be slow in interfering with the discretion exercised by the trial Court in directing enquiry under Section 202 of Code of Criminal Procedure. However, facts of the present case disclose that the trial Court has not ordered investigation under Section 156(3) of the Code of Criminal Procedure, as the recording of evidence in M.A.No.194 of 2012, was not complete and it was at premature stage to direct investigation. Now, those circumstances are changed. Recording of evidence is complete and matter is disposed of. In such situation it is a fit case where the trial Court can reconsider the application given by the petitioner and apply its own discretion.

7. At this stage, it is made clear that this Court is not substituting the order of investigation under Section 156(3) of Code of Criminal Procedure with the order of enquiry under Section 202 of Code of Criminal Procedure as passed by trial Court, but this Court is merely directing the trial Court to reconsider afresh M.A. No.207 of 2014, as filed by the petitioner before it. The trial Court is still at liberty after going through the material placed before it, to pass order of enquiry under Section 202 of Code of Criminal Procedure. This Court is merely

directing the trial Court to apply its mind afresh because now situation is changed and the very ground on which trial Court has not ordered investigation under Section 156(3) is no more surviving in view of recording of evidence and matter being disposed of finally.

8. Thus, Writ Petition is allowed. The impugned order passed by the trial Court is set aside. The trial Court is directed to reconsider afresh the prayer made in M.A. No.207 of 2014. Needless to state that the trial Court to decide the said application without being influenced by any of the observations made above.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

C E R T I F I C A T E

Certified to be true and correct copy of the
original signed oral judgment.