

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.428 OF 2016

Mrs. Jancy David Wilson and ors.	..Petitioners
Versus	
State of Maharashtra and anr.	..Respondents

Mr. Prakash Naik along with Mr. Pawan Mali i/b. Ms.Priya Crasto,
advocate for the petitioners.
Ms. S. D. Shinde, APP for the State.
Mr. K. Q. Devassy, advocate for respondent No.2.

**CORAM : RANJIT MORE &
V. L. ACHLIYA, JJ.**

DATE : 18th FEBRUARY, 2016.

P. C. :

Heard learned counsel and learned APP appearing for the
respective parties.

2. By this petition, the petitioner is challenging an order dated 25th June, 2015 passed by the learned Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai, below Exh.1 in C.C.No.13/SW/15. By the said order, the learned magistrate has issued process under Section 156(3) of the Code of Criminal Procedure, 1973 in the criminal case referred above.

3. Respondent No.2 is the original complainant who filed the above criminal case before the learned Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai – 400 001. A copy of the complaint dated 29th January, 2015 is annexed at “Exhibit A”, page 23. Perusal of the same reveals that this complaint was not filed under Section 156(3) of the Code of Criminal Procedure, 1973. Prayer clause in the complaint shows that the complainant asked for issuance of process. Therefore, it is clear that the complaint was filed under Section 200 of the Code of Criminal Procedure, 1973. Verification statement of the complainant was recorded on 21st February, 2015. A statement is made by Mr. Naik, learned counsel for the petitioner that respondent No.2 advanced the arguments for issuance of process. This statement is not denied by learned counsel for respondent No.2. Despite this position, the learned Magistrate by the impugned order, issued directions under Section 156(3) of the Code of Criminal Procedure, 1973.

4. By now, it is settled position in law that the directions under Section 156(3) of the Code of Criminal Procedure, 1973, can be issued at pre-cognizance stage. That apart, the subject complaint was filed by respondent No.2 not under Section 156 but under Section 200 of the Code of Criminal Procedure, 1973 claiming the order of issuance of process. Learned magistrate, after recording the verification statement

and after hearing the arguments of the complainant, was expected to have applied his mind as to whether the process is to be issued under Section 204 or the complaint is to be dismissed under Section 203 of the Code of Criminal Procedure, 1973. In any case, the magistrate could not have issued order under Section 156 of the Code of Criminal Procedure, 1973. The present case is squarely covered by the ratio of the decision of the Apex Court in **Pinni Co-operative Housing Society and ors vs. Maruti Mathu Gaikwad and ors. 2013 ALL MR(Cri) 3034.** In the light of the above discussion, the impugned order deserves to be quashed and set-aside. The petition is, accordingly, allowed in terms of prayer clause (a) and is disposed of as such.

5. Learned Magistrate shall proceed to pass appropriate orders in the light of the discussion made hereinabove.

[V. L. ACHLIYA, J.]

[RANJIT MORE, J.]