

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
**CRIMINAL WRIT PETITION NO. 2122 OF 2014**

|                              |     |             |
|------------------------------|-----|-------------|
| Mrs. Anjali Pimplikar & Ors. | ... | Petitioners |
| vs.                          |     |             |
| Mr. Jayant kataria & Ors.    | ... | Respondents |

Mr.Sukand R.Kulkarni,Advocate for the petitioners.  
Mr. Shailendra S. Kanetkar for respondent Nos. 1, 2, 3, 4, 7,8, 11 & 12.  
Ms. A.A.Mane, APP, for the State.

**CORAM: SMT. SADHANA S.JADHAV, J.**  
**DATE : 16th June, 2016.**

**P.C.**

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

2. The petitioners herein happen to be the original complainants in Criminal M.A. No.2961 of 2012. That the complaint was filed on 23.11.2012. The learned Judicial Magistrate, First Class, Court No.7, Pune, had perused the application and the documents annexed along with the application below Exhibit 3. The learned Magistrate was of the opinion that a prima facie case is made out for directing investigation and passing an

order under Section 156(3) of Cr.P.C. Hence, by an order dated 1.12.2012, the learned Judicial Magistrate, First Class, Pune had sent the complaint for registration and further investigation to the concerned police station under Section 156(3) of Cr.P.C.

3. It is a matter of record that the order under Section 156(3) passed on 1.12.2012 was given effect on 16.12.2012 and pursuant to the said direction, Crime No.443/2012 was registered at Hinjewadi Police Station against the accused for the offence punishable under Section 409 read with Section 34 of IPC.

4. Being aggrieved by the order passed on 1.12.2012, the accused filed Criminal Revision Application before the Sessions Court on 8.1.2013. The revisional Court by a judgment and order dated 6.2.2014, was pleased to allow the revision application and had quashed and set aside the order dated 1.12.2012 passed by the Judicial Magistrate, First Class, 7<sup>th</sup> Court, Pune.

5. Being aggrieved by the said judgment and order dated 6.2.2014, the original complainant had approached this Court by filing the

present Writ Petition.

6. The learned counsel for the petitioners submits that in fact, the order dated 1.12.2012 passed by the learned Judicial Magistrate, First Class, Pune had taken effect on 16.12.2012 and, therefore, the revisional Court had no jurisdiction to entertain the revision application. To substantiate his contention, the learned counsel for the petitioners has relied upon a Judgment of the Hon'ble Division Bench of this Court dated 4.5.2016 in the case of **Kailash Dattatraya Jadhav and another vs. State of Maharashtra & Anr. (Criminal Application No.152 of 2015)**. The Hon'ble Division Bench of this Court has considered the judgment of the Division Bench of this Court in the case of **Avinash Trimbakrao Dhondage vs. State of Maharashtra 2016-ALL Mr (Cri) 985**, wherein the Hon'ble Division Bench at Aurangabad had held that the order under Sub-section (3) of Section 156 of the Code is not an interlocutory order, but it is a final order on an application/complaint under sub-section (3) of Section 156 of Cr.P.C. The Division Bench had also taken into consideration the judgments of the Hon'ble Apex Court in the case of **Madhu Bala vs. Suresh Kumar and others (1997) 8 SCC 476**, **Suresh Chand Jain vs. State of Madhya Pradesh (2001) 2 SCC 628** and in the case of **Father**

**Thomas Vs. State of Uttar Pradesh 2011 Cri. L.J.2278** as well as the Judgment in the case of **Jagannath Verma vs. State of Uttar Pradesh 2015 ALL MR (Cri) Journal 129** which happens to be the Judgment of the Full Bench of the Allahabad High Court.

7. The Hon'ble Division Bench of this Court in **Kailash Jadhav (cited supra)**, has concluded as follows :-

*“The power of revision under section 397 will have to be read with Section 398 of the Code. Firstly, we may note here that power of the High Court or the Sessions Court under sub Section 3 of Section 397 is of calling for the record of proceedings before any subordinate Criminal Court for the purposes of satisfying itself about correctness, legality or propriety of any finding, sentence or order recorded or passed in any proceeding before such subordinate Court. Thus, the power under Section 397 is confined to testing the legality, validity and propriety of the orders passed by the Courts which are subordinate to the High Court or the Sessions Court, as the case may be. Secondly, on conjoint reading of Sections 398, 399 and 401, it follows that there is no power conferred on the Revisional Court to quash FIR registered by the police in accordance with sub-section (1) of Section 154 of the Code and the investigation carried out on the basis of that and to quash the criminal proceedings on the basis of charge sheet, which may be eventually filed. Therefore, in a case where an order made under sub-section 3 of Section 156 culminates into registration of FIR, the Revisional Court is powerless to pass an order for quashing the FIR and quashing a charge sheet filed on the basis of the FIR. Therefore, in a case where on the basis of an order under sub Section 3 of Section 156 of the Code, FIR is registered, the remedy of revision under the Code for challenging the order under sub section 3 of Section 156 will not be an efficacious remedy at all.”*

In the facts of the present case, it is clear that the learned Sessions Court was oblivious of the fact that the order passed under Sub-section (3) of section 156 had already taken effect and, therefore, setting aside the order would be a futile exercise by the Revisional Court.

8. The learned counsel for the petitioner has also drawn attention of this Court to the Judgment and order passed by this Court (Coram: Smt. Sadhana S. Jadhav,J.) in the case of **Shankar Mahadeo Vichare vs. Santosh Haribhai Vichare & Ors. (Cri. W.P.No.698 of 2014)**, where this Court had held that order passed under Section 156(3) of the Code of Criminal Procedure is an interlocutory order and the Revisional Court had exceeded the powers conferred upon it under Section 397 of Cr.P.C. It was also held that an accused has no locus to challenge the order under Section 156(3) of Cr.P.C as it is in the nature of a direction to register FIR.

9. The learned counsel for the respondent submits that the Hon'ble Division Bench has held that a revision challenging the order under Section 156(3) of Cr.P.C. is maintainable and therefore, the learned appellate Court had rightly heard the Revision on merits. It is also urged by

the learned counsel for the respondent that the learned Revisional Court had gone into the complaint and the documents annexed along with the complaint and upon perusal of the same, had come to a conclusion that no offence is carved out against the accused and had therefore, rightly set aside the order passed by the Magistrate under Section 156(3) of Cr.P.C.

10. As against this, the learned counsel for the petitioners once again placed implicit reliance upon a Judgment of the Hon'ble Division Bench of this Court and submits that setting aside the order by the Revisional Court would be an abuse of process of law since the order had taken effect. The contention of the learned counsel for the respondents that once an order under Section 156(3) is set aside, registration of FIR or registration of offence also have no effect, would be an unwarranted contention. The Hon'ble Division Bench has held that the Sessions Court in its Revisional Jurisdiction would have no powers to quash the FIR and that it would not be an efficacious remedy.

11. The learned APP submits that pursuant to the registration of the FIR, the investigation had commenced and was in progress till 6.2.2014 i.e. the day when the order under Section 156(3) of Cr.P.C. was quashed and set aside by the Revisional Court. The learned APP submits that now that the

order dated 6.2.2014 is quashed and set aside, the investigating machinery would continue with the investigation from the stage where it has stopped. However, that is a matter for investigation agency to take appropriate steps pursuant to the order dated 6.2.2014 being quashed and set aside by this Court.

12. In view of the above discussion, the impugned order dated 6.2.2014 deserves to be quashed and set aside. The petition deserves to be allowed in terms of prayer clause B. Rule is made absolute in the above terms. Writ Petition stands disposed of.

13. It is made clear that this Court has only considered the impugned order and not the merits of the complaint.

14. An oral request is made to stay the order passed by this Court quashing and setting aside the order dated 6.2.2014. However, taking into consideration the fact that the petition is of the year 2014, no interim orders were passed and hence this Court would decline from considering the oral request.

**(SMT.SADHANA S.JADHAV, J.)**