

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 192 OF 2017

Mr. Sainath S/o Ramrao Thombre,
Age : 47 years, Occ. Service,
As Police Inspector, presently working at
Sadar Bazar Police Station, Jalna
Resident of Jalna, District Jalna.

... **Applicant**

Versus

1. The State of Maharashtra
Through in-charge
Washi Police Station, Tq. Washi,
District Osmanabad.
2. Smt. Manisha Mahadeo Sandase,
Age : 30 years, Occ. Agriculturist,
R/o Washi, Post. Washi, Tq. Washi,
District Osmanabad.

... **Respondents**

Mr. V.D. Sapkal, Advocate for the Applicant.
Mr. A.R. Borulkar, A.P.P. for the Respondent/State.
Mr. A.N. Nagargoje, Advocate for Respondent No.2.

**CORAM : S.S. SHINDE &
MANGESH S. PATIL, JJ.**

**DATE OF RESERVING THE JUDGMENT : 04.10.2017
DATE OF PRONOUNCING THE JUDGMENT : 10.10.2017**

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JUDGMENT: (*Per Mangesh S. Patil, J.*)

. Rule. Rule is made returnable forthwith. With the consent of
the parties matter is heard finally.

2. This is an application under Section 482 of the Criminal Procedure Code for quashment of F.I.R. bearing Crime no. 263 of 2016 registered with Washi Police Station, District Osmanabad for the offence punishable under Section 306, 167 and 120-B read with Section 34 of the Indian Penal Code as well as for quashing and setting aside the order passed by the learned Judicial Magistrate First Class, Washi in Misc. Criminal Application No. 257 of 2016 dated 23.12.2016, whereby the learned Magistrate passed an order under Section 156(3) of the Cr.P.C. and in pursuance whereof the aforementioned F.I.R. has been registered.

3. Stated in brief the facts leading to the filing of this application are as under:

The husband of the respondent no.2 by name Mahadeo had borrowed money from a private money lender and the latter had extorted huge amount under the guise of recovering interest against a paltry loan of Rs. 50,000/-. The money lender had allegedly recovered more than Rupees Thirteen Lakhs and still was insisting for more. Fed up with such harassment Mahadeo hanged himself to a tree on 04.10.2015.

The officer in charge of the Police Station, Washi registered Accidental Death case no. 59 of 2015 on the basis of the information furnished by Mahadeo's father. Inquiry was made by Police Head Constable Choudhari, B.No. 323. During that inquiry two suicidal notes found in the pocket of Mahadeo were seized under a panchnama. In one of the chits (Exhibit-R2) he had narrated the aforementioned facts of having obtained loan of Rs.50,000/- and in spite of having paid more than Rupees Thirteen to Fourteen Lakhs the money lender was demanding more money and that is why he was committing suicide.

The respondent no.2 is the widow of the deceased according to her the applicant was posted as a Police Inspector at Washi Police Station at the relevant time. She used to approach him to inquire as to what steps he was intending to take on the basis of the suicidal note. He used to send her back either by saying that he would be transmitting suicidal note to the handwriting expert or that it was already sent to the handwriting expert. However, he never sent the suicidal note for any such examination of handwriting expert, just to help the money lender. She ultimately lodged a complaint with the Superintendent of Police and filed a private complaint in the form of Misc. Criminal Application No. 257 of 2016. The learned Magistrate directed the matter to be inquired into

by passing an order under Section 156(3) of Cr.P.C. On the basis of such order the concerned Police Station registered the offence as mentioned herein-above. Hence this application.

4. According to the applicant, the complaint has been lodged with *mala fide* intention and without any basis. He has admitted that the suicidal note was recovered and seized under a panchnama during the inquiry of the accidental death case. The father of the deceased Mahadeo had no grievance and on the basis of his request the accidental death case was registered. All the while the suicidal note was in the custody of Police Head Constable Choudhari who was inquiring into the accidental death case and the applicant had no role to play. The complaint has been filed against him with a vengeance. Even if the contents of the complaint are accepted at their face value the offence punishable under Section 306, 167 and 120-B read with Section 34 of the I.P.C. cannot be made out. Lastly, it has been contended that in view of amendment to Section 156 of the Cr.P.C., which has come in to effect in the year 2016, the respondent no.2 had not obtained any sanction to prosecute the applicant, for want of such sanction the learned Magistrate had no jurisdiction to pass the impugned order.

5. We have heard the learned Advocate for the applicant as well

as the learned A.P.P. The learned Advocate for the applicant made submissions in consonance with the averments in the application and sought to rely upon the decision in the case of **State of Haryana Vs. Bhajanlal (AIR 1992 SCC 604)** and also the amended provision of Section 156 of Cr.P.C.

6. Per contra, the learned Advocate for the respondent no.2 submitted that since the alleged offence committed by the applicant cannot be said to have been committed in discharge of his official duties and therefore sanction as contemplated even under amended Section 156 is not necessary. The learned Advocate cited the decision in the case of **Rajib Ranjan and Ors. V/s. R. Vijaykumar; (2015) 1 SCC 513**. The learned Advocate also submitted that even if the offence punishable under Section 306, 167 and 120-B read with Section 34 of the Indian Penal Code cannot be made out on the basis of the averments in the complaint, the Investigating Officer is at liberty to apply a suitable provision from the Indian Penal Code.

7. The learned A.P.P. also supported the impugned order. We have perused the affidavit in reply of the Superintendent of Police, Osmanabad.

8. At the outset, we propose to meet the law point raised by the learned Advocate for the applicant regarding sanction as well as jurisdiction of the Magistrate while passing the order under Section 156(3). Suffice for the purpose to observe that by Maharashtra Act No. 33 of 2016, the Code of Criminal Procedure (Maharashtra Amendment) Act, 2015 which came into force with effect from 01.11.2016, in view of the Government notification dated 27.10.2016, a couple of provisos have been added to Section 156 after Sub-section (3) which read as under:

“Provided that, no Magistrate shall order an investigation under this section against a person who is or was a public servant as defined under any other law for the time being in force, in respect of the act done by such public servant while acting or purporting to act in the discharge of his official duties, except with the previous sanction under section 197 of the Code of Criminal Procedure, 1973 or under any law for the time being in force :

Provided further that, the sanctioning authority shall take a decision within a period of ninety days from the date of receipt of the proposal for sanction and in case the sanctioning authority fails to take the decision within the said stipulated period of ninety days, the sanction shall be deemed to have been accorded by the sanctioning authority”.

9. It is thus apparent, as has been rightly submitted by the learned Advocate for the applicant, whenever, a direction is sought to be

issued under Section 156(3) of the Cr.P.C. against a public servant in respect of any act done by such public servant while acting or purporting to act in the discharge of his official duties, a Magistrate cannot order investigation without their being a previous sanction obtained under Section 197 of the Cr.P.C. or under any other law for the time being in force. The second proviso is in the nature of a deeming provision and the person applying for sanction can proceed to file a complaint if the sanctioning authority fails to grant sanction within ninety days of the application for seeking sanction. In the matter before hand, when according to the averments in the complaint, the respondent no.2 had applied for sanction to the Superintendent of Police, Osmanabad on 27.09.2016, the amended provision of Section 156 (supra) had not come into force and which came in force only on 01.11.2016. Therefore, when the law did not expect her to have obtained previous sanction when she actually applied for it, apparently no fault could be found with her in filing complaint without such sanction.

10. However, a careful look into the facts and law would reveal that when actually the respondent no.2 filed the complaint on 20.12.2016 the amended provision of Section 156 of Cr.P.C. were already in force and going by the clear wording of the first proviso (supra) in fact

the mandate of law required a Magistrate not to pass any order for investigation under Section 156(3) except with a previous sanction. Therefore, even though when the respondent no.2 actually sought sanction from the Superintendent of Police, the law did not require any such previous sanction as a condition precedent for a Magistrate to direct investigation under Sub-section (3) of Section 156, as on the date on which the impugned order was passed by the learned Magistrate on 23.12.2016 his powers were curtailed by the legislature and the condition laid down by the first proviso (supra) would indeed go to the root of the jurisdiction of a Magistrate in directing investigation under that provision. In short, as on the date of which the learned Magistrate passed the order directing such investigation by the impugned order, his jurisdiction was circumscribed by the newly added proviso. When admittedly no sanction was obtained before passing of the impugned order, the learned Magistrate had no jurisdiction to issue direction for the investigation.

11. True it is, as is observed in the matter of **Rajib Ranjan** (supra), hypothetically a distinction can indeed be made in respect of the acts which can be said to be done while acting or purporting to act in the discharge of official duties and such other acts which do not form part of the official duties but done during the course of the employment.

However, this analogy in our considered opinion does not apply to the facts in the matter before hand. Even assuming for the sake of arguments that the suicidal note was in the custody of the applicant and he failed to act upon it may be with a view to shield the money lender, his such act in not transmitting the suicidal note to the handwriting expert or misleading the respondent no.2 by falsely stating about having already forwarded the suicidal note for handwriting examination would amount to an act done by him in discharge or purported discharge of his official duties. Consequently, the respondent no.2 cannot seek any benefit from the decision in the case of **Rajib Ranjan** (supra).

12. In substance, we conclude that the learned Magistrate had no jurisdiction to pass the impugned order directing investigation for want of sanction and for this reason alone the application deserves to be allowed in toto.

13. Even otherwise, independent of the above reasoning, applying the principles laid down by the Supreme Court in the case of **Bhajanlal** (supra), even by accepting the allegations made in the complaint lodged by the respondent no.2 as it is, neither of the offences registered by the Police viz., Section 306, 167 and 120-B read with Section 34 of the Indian Penal Code can be made out. It seems that

simply because in the complaint filed by the respondent no.2 these sections have been mentioned the Police seem to have registered the offence under those sections only. In our considered view whenever a direction is issued by a Magistrate by invoking powers under Section 156(3) of Cr.P.C., the rights of the Investigating Officer are not curtailed or circumscribed by such direction and it shall always be open for the Investigating Officer to carry out the investigation freely. The direction under Section 156(3) of the Cr.P.C. is only to enable the police to register the offence and to carry out investigation and it is always open for the Investigating Officer to apply such sections as would be revealed, as a result of the investigation carried out by him.

14. However, when the allegations in the complaint do not make out even *prima facie* the necessary ingredients for the offence registered in the matter in hand, the F.I.R. deserves to be quashed.

15. It is necessary to mention here that the Superintendent of Police, Osmanabad in his affidavit has specifically stated that it was a lapse on the part of the present applicant in not promptly taking steps in accordance with law in respect of the suicidal notes. It has also been made abundantly clear that department is proceeding against the

applicant for disciplinary action. Be that is it may, the observations made herein-above are only restricted in respect of decision of this application and shall not affect the disciplinary proceedings which shall be conducted independently.

15. In the circumstances, for more reasons than one the application deserves to be allowed and is accordingly allowed. Rule is made absolute in terms of prayer clause 'B' and 'C'.

[MANGESH S. PATIL, J.]

[S.S. SHINDE, J.]

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