

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1368 OF 2005

The State of Maharashtra and Others. ..Petitioners.

Versus

Sahadu Bhaurao Repale and Others. ..Respondents.

Ms. S. D. Shinde, APP for the Petitioner – State.
None for the Respondents.

Coram : RANJIT MORE &
SARANG V. KOTWAL, JJ.

Date : **July 13, 2017.**

P. C. :

1. Heard Ms. Shinde, learned APP for the Petitioner – State.
None appears on behalf of the Respondents. Petitioner No. 1 is the State of Maharashtra and rest of the Petitioners were the public servants at the time of passing of the order impugned in this writ petition.

2. By this petition, the Petitioners are challenging the order dated 21st March 2005 passed by the the learned Special Judge (Prevention of Corruption Act), Pune below Exhibit-1 in Special Case No. 11 of 2004. The said case was registered on the basis of the private complaint filed by the Respondents, making allegations against Petitioner Nos. 2 to 7 for the offence punishable under sections 13(1)

(c) (d) (i) (ii) (iii) of the Prevention of Corruption Act, 1988 and some sections of the IPC and the Urban Land (Ceiling & Regulation) Act, 1976. By the impugned order, the learned Special Judge invoking his powers under section 156(3) of the Code of Criminal Procedure, 1973, issued direction to the CBI, Mumbai to investigate the complaint and submit the report. The learned Special Judge also directed the S.P., CBI, Mumbai to assign the work of investigation to the competent officer.

3. The learned APP at the outset took exception to the jurisdiction of the learned Special Judge to issue directions under section 156(3) of the Code against the public servants. In this regard, she relied upon the decision of the Apex Court in Anil Kumar v. M. K. Aiyappa [(2013) 10 SCC 705] and Priyanka Srivastava v. State of UP. [(2015) 6 SCC 287]. She also submitted that learned Magistrate or Special Judge could not have directed investigation by CBI. In this regard, she relied upon the Apex Court decision in CBI, Jaipur v. State of Rajashtan [2001 Cr.L.J. 968].

4. Having considered the submissions of the learned APP and having gone through the impugned order, in our considered view,

petition deserves to be allowed. Petitioner Nos.2 to 7 against whom investigation is ordered by the the learned Special Judge under section 156(3) of the Code are/were admittedly public servants. The issue whether sanction under section 19(1) of the Prevention of Corruption Act, 1988 is required to be obtained before ordering investigation under section 156(3) of the Code fell for consideration before the Apex Court in *Anil Kumar (supra)*. The Apex Court held that the sanction under section 19(1) of the Prevention of Corruption Act, 1988 is pre-condition for ordering investigation against public servant under section 156(3) of the Code even at pre-cognizance stage.

5. The issue whether the Magistrate can, under section 156(3) of the Code, direct an investigation by CBI fell for consideration before the Apex Court in *CBI v. State of Rajasthan (supra)* wherein in paragraph 6, the Apex Court held as under :

“6. If the power of a Magistrate to order investigation by the CBI in non-cognizable cases cannot be traced in the above provision, it is not possible to trace such power in any other provision of the Code. What is contained in sub-section (3) of section 156 is the power to order the investigation referred to in sub-section (1) because the words “order such an investigation as above-mentioned” in sub-section (3) are unmistakably clear as referring to the other sub-section. Thus the power to order an “officer-in-charge of a police station” to conduct investigation”

. The above observations make it abundantly clear that

Magistrate, and in the present case Special Judge, under section 156(3) of the Code cannot order investigation by CBI.

6. Thus, on both the counts the impugned order cannot be sustained. Hence, the same is quashed and set aside. Rule is made absolute in terms of prayer clause (a).

[SARANG V. KOTWAL, J.]

[RANJIT MORE, J.]