**THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 3246 OF 2008

Shri Prem Garg ..Applicant

v/s.

Krishna Sahakari Sakhar Karkhana Ltd.
& Anr. ..Respondents

Mr. Sobodh Desai for the Applicant
Mr. Dilip Bodake for the Respondent No.1.
Ms. R.M. Gadhvi Addl. PP for the Respondent No.2.

**CORAM : A.S.OKA & ANUJA PRABHUDESSAI, JJ.**
**DATED : 03 MARCH, 2017**

**JUDGMENT (PER A.S.OKA, J.).**

1. Called out for final hearing.

2. By this Application under Section 482 of Code of Criminal Procedure, 1973 (for short Cr.P.C), the prayer is for quashing Regular Criminal Case No.47 of 2008 pending before the learned Judicial Magistrate, First Class, Karad, District Satara. There is also a prayer for quashing the Order dated 13th December, 2005 passed under sub-Section 3 of Section 156 of Cr.P.C and the First Information Report

registered on the basis of the said Order.

3. Rule was issued by Order dated 20th April, 2009. The Order reads thus:

> "1. Heard learned Senior Counsel for the applicant. He has invited my attention to the roznama of the proceedings which shows that after verification of the representative of the original complainant was recorded, the learned Magistrate has passed an order under Section 156(3) of the Code of Criminal Procedure, 1973. The learned Counsel for the first respondent has invited my attention to the Order dated 12th August, 2008 passed by this Court in Criminal Writ Petiton No. 2095 of 2005 filed by the co-accused (accused no.2.). However, when a query was made, he fairly states that the aforesaid factual aspect that the order under Section 156(3) of the said Court was passed after recording verification was not argued in the said petition.
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> 2. Arguable questions are raised. Rule. Advocate for the first respondent waives service. Learned APP waives service for State. To be placed for final hearing on board to be notified for July 2009. There will be interim relief in terms of prayer clause (e). It is made clear that the benefit of this interim relief will be available only to the applicant."

4. Thereafter, by Order dated 29th July, 2016, the record of the Complaint on which the impugned Order under sub-Section (3) of Section 156 of Cr.P.C was issued was called for. Now the record is received by the Court. We have perused the said record with the assistance of the learned Counsel appearing for the parties. The complaint was filed by the first Respondent in the Court of learned Judicial Magistrate First Class at Karad on 25th November, 2005 alleging commission of offences under Sections 403, 406, 409, 418 and 420 of the Indian Penal Code. We have perused the roznama of the said complaint. On 1st December, 2005 when the complaint was filed, there is a specific entry in the roznama that the complaint was adjourned for verification till 13th December, 2005. On 13th December, 2005 roznama shows that verification was recorded and an order was passed calling for the report. Verification was recorded on 13th December, 2005 of Shri S.S.Patil on behalf of the first Respondent. On the very same day, the impugned Order was made by the learned Magistrate which reads thus:

" Heard. The allegations being serious, at prima facie

stage call report under sub-Section of Section 156 of Cr.P.C. of the concerned police station, returnable on 13th February, 2005."

5. Thus, the roznama of the proceedings clearly shows that the complaint was specifically fixed for recording of the verification of the complainant on 13th December, 2005 and that after recording the verification of the complainant on 13th December, 2005, the impugned Order dated 13th December, 2005 under sub-Section (3) of Section 156 was passed.

6. Thus, the said Order was passed after pre-cognizance stage was over. The learned Magistrate had no jurisdiction to issue a direction under sub-Section (3) of Section 156 of Cr.P.C after pre-cognizance stage was over, and therefore, all consequential steps taken on the basis of the said Order will have to be held bad in law.

7. The learned Counsel appearing for the First Informant invited out attention to the Order dated 12th August, 2008 passed by a Single Judge (A.S.Oka, J.) in Writ Petition No. 2095 of 2007 on a petition filed by accused no.2 on pages 162 and 163 of the reply filed by the first Respondent. It is apparent that in the said Petition the challenge was confined to the Order dated 13th December, 2005.

There was no challenge to the first Information Report or Charge-sheet. Paragraph 1 and 2 of the said order reads thus:-

> "1. Shri Bodke for the second respondent states that charge-sheet has already been filed by the Investigating Officer. He has produced for my perusal a copy of the said charge-sheet.
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> 2. The challenge in this petition is to the order under Section 156(3) of the Code of Criminal procedure, 1973. In view of filing of the charge-sheet, this petition cannot be entertained and the same is disposed of with liberty to the petitioner to file appropriate proceeding before the trial court.
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> 3. All contentions on merits are expressly kept open."

8. We have already quoted the Order passed on 20th June 2009 while issuing Rule on this petition. From the said Order it is very clear that the said Order passed in Writ Petition No. 2095 of 2005 was brought to the notice of this Court by the first Respondent. Even his statement has been recorded that the submission that the impugned Order under sub-Section (3) of Section 156 was made after recording verification statement was not canvassed in the said

writ petition. Therefore, the Order passed in Criminal Writ Petition No. 2095 of 2005 will not come in the way of entertaining this petition.

9. To summarize, as the impugned Order passed under sub-Section (3) of Section 156 was bad in law, all subsequent proceedings stand vitiated.

10. Accordingly, this petition must succeed. As stated earlier, the challenge is to the proceeding of RCC No.247 of 2008. The roznama of Complaint No. 611 of 2005 ( M.A. No.611 of 2005) shows that after the chargesheet was filed, the same was numbered as RCC No. 247 of 2008.

11. Accordingly, we pass the following Order:-

i) Rule is made absolute in terms of prayer clauses (b) and (d) which reads thus:-

> "(b) That after going through the legality and propriety of the aforesaid proceedings, the Hon'ble Court be pleased to quash and set aside the R.C.C.No. 247/2008 pending before the Ld. Judicial Magistrate, First Class, Karad, District Satara.
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> (d) That this Hon'ble Court be pleased to quash and set

aside the order dated 29.7.2008 passed in R.C.C.No.247/2008 pending before the Ld. Judicial Magistrate, First Class, Karad, District Satara issuing Non-bailable warrant against the Applicant u/s.75 of Cr.P.C.

ii) All concerned to act on an authenticated copy of this Order;

iii) We clarify that as the Order dated 13th December, 2005 under sub-Section (3) of Section 156 of Cr.P.C. is set aside, the complaint/ Misc. Application No. 611 of 2005 will proceed in accordance with law from the stage subsequent to the stage of recording of verification statement;

iv) We make it clear that no adjudication has been made on the merits of the averments in the complaint.

**(ANUJA PRABHUDESSAI, J.)** **(A.S.OKA, J.)**