

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2816 OF 2018

Nikhil s/o. Dhondiram Katke
Age 38 yrs, Occ. Agril,
R/o. Nath Nagar, Parli (V),
at Present Keshav Nagar, Latur.

.. Applicant.
(original complainant)

Versus

1] The State of Maharashtra
through the Superintend of Police,
Beed.

2] Shivanand s/o. Rambhau Salmote
Age 48 years, Occ. Agril,
R/o. Sarveshwar Nagar, Parli (V),
Dist. Beed.

3] Dinkar s/o. Madhavrao Deshmukh
Age 50 years, Occ. Agril,
R/o. Partur, Tq. Partur, Dist. Jalna.

4] Shaikh Sardar Shaikh Ratnaji,
Age 60 years, Occ. Agril.,
R/o. Daithana, Tq. Partur, Dist. Jalna.

5] The Sub-Registrar,
Office of Sub-Registrar, Parli (V),
Dist. Beed.

6] Dr. Ravindra s/o. Manikrao Gaikwad
Age 47 years, Occ. Medical Practitioner,
R/o. Nath Nagar, Parli (V), Dist. Beed.

7] Mrs. Shital w/o. Ravindra Gaikwad,
Age 43 years, Occ. Medical Practitioner,
R/o. Nath Nagar, Parli (V), Dist. Beed.

8] Pradip s/o. Govind Bobade,
Age 32 years, Occ. Compounder,
R/o. Shivaji Chowk, Parli (V), Dist. Beed. RESPONDENTS.

Mr. V.D. Sapkal, Advocate h/f. Mr. A.D. Wange, Advocate for
applicant
Mr. K.D. Munde, APP for respondent No.1
Mr. S.B. Solanke, Advocate for respondent No.4.
Mr. P.P. More, Advocate for respondent Nos. 6 and 7.

CORAM : K.K. SONAWANE,J.

**RESERVED ON : 11TH APRIL, 2019.
PRONOUNCED ON : 25TH APRIL, 2019.**

JUDGMENT :

Heard, matter is taken up for finality on merit with the
consent of both sides.

2] The applicant, taking recourse of remedy under Section 482 of Code of Criminal Procedure (hereinafter referred to as “the Code” for brevity)., preferred the present application to agitate the validity and propriety of the impugned order dated 14.8.2018 passed in Misc. Cri. Application No. 356 of 2018 by the learned Magistrate at Parli-Vaijnath, Dist. Beed, thereby rebuffing the relief prayed to make over the investigation to the police under Section 156(3) of the Code; instead, the liberty was granted to the applicant to adopt the later course under Section 200 of the Code by treating the application filed by the applicant as complaint under Section 2(d) of the Code.

3] The applicant in the present matter is the victim of alleged malefactors on the part of respondent/accused. He put in question the scope of Section 156(3) of the Code and the process of the Magistrate thereunder. According to the applicant, the impugned order passed by the learned Magistrate, refusing to order for registration of FIR under Section 156(3) of the Code is erroneous, illegal and not as per law, and liable to be set aside and quashed. The learned Magistrate was duty bound to refer the matter to police for investigation and therefore, the concerned Magistrate be directed to reconsider the said application afresh and pass order in accordance with law.

4] The facts relevant for adjudication of this application briefly stated are, that, the house property bearing MCH No. 745 and 744 (old MCH No. 798 and 798/1) located in Parli-Vajinath town was owned and in possession of one Dr. Dhondiram Bapurao Katke. The applicant was the adopted son of spouses Dr. Dhondiram Katke and wife Smt. Vasudha Dhondiram Katke. The registered document of adoption-deed was also executed on 16/8/1984. It has been alleged that the house property referred above was given on rent to respondent No.6 Dr. Ravindra Marutrao Gaikwad and respondent no. 7 Dr. Mrs. Shital Gaikwad for hospital purpose. There was negotiation in between the applicant and tenant Dr. Gaikwad for sale and purchase of the hospital property. But, it did not evoke

result. The applicant asked the respondent Nos. 6 and 7 Dr. Gaikwad to vacate the premises as the period of rent agreement came to be expired on 30/06/2017. But, the occupation of Dr. Gaikwad as tenant was allowed to be continued on humanitarian ground to facilitate him to take search for suitable alternate accommodation. Meanwhile, the applicant came to know that all the respondents/accused in connivance with each other hatched the criminal conspiracy, and with mala fide intention get prepared the fabricated and fake document of Adhar Card of the applicant as well as they proceeded to registered the document of forged sale deed of the house property of the applicant and attempted to get, transfer the immovable property in the name of respondent No.7 Shri Pradeep Bobde, who was employed as an compounder in the hospital of respondent Nos.6 and 7. It has been contended that after the knowledge of alleged mischief of forgery, cheating etc, the applicant filed F.I.R. to the police of Parli (Vaijnath) P.S. But, the police did not take any action against the miscreants. Thereafter, the applicant filed the complaint to the concerned Superintendent of Police, Beed, but all his efforts found unavailing. Eventually, applicant approached to the learned Magistrate and filed the application for simplicitor relief of issuance of directions to the concerned police to investigate the crime under Section 156(3) of the Code But, the learned Magistrate found reluctant to refer the complaint to the police for investigation by exercising powers under

Section 156(3) of the Code and rejected the prayer. However, the learned Magistrate allowed the applicant to proceed further into the matter by adopting the course as envisaged under Section 200 of the Code. Being dissatisfied with the mode adopted by learned Magistrate, the applicant rushed to this court and moved the present application under Section 482 of the Code to redress his grievances.

5] The learned counsel Shri V.D. Sapkal for applicant strenuously urged that the impugned order passed by the learned Magistrate is wholly illegal, perverse and without jurisdiction. He submits that the application filed by the applicant under Section 156(3) disclosed commission of cognizable offence and hence, the Magistrate has no jurisdiction to refuse for an direction to the concerned police for registration and investigation of the FIR. According to learned counsel Shri Sapkal, the Magistrate has to act in accordance with law and he cannot travel beyond the scope of the powers which has been conferred on him under Section 156(3) of the Code. He submits that once the cognizable offence is revealed from the application under Section 156(3) of the Code, the Magistrate is left with no other option but to order for investigation. He gave much more emphasis that the applicant has invoked the administrative jurisdiction of the Magistrate for directions to the police to register the FIR under Chapter XII of the Code. But, the

learned Magistrate committed error in not granting relief as prescribed under Section 156(3) of the Code. The learned counsel Shri Sapkal further assailed that the applicant filed the application simplicitor for relief to direct the concerned police to investigate the matter under Section 156(3) of the Code; as the respondents/accused committed the crime of cognizable in nature. But, the learned Magistrate failed to exercise the discretion properly and instead, directions for investigation under Section 156(3) of the Code, proceeded to deal with the application as complaint for taking cognizance under Section 190 of the Code to adopt further process as laid down under Section 200 of the Code. He contends that the Chapter XII of the the Code deals with the information to the police and its power to investigate the offence. The provision of Section 156(3) is included in this chapter which empowers the Magistrate to direct investigation after registration of crime. The Chapter XV of the Code deals with the complaints to a Magistrate and procedure to be adopted by Magistrate after taking cognizance of an offence. Therefore, the scope and procedure for application under Section 156(3) and complaint as envisaged under Section 2(d) of the Code to the Magistrate are totally different and distinct in nature. According to learned counsel Shri Sapkal, the application filed under Section 156(3) has only a limited purpose to seek indulgence of the Magistrate to direct the police to register and investigate the cognizable case. Therefore, such application

cannot be treated as complaint for taking cognizance under Section 190 of the Code. The application filed under Section 156(3) of the Code cannot be transformed an application to one under Section 2(d) of the Code as “complaint”. The Magistrate cannot direct the applicant to proceed with the application as a complaint for further process under Section 200 of the Code. It is the choice of the applicant to decide, as to whether under which forum he wants to get his grievance redressed. The Magistrate cannot exercise the advisory jurisdiction to direct the applicant to opt for complaint under Section 200 of the Code. In support of contention, the learned counsel Shri Sapkal relied upon the judicial pronouncements in the matter of ***Dhariwal Tobacco Products Ltd., and others Vs. State of Maharashtra and another reported in AIR 2009 SC 1032; (2) Babulal vs. State of Rajasthan and others, 2009 Cri.L.J. 4362; Panchbhai Popatbhai Butani and others Vs. State of Maharashtra and others ; 2010(1) B Bom.C.R. (Cri.) 1.***

6] The learned APP as well as learned counsel Shri Solanke and learned counsel Shri More appearing for respective respondents vociferously opposed the contentions propounded on behalf of applicant. They contend that there are no error or illegality in the impugned order passed by the learned Magistrate. In contrast, the learned Magistrate correctly applied the judicious

mind and passed the impugned order in the interest of justice. According to respective learned counsel, the learned Magistrate considered it essential not to order for any sort of investigation, therefore, the order cannot be faulted with. Moreover, the Magistrate has an power to treat the application filed by the applicant under Section 156(3) as a “complaint”. The learned Magistrate dealt with the matter in proper manner and, therefore, the interference in the impugned order is totally unwarranted. They further assailed that the alternate efficacious remedy was available to the applicant, therefore, there is no need to exercise powers under Section 482 of the Code. The learned counsel for respondents relied upon the law laid down in the matter of **Devarapali Lakshminarayana Reddy and others Vs. V. Narayana Reddy and others reported in MANU/SC/0108/1976 : air 1976 SC 1672; Ramdeo Food Products Pvt. Ltd. Vs. State of Gujarat reported in AIR 2015 SC 1742; Manju Surana Vs. Sunil Arora and others 2018(2) Crimes 363(SC); V.K. Jain and others Vs. Pratap V. Padode and others 2005(3) Mh.L.J. 778; RameshbbaiPandurao Hedau Vs. State of Gujarat 2010 AIR (SC) 1877.**

7] At the inception, the learned counsel for the respondent raised objection for exercise of inherent powers under Section 482 of the Code and they relied upon **V.K. Jain's case**, as referred

above. However, in view of the exposition of law delineated by the Honourable Apex Court in the case of ***Dhariwal Tobacco Products Ltd. and others Vs. State of Maharashtra and another, (cited supra)***, there is no impediment to entertain the present petition even after efficacious remedy is available to the petitioner.

8] I have considered the rival submissions advanced on behalf of both sides. I have also delved into the relevant documents including the judicial pronouncements produced on record. The crucial points to be ponder over in this case are, **(1)** Whether on receipt of application under Section 156(3) of the the Code the Magistrate is always bound to pass order to register the case and investigate if a cognizable offence is disclosed; and **(2)** Whether the Magistrate, while recording any findings to the effect that where cognizable offence is made out or not, may order for treating the application as a “complaint” to follow the procedure under the provisions of Chapter XV of the Code.

9] In view of these legal issues, it is profitable to make a reference of the provisions of Section 156 of the Code, which is reproduced as under :-

“156. Police officer's power to investigate cognizable case -

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court

having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this Section to investigate.

(3) Any Magistrate empowered Under Section 190 may order such an investigation as above-mentioned."

10] It has specifically provided in sub-section (1) of Section 156 of the Code that the Officer incharge of a police station has a power to investigate any cognizable case. The police officer is bound to investigate any cognizable case, when information is received by him. If the police decline to investigate any cognizable case, then, the aggrieved person has a remedy to approach to the Magistrate by taking recourse of provision of Section 156(3) of the Code and the Magistrate under these provisions, can pass an order for investigation in the case where cognizable offence is found committed. There is no doubt that proceeding under Section 156(3) is pre-cognizance and once cognizance is taken by the Magistrate under section 190 of the Code, he has to proceed in his discretion, treating it as a complaint under Section 200 of the Code.

11] The Full Bench of this court in the Panchabhai's case referred above, held that the reference to the provision of Section

190 in Section 156(3) of the Code is merely to determine the jurisdiction of the Magistrate to whom the application has to be made by the aggrieved person or the complainant. It no way controls the power of the court to direct registration and/or investigation as contemplated under Section 156(3) of the Code. It has also observed that detail factual allegations are not necessary for an application under Section 156(3) nor any format has been prescribed for the same, including the prayer clause. It is for the complainant or the aggrieved person to decide, whether he wishes the matter to investigation under Section 156(3) of the Code, or whether his application is to be treated as a regular "complaint" under section 200 of the Code. It is for the complainant or aggrieved person to bring it to the notice of the court under Section 156(3) of the Code that despite intimation to police, it has failed to act and investigate into a cognizable offence in accordance with law. In the aforesaid Panchabhai's case, Their Lordships of this Court further elucidated that once such a petition under Section 156(3) is presented, the learned Magistrate is free to exercise appropriate jurisdiction in accordance with law, and at the request of the complainant. But, it cannot be rejected by the court merely on the ground that it does not contain proper prayer clause insofar as it discloses commission of a cognizable offence. In para. 55 of the aforesaid Panchabhai's case the Full Bench has observed thus :-

“55.Even to Criminal jurisprudence, the law of pleading is applicable to certain extent. Thus where a person files a complaint under section 200 of the Code of Criminal Procedure, he is expected to state the facts giving details and correct versions which would amount to committing of an offence alleged. It has to satisfy the basic ingredients of such an offence and it is expected of the complainant to make a proper complaint as contemplated under section 2(d) of the Code with appropriate prayers. In contradistinction to this, such strict rule of pleadings cannot be made applicable to the provisions of section 156 (3) of the Code as it is result of a default and even intimation in appropriate format may suffice the purpose in some cases. That certainly does not mean that under section 156 (3) properly drafted petition cannot be moved. Rather if a petition with complete facts, stating detailed and definite events essential to constitute the offence alleged to have been committed is presented and the prayers have been made, discretion of the Magistrate would be much wider than merely directing investigation in terms of section 156(3) and the Court even could take cognizance of the offence if the complaint is filed under section 200 of the Code. If a complaint does not disclose a cognizable offence with proper facts, it may be liable to be dismissed and/or rejected by the Magistrate.”

(Emphasis supplied)

12] Now turning to the crucial issue involved in the matter, it is axiomatic that the provision of Section 156 occurs in Chapter XII of the Code, which deals with the information to the police and powers of the police to investigate a crime. The provision of Section 156(3) relating to power of the Magistrate is placed in the Chapter different from chapter XIV of the Code, which deals with initiation

of proceeding against an accused person. The provisions of taking cognizance under Section 190 of the Code and provisions for application under Section 156(3) are totally different and work in distinct spheres. If the Magistrate receives a complaint under Section 190 of the Code, he can act under Section 156(3) provided that he does not take cognizance. It manifestly makes it clear that Chapter XIV of the Code deals with post-cognizance stage, whereas, chapter XII so far as Magistrate is concerned, deals with pre-cognizance stage. i.e. to say, once the Magistrate starts acting under Section 190, then he cannot resort to Section 156(3) for direction to the police to investigate into the crime. The Honourable Apex Court in the matter of ***“Ramdeo Food Products Vs. State of Gujarat”*** in para.22, observed as below :-

“22. Thus, we answer the first question by holding that the direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone instance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice, it is considered appropriate to straightway direct investigation, such a direction is issued. Cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine “existence of sufficient ground to proceed”. Category of cases falling under Para.120.6 in Lalita Kumari (supra) may fall under Section 202. Subject to these broad guidelines available from the scheme of the

Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case.”

13] In the light of aforesaid judicial precedent referred above, it is evident that the action which required to be taken by the Magistrate on a complaint is provided under Chapter XIV of the Code. Needless to say that under the said provision, the subsequent action is by way of recording of statement of the complainant under Section 200 of the Code and that of his witnesses under Section 202 of the Code. It is the rule of law that every application is not a complaint. If the complainant makes any other different prayer, then, it does not fall under the category of complaint as envisaged under Section 2(d) of the Code. The application under Section 156(3) would fall within the category of such applications which cannot be termed as a “complaint”, under Section 2(d) of the Code. Moreover, as described above, there is a distinction in between the application under Section 156(3) of the Code and a “complaint” as defined under Section 2(d) of the Code. But, it cannot be overlooked that the powers under Section 156(3) warrants application of a judicious mind and the applicant or aggrieved person cannot on its own whim, invoke the authority of the Magistrate. It is to be borne in mind that the use of word “may” in Section 156(3) instead of “shall” is very significant and clearly indicate the discretion to be exercised by the Magistrate in the

matter and he can, in appropriate cases, refuse to order investigation. Therefore, it is fallacious to appreciate that, after receiving the application under Section 156(3), the Magistrate is duty-bound to pass an order to register the case and investigate if the cognizable offence is disclosed.

14] In the case of ***Chandrika Singh Vs. State of U.P. And ors. 2007 CRI.L.J. 3169***, the learned Single Judge of the Allahabad High Court, observed that the Magistrate is fully competent to use his judicial discretion in the matter if he is of the opinion that in circumstances of the case, it will be proper to treat the application , as a “complaint” case, and he may proceed according to the procedure prescribed under Chapter XV of the Code. In the case of ***Joseph Mathuri @ Vishveshwarananda Vs. Swami Shivanand Harisakshi and another 2001(3) Crimes 384***, the Honourable Apex Court held that the application moved under Section 156(3) of the Code can be treated as a “complaint” for further process, under Section 200 of the Code.

15] In the matter in hand, the applicant preferred the application before the learned Magistrate, with a prayer to direct the police of Parli (V) city police station, to register and investigate the crime under Sections 120-B, 416, 420, 465, 467, 468, 471, 472 r/w 34 of IPC and Section 81 of the Registration Act. But, the learned

trial court did not give response to issue directions to the concerned police to register the crime and investigate the same. The learned Magistrate made a reference of exposition of law delineated by this Court Bench at Nagpur in the case of “***State of Maharashtra Vs. Shashiakant Eknath Shinde, reported in 2013 ALL M.R.(Cri.) 3060***”, wherein, it has been held that the Magistrate should not adopt casual approach while dealing with the application under Section 156(3) of the Code. It is an obligation for the magistrate to ascertain whether, the contentions made in the petition/complaint constitute any offence cognizable in nature and the circumstances are sufficient to refer the matter to the police for investigation by invoking powers under Section 156(3) of the Code. He has to consider whether the factual aspect of the matter also required in the interest of justice to avail later course, as prescribed under Section 200 of the Code for further process.

16] In the instant case, the learned Magistrate appreciated the entire circumstances on record and turned down the relief prayed on behalf of applicant for transmission of the matter to police for registration and investigation into the cognizable offence, as allegedly committed by the respondents. The learned Magistrate, while rejecting the prayer under Section 156(3), kept open the remedy for the applicant to avail the later course, by converting the application filed under Section 156(3) as a

“complaint” under Section 2(d) of the Code and if he shown inclination for later course, he may proceed to comply with the further process as contemplated under Section 200 of the Code. The impugned order passed by learned Magistrate is reproduced as under :-

“ ORDER

“1] The application for request to issue direction under section 156(3) of Code of Criminal Procedure to register an offence is rejected.

2] The complainant is at liberty to proceed with the complaint under Section 200 of the Code of Criminal Procedure.

3] The complaint be kept for verification of the complainant.

PARLI (V).

Dated 14.8.2018

Sd/-
(V.M. Bansod)
Judicial Magistrate First Class
Parli Vaijnath.”

17] The aforesaid order categorically reflects that the learned Magistrate did not show favour to refer the matter to the police under Section 156(3) of the Code for investigation. According to learned Magistrate, the gravity of allegations of forgery nurtured on behalf of applicant needs no investigation by the police at pre-cognizance stage. There are allegations that the respondents committed mischief by executing a forged sale deed as well as fabrication of spurious documents of Adhar card, Adoption

Deed etc. and, therefore, committed an offence of forgery, cheating etc. The relevant documents of forgery, cheating etc. all are available with the applicant. The expert's report can be made available during course of trial. In such circumstances, there was no special reason for police investigation in this case. Mere allegations of forgery is not enough to make the Magistrate to pass an order under Section 156(3). The learned Magistrate was intending to proceed for further enquiry by taking cognizance of the alleged offence, instead of referring the matter to the police for investigation.

18] The mode and tenor of impugned order conjures up an image that the the Magistrate did not convert the present application filed under Section 156(3) into a “complaint” as defined under Section 2(d) of the Code for taking cognizance. The learned Magistrate simply granted liberty to the applicant to avail the remedy prescribed under Chapter XV of the Code. I find no illegality, or error committed in the impugned order by the learned Magistrate. He was reluctant to refer the matter to the police for investigation by exercising administrative jurisdiction under Section 156(3) of the Code. The learned Magistrate granted liberty to the applicant to opt for further inquiry to be carried out by taking recourse of provision of Section 200 of the Code.

19] As referred above the litigant or the aggrieved person cannot at its own whim invoke the authority of the Magistrate. It is true that the applicant has an option to prefer the forum for redressal of his grievances. But, the use of word “may” in Section 156(3) instead of “shall” indicate that the Magistrate has a discretion into the matter and in appropriate cases he has a power to refuse to order investigation.

20] In the matter in hand, the learned Magistrate exercised the discretion in proper manner and, therefore, it does not warrant any interference. There is no illegality or perversity in the impugned order passed by the learned Magistrate. While rejecting the application under Section 156(3), liberty was granted to the applicant to proceed with the application as a complaint under Section 200 of the Code. The Magistrate did not convert the application filed under Section 156(3) into a “complaint” under Section 200 of the Code. But, the option was given to the complainant, that if he is inclined he may proceed by treating the present application as a “complaint” u/section 2(d) of the Code for further course, as prescribed under Chapter XV of the Code. It is preposterous and incomprehensible to appreciate the attempt of the applicant to insist for investigation by the police under Section 156(3) of the Code, to arm-twist the respondents/accused, after having them arrested at the hands of police, by registration of crime

against them.

21] In the above premises, it is evident that the learned Magistrate has dealt with the proceeding in proper manner. He has applied his judicious mind and considering the nature of the subject matter and gravity of the allegations, he did not prefer to pass order for registration and investigation of the offence by the police. He has chosen to grant liberty to the applicant to proceed into the matter by availing the remedy prescribed under Chapter XV of the Code. He has not committed any wrong nor he converted the application simplicitor filed under Section 156(3) of the Code, as “complaint” under Section 2(d) of the Code. But, the learned Magistrate kept open the doors of the courts of law for option to the applicant to avail remedy under Section 200 of the Code. It does not mean that he rejected the application under Section 156(3) of the Code and started further course by taking cognizance under Section 190 of the Code. In case the applicant is not favourable to proceed further by availing appropriate remedy under Chapter XV of the Code, he may communicate his intention to the concerned Magistrate so that proceeding will be closed and in case, the applicant is inclined to proceed further into the matter, after taking cognizance by the learned Magistrate under Section 190 of the Code, then he may appear before the learned Magistrate for

further course as envisaged under Section 200 of the Code.

22] In view of above, the power under Section 482 of the Code cannot be exercised in favour of applicant, to quash and set aside the impugned order, as same appears legal, proper and within purview of law. There was no any abuse of process of law nor any interference in it is necessary to secure the ends of justice. In the result, the application being devoid of merit deserves to be dismissed. Accordingly, the application stands dismissed. No orders as to costs.

[K.K. SONAWANE]
JUDGE.

Grt/-