

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

WRIT PETITION No. 113 OF 2019

Kanchan Motors, through its Manager,
Mr.Ajit Hiranman Pawar ...Petitioner

Versus

The State of Maharashtra ...Respondent

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Mr.Mayank Bagla a/w. Mr.Durgesh Kulkarni i/b.Ms.Rashmi
A.Arabekar for the Petitioner.
Mr. A.R.Patil, APP for the Respondent-State.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED : 29 JANUARY, 2019**

P.C.:

1. Rule. Rule made returnable forthwith. By consent of the parties, the Petition is heard finally and disposed of at the stage of admission, as short issue is involved.
2. This Petition is directed against the orders dated 5th July, 2018 and 2nd January, 2019 passed by the learned Judicial Magistrate First Class, Nashik in Criminal Misc. Application No. 1061 of 2018.

3. On 27th June, 2018, the petitioner/ complainant filed a private complaint under sections 403, 406, 409, 418, 420, 427, 467, 120B read with 34 of the Indian Penal Code. The matter was kept on board on 5th July, 2018 for verification. On 25th July, 2018, the petitioner/complainant moved an application praying that the matter be heard in accordance with provisions under section 156 (3) of the Code of Criminal Procedure (for short “the Cr.P.C”), as in the said complaint, the petitioner/complainant has prayed for calling report from the police station and giving directions under section 156 (3) of the Cr.P.C. The learned Magistrate, after hearing the petitioner/complainant, who sought directions under section 156 (3) of the Cr.P.C, has passed the order on 5th July, 2018 instead of verification of the complainant. The learned Magistrate heard the complainant on this issue and rejected the application by reasoned order dated 2nd January, 2019. The learned Magistrate took view that on the earlier date, the matter was fixed for verification. It amounts to taking cognizance and, therefore, the procedure prescribed under section 200 of the Cr.P.C. should have to be followed. The learned Magistrate has also taken a view that once cognizance is taken, then directing the police to investigate the matter under section 156 (3) of the Cr.P.C. is not permissible.

4. The learned counsel for the petitioner while challenging the said order passed by the learned Magistrate, has submitted that when the complaint is filed specifically asking to give directions under section 156 (3) of the Cr.P.C. to the police, then the learned Magistrate has only two options i.e., to pass such order giving directions to the police to investigate the matter under section 156 (3) of the Cr.P.C or to reject the said prayer. He has further submitted that no third option of keeping the matter for verification under section 200 of the Cr.P.C. is open for the learned Magistrate especially when no such prayer is made by the complainant. He has further submitted that the order passed by the learned Magistrate on 5th July, 2018 is a non-speaking order. In support of his submissions, he has relied on the judgment of the Supreme Court in the case of **Anil Kumar and Others Versus M.K.Aiyappa and Another** reported in **(2013) 10 SCC 705**.

5. The learned APP while opposing this Petition and supporting the procedure adopted by the learned Magistrate, has relied on the judgment of the Supreme Court in the case of **Mona Panwar Versus High Court of Judicature of Allahabad through its**

Registrar and others reported in **(2011) 3 SCC 496**. He has submitted that if such private complaint is filed, then the learned Magistrate has to pass an order under section 156 (3) of the Cr.P.C. or under section 200 of the Cr.P.C.

6. Heard. Considered submissions.

7. In the case of **Anil Kumar and Others** (*supra*), the Supreme Court while dealing with the scope of section 156 (3) of the Cr.P.C. has observed that when the complaint is filed and the Magistrate before exercising jurisdiction under section 156 (3) of the Cr.P.C. or under section 200 of the Cr.P.C., the application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such reflected in the order is not sufficient.

8. In the case of **Mona Panwar** (*supra*), the Supreme Court has discussed the scope and procedure adopted while invoking powers under section 156 (3) of the Cr.P.C. or under section 200 of the Cr.P.C. The Supreme Court has held that the judicial discretion exercised by the appellant/ Magistrate, to proceed under Section 200 of the Code in the light of principles of law laid down by the

Allahabad High Court in various reported decisions could not have been faulted with. The Supreme Court has further held that,

“23. Normally, an order under Section 200 of the Code for examination of the complainant and his witnesses would not be passed because it consumes the valuable time of the Magistrate being vested in inquiring into the matter which primarily is the duty of the police to investigate. However, the practice which has developed over the years is that examination of the complainant and his witnesses under Section 200 of the Code would be directed by the Magistrate only when a case is found to be a serious one and not as a matter of routine course. If on a reading of a complaint the Magistrate finds that the allegations therein disclose a cognizable offence and forwarding of the complaint to the police for investigation under Section 156 (3) of the Code will not be conducive to justice, he will be justified in adopting the course suggested in Section 200 of the Code”.

9. In the present case, the petitioner/complainant has asked for directions to investigate the matter and lodge F.I.R. under section 156 (3) of the Cr.P.C. It is also prayed that the Court may grant other relief, which the Court may deem fit and proper in favour of the complainant though the said prayer is routinely made. Under the said prayer, the Court definitely has discretion to pass an order in favour of the complainant. The submissions made by the learned counsel for the petitioner/complainant that once the private complaint is filed seeking directions to pass orders of

investigation and register the F.I.R. under section 156 (3) of the Cr.P.C., then the learned Magistrate cannot go for verification under section 200 of the Cr.P.C., is not correct. The private complaint is filed under section 190 of the Cr.P.C.. Under what instructions the learned Magistrate can take cognizance? Upon receiving the complaint, if the offence is constituted, then the learned Magistrate has power to take cognizance and proceed further. Section 156 (3) of the Cr.P.C. states that the police officer has power to investigate the cognizable case, if the learned Magistrate has directed the police to investigate. If the learned Magistrate, after going through the complaint thinks fit to examine the complainant, then he can keep the matter for verification under section 200 of the Cr.P.C. It is the choice of the Magistrate to give directions to the police to proceed with the matter on the basis of the complaint. Thereafter, the learned Magistrate under section 202 of the Cr.P.C. either can postpone to issue process or give directions to the police or he may issue process under section 204 of the Cr.P.C. Thus, these options other than section 156 (3) of the Cr.P.C. are open for the Magistrate.

10. The submissions made by the learned counsel for the petitioner that keeping the matter for verification is a non-speaking order, cannot be appreciated because at that stage, when the learned Magistrate keeps the matter for verification, the learned Magistrate need not give reasons. The learned Magistrate supposed to pass further order either under section 202 or section 204 of the Cr.P.C.

11. Under such circumstances, the orders passed by the learned Magistrate cannot be faulted with. Hence, Writ Petition is dismissed. Rule is discharged.

(MRIDULA BHATKAR, J.)