

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

CRIMINAL REVISION APPLICATION NO. 332 OF 2015

M/s. Arihant Universal Reality Pvt. Ltd. ... Applicant

V/s.

Rakesh Pravin Sanghvi and Anr. ... Respondents

Mr. Niranjan Mundargi I.by Ms. Keral Mehta for the applicant.
Mr. H.H. Ponda a/w. Mr. Subodh Desai I.by Mr. Pravin Desai for the
respondent.
Ms. Anamika Malhotra-APP for the State.

**CORAM : SMT. SADHANA S. JADHAV, J
DATED : MARCH 5, 2020.**

P.C. :

1 Heard the learned Counsel for the applicant and the
learned Counsel for the responders and the learned APP for State.

2 The applicant herein happens to be the original
complainant in Misc. Application No. 174 of 2015 filed before the
Judicial Magistrate First Class, CBD Belapur, Navi Mumbai. The
applicant company had filed a complaint alleging therein that the

respondent No. 1 and accused No. 3 had approached the complainant company and represented to the company that they had acquired rights, title and interest from various project affected persons in respect of various lands allotted under what is known as the 12.5% scheme. It was also represented that the accused respondents were willing to transfer and assign their rights to the complainant company on certain terms and conditions. The complainant company had accepted the offer and had entered into three memorandums of understanding with the respondent No. 1, the memorandum of understandings being dated 27/6/2010, 16/9/2010 and 15/2/2011. The agreed amount was Rs. 6 Crores One Lakh, out of which complainant company had paid sum of Rs. 5 Crores 51 Lakhs to the respondents.

3 It had further transpired that the respondents herein had not taken any concrete steps in order to complete the transaction and the obligations, as had been agreed by way of memorandums of understandings. The complainant company had pursued the respondents on several occasions and it clearly appeared that they were willing to settle the complainant's claim. Hence, the accused

had issued 3 cheques for Rs. One Crore, Rs. 6 Crores and Rs. 6,83,38,910/-, totalling an amount of Rs. 13,83,38,910/-. A deed of settlement was recorded between the parties on 13th October, 2014. The complainant had presented the said cheques for encashment. However, the cheques were dishonoured. The respondents had started taking steps to intimidate the complainant, their officers and directors in order to pressurise them to return the cheques and the deed of settlement, which was the foundation of the transaction and agreements between both the parties.

4 The complainant was therefore, constrained to approach the police, as the complainant had realised that the complainant is cheated by the respondents-accused. The complainant had approached the Deputy Commissioner of Police, Zone I, Vashi and had requested him to direct the concerned police station to record the F.I.R. and investigate the offence. The report was filed to the police on 9/1/2015. It appeared that the police were not willing to register F.I.R. and hence, the complainant was constrained to approach the Court of Judicial Magistrate First Class, Vashi and seek

directions under section 156(3) of the Code of Criminal Procedure, 1973. On 21/1/2015 the Complainant had filed a complaint before the said court. On 11/2/2015 the Learned Judicial Magistrate First Class had passed an order directing the concerned police station to investigate the crime under section 156(3) of the Code of Criminal Procedure, 1973. Pursuant to the order dated 11/2/2015, F.I.R. was registered on 13/2/2015 bearing Crime No. 75/2015 for offences punishable under section 420, 389, 394, 120-B of Indian Penal Code and section 138 of the Negotiable Instruments Act.

5 On 12/3/2015 the respondents herein filed Revision Application No. 54 of 2015 in the Court of Sessions Judge at Thane challenging the order dated 11/2/2015 giving directions to the concerned police station to register F.I.R. The learned Sessions Judge had gone into the merits of the complaint. The material on record was marshalled by the learned Revisional Court and by an order dated 15/5/2015, the revision application was allowed and the order of the learned Magistrate dated 11/2/2015 in original Misc. Application No. 174 of 2015 invoking power under section 156(3) of

the Code of Criminal Procedure, 1973 was quashed and set aside. Hence, this Revision Application by the original complainant.

6 At the outset, the learned Counsel for the applicant submits that in fact, a revision was not maintainable challenging the order dated 11/2/2015 on three grounds. The first being that an order directing investigation under section 156(3) of the Code of Criminal Proceeding, 1973 is an interlocutory order and hence, the same could not have been entertained by filing of the revision application. Secondly, that by the time the revision application was filed, the offence was registered on 13/2/2015 since the order dated 11/2/2015 was complied with by the police station. Thirdly, that the order under section 156(3) is an interlocutory order.

7 The Websters' New Words dictionary defined "interlocutory" as an order other than a final decision. In the case of **V.C. Shukla v/s. State through CBI reported in AIR 1980 SC 962**, the Hon'ble Apex Court has held that :

“Unless an order results in a final termination of the proceeding

in any way it is decided, the order is of an interlocutory nature. .. An interlocutory order is an order entered pending a cause deciding some point or matter, essential to the progress of the suit and colateral to the issues formed by the pleadings and not a final decision or judgement on the matter in issue.”

A direction under section 156(3) of Code of Criminal Procedure, 1973 is a peremptory reminder to the police to exercise their plenary powers to register an offence whenever the allegation discloses a cognisable offence. The result of the said enquiry could be a subject matter of challenge, but, direction of an enquiry /investigation does not determine the rights of any proposed accused person and therefore, an accused cannot pray for quashing of an order under section 156(3) of Code of Criminal Procedure, 1973. It may be open for an accused to seek the relief of quashing of FIR under section 482 of the Code of Criminal Procedure, 1973 after demonstrating that prima facie, no offence has been made out. In fact, once an offence is registered pursuant to the directions under section 156(3) of Code of Criminal Procedure, 1973, the complaint would be terminated and the enquiry would commence upon registration of offence and therefore, an order quashing direction would be a

nullity.

8 The Division Bench of this Court in the case **Kailash Dattatray Jadhav and Anr. V/s. State of Maharashtra through Saki Naka Police Station in Criminal Application No. 152 of 2015 vide Judgment and Order dated 4th May, 2016** has observed as follows :

“in a case where on the basis of an order under sub-Section 3 of Section 156 of the Code, FIR is registered, the remedy of revision under the Code for challenging the order under sub-Section 3 of Section 156 will not be an efficacious remedy at all.”

“even in a case where a revision application is entertained against an order under sub-Section 3 of Section 156 where FIR on the basis of the said order is already registered, in exercise of revisional jurisdiction, neither this Court nor Sessions Court can quash the FIR and proceedings subsequent to the FIR, as what can be gone into by the Court in revisional jurisdiction is the issue of legality, validity and propriety of the orders passed by a subordinate Criminal Court.”

In the said Judgment, the Hon'ble Division Bench had considered all the other judgments under section 156(3) of the Code of Criminal Procedure, 1973 including the judgment in the case of **B.S.Khatri(Col.) & ors v/s. State of Maharashtra and anr. reported in (2004) 1 BCR page 424.** It is held that mere order directing investigation does not cause any injury of irreparable nature, which

requires quashing of even the investigation.

9 The learned Sessions Court while allowing the revision application, had taken into consideration the merits of the complaint and had observed that the Judicial Magistrate First Class has not applied its mind and since no reasons are assigned for directing investigation under section 156(3) of the Code of Criminal Procedure, 1973 the order deserves to be quashed. It is clear that the learned Sessions Judge had fallen in error to observe accordingly.

10 A full bench of Allahabad High Court when seized of the issue as to whether section 156(3) of the Code of Criminal Procedure, 1973 would be amenable to revisional jurisdiction, in the case of **Father Thomas v/s. State of U.P. reported in (2011) 2 Allahabad Law Journal 217** had observed that “a prospective accused had no locus standi to challenge a direction for investigation under section 156(3) of Cr. P.C. by filing a revision petition before cognizance or issuance of process against him.” It was also held that a revision petition against such an order directing registration of FIR

under section 156(3) of Code of Criminal Procedure, 1973 was not maintainable. The accused has a right to challenge the proceedings post-cognizance stage or at the trial.”

11 The learned Counsel for the respondent vehemently submits that the learned Sessions Judge had rightly gone into merits of the matter and had observed that the learned Magistrate has not recorded reasons for directing investigation under section 156(3) of Code of Criminal Procedure, 1973 and that no case was made out for police investigation and therefore, the order dated 11/2/2015 deserves to be quashed and set aside. As against this, learned Counsel for the applicant has vehemently submitted that once the order is complied with, there was no reason to interfere with the said order. In fact, the police had also commenced with the investigation process and the Sessions Court had erroneously allowed the revision application.

12 It is true that there are divergent views on the issue as to whether a revision is maintainable or not. However, at this stage, in

the present case, it would not be necessary to delve into the said issue. The question is as to whether a direction under section 156(3) of Code of Criminal Procedure, 1973 could have been quashed and set aside by the revisional court. This Court is of the opinion that once the direction was complied with and the offence was registered, the learned Sessions Judge had no authority or powers to set aside the said direction, by going into the merits of the matter.

13 It would not be necessary for the Judicial Magistrate First Class to record detailed reasons. All that is required is a subjective satisfaction, that upon perusal of the complaint, the Court was of the opinion that a case has been made out for investigation under section 156(3) Code of Criminal Procedure, 1973.

14 This Court is of the opinion that at the stage of initiating an enquiry under section 156(3) of Code of Criminal Procedure, 1973 or at the stage of issuance of process or at the stage of registration of F.I.R., the accused has no locus, whatsoever. to challenge such a direction or initiation of such an enquiry. Moreover,

after compliance of the order the Revisional Court could not have quashed the proceedings under section 397 of the Code of Criminal Procedure. Section 397(2) reads thus :-

“The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding”.

15 An order under section 156(3) does not determine/ascertain or adjudicate the rights of a proposed accused. The right to challenge or seek quashing of FIR is available under section 482 of Code of Criminal Procedure, 1973.

16 It is in view of the above observations, the Revision Application filed by the original complainant deserves to be allowed. Hence, following order is passed :

ORDER

- (i) The Criminal Revision Application is allowed.
- (ii) The order dated 15th May 2015 passed by the Sessions Judge, Thane in Criminal Revision Application No. 54 of 2015 is quashed

and set aside. Needless to say that the Interim relief granted vide order dated 30th July 2015 and 19th August 2015 is recalled/vacated.

17 At this stage, the learned counsel Mr. Ponda for the respondent no. 1 seeks a stay to this order. Taking into consideration the fact that the revision application, itself was filed in the year 2015 and that further proceedings have been stalled. Pursuant to the order passed by the Sessions Judge, this Court is not inclined to grant any stay. However, it is made clear that in the eventuality, the respondent herein decides to adopt any appropriate legal proceedings, the time spent in prosecuting the present application shall be taken into consideration.

18 The Revision Application is disposed off accordingly.

(SMT. SADHANA S. JADHAV,J)