

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL WRIT PETITION NO.115 OF 2019

(Ashish Bhaskar Kaore and others ..vs.. The State of Maharashtra, through PSO, PS Rana Pratap,
Nagpur and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.P. Bhandarkar, Counsel for the petitioners,
Shri P.S. Tembhare, Addl.P.P. for respondent 1/State,
Shri A. Anantkrushnan and Sonkusare, Counsel for respondent 2.

CORAM : ROHIT B. DEO, J.

DATED : 18-02-2020

Unfortunately, the mediation which this Court thought would bring an end to the unsavoury dispute, has failed.

2. The petition is directed against the order dated 22-9-2017 whereby the learned Magistrate dismissed the application preferred under Section 156(3) of the Criminal Procedure Code, prayer clause of which application reads thus :

“(i) Call for the record and proceeding of the enquiry conducted by the non-complainant No.1 against the non-complainant No.2 and upon perusal thereof further be pleased to :

(ii) Direct the non-complainant No.1 to register the offence punishable under Sections 405, 415, 499, 383, 356 and 378 of Indian Penal Code against the non-complainant No.2.

(iii) Grant any other relief which this Hon’ble Court deems fit and proper considering facts and circumstances of the case.”

3. The petitioners preferred Criminal Revision Application 350/2018 which is dismissed by the judgment dated 20-12-2018 rendered by the Sessions Judge, Nagpur.

4. The revisional Court has recorded primarily two reasons for dismissing the revision. The first is that application under Section 156(3) of the Criminal Procedure Code does not comply with the provisions of Sections 154(1) and 154(3) of the Criminal Procedure Code. It is further observed that the complaint does not specifically point out what sort of evidence needs to be collected by the police machinery. The relevant observations in the revision order reads thus :

“7. In the light of above submission I have carefully gone through the impugned order passed by the learned Magistrate alongwith record and proceeding. The learned advocate for the applicants invited my attention towards document No.1 of list vide Exh.3 i.e. police report and submitted that the applicants have complied with the provisions u/s 154(1) of Cr.P.C. I have carefully gone through the said document, it is seen that the letter issued by the applicant to the police officer in-charge informing that they have sent the notice to the respondent No.2 for criminal charges u/s 405, 415, 499, 383, 356 and 378 of I.P.C. except this there is nothing to show that the said document discloses any incident as alleged by the applicants whereas they have only informed police through said letter that they intend to take action against the respondent No.2. The learned advocate further brought to my notice that the letter dated 5-9-2017 addressed to the Commissioner of Police stating that the petition is filed in the court on

18-5-2017. Upon considering the above letter it is an admitted position that there has not been prior compliance of provision u/s 154(3) of Cr.P.C. Moreover, the said letter sent to the Commissioner of Police also does not disclose any cognizable offence against respondent No.2. Therefore it cannot be said that the complainant have approached all the forums provided under law before moving this application.

8. Further it is worthwhile to mention here that on going through the complaint filed by the applicant it reveals that nothing was pointed out as to what sort of evidence that needs to be collected by the police machinery in the present matter. Considering the nature of matter it cannot be said that the evidence required in this present matter is of a nature that the applicants do not have access to it and that can only be collected by the investigation agency. Further more, it is also pertinent to note that the applicants have quoted the sections for various offences and not the punishable offences. Moreover, the alleged police report filed by the applicants do not even disclose any incident as alleged at all and therefore, as per the observation of learned Magistrate there is nothing on record to suggest that investigation as prayed for by the applicants is absolutely necessary for an effective and efficient prosecution against respondent No.2 is not at all required to interfere with this Court.”

5. Conjoint reading of the paragraphs 7 and 8 would reveal that the revisional court was persuaded to confirm the order of dismissal of application under Section 156(3) of the Criminal Procedure Code in view of the purported *lacunae* in the application and the purported non-compliance of the provisions under Sections 154(1) and 154(3) of the Criminal Procedure code.

6. Shri S.P. Bhandarkar, learned Counsel fairly states that afresh application under Section 156(3) of the Criminal Procedure Code shall be filed after complying with the statutory provisions as interpreted in the decision of the Hon'ble Apex Court in ***Priyanka Srivastava & another vs. State of Utter Pradesh, (2015) 6 SCC 287.***

7. The petition is disposed of with liberty to file afresh application under Section 156(3) of the Criminal Procedure Code which shall be considered on its own merits and uninfluenced by any observation in the order impugned.

8. The learned Counsel for the respondent 2 submits that even the earlier application was grossly delayed and that there is no material to warrant direction to investigate. It is made clear that every contention, whether in this petition or in rebuttal, is kept expressly open. It shall always be open for the respondents to point out that no case is made out for entertaining the application under Section 156(3) of the Criminal Procedure Code.

JUDGE

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