

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
903 CRIMINAL APPEAL NO.932 OF 2019

PRAMOD (PRAFULLA) RATNAKAR LALSARE AND OTHERS
VERSUS

THE STATE OF MAHARASHTRA AND ANR

Mr. V. D. Sapkal, learned Senior Counsel i/b Mr. S. R. Sapkal, Advocate for the appellants
Mr. S. P. Sonpawale, APP for the respondent/State
Mr. A. R. Salve, Advocate for the respondent No.2 (appointed)

CORAM : N. R. BORKAR, J.

RESERVED ON : 09-12-2021

PRONOUNCED ON : 23-12-2021

P. C.

. This appeal takes an exception to the order dated 16-08-2019 passed by the learned Additional Sessions Judge, Aurangabad in Criminal Misc. Application No. 98 of 2019.

2. The respondent No.2 herein had filed the complaint for the offences punishable under Sections 323, 504 and 506 read with Section 34 of the Indian Penal Code and Sections 3(1)(x)(i) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against the present appellants.

3. The trial court on 13-03-2019, had passed the following order.

The complainant to produce all his witnesses for recording their statements in enquiry.

4. The trial court thereafter recorded the statements of the complainant and two more witness. The trial court after recording the statements of the complainant and the witnesses passed the order under Section 156(3) of the Cr. P. C. for investigation and directed the Pundalik Nagar Police Station to register the crime against the petitioners for the offences punishable under Sections 3(1)(r) and (s) read with Section 6 of the Atrocities Act and Sections 323, 504, 506 read with Section 34 of the IPC.

5. I have heard the learned senior counsel for the appellants, the learned APP for the respondent/State and the learned counsel for the respondent No.2

6. The learned senior counsel for the

appellants submits that power under Section 156(3) can be invoked at pre-cognizance stage and not after taking the cognizance of the offences. It is submitted that in the present case, the trial court after examining the allegations thought it fit to direct the complainant to produce witnesses for recording their statements. It is submitted that trial court thereafter recorded the statements of the complainant and the witnesses. It is submitted that the trial court after recording the statements of the complainant and the witnesses was not justified in directing the police to register the crime under Section 156(3) of the Cr. P.C. In support of the submissions the learned senior counsel has relied upon the judgments in the case of Suresh Chand Jain Vs State of MP and another reported in AIR 2001 SC 571, CREF Finance Ltd Vs Shree Shanti Homes Pvt. Ltd. and another reported in 2005 SC 4284 and Rameshbhai Pandurao Hedau Vs State of Gujrat reported in 2010 CRI LJ 2441.

7. On the other hand the learned counsel for the respondent No.2 submits that by just recording the statements of complainant and witnesses, it cannot be said that the trial court has taken

cognizance of the offence. It is submitted that the trial court considering the nature of allegations was justified in ordering the investigation under Section 156(3) of the Cr. P. C. It is submitted that thus, no interference is called for in the impugned order. Accordingly it is submitted that the appeal be dismissed.

8. The Hon'ble Supreme court in the case of *Suresh Chand Jain* (supra) has observed:

10. The position is thus clear. Any judicial magistrate, before taking cognizance of the offence, can order investigation under [Section 156\(3\)](#) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer-in-charge of the police station as indicated in [Section 154](#) of the Code. Even if a magistrate does not say in so many words while directing investigation under [Section 156\(3\)](#) of

the Code that an FIR should be registered, it is the duty of the officer-in-charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.

9. At what stage the powers under Section 156(3) can be invoked, the Hon'ble Supreme Court in the case of Rameshbhai Pandurao Hedau (supra) has observed:

18. The power to direct an investigation to the police authorities is available to the Magistrate both under [Section 156\(3\)](#) Cr.P.C. and under [Section 202](#) Cr.P.C. The only difference is the stage at which the said powers may be invoked. As indicated hereinbefore, the power under [Section 156\(3\)](#) Cr.P.C. to direct an investigation by the police authorities is at the pre-cognizance stage while the power to direct a similar investigation under [Section 202](#) is at the post-cognizance stage. The learned Magistrate has chosen to adopt the latter course and has treated the protest petition filed by the Appellant as a complaint under [Section 200](#) of the Code and has thereafter proceeded under [Section 202](#) Cr.P.C. and kept the matter with himself for an inquiry in the facts of the case. There is nothing irregular in

the manner in which the learned Magistrate has proceeded and if at the stage of Sub-section (2) of [Section 202](#) the learned Magistrate deems it fit, he may either dismiss the complaint under [Section 203](#) or proceed in terms of [Section 193](#) and commit the case to the Court of Sessions.

10. As regards what amounts to taking cognizance, the Hon'ble Supreme Court in the case of *CREF Finance Ltd.* (supra) has observed:

10. In the instant case, the appellant had filed a detailed complaint before the Magistrate. The record shows that the Magistrate took cognizance and fixed the matter for recording of statement of the complainant on 01.06.2000. Even if we assume, though that is not the case, that the words "cognizance taken" were not to be found in the order recorded by him on that date, in our view that would make no difference. The cognizance is taken of the offence and not of the offender and, therefore, once the Court on perusal of the complaint is satisfied that the complaint discloses the commission of an offence and there is no reason to reject the complaint at that stage, and proceeds further in the matter, it must be held to have taken cognizance of the offence. One should not confuse taking of

cognizance with issuance of process. Cognizance is taken at the initial stage when the Magistrate peruses the complaint with a view to ascertain whether the commission of any offence is disclosed. The issuance of process is at a later stage when after considering the material placed before it, the Court decides to proceed against the offenders against whom a prima facie case is made out. It is possible that a complaint may be filed against several persons, but the Magistrate may choose to issue process only against some of the accused. It may also be that after taking cognizance and examining the complainant on oath, the Court may come to the conclusion that no case is made out for issuance of process and it may reject the complaint. It may also be that having considered the complaint, the Court may consider it appropriate to send the complaint to police for investigation under [Section 156\(3\)](#) of the Code of Criminal Procedure. We can conceive of many other situations in which a Magistrate may not take cognizance at all, for instance, a case where he finds that the complaint is not made by the person who in law can lodge the complaint, or that the complaint is not entertainable by that Court, or that cognizance of the offence alleged to have been committed cannot be taken without the sanction of the competent authority etc. These are cases where the Magistrate will

refuse to take cognizance and return the complaint to the complainant. But if he does not do so and proceeds to examine the complainant and such other evidence as the complainant may produce before him then, it should be held to have taken cognizance of the offence and proceeded with the inquiry. We are, therefore, of the opinion that in the facts and circumstances of this case, the High Court erred in holding that the Magistrate had not taken cognizance, and that being a condition precedent, issuance of process was illegal.

11. Admittedly, in the present case, the trial court by order dated 13-03-2019 directed the complainant to produce his witnesses for recording their statements. The trial court thereafter, recorded the statements of complainant and the witnesses. In view of the settled legal position, the trial court was then not justified in directing the investigation under Section 156(3) of the Cr. P. C. The order impugned, therefore, cannot be sustained. In the result, following order is passed.

ORDER

- i. The appeal is allowed.

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ii. The order impugned is set aside.

iii. The trial court shall proceed to decide the complaint filed by the respondent No.2 in accordance with law.

iv. Fees shall be paid to the learned counsel for the respondent NO.2, by the High Court Legal Services Sub-Committee, Aurangabad in accordance with rules.

[N. R. BORKAR, J.]

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