

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 3324 OF 2019

Mukund Balvirsingh Thakur,
Age 53 years, Occ. Business,
R/o. 7, Baliram Peth, Opposite
Mahatma Gandhi Market, Above
Pushpa Collection, Jalgaon, Tq.
& Dist. Jalgaon.

... **Applicant.**

VERSUS

1) The State of Maharashtra,
Through its District Superintendent
of Police, Jalgaon, Dist. Jalgaon.

2) Police Inspector,
City Police Station, Jalgaon,
District Jalgaon.

... **Respondents.**

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Advocate for the Applicant : Mr. Vijay B. Patil.
APP for the Respondents/State : Mr. S.W. Mundhe.

CORAM : MANGESH S. PATIL, J.

RESERVED ON : 18.02.2021.

PRONOUNCED ON : 04.03.2021.

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The applicant is invoking the powers of this Court under Section 482 of the Code of Criminal Procedure questioning the order passed by the learned Chief Judicial Magistrate on his application whereby his request for issuing a direction under Section 156(3) of the Code of Criminal Procedure has been turned down.

3. The applicant filed the proceeding before the learned Chief Judicial Magistrate with the allegations that one Abhimanyu Arjun Patil had sent him e-mails containing threats to his life. It was also communicated in these e-mails that even similar e-mails were sent to couple of advocates threatening them of dire consequences if they supported the applicant who was facing a prosecution. He further alleged that when he approached the police as is required under Section 154 of the Code of Criminal Procedure they refused to take cognizance and therefore as is laid down in the case of **Lalita Kumari vs. State of Uttar Pradesh and other; (2012) 4 Supreme Court Cases 1**, he approached the learned Chief Judicial Magistrate seeking a direction under Section 156(3) of the Code of Criminal Procedure alleging that the allegations would clearly make out the offences punishable under Section 109, 120B, 190, 506, 511 read with Section 34 of the Indian Penal Code.

4. The learned advocate for the applicant would submit that in spite of their being concrete material in the form of e-mails received by the applicant which were produced on the record and clearly disclosed commission of the offences the learned Chief Judicial Magistrate without application of mind has refused to issue a direction under Section 156(3) of the Code of Criminal Procedure. He would also refer to the decisions in the case of **Dilawar Singh Vs. State of Delhi; (2007) 12 SCC 641**, **Mrs. Priyanka Srivastava and another Vs. State of U.P and others; (2015) 6 SCC 287**.

5. The learned A.P.P supported the order.

6. As can be seen from the application filed by the applicant before the learned Chief Judicial Magistrate and as can be clearly made out from the contents of the present application, the offences which according to the applicant can be made out are as follows :

Section 190 of the Indian Penal Code :	Threatening any person to induce him to refrain from
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making a legal application for protection from injury.

Section 506 of the Indian Penal Code : Criminal intimidation.

These are the only substantive offences which are both non cognizable. As far as the other Sections 109, 120B and 511 of the Indian Penal Code are concerned, those would be in aid of the substantive offences under Section 190 and 506 of the Indian Penal Code and consequently will have to be treated as non cognizable ones. This needs to be borne in mind in view of the specific wording of Section 156(3) of the Code of Criminal Procedure which reads thus :

“Section 156(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."

As can be appreciated, Section 156 falls under Chapter XII of the Code of Criminal Procedure which lays down provisions in respect of the Information to the police and their powers to investigate. As can be understood, under sub Section 1 of Section 156 an officer in charge of the police station may without an order of a Magistrate investigate a cognizable case. Sub Section (3) of Section 156 empowers a Magistrate to direct such an investigation to be made by a police officer as is contemplated under Sub Section (1). It is

therefore quite clear that it is only in cases where a cognizable offence appears to have been committed and the police refuse to investigate it under Sub Section (1) of Section 156 of the Code of Criminal Procedure that the jurisdictional Magistrate is empowered to call upon him to exercise that power by invoking sub Section (3) of Section 156 of the Code of Criminal Procedure.

7 Instead of dealing the matter further it would be sufficient to refer to and rely upon the decision of the Supreme Court in the case of **Madhu Bala Vs. Suresh Kumar and others; AIR 1997 Supreme Court 3104** and **Central Bureau of Investigation through S.P. Jaipur Vs. State of Rajasthan and another; AIR 2001 Supreme Court 668**. Following observations from the case of **Central Bureau of Investigation through S.P. Jaipur (supra)** from paragraph No. 6 are pertinent :

“If the power of a Magistrate to order investigation by the CBI in non-cognizable cases cannot be traced in the above provision, it is not possible to trace such power in any other provision of the Code. What is contained in sub-section (3) of Section 156 is the power to order the investigation referred to in sub-section (1) because the words “order such an investigation as above mentioned” in sub-section (3) are unmistakably clear as referring to the other sub-section. Thus the power is to order an “officer-in-charge of a police station” to conduct investigation”.

8 Relying upon these two decisions even this Court in the case of **Swati Sachin Mahajan Vs. State of Maharashtra; 2007 Cri. L. J. 3645** has taken a similar view in paragraph No. 7 and the relevant portion reads thus :

“It can thus be seen that under sub-section (1) of Section 156 of Cr.P.C., an officer in charge of the 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 situation would have power to inquire into or try under the provisions of Chapter XIII. It can further be seen that by virtue of sub-section (3) of the said Section, any Magistrate empowered under Section 190 may order such an investigation as above mentioned. It can thus be seen from conjoint reading of sub-section (1) and sub-section (3) of Section 156 of Cr.P.C., that an investigation under Section 156(3) would be permissible only for a cognizable offence.”

9 It can therefore be concluded that a direction can be issued by a Magistrate under Section 156(3) of the Code of Criminal Procedure only when the offence is cognizable one and the police refuse to exercise the powers under sub section (1). If a person approaches the police making a grievance about occurrence of a non-cognizable case the police is not obliged to exercise the power under sub section (1) of Section 156 and consequently even the Magistrate would have no power to direct him to do so in exercise of the powers under sub Section (3) of section 156.

10 True it is that learned Magistrate has not passed the impugned order for the aforementioned reasons. However, when independently, his conclusion can be justified for the reasons discussed herein above, the application is liable to be dismissed.

11. The Application is dismissed.

12. The Rule is discharged.

(MANGESH S. PATIL, J.)

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