

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

928 CRIMINAL WRIT PETITION NO.63 OF 2022

**NAMDEVRAO S/O DHONDBARAO KADAM
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. B. R. Warmaa, Advocate for the petitioner

Mr. V. S. Bedre, Advocate h/f Mr. Ashok Munde, Advocate for
respondent Nos. 2 to 5

CORAM : KISHORE C. SANT, J.

DATE : 17th November, 2022

P. C.

1. Heard the learned counsel for the parties.

2. At the outset learned advocate for the petitioner states fairly that while issuing notice this court issued notice to respondent Nos. 2 to 5.

3. By way of this petition, the petitioner has challenged the order passed by the learned Sessions Judge in Criminal Revision Application No. 81/2021 filed by the petitioner. Learned Sessions Judge by way of impugned judgment and

order has rejected the revision application and thereby confirmed the order passed by the learned JMFC dated 09-09-2021 on an application under Section 156(3) of the Code of Criminal Procedure bearing OMCA NO. 1173/2021. It is the case of the petitioner that respondent No.3 is daughter-in-law, respondent No.2 is her father, respondent No. 4 is her uncle and respondent No.5 is also related to her. He submits that because of the family dispute the parties were not residing together. Respondents on 27-08-2021 at around 2 O'clock started forcibly residing in the house by use of force alongwith that he produced CCTV footage which clearly shows that door was broken up. Respondents are still breaking the get of house etc. with the help hammer like tools. He, therefore, lodged the complaint on 20-08-2021 with the Superintendent of Police, Nanded. Thereafter, he also lodged various complaints. However, in spite of the same, no cognizance was taken by the police. The petitioner therefore was constrained to file an application under Section 156 (3) of the Cr. P. C. While rejecting the application the learned JMFC has given reason that there is suppression of

material fact about relations between the parties and about various cases pending between the parties. He further observed that the dispute appears to be a family dispute between the relatives and he does not find any material in the allegations and rejected the application.

4. The revisional court also observed in para No. 7 that reasoning assigned by the learned Magistrate does not require any interference looking to the conduct of the parties and not disclosing the relations. In para No. 8 it is specifically observed that CCTV footage was shown to the court. From that CCTV footage the learned Sessions Judge found that some incidences have taken place which is recorded. However, this petitioner was under obligation to disclose the fact in all fairness and without suppressing it. It was further held that it was necessary for the complainant /petitioner to disclose the relations between the parties and in view of suppression of fact the court did not interfere with the orders passed by the JMFC. At this stage the learned counsel for the petitioner relied upon the judgment and

order passed by the Hon'ble Apex Court in Criminal Appeal No. 1184/2022 decided on 05-08-2022. He invited attention of this court to para No. 23, 24, 27 and 28 which reads as under:-

23. It is true that the use of the word "may" implies that the Magistrate has discretion in directing the police to investigate or proceeding with the case as a complaint case. But this discretion cannot be exercised arbitrarily and must be guided by judicial reasoning. An important fact to take note of, which ought to have been, but has not been considered by either the Trial court or the High Court, is that the appellant had sought the production of DVRs containing the audio-video recording of the CCTV footage of the then Vice-Chancellor's (i.e. the second respondent) chamber. As a matter of fact, the institute itself had addressed communications to the second respondent directing the production of the recording, noting that these recordings had been handed over on his oral direction by the then Registrar of the Institute as he was the Vice Chancellor. Due to the lack of response despite multiple attempts, the institute had even filed a complaint with PS Gole Ka Mandir on 29 October 2021 for registering an FIR against the second respondent for theft of the DVRs.

24. Therefore, in such cases, where not only does the Magistrate find the commission of a cognizable offence alleged on a prima facie reading of the complaint but also such facts are brought to the Magistrate's notice which clearly indicate the need for police investigation, the discretion granted in Section 156(3) can only be read as it being the Magistrate's duty to order the police to investigate. In cases such as the present, wherein there is alleged to be documentary or other evidence in the physical possession of the accused or other individuals which the police would be best placed to investigate and retrieve using its powers under the CrPC, the matter ought to be sent to the police for investigation.

27. At this stage, the court is not called upon to decide upon the veracity of the allegations in the complaint, save and except to underscore the importance of an investigation by the police in a matter where the CCTV

footage (or other evidence) is not under the possession or control of the appellant, but to be inquired into the course of an investigation by the police. The discretion which has been conferred upon the Magistrate by Section 156(3) CrPC, must be exercised in a judicious manner.

28. *In the facts of the present case and bearing in mind the position of law which has been laid down by this court, recourse to the jurisdiction under Section 156(3) CrPC was warranted.”*

5. He submits that at the stage of deciding 156(3) application the court has to see whether prima-facie case is made out to issue directions to the police under Section 156(3). He submits that though the word is used as “may” however, in fact that provision is to enable the Magistrate to pass the order under 156(3). For that purpose he relied upon para Nos. 18 and 19 which read as under:-

18. *Whether or not the offence complained of is made out is to be determined at the stage of investigation and / or trial. If, after conducting the investigation, the police find that no offence is made out, they may file a B Report under Section 173 CrPC. However, it is not open to them to decline to register an FIR. The law in this regard is clear- police officers cannot exercise any discretion when they receive a complaint which discloses the commission of a cognizable offence.*

19. *Second, we deal with the issue of the discretion granted to a Magistrate vis-a-vis the exercise of powers under Section 156(3) CrPC. On this issue, the High Court has held that the JMFC was not under an obligation to direct the police to register the FIR and the use of expression “May” in Section 156(3) CrPC indicated that the JMFC had the discretion to direct the complainant to examine witnesses*

under Sections 200 and 202 CrPC, instead of directing an investigation under Section 153(3).

6. He further submitted that he has also filed one suit bearing RCS No. 232/2021 wherein now injunction is granted against the respondents by order dated 22-12-2021. He further submits that, even thereafter respondents has infringed that order & on that basis again an application was moved on 05-05-2022.

7. Learned counsel for respondent No.2 to 5 supports the order stating that reasons assigned by the trial court as well as Sessions Court are just and proper and submitted that no interference is called for. He submits that material suppression of the fact was rightly considered by the courts below.

8. Learned APP produced police papers to show that now the offence is registered bearing No.170/2022 for the offences punishable under Sections 294, 143, 506 & read with Section 34 of the Indian Penal Code on the basis of complaint lodged by this petitioner dated 05-05-2022. However, this is in

respect of subsequent conduct of the incidence that have taken place and not about the complaint which was in respect of 156 (3) directions.

9. This court has considered the application under Section 156(3). From the reading of the application it is clear that case is made out to issue directions under Sections 156(3) directing the police to make the investigation. What appears from the observations of the both the courts below in the order is that even those courts have not observed that no offence is made out punishable under Sections 453, 427 read with Section 34 of the IPC. Only reason assigned appears is that suppression of material fact about the relations between the parties. Relations between the parties would hardly come in way when the matter relates to any crime or any offence punishable under law. Assuming that there is a suppression that cannot be a ground to deny the relief. The relief under the criminal law cannot be termed to be a relief discretionary or equitable relief where pleadings are required to be without suppression from the

facts and wherein the parties are required to give disclosure of all the material facts. Both the courts below have thus rejected the application and revision for the extraneous reasons. Both the courts below have thus committed error and have passed erroneous orders. Hence, the following order:

ORDER

- a] Criminal Writ Petition stands allowed.
- b] Impugned judgment and order dated 14-12-2021 passed by the learned Sessions Judge, Nanded in Criminal Revision Application No. 81/2021 upholding the order dated 09-09-2021 passed in OMCA No.1173/2021 by the learned JMFC Nanded is quashed and set aside.
- b] OMCA No. 1173/2021 filed by the petitioner below Exh.1 for seeking direction under Section 156(3) stands allowed.
- e] The police to take steps pursuant to the directions under Sections 156(3) of the Cr. P.C. only against respondent Nos. 2 to 5.

[KISHORE C. SANT, J.]