

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 242 of 2021

Waseem Karim Tamboli ...Applicant
vs.

Manu Laxman Lokhande

And Anr. ...Respondents

Mr. Ammar I. Nizami a/w Mohommed Umar Z. Kazi i/b Waseem Shaikh, for the Applicant.

Mr. A. R. Patil, APP for the State.

CORAM : N. J. JAMADAR, J.

DATE : APRIL 29, 2022

P.C.:

1. Heard the learned counsel for the Applicant.
2. The challenge in this Application is to an order passed by the learned Additional Session Judge, Kalyan in Criminal Application No. 26 of 2021, whereby the learned Sessions Judge set aside the order passed by the learned J.M.F.C. Ulhasnagar dated 4th March 2021 in O.M.A. No. 53 of 2021 directing the police to register the F.I.R. and investigate the matter under section 156(3) of the Code of Criminal Procedure, 1973 (for short "the Code).
3. The Applicant had filed the complaint for the offences punishable under Sections 380, 420, 406, 452 and 406 read

with Section 34 of the Indian Penal Code, 1860. By an order dated 3rd April 2022, the learned Magistrate directed the Bazarpeth Police Station, Pune to register the F.I.R. and carry out investigation under Section 156(3) of the Code. The respondent - accused carried the matter in revision.

4. The learned Sessions Judge interfered with the order passed by the magistrate *inter alia* on the ground that the complaint lodged by the Applicant with prayer for investigation under Section 156(3) of the Code wasnot supported by affidavit as mandated by the directions given by the Supreme Court in the case of **Priyanka Srivastav vs. State of U.P.**¹

5. Copy of the complaint (Exhibit-B) annexed to the application does not reveal that it was supported by an affidavit. Nothing contrary was brought to the notice of the learned Additional Sessions Judge. Even the order passed by the learned Magistrate does not indicate that, such an affidavit was filed and considered by the learned Magistrate.

6. In the aforesaid view of the matter, the order passed by the learned Magistrate does not suffer from any infirmity.

7. The learned counsel for the Applicant submitted that, the learned Additional Sessions Judge could not have interfered with

1 (2014) 6 SCC 287

the order passed by the learned Magistrate as by the time revision came to be decided, the F.I.R. was already registered.

8. Even, the aforesaid ground of challenge does not merit acceptance. If the order of the learned Sessions Judge is set aside, it would have the result restoring an order which in itself was illegal.

9. Thus, the Application does not deserve countenance.

10. Application stands dismissed.

(N. J. JAMADAR, J.)