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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.156 OF 2021

Dinesh Shivajirao Sonawane ... Applicant
V/s.
 The State of Maharashtra & Ors. ... Respondents

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Mr. Tapan Thatte i/by Mr. Amar M. Patil for the applicant.

Mr. A.R. Patil, APP for respondent no.1/State.

Mr. Balasaheb Deshmukh for respondent no.2.

Mr. Sanjeev B. Deore with Ms. Suchita J. Pawar and Mr. D.R. Singh for respondent nos.3 and 4.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 8, 2022

P.C.:

1. The order impugned in the present revision is dated 24th June 2021, thereby dismissing the complaint of the applicant under section 203 of the Criminal Procedure Code, 1973 (hereafter “CrPC”, for short).

2. The applicant had filed a private complaint against respondent nos.2 and 3 under sections 218, 420, 468, 471, 473 read with 120-B of the Indian Penal Code, 1860 and under section 13(1)(d)(ii) of the Prevention of Corruption Act, 1988. It is alleged that while conducting the process of appointment of teaches, the accused persons had forged certain documents and obtained

pecuniary benefits from the Government. The request was, therefore, made for investigation under section 156(3) of the CrPC.

3. The learned Special Judge after hearing both sides, recorded a finding that the ingredients to constitute offences alleged against the accused persons are not made out. After going through the ingredients of the complaint, a finding has been recorded that there is no *prima facie* case made out by the complainant. The applicant has, therefore, filed present revision under section 482 of the CrPC.

4. Learned advocate for the applicant submitted that the initial application filed by the applicant was under section 156(3) of the CrPC and, therefore, the learned Special Judge had only two options available: either to conduct the investigation under section 156(3) and adjudicate as to whether the offences made out; or to take cognizance of the complaint and thereafter holding inquiry under section 202 to decide as to whether to issue process or to dismiss the complaint under section 203 of the CrPC. According to him, instead of opting either of the options, the learned Special Judge without following procedure under sections 200 and 202 of the CrPC has dismissed the complaint under section 203 of the CrPC, which is impermissible.

5. *Per contra*, learned advocate for respondent no.3 submitted that the investigation under section 156(3) is contemplated at the pre-cognizance stage and the procedure under sections 200 to 203 is contemplated only after the cognizance of the complaint is

taken. Since the learned Special Judge has not taken cognizance of the complaint, there was no question of passing order under section 203 of the CrPC, but as a matter of fact the order has been passed in exercise of power under section 156(3) after considering the averments in the complaint and after being satisfied that the ingredients of the offence alleged against the accused are not made out.

6. Learned advocate for respondent no.2 submitted that the learned Special Judge has in fact considered the averments in the complaint and has exercised power under section 156(3) of the CrPC and, therefore, there was no need of taking cognizance or following procedure under sections 200 and 202 of the CrPC.

7. The rival contentions fall for consideration.

8. On perusal of the scheme under Chapter XIV, XV and XVI, it appears that when the Magistrate receives a complaint/application under section 156(3) of the CrPC, he has discretion to take cognizance under section 190(1)(a) by applying his mind to the facts of the case and in the said eventuality to proceed in the manner provided under sections 200 and 202 of the CrPC. Under section 200, he is required to examine the complainant and witnesses present, if any. If the Magistrate finds that there is sufficient ground for proceeding against the accused, he may issue process under section 204. However, if the Magistrate is not satisfied, he may either dismiss the complaint under section 203 of the CrPC or postpone the issuance of process and take recourse to section 202 which provides that the Magistrate may inquire into

the case himself or cause an investigation to be made. The other course open to the learned Special Judge is that instead of taking cognizance, he may send the complaint/application under section 156(3) for police investigation. If this course is adopted, however, the police will have to investigate into the matter as per the procedure laid down under section 157 of the CrPC and if upon investigation the police come to the conclusion that there is sufficient ground or material to justify forwarding the accused for trial or submit a report for dropping of the proceedings, the Magistrate may have following options open: (1) the Magistrate may considering the report arrived at by the police, accept the report and drop the proceedings; (2) the Magistrate may take cognizance of the offences under section 190(1)(b) and straightway issue process against the accused without being bound by the conclusion drawn by the investigating agency; and (3) the Magistrate may order further investigation and if he is satisfied that the investigation was made in a perfunctory manner, the Magistrate may without issuing process or dropping the proceedings decide to take cognizance under section 190(1)(a) upon the original complaint/application treating the same as complaint and proceed to act under sections 200 and 202 of the CrPC and thereafter decide whether the complaint should be dismissed or process should be issued.

9. On perusal of the impugned order, it appears that applications have been filed by the applicant stating as application under section 156(3) of the CrPC. The learned Special Judge in the impugned order has considered merits of the complaint

without disclosing as to which option which has been exercised by the learned Special Judge. It is not clear from the material on record as to whether the learned Special Judge had taken cognizance of the complaint or not. It is also not clear from the order and the material on record that the learned Special Judge proceeded in the manner contemplated under sections 200 and 202 of the CrPC. The order impugned cannot be treated as order simply dismissing the application holding that no *prima facie* case for taking cognizance has been made out. Operative part of the order suggest that the learned Special Judge has dismissed the complaint under section 203. In the absence of mention of section 203, the order could have been termed as an order declining exercise of power to investigate into the complaint as the complainant failed to make out the offence as alleged. But having specifically mentioned in the operative part of the order that the complaint has been dismissed under section 203 of the CrPC, it was necessary for the learned Special Judge to have recorded reasons as to whether the learned Special Judge was exercising power of declining investigation under section 156(3) or is dismissing the complaint under section 203 after following procedure contemplated under sections 200 and 202 of the CrPC. The procedure for inquiry while dismissing the complaint under section 203 is entirely different than the procedure for inquiry contemplated by dismissing the application under section 156(3) of the CrPC.

10. In that view of the matter, it is necessary that the proceedings be remanded for fresh consideration to decide as to

whether the learned Special Judge is exercising power of directing investigation under section 156(3), or has taken cognizance under section 190 read with sections 200 and 202 of the CrPC. Hence, following order:

(a) The impugned order dated 24th June 2021 passed by the learned Additional Sessions Judge, Malegaon is quashed and set aside;

(b) The proceedings are remanded back to the learned Magistrate to decide the application filed by the applicant in accordance with the reasons in the body of this order.

11. The criminal revision application is disposed of in above terms. No costs.

(AMIT BORKAR, J.)