

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

CRIMINAL WRIT PETITION NO. 3337 OF 2022

Flame S. A. Through Rajiv Soni	...Petitioner
Versus	
State of Maharashtra and Ors.	...Respondents

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Ms. Anandini Fernandes i/by Mr. Nikhil Maneshinde, Advocate
for the Petitioner.

Mr. S. R. Agarkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 15th SEPTEMBER, 2022

PC :

1. The petitioner has lodged the Police Complaint dated 15.02.2022 with Economic Offences Wing (for short "EOW") for seeking registration of First Information Report under Sections 403, 406, 415, 420, 465, 467, 471, 120-B read with 34 of the Indian Penal Code (for short "IPC").
2. The primary allegations against the accused were that they criminally conspired and acted in connivance with each other and dishonestly and fraudulently induced the petitioner into parting with coal worth crores of rupees without intention to pay the petitioner in full. The said goods were misappropriated and converted for their own use causing wrongful loss to the petitioner to the tune of

Rs.15,55,47,971.49/- and thereby committed offences under Sections 403, 406, 420, 465, 468, 471 and 120-B of the IPC. Since no action was taken on the first complaint, the petitioner filed another complaint dated 28.09.2020 with Joint Commissioner of Police, Economic Offences Wing, Mumbai for seeking registration of FIR for the aforesaid offences. Letter dated 09.04.2021 was forwarded by the EOW to petitioner stating that the complaint was received by Investigating Agency and enquiry was conducted. The complaint made against the opponents relates to the dispute which is of civil nature.

3. The petitioner approached the Court of learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai for seeking directions under sections 156(3) of Cr.P.C.. The petitioner and their advocate remained present before the Court. According to the petitioner, the Court refused to take the complaint on record and orally directed the petitioner to approach the local police station. Due to refusal of the Court to accept the complaint, the petitioner was constrained to file application dated 29.03.2022 seeking permission to file complaint. Learned Magistrate by order dated 29.03.2022, directed

that the complaint is returned to the applicant/complainant for presentation before the concerned Kalachowki Police Station within whose jurisdiction alleged offence has been committed.

4. Learned Magistrate while passing aforesaid order has observed that the complainant had approached EOW. Preliminary enquiry was initiated by EOW and report was given to the petitioner that dispute is of civil nature. The complainant has to approach the Police Station within whose jurisdiction the offence has been committed i.e. Kalachowki Police Station. In the present case, the complainant had directly approached the EOW. If the Kalachowki Police Station failed to register the FIR, then the complaint can be sent to senior officials of the Kalachowki Police Station. In the present case, the complainant is walking reverse side by filing complaint directly to EOW. The Special Court of EOW cannot direct the EOW to register the FIR. All the offences are registered initially at the police station within whose jurisdiction offence has been committed and thereafter if the offence involving huge amount is required to be investigated through EOW, the police station in-charge used to transfer the said C.R. to

EOW. Hence, the complaint was returned to the complainant with direction to approach the concerned Court i.e. Kalachowki police station to register the FIR.

5. Learned advocate for the petitioner urged as follows_

(i) Learned Magistrate has committed an error in returning the complaint for presenting it to Kalachowki police station.

(ii) The petitioner had already approached the Inspector, EOW and thereafter, the Joint Commissioner, EOW. However, the communication was issued by EOW to the petitioner that the dispute is of civil nature. In this circumstances, the Court ought not to have directed the petitioner to present the complaint to Kalachowki police station. The submission of complaint to two authorities amounts to compliance of Sections 154(3) and 154(4) of the Cr.P.C.

(iii) Merely on the ground that the petitioner should have approached Kalachowki police station first, the Court ought not to have refused to take complaint and issued direction to approach Kalachowki police station.

(iv) The learned advocate for the petitioner has relied upon the decision of this Court in the case of **Charu Kishor**

Mehta Vs. State of Maharashtra & Anr. delivered in Writ Petition No.1937 of 2010 this Court had dealt with the complaint which was addressed to EOW and since the cognizance was not taken, this Court had directed EOW to take cognizance of complaint since cognizable offence was made out.

6. It is pertinent to note that the complainant had indeed approached two authorities before filing the private complaint. The communication was issued to the petitioner that the dispute is of civil nature. Since the EOW had already issued opinion that the dispute is of civil nature, there was no point in directing the petitioner to approach Kalachowki police station. Although, the petitioner had not approached Kalachowki police station and approached two authorities as stated above, it cannot be said that there is non-compliance of Section 154(3) and 154(4) of Cr.P.C. In the aforesaid decision this Court had taken a note of the fact that the petitioner therein had sent communication to EOW, Crime Branch, CID. Accusations were made in detail. The Court directed registration of FIR.

7. Considering the factual aspects of this matter, it is noted that the complainant had approached the Inspector

of Police, EOW, Mumbai and then to Join Commissioner, EOW Mumbai and in these circumstances after the opinion was given by EOW, it was not necessary to approach Kalachowki Police Station. Learned Magistrate should have taken the complainant on record and proceeded with the complaint in accordance with law.

ORDER

- (i) Order dated 29.03.2022 passed by Additional Chief Metropolitan Magistrate, 47th Court, Mumbai is quashed set aside.
- (ii) Learned Magistrate is directed to take complaint of the petitioner and proceed with the complaint in accordance with law.
- (iii) It is clarified that this Court has not expressed any view on the merits of the complaint. It may not be construed that this Court has granted the prayers which the petitioner proposes to seek in the complaint to be presented by the petitioner. The learned Magistrate shall proceed with the complaint expeditiously.
- (iv) Petition is disposed off.

(PRAKASH D. NAIK, J.)