

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Writ Petition No. 43 of 2022

Atul S/o Anandrao Jagtap,
Aged about 42 years, Occupation Business,
Resident of House No. 47, Shivajinagar,
Near Shivaji Garden,
Yavatmal – 445001.

... Petitioner

- Versus -

(1) State of Maharashtra – Through its
Superintendent of Police, LIC Chowk,
Yavatmal.

(2) State of Maharashtra – Through its
Secretary, Public Works Department,
Mantralaya, Mumbai – 440 032

(3) Central Bureau of Investigation,
3rd Floor, CGO Complex, Block C,
Central Office Campus, Futala Road,
Seminary Hills, Nagpur, 440006

... Respondents

Mr. S. V. Purohit, Advocate for the petitioner
Mr. M. K. Pathan, APP for the State/respondents 1 and 2

**CORAM : ROHIT B. DEO AND
URMILA JOSHI-PHALKE JJ.**

DATED : 17-11-2022

JUDGMENT (Per : Rohit B. Deo, J.)

The petitioner claims to be an agriculturist, social worker
and contractor.

2. The petitioner alleges that the partners of the joint venture firm D. Thakkar Company Private Limited (DTCPL) – Bajoria Construction Company Private Limited (BCCPL) have defrauded the State Government in connivance with the officers of the Public Works Department, and the complaint which he sought to lodge on 14-10-2021 was not entertained by the Superintendent of Police. Petitioner further contends that he approached the Special Inspector General of Police, Amravati with the grievance that the Superintendent of Police had refused to receive the complaint and the superior officer paid no heed to the representation.

3. Petitioner is invoking jurisdiction under Articles 226 and 227 of the Constitution of India and is seeking direction to an independent investigating agency like Central Bureau of Investigation or Directorate of Enforcement to register first information report (FIR) and to conduct fair and impartial investigation. It would be apposite to extract the prayer clause in entirety.

“i. Issue appropriate Writ, Order or Direction to any independent Investigating Agency like Central Bureau of Investigation or Directorate of Enforcement or any other independent Investigation Agency to Register FIR and to conduct fair and impartial Investigation in the matter of Misappropriation of funds, fraud, forgery, dereliction of Public Money, Criminal Breach of Trust, etc., in the entire process of concerned Tender and further to register FIR for investigation against

the Partners/Directors of the joint Venture referred above, and all person, concerned Officers of the Public Works Department and all other concerned persons, in the interest of justice.

- ii. In the alternative, only in the event of this Hon'ble Court comes to the conclusion that investigation at the hands of independent agency at this stage is not necessary then the concerned local police station/stations officer may be directed to accept the complaint of the Petitioner and to further register FIR and to further conduct fair and impartial investigation in the matter of misappropriation of funds, fraud, forgery, dereliction of Public Money, Criminal Breach of Trust, etc., in the entire process of concerned Tender and further to register FIR for investigation against the Partners/Directors of the Joint Venture referred above, and all persons, concerned Officers of the Public Works Department and all other concerned persons, in the interest of justice.*
- iii. Grant any other relief deemed fit in the facts and circumstances of the Case including that of costs."*

4. The allegation levelled by the petitioner, broadly is that the said joint venture responded to e-tender received by the Executive Engineer, Public Works (Special Project) Division, Yavatmal for the improvement and construction of Four Lane Nagpur-Bori-Tuljapur Road in Yavatmal City. The e-tender process was farce and the said joint venture, acting pursuant to criminal conspiracy, submitted forged and fake documents in response to the said tender. It is alleged that the said joint venture secured the contract with the aid of such forged

documents and defrauded the State Government of Rs. 38,00,00,000/- (Rupees Thirty Eight Crores).

5. We heard learned counsel for the petitioner Mr. S. V. Purohit on 14-10-2022 and briefly on 17-11-2022. During the course of the hearing, on the aforementioned dates, we indicated to learned counsel Mr. Purohit that the dominant judicial view is that the High Court ought not to direct registration of offence in exercise of jurisdiction under Article 226 of the Constitution of India, unless the complainant first takes recourse to the provisions of Section 154(3) and Section 156(3) of the Code of Criminal Procedure, 1973 (Code). We have heard Mr. Purohit at length today, and called upon him to convince us why in the teeth of law declared by the Hon'ble Supreme Court of India, we should exercise writ jurisdiction and direct registration of FIR, since admittedly, the petitioner did not approach the Magistrate under Section 156(3) of the Code. In response, Mr. Purohit would urge that the facts are glaring and an extraordinary case is made out since the police officers are in connivance with and are at any rate, under the influence of, the partners of successful bidder.

6. The partners of the successful bidder against whom serious allegations are levelled are not parties to the petition, and we do not

have the benefit of their version. Be that as it may, even *de hors* the said aspect, we are not inclined to exercise writ jurisdiction. We outrightly reject the submission that since the police officers are influenced by the partners of the successful bidder, the remedy under Section 156(3) of the Code is illusory. We need not burden this order by copious reference to the plethora of decisions which hold the field. It would suffice to refer to ***M. Subramaniam and another Vs. S. Janaki and another [(2020) 16 SCC 728]*** and extract the following passage in which the earlier decisions are considered.

“6. While it is not possible to accept the contention of the appellants on the question of locus standi, we are inclined to accept the contention that the High Court could not have directed the registration of an FIR with a direction to the police to investigate and file the final report in view of the judgment of this Court in [Sakiri Vasu v. State Of U.P](#) in which it has been inter alia held as under: (SCC pp. 412-14, paras 11-18)

“11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under [Section 154](#) CrPC, then he can approach the Superintendent of Police under [Section 154\(3\)](#) CrPC by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under [Section 156\(3\)](#) CrPC before the learned Magistrate concerned. If such an application under [Section 156\(3\)](#) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to

be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

12. Thus in *Mohd. Yousuf v. Afaq Jahan* this Court observed: (SCC p. 631, para 11)

“11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under [Section 156\(3\)](#) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in [Section 154](#) of the Code. Even if a Magistrate does not say in so many words while directing investigation under [Section 156\(3\)](#) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.”

13. The same view was taken by this Court in *Dilawar Singh v. State (NCT of Delhi)*, SCC para 18. We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under [Section 156\(3\)](#)

CrPC, and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order(s) as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under [Section 156\(3\)](#) CrPC.

14. [Section 156\(3\)](#) states:

‘156. (3) Any Magistrate empowered under [Section 190](#) may order such an investigation as abovementioned.’

The words “as abovementioned” obviously refer to [Section 156\(1\)](#), which contemplates investigation by the officer in charge of the police station.

15. [Section 156\(3\)](#) provides for a check by the Magistrate on the police performing its duties under Chapter XII [CrPC](#). In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

16. The power in the Magistrate to order further investigation under [Section 156\(3\)](#) is an independent power and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide [Section 173\(8\)](#). Hence the Magistrate can order reopening of the investigation even after the police submits the final report, vide [State of Bihar v. J.A.C. Saldanha](#) (SCC para 19 : AIR para 19).

17. In our opinion [Section 156\(3\)](#) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done,

or is not being done by the police. Section 156(3) CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

18. It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution.”

7. Mr. Purohit invites our attention to the decision of the Hon’ble Supreme Court in ***Criminal Appeal 1184/2022*** rendered by the two Judges Bench on 5-8-2022 (***XYZ Vs. State of Madhya Pradesh and ors***). We find that the said decision, rather than assisting the petitioner, reiterates the position of law which is declared in ***M. Subramaniam and another***.

8. We did make an attempt to impress upon Mr. Purohit that the purported status and influence of the partners of the successful bidder and the alleged subservience of the executive is irrelevant since the application under Section 156(3) of the Code shall lie before the learned Judicial Magistrate, and the law will take

its own course irrespective of the purported status or influence or position in life of the guilty persons assuming that there is any misconduct or offence. However, Mr. Purohit persisted with the submission that considering the experience of the petitioner with police officers, the remedy is illusory. In the interest of maintaining restraint, we pen nothing more. We see absolutely no merit in the petition.

9. We dismiss the petition with costs of Rs. 10,000/- (Rupees Ten Thousand) to be deposited with the High Court Legal Services Sub-Committee, Nagpur within the next four weeks.

(Urmila Joshi-Phalke, J.)

(Rohit B. Deo, J.)

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