

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

CRIMINAL APPLICATION NO. 248 OF 2022

Dhammapal s/o. Rohidas Bansode .. Applicant

Versus

The Police Station Officer, Mukhed Police Station, .. Respondent
Mukhed, Tq. Mukhed, Dist. Nanded

Mr.Rajendra S. Deshmukh, Sr. Advocate a/w. Smt. Yugandhara A. Namde i/b.
Mr. A.A. Mukhed, Advocate for the applicant.
Mrs.D.S. Jape,APP for the respondent/State.

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	21.12.2022
PRONOUNCED ON	:	20.02.2023

ORDER :-

01. This application is filed by original complainant, who had filed an application in the Court of Judicial Magistrate, First Class, Mukhed, Tq. Mukhed, Dist. Nanded bearing OMCA No.180 of 2021 praying for directions under section 156(3) of the Cr.P.C. The learned JMFC by his order dated 30.10.2021 rejected the prayer to the extent of directing the police to investigate an offence under section 156(3) of the Cr.P.C. The learned JMFC, however, fixed the complaint for examination of the complainant under section 200 of the Cr.P.C. The applicant is, therefore, before this Court to the

extent of rejection of his prayer as regards directions under section 156(3) of the Cr.PC.

02. The facts alleged in the application are that the applicant married with one Jyoti and is residing with her. One Ashwini Bansode – respondent No.1 filed an FIR with Bhagya Nagar Police Station, Nanded bearing Crime No.118 of 2016. It is alleged in the complaint that said crime is registered by producing fabricated and bogus documents on record, such as, PAN Card, Aadhar Card, Residence Certificate, Marriage Certificate, 7/12 Extract etc. The accused even filed a petition in the Family Court, Nanded praying for maintenance under section 125 of Cr.PC. The Family Court, Nanded granted said petition and directed the applicant to pay an amount of Rs.3000/- per month. The accused, thereafter, filed RCC No.12 of 2017 against the applicant and his relatives for the offence punishable under section 494 r/w 34 of the Indian Penal Code. The applicant informed this fact to the Collector, Nanded by various representations. However, no action is taken against the accused.

03. The applicant further stated that though the applicant had not

purchased any bond paper in the name of Vijay Gautam Gajbhare, still false agreement of marriage is recorded and is registered before the notary at Nanded by putting bogus thumb impression and signature of this applicant. There is also marriage certificate issued by one Bhante, who does not have right to issue such certificate. However, such marriage certificate dated 09.11.2013 is prepared with the help of photo-shop. Thus, the applicant clearly denied the marriage with said Ashwini Bansode and filed the application.

04. The learned Magistrate after hearing the applicant held that no case is made out for directions under section 156(3) Cr.P.C, since all the documents are in possession of the applicant and he can prove the documents during the course of trial and rejected the prayer for directions under section 156(3) and instead directed the complainant to examine himself under section 200 of the Cr.P.C. It is this order under challenge before this Court.

05. The learned Sr. Advocate for the applicant submitted that a specific complaint is filed by the applicant making out cognizable offence. He had also filed complaint with the Police Inspector, Mukhed dated 05.02.2021.

However, no cognizance was taken and therefore he was required to file application seeking directions under section 156(3) of the Cr.P.C. in the Court of learned JMFC, wherein clear case of fabrication of documents is made out. It is pointed out that the PAN card and Residence Certificate are also falsely obtained by the accused showing the applicant as her husband. He had even filed an application in the office of Collector, Nanded. On the representation of the applicant even the Collector wrote letter to the Income Tax Officer requesting to make an inquiry in respect of preparing of fabricated PAN Card in the name of accused Ashwini. The Tahsildar had also issued notice dated 02.02.2021 to the concerned persons including the applicant asking them to appear before him on 26.02.2021. However, no further action was taken.

06. The applicant thus submits that when the accused persons have prepared so many bogus and fabricated documents which certainly requires investigation at the hands of the police. It is not within power of the applicant to prove the same.

07. The learned APP submits that no interference is called for in the application. The learned Magistrate has rightly passed the order under

section 200 of the Cr.P.C. After receipt of the complaint the Magistrate can direct investigation under section 156(3) or he can choose to direct the complainant to lead evidence in support of the complaint. Both the courses are available to the learned Magistrate. Looking to the facts of the case the learned Magistrate has rightly exercised the jurisdiction and has chosen the right course. In this case, looking to the allegation, it can be seen that it is totally based on the documents, which are already with the applicant and therefore no investigation was necessary. She further submits that the learned Magistrate is having wide discretion in such case. When the learned Magistrate has exercised his discretion with application of mind, such order need not be interfered by this Court. The learned APP further submits that in fact the applicant should have filed a revision against the impugned order by making accused as party. In view of availability of alternate remedy, the application need not be entertained.

08. The learned Sr. Advocate for the applicant relied upon judgment in the case of Yogesh Vilas Dalavi & Ors. Vs. State of Maharashtra & Anr., reported in 1025 (3) Mh.L.J. (Cri.) 227. In the said judgment, Division Bench of this Court held that inevitable conclusion was that revision before the

Sessions Court is not maintainable against an interlocutory order passed by the learned JMFC. In that case the learned Magistrate had passed an order directing the complainant to remain present for verification. Thus, in view of this judgment it was held in that case that the petition was maintainable.

09. Next judgment cited by the learned Sr. Advocate is in the case of **Dharmeshbhai Vasudevbbhai & Ors. Vs. State of Gujarat & Ors.k, 2009 AIR (SCW) 3484**, wherein the Hon'ble Apex Court has discussed about powers under section 156(3) of the Cr.P.C. vis-a-vis section 202 of the Cr.P.C. It is reiterated that order under section 156(3) is at pre-cognizance stage whereas order under section 202 is at post-cognizance stage. The order under section 156(3) is only in the nature of peremptory reminder or intimation to the police to exercise their plenary powers of investigation. It is further held that under section 202 the object of investigation is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him. Thus, it is submitted that, therefore, it was necessary to direct the police to investigate under section 156(3) of the Cr.P.C.

10. The learned APP relied upon judgment in the case of **Rameshbhai Pandurao Hedau Vs. State of Gujarat reported in 2010 AIR (SC) 1877** to submit that it is not always necessary to direct the police under section 156(3) of the Cr.P.C. when application is filed. It is open even after examination of the complainant to direct the police and call report under section 202 of the Cr.P.C. That course is still open for the learned Magistrate and the learned Magistrate may decide whether to call such report after examination of the complainant is over.

11. The learned APP also relied upon judgment in the case of **Suresh Chand Jain Vs. State of Madhya Pradesh reported in 2001 AIR (SC) 571**, wherein it is held that it is for the Magistrate to exercise discretion after the application is received and no fault can be found when the order is passed adopting one of the two courses.

12. The learned APP also relied upon Full Bench Judgment of Allahabad High Court in the case of **Jagannath Verma & Ors. Vs. State of UP & Anr reported in 2014 (8) ADJ 439**.

13. Thus, considering all these things, we need to consider as to whether the applicant has made out a case for issuance of directions under section 156(3) of the Cr.P.C. It also needs to consider the complaint itself which is lodged. In the light of mandate under various judgments in respect of entertaining of the complaint, this Court finds that the judgments cited by learned APP would be helpful in this regard. From the pleading of the complaint it is seen that there is no averment in the complaint that the complainant had filed complaint with the police station and thereafter under section 154(3) of the Cr.P.C. to the Superintendent of Police. In view of the judgment, which holds that it is mandatory for the complainant to follow this procedure, in this case it is seen that no such procedure is followed. Since this question is not raised, this Court need not consider the same.

14. In this case, considering the nature of allegation, it is seen that the allegations are only that the accused wife had prepared certain false and fabricated documents, on basis of which she claims to be wife of the applicant/complainant. The learned Magistrate has rightly considered the contents of the complaint and has passed the order. Even on merits, it is found that the learned Magistrate has chosen the course available to him. By

directing the complainant to examine himself under section 200 of the Cr.P.C., it does not in any case amount to closing the doors of the applicant. If after considering his verification the learned Magistrate feels that case is made out directing police to make inquiry, under section 202 of the Cr.P.C., it is always open to the Magistrate to do so. This Court finds that there is no merit in the application and no interference is called for. The application is dismissed.

[KISHORE C. SANT, J.]