

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

CRIMINAL WRIT PETITION NO. 1597 OF 2020

1. Ramdas Dayandeo Ghavate
Age: Major, Occu.: Agri.,
R/o A/p Jawala, Tq. Parner,
Dist. Ahmednagar

2. Kisan Patilba Kawad
Age: Major, Occu.: Agri.,
R.o Nighoj, Tq. Parner,
Dist. Ahmednagar

..PETITIONERS

VERSUS

1. State of Maharashtra
Through its Principal Secretary,
Home Department,
Mantralaya, Mumbai

2. Director General of Police
Police Mukhyalaya,
Mumbai

3. The Superintendent of Police
Ahmednagar, Dist. Ahmednagar

4. The Police Inspector
Parner Police Station,
Tq. Parner, Dist. Ahmednagar

5. Union of India
The Central Bureau of Investigation
Mumbai Zone,
Through its Joint Director
Zone-I, CBI, 13th Floor, Plot No. C-35A,
'G' Block, Bandra-Kurla Complex (BKC),
Near MTNL Exchange,
Bandra (East), Mumbai

6. The Enforcement Directorate
Through its Joint Director,
Kaiser-e-Hind Building, Ballard Estate,
Fort, Mumbai

..RESPONDENTS

....
 Ms. Pradnya Talekar, Advocate i/b Talekar and Associates for petitioner
 Mr. A.R. Kale, A.P.P. for respondent nos.1 to 4
 Mr. S.S. Deve, Advocate for respondent nos. 5 and 6

CORAM : R.G. AVACHAT AND
 SANJAY A. DESHMUKH, JJ
 RESERVED ON : 21st AUGUST, 2023
 PRONOUNCED ON : 10th NOVEMBER, 2023

JUDGMENT (PER : R.G. AVACHAT, J.) :

Heard finally with consent of learned counsel for the parties.

2. This petition, under Article 226 of the Constitution of India, is filed for the following reliefs :

- “A) To direct the respondents to register F.I.R. against the persons involved in commission of crime in light of complaints made by the petitioners by issuing a writ of mandamus, or any other appropriate writ, order or direction as the case may be.*
- B) To direct the Central Bureau of Investigation to investigate the complaint filed by the petitioner by issuing a writ of mandamus, or any other appropriate writ, order or direction as the case may be.*
- C) To direct the Enforcement Directorate to investigate the complaint filed by the petitioner under Prevention of Money Laundering Act, 2002 by issuing a writ of mandamus or any other appropriate writ, order or direction as the case may be.*
- D)*
- E) To quash the communication dated 25.11.2021 issued by the Police Inspector, Parner Police Station by issuing any writ, order or direction as the case may be;*

- F) To quash Inquiry Report dated 10.12.2021 prepared by the Deputy Superintendent of Police, by issuing any writ, order or direction as the case may be;*
- G) To quash the communication dated 16.12.2021 issued by the Superintendent of Police, Ahmednagar by issuing any writ, order or direction as the case may be;”*

3. Petitioner No.1 is a social activist and Petitioner No.2 was a shareholder and member of Parner Taluka Sahakari Sakhar Karkhana Ltd. ('sugar factory'). It is the case of the petitioners that the officials and persons in control of the Maharashtra State Co-operative Bank ('M.S.C.B.') and Shree Kranti Sugars and Power Pvt. Ltd. ('purchaser company') conspired to sell the sugar factory at a throwaway price. It is submitted by learned counsel for the petitioners that the sugar factory owned 162.21 Hectors agricultural and non-agricultural land. The sugar factory had fuel pump, staff quarters, guest house, water tank, shops and godowns for storing the sugar stock. The sugar factory was valued at Rs.76.43 crores apart from its agricultural holdings. As per the ready reckoner rate prepared by the Joint Registrar, Parner non-agricultural land owned by the sugar factory was worth Rs.51.43 crores. The Board of Directors of sugar factory could have availed benefits of schemes of Central and State Governments for revival of sugar factory. On the date the factory was sold, it was worth not less than Rs.300 crores. It was however, sold for Rs.31.75 crores, grossly undervalued. According to learned counsel

for the petitioners, gist of the facts constituting cognizable offence/s are as under :-

I) The sugar factory availed loans from M.S.C.B. for Rs.14.5 crores and Rs.2.65 crores.

II) Movable and immovable properties of the sugar factory were mortgaged and pledged as security for the loans.

III) The Board of Directors of the sugar factory availed several loans on the names of employees of the sugar factory behind their back from various cash credit societies. The loan amount was never given to those employees. The amount of loan was utilised by the sugar factory. As such, it was an offence of criminal breach of trust, cheating and forgery as well. A government audit report 2002-2006 has been relied on in support of these allegations. Affidavits of some of the sugar factory employees in that regard have also been placed on record.

IV) The one, who was the Chairman of the sugar factory for ten years, later on became Chairman of M.S.C.B. He managed to inflate the loan amount without verifying the sugar stock. When, the sugar stock was of Rs.14.75 crores, the loan amount given thereagainst was Rs.33 crores. A statement of balance-sheet of sugar factory for the year 2000-05 is relied on in support of these allegations.

V) The Commissioner for Co-operation did not take prompt action under the relevant provisions of the Maharashtra Co-operative

Societies Act.

4. The sugar factory alongwith its land admeasuring 47 acres was put to sell in exercise of power under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Tender notice was not published in nation-wide newspaper, only with a view to select favourable purchaser company. Only one bid, that of the purchaser company, was received.

5. The upset price was Rs.31,73,53,000/- while the sale price is Rs.31,75,00,000/-. It was submitted by learned counsel that owner of the purchaser company was a confident of a political bigwig. The balance-sheet of the purchaser company would indicate it to have no assets even worth Rs.3 crores. Just two days before the auction sale, the M.S.C.B. granted the purchaser company loan of Rs.28 crores for purchase of the sugar factory and no sugar stock was available for being pledged.

6. The purchaser company was incorporated nearly six years before it purchased the sugar factory. The Directors of the Sugar Industries however issued it a certificate entitling exemption from stamp duty, as being a newly established industry. The loss of Rs.1.5 crores has thus been caused to the State on account of non-payment of stamp duty.

The valuers appointed were ineligible as per the provisions of Section 34 of the Wealth Tax Act and Rule 8A of the Rules thereunder. The 7/12 extracts, containing no entries about encumbrance of the State Government, were annexed alongwith a deed of conveyance. There was a debt of not less than 20 crores due from the sugar factory to the State Government.

7. Learned counsel for the petitioners would further submit that the petitioners have continuously persuing the matter. They had lodged a report way back in 2019, but no F.I.R was registered. When this Court directed learned A.P.P. to file an affidavit-in-reply on 02nd December, 2021, Respondent No.4 called Petitioner No.1 and asked him to submit a statement to the Superintendent of Police, Ahmednagar ('S.P.'). He, accordingly submitted the statement on 06th December, 2021. The S.P., in turn, forwarded the same to the Deputy Superintendent of Police (Rural), Ahmednagar for enquiry. The enquiry was made and the report thereof was submitted to the S.P. on 10th December, 2021 with the following observations:-

- “i) The complaint of the petitioners is general in nature.*
- ii) The documents submitted along with the complaint are not sufficient to make out a case as narrated in the complaint.*
- iii) The complaint is registered with a span of 5 to 25 years of delay; and further mentioned that no cognizable offence is made out.”*

8. Learned counsel relied on the judgment of the Constitution Bench of the Apex Court in case of *Lalita Kumari Vs. State of Uttar Pradesh and Others, (2014) 2 SCC 1* to submit that based on the report lodged by the informant, the F.I.R. ought to have been registered and investigation made. The authorities concerned, by-passed the said mandate and made a farcical enquiry so as to support all those involved. It is nothing short of white collar crime. She then adverted out attention to a judgment of this Court (Principal Seat) in Public Interest Litigation No.6 of 2019 filed by **Surinder Mohan Arora Vs. Maharashtra State Co-operative Societies Bank, 2019 SCC OnLine Bom. 1676**, wherein Economic Offences Wing, Mumbai was directed to register the F.I.R. and investigate the same. Then our attention was drawn to the order of Apex Court dated 02nd September, 2019 dismissing Special Leave Petition (Cri.) No. 7668 of 2019 preferred against the order passed in the aforesaid PIL. Learned counsel for the petitioners would further submit that since the concerned police officials without registering the F.I.R. made enquiry and observed to have no cognizable offence been made out and in view of the fact that political bigwigs have also been involved in the crime in question, the CBI or ED be directed to register the crime and investigate the same.

9. Learned A.P.P. would, on the other hand, submit that the matter was thoroughly enquired into. No substance was found therein. Learned A.P.P. then adverted out attention to the affidavit-in-reply filed by the then

S.P. stating therein that the petitioner had approached him by filing written complaint. He (S.P.) accepted the same. He then directed the Dy.S.P. (Rural), Ahmednagar to conduct enquiry under Section 154(3) of Code of Criminal Procedure ('Cr.P.C.'). The report of enquiry is as stated above. Learned A.P.P. would further submit that the petitioners may have equally efficacious alternate remedy under Section 156(3) of Cr.P.C. They may avail the same. Learned A.P.P. relied on following authorities to ultimately urged for dismissal of the petition :-

- I) *Charansingh Vs. State of Maharashtra and Ors., (2021) 5 SCC 469*
- II) *M. Subramaniam and Anr. Vs. S. Janki and Anr., (2020) 16 SCC 728*
- III) *Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage and Ors., (2016) 6 SCC 277*

10. Considered the submissions advanced. Perused the documents relied on. We appreciate the petitioners have been persuing the case for long.

11. The Constitution Bench of the Apex Court, in case of Lalita Kumari (supra) observed in paragraph no.120 as under :-

"120. In view of the aforesaid discussion, we hold:

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary

inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/ family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases

e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”

12. It is true that Division Bench of this Court in case of Surinder Arora (supra) had directed registration of the F.I.R. and Economic Offences Wing, Mumbai to investigate the crime. It is also true the S.L.P. preferred against the judgment and order passed in the said case was dismissed by the Apex Court. Needless to mention, it was a public interest litigation. Moreover, charge-sheet was filed under Section 88 of the Maharashtra Co-operative Societies Act and inspection report of NABARD. The petitioners apprehend that since political figures and officials have been involved in the crime in question, the police authorities would not make fair investigation. According to learned counsel for the petitioners, same is evident from the

enquiry made by the Sub-Divisional Police Officer on the directions of the S.P. without registering the F.I.R.

13. In our considered view, the petitioners have equally efficacious alternate remedy to approach the Court of Judicial Magistrate First Class, Parner and solicit order under Section 156(3) of Code of Criminal Procedure. The Apex Court in case of ***Sakiri Vasu Vs. State of Uttar Pradesh and Others, (2008) 2 SCC 409*** observed thus :-

“10. It has been held by this Court in CBI and Anr. vs. Rajesh Gandhi and Anr. (1996) 11 SCC 253 (vide para 8) that no one can insist that an offence be investigated by a particular agency. We fully agree with the view in the aforesaid decision. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.

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 Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. 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) Cr.P.C. 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 vs. Smt. Afaq Jahan & Anr. (2006) 1 SCC 627, this Court observed:*

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 vs. State of Delhi, (2007) 12 SCC 641 (vide para 17). 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)*

Cr.P.C., 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) Cr.P.C.

14. *Section 156 (3) states:*

“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 Cr.P.C. 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 re-opening of the investigation even after the police submits the final report, vide State of Bihar vs. A.C. Saldanha AIR 1980 SC 326 (para 19).*

17. *In our opinion Section 156(3) Cr.P.C. 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 F.I.R. 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) Cr.P.C., 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.*

24. *In view of the abovementioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) Cr.P.C. to order registration of a criminal offence and /or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) Cr.P.C., we are of the opinion that they are implied in the above provision.*

25. *We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file*

a writ petition or a petition under Section 482 Cr.P.C. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters, and relegate the petitioner to his alternating remedy, firstly under Section 154(3) and Section 36 Cr.P.C. before the concerned police officers, and if that is of no avail, by approaching the concerned Magistrate under Section 156(3).

26. *If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover, he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?”*

14. Moreover, the aforesaid view of the Apex Court in case of Sakiri Vasu (supra) has been affirmed by a three-judges Bench of the Apex Court in case of ***M. Subramaniam and Anr. Vs. S. Janaki and Anr. AIR 2021 SC (Supp) 1382.***

15. In view of aforesaid legal position, we are not inclined to entertain present petition at this stage. If the petitioners are unsuccessful in the

proceeding under Section 156(3) of Cr.P.C., they have every remedy to challenge the same by approaching this Court. The petitioners may avail the same. Needless to mention, if such an application is moved, the same would be decided on its own merits. With these directions, criminal writ petition stands disposed of.

16. The petitioners have deposited a sum of Rs.1 lakh with this Court. The same be paid back to them with interest accrued thereon.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

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