

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

CRIMINAL WRIT PETITION NO. 2545 OF 2021

Subhash Aadisha Kadappa & Anr.	...	Petitioners
Versus		
The State of Maharashtra & Anr.	...	Respondents

Mr. Sandeep S. Koregave for the Petitioners.
Mr. Ayodhya Patki for the Respondent No.2.
Mr. K. V. Saste, APP for the Respondent No.1-State.

**CORAM: NITIN W. SAMBRE AND
R. N. LADDHA, JJ.**

DATE : 28th JUNE, 2023

Order (Per Nitin W. Sambre, J.) :-

1. The respondent-complainant initiated proceedings being Criminal M.A. No. 460 of 2019 on the file of Judicial Magistrate, First Class, Ichalkaranji, alleging commission of an offence punishable under Sections 406, 418, 420, 423, 426, 465, 468 and 471 read with Section 34 of the Indian Penal Code. The petitioners are the office bearers of the Adhinath Cooperative Bank Ltd., who is also into the business of advancing loans. It is the case of the respondent-complainant before the Magistrate that his signature on the loan application was forged and the amount was siphoned off by the petitioners' office bearers/employees of the aforesaid Cooperative Bank.

2. The respondent-complainant initially lodged complaint with the

Police Station, however, since a non cognizable offence was disclosed, the complaint under Section 156(3) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') in view of provisions of Section 155(2) of the Cr.P.C. came to be lodged.

3. The learned Magistrate after considering the contents in the complaint and argument of the counsel for the petitioners was pleased to post the complaint for verification vide order dated 23rd January, 2020 which order was challenged before the learned Sessions Judge in Criminal Revision Application No. 7 of 2020. The Revisional Court vide order impugned dated 8th April, 2021 was pleased to set aside the order dated 23rd January, 2020 passed by the Magistrate and application preferred by the respondent-complainant under Section 156(3) of the Cr.P.C. came to be allowed. The Revisional Court proceeded to direct the Police Officer, Ichalkaranji to investigate the complaint of the petitioners in terms of provisions of Section 156(3) of the Cr.P.C., as such, this petition.

4. We have heard the respective counsel for sometime.

5. The contention of the counsel for the petitioners are two folds:

(a) the order impugned ought not to have been passed by the Revisional Court whereby exercising powers under Section 156(3) in view of embargo created under provisions of Section 193 of the Cr.P.C. According to him, once the complaint of the respondent was posted for recording of verification, it cannot be said that the respondent-complainant have right in law to prefer

the revision against an interlocutory order as the revision against the interlocutory order is not maintainable.

(b) His next submission is that even if the Revisional Court is satisfied that the complaint discloses a cognizable offence, still the Revisional Court should have relegated the matter with its observation to the Magistrate Court and ought not to have passed an order impugned herein contrary to the scheme of Section 193 of the Cr.P.C. His further contentions are the remedy respondent-complainant lies before the Competent Authority under the provisions of SARFAESI Act.

6. While countering the aforesaid submissions, the counsel for the respondent-complainant urge that once a cognizable offence was disclosed in the complaint, the least that was expected of the Magistrate was to pass an order of investigation. According to her, the revision against such order is very much maintainable as the order refusing to grant relief in exercise of powers under Section 156(3) of the Cr.P.C. cannot be termed as an interlocutory one. According to her, power to entertain revision under Section 397 of the Cr.P.C. includes power to issue appropriate directions including that of the investigation by the Police Authorities under Section 156(3) of the Cr.P.C., as such she would urge that once the complaint discloses a cognizable offence, the Revisional Court was justified in issuing the directions.

7. We have appreciated the aforesaid submissions.

8. Once the matter is posted by the Magistrate for recording of

verification vide order dated 23rd January, 2020, the same cannot be termed as attaining finality to the proceedings as the prayer of the respondent-complainant for passing an order in exercise of powers under Section 156(3) of the Cr.P.C. is not determined or decided. The respondent-complainant was put to condition of providing verification before the Magistrate so as to reach to a satisfaction for exercising powers vested in the Magistrate under the provisions of the Cr.P.C. That being so, it cannot be said that revision against such an order like the one preferred in present case against the order of the Magistrate passed on 23rd January, 2020 was maintainable, as the order of the Magistrate cannot be termed as an order attaining finality or deciding the rights of the parties finally. Such order has to be termed as an interlocutory order as the next stage before the Magistrate was to form an opinion after appreciating the verification of the complainant to grant the relief claimed by the complainant or refuse the same.

9. Apart from above, if we appreciate the scheme under Section 193 of the Cr.P.C., even if for the sake of arguments, the revision is held to be maintainable, the fact remains that the Revisional Court ought not to have exercise the powers of the Magistrate thereby directing the complaint to be investigated pursuant to the provisions of Section 156(3) of the Cr.P.C. Once, the Sessions Judge has formed an opinion that the order refusing to grant the relief under Section 156(3) of the Cr.P.C. was illegal, the only option left with the Revisional Court is to make reasoned observation on the line that the complaint discloses a *prima facie* cognizable offence and relegate the matter to the Magistrate for passing a consequential order therein.

10. The provisions of scheme of Section 193 needs to be appreciated. Section 193 of the Cr.P.C., reads thus:-

“193. Cognizance of offences by Courts of Session - Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.”

11. In express term to the section puts an embargo on the powers of the Sessions Court to take cognizance of an offence as a Court of original jurisdiction unless the Magistrate within his powers commit the case to the said Court. In the case in hand, neither the case is committed to the Sessions Court by the Magistrate nor the Sessions Court could be termed as Court of original jurisdiction.

12. In that view of the matter, the Revisional Court ought not to have exercised the jurisdiction contrary to the provisions of Section 193 of the Cr.P.C. Apart from above, the plain reading of Section 156(3) contemplates the vesting of powers with the Magistrate's Court to take cognizance under Section 190 so as to order investigation. The Criminal Procedure Code is not conferring such power on the Court of Sessions to direct investigation under the provisions of the Cr.P.C. contrary to Section 193 of the Cr.P.C.

13. In the case in hand, in a non maintainable revision as same was preferred against an interlocutory order, the Revisional Court has proceeded to pass an order contrary to the very scheme of Section 193 of the Cr.P.C. Rather Section 193 can be said to be guiding the Revisional Court, in this case Sessions Court, about its power to take

cognizance of offence as the original jurisdiction to try the same vest with the Court of Magistrate.

14. For the aforesaid reasons, we deem it appropriate to hold that the order impugned dated 8th April, 2021 passed by the Additional Sessions Judge, Ichalkaranji, in exercise of powers under Section 397 of the Cr.P.C. (revisional powers) is not sustainable and contrary to the very scheme of Section 193 of the Cr.P.C. As such, the said order is hereby quashed and set aside.

15. As a consequences, the order thereby directing investigation pursuant to the provisions of Section 156(3) of the Cr.P.C. is also quashed and set aside. As a sequel of above, the FIR stood quashed.

16. However, we deem it appropriate to grant opportunity to the respondent-complainant to appear before the Magistrate on 3rd August, 2023, if so desire, for recording his verification.

17. The learned Magistrate while dealing with the claim of the petitioners should be conscious to the aforesaid observation and may pass an appropriate order in the matter.

18. The petition as such stands partly allowed in aforesaid terms.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]

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