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

CRIMINAL APPLICATION NO.128 OF 2023

Reggie Peter Dias

... Applicant

V/s.

The State of Maharashtra & Ors.

... Respondents

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Mr. Prashant Pandey with Mr. Dinesh Jadhvani i/by
Aigon Zakir Memon for the applicant.

Mr. M.G. Patil, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : MARCH 15, 2023

P.C.:

1. The challenge in this application is to the order dated 23rd August 2022 rejecting prayer of the complainant sending the complaint for investigation under section 156(3) of the Criminal Procedure Code, 1973 (hereafter “Code”, for short).

2. The complaint was filed by the applicant contending that the death of applicant’s sister occurred in suspicious circumstances and according to him persons named in paragraph 12 of the complaint are the reasons behind the demise of his sister. According to him, due to such demise wrongful gain occurred to the persons named in that paragraph. He, therefore, filed complaint before the Magistrate for carrying out investigation.

3. The learned Magistrate by the impugned order transferred

the complaint for verification.

4. According to the applicant, in the facts of the case the Magistrate ought to have conducted investigation under section 156(3) of the Code and the nature of allegations requires investigation under section 156(3) of the Code.

5. Learned Magistrate referring judgment of this Court in **State of Maharashtra v. Shashikant Shinde** reported in 2013 All Mr (Cri.) 3060 held that though the police officer is duty bound to register first information report on receipt of information of cognizable offence, the Magistrate is not bound to refer the matter to the police officer under section 156(3) of the Code. According to the learned Magistrate, the allegations levelled against the persons named in paragraph 12 can be proved by oral and documentary evidence and, therefore, there is no requirement to send the case for investigation under section 156(3) of the Code.

6. On perusal of the allegations in the complaint, in my opinion, the applicant in the facts of the case cannot insist for sending it for investigation under section 156(3) as the observations made in the impugned order are *prima facie* in nature and it is always open for the Magistrate to adopt appropriate course as available in law after the verification of the complainant.

7. Learned advocate for the applicant relied on the judgments of the Apex Court **Srinivas Gundluri v. SEPCO Electric Power Construction & Ors** in Criminal Appeal Nos.1377 and 1378 of 2010, **Lalita Kumari v. Government of Uttar Pradesh & Ors.** In Criminal Writ Petition No.68 of 2008,

Vinubhai Haribhai Malaviya & Ors. v. The State of Gujarat & Anr in criminal Appeal Nos.478-479 of 2017, **Anusha Deepak Tyagi v. The State of Madhya Pradesh & Ors.** In Criminal Appeal No.1184 of 2022 and judgment of this Court in **Dinesh S. Sonawane v. The State of Maharashtra & Ors.** in Criminal Revision Application No.156 of 2021. On perusal of the judgments, none of the judgment held that the applicant in his endeavour to show that the Magistrate has no discretion to refer the complaint for verification. All the judgments lay down a principle of law that whenever cognizable offence is made out in a complaint, the Magistrate shall order an investigation under section 156(3), however, none of the judgment hold that the Magistrate has no discretion to send the complaint for verification under section 200 of the Criminal Procedure Code, 1973.

8. The exercise of discretion is not contrary to either provisions of statute or can be termed as perverse. The criminal application has no merit.

9. The criminal application is dismissed. No costs.

(AMIT BORKAR, J.)