

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.469 OF 2023

Mahima Pravin Thakur & Anr. .. Petitioners
v/s.
State of Maharashtra & Anr. .. Respondents

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Dr. Abhinav Chandrachud, a/w. Mr. Ashok Kumar Singh, Mr. R.N. Gaonkar, and Mr. Pravin Singh, for the Petitioners.

Mr. R.M. Pethe, APP, for the State/Respondent.

Mr. Subhash Jha, a/w. Mr. Siddharth Jha, Ms. Meena Mishra, Ms. Alka Pandey, Mr. Harekrishna Mishra, Mr. Akash Singh and Mr. Tushar Bansode, for Respondent No.2.

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CORAM : R.G. AVACHAT, J.

RESERVED ON : 27 FEBRUARY 2023.

PRONOUNCED ON : 3 MARCH 2023.

JUDGMENT:-

Rule returnable forthwith. Heard finally with consent of the parties.

2. The challenge in this writ petition, under Article 227 of the Constitution of India, is to a judgment and order dated 19 January

2023, passed by Additional Sessions Judge, Greater Mumbai, in Criminal Revision Application No.688 of 2022. Vide the judgment and order impugned herein, the order passed by Metropolitan Magistrate on 19 July 2022 has been set aside with a direction to Senior Inspector of Tromby Police Station, Mumbai to register FIR and make investigation on the basis of a report made by the Applicant, Prakash Lalwani on 23 February 2021. Thus, what has been challenged herein is an order passed under Section 156(3) of Code of Criminal Procedure.

3. Facts giving rise to this writ petition are as follows:

Petitioner No.1 is the daughter of Petitioner No.2. They are residents of Green Acres Bungalows, Din Quarry Road, Panjarpole, Deonar, Mumbai, a housing society. The respondent No.2 is also the resident of the same housing society. Master Manav (deceased) was 24 years old son of the respondent No.2. Both, Manav and Petitioner No.1-Mahima, had a romantic relationship inter se for little over two years. There was a break-up in the relationship. It short lived. The relationship resumed. On 1st December, both, Manav and Petitioner No.1, had gone out for dinner. They returned to the society by 12.00 midnight. There was an intense quarrel between the two in the parking lot of the society. After a while, P.W.1 went to her residence. The telephonic conversation through WhatsApp chat continued

between the two. Manav committed suicide by hanging himself with a rope on the terrace of his residence. It was by 2.00 a.m. The complainant, after having realised the same, rushed Manav to hospital, but in vain.

4. It is the case of the complainant that Petitioner No.1 abetted commission of suicide by Manav. A report to that effect was lodged with Tromby Police Station. The police did not take cognizance. The Commissioner of Police was, therefore, approached. He too did not respond. The complainant, therefore, approached the Court of Metropolitan Magistrate with an application under Section 156(3). The learned Magistrate, however, directed the complainant to appear and give his statement on oath (verification). The complainant, therefore, took exception to the said order by preferring the revision application.

5. The learned Additional Sessions Judge allowed the revision application with the following observations :

14.Once a report is made to the Police alleging the commission of cognizable offence it is their duty to register a first information report and proceed to carry out the investigation. The allegations made by the applicant prima facie pertain to an allegations of an offence under Section 306 of the IPC, which is a cognizable offence triable by the Court of Sessions. The allegation shows that the evidence if any about abetment or ratio the prima facie evidence

regarding the abetment would be the Whatsup chat between the deceased and respondent no.2, which are alleged to have been deleted by the respondent no.2. In such case, the Whatsup chat will have to be retrieved. Forensic and other evidence will have to be collected. It is not possible for an individual to carry out such exercise. The investigation by the police machinery would be imperative.

15.

16. Once a report disclosing commission of a cognizable offence is made, the proper course of action would be to register a first information report on the basis of the allegations disclosing commission of an offence. To register offence would not be the end of the road either for the police or for the respondent no.2. The police officers can thereafter conduct a neutral, impartial and objective investigation into the allegations, and if on the basis either investigation they come to a conclusion that an offence is committed, they can file a charge-sheet on the other hand, if the investigation reveals that the respondent no.2 is not involved or no offence is made out, they can prefer a necessary summary report before the court.

17. Considering that there is a loss of life, allegations about the abetment, it would be necessary that Senior Police Inspector of the Trombay Police Station is directed to register a FIR and investigate the matter. The impugned order is not sustainable and it is set aside. ...”

6. Heard. Mr. Abhinav Chandrachud, learned Advocate for the Petitioners, would submit that the application preferred under Section 156(3) of Cr.P.C. did not disclose commission of a cognizable offence. Intention is an essential ingredient of the offence punishable

under Section 306 of IPC. The learned Magistrate had passed the order under Section 200 Cr.P.C. The said order was interlocutory in nature. Remedy of revision was, therefore, not available. According to him, it is an unfortunate incident. Learned Additional Sessions Judge ought not to have entered into the shoes of Metropolitan Magistrate. The police, on due enquiry, found it to be a case of accidental death. The complainant himself gave a statement to the police that Manav was suffering from depression and anxiety. He (Manav) used to remain quiet. Cell phones of both Manav and Petitioner No.1 have been seized by the police. Memory card of the CCTV footage installed at the society campus has also been taken charge of. The police did not find it to be a case of cognizable offence. After about two months of the incident, the complainant lodged afterthought application under Section 156(3) of the Cr.P.C. He would further submit that Manav was possessive of Petitioner No.1. He wanted to have physical relationship with her. He even disliked Petitioner No.1 talk to her friends (male). The WhatsApp chat between the two, at the relevant time would reinforce the same. According to learned Advocate, the Petitioners have every right to put-forth their case to suggest that no cognizable offence was disclosed from the application made under Section 156(3). Whatever has been alleged therein was afterthought. The WhatsApp chat would run counter to the case of the complainant. Learned Advocate, therefore, urged for setting aside the order impugned herein. In support of his submissions, learned Advocate has

relied on the following authorities :

- (i) Thermax Limited And Others vs. K.M. Johny And Others.¹
- (ii) HDFC Securities Limited And Others vs. State of Maharashtra And Anr.²
- (iii) Prof. R.K. Vijayasathy And Another vs. Sudha Seetharam And Anr.³
- (iv) Narayandas s/o. Hiralalji Sarda And Others vs. State of Maharashtra & Anr.⁴
- (v) Avinash S/o Trimbakrao Dhondage vs. State of Maharashtra & Anr..⁵
- (vi) Kailash Dattatray Jadhav And Anr. vs. State of Maharashtra through Sakinaka Police Station And Anr..⁶

7. Mr. Jha, learned Advocate for the complainant, would, on the other hand, submit that it is a cry for justice. The report lodged by the complainant with the concerned police station was not taken cognizance of. Averments/allegations in the application made to the Magistrate, prima facie, make out a case of cognizable offence. The learned Magistrate erred in directing the complainant to give statement on oath (verification of the complaint) when the complainant had prayed only for a relief in terms of Section 156(3) Cr.P.C. Refusal to

1 (2011) 13 Supreme Court Cases 412

2 (2017) 1 Supreme Court Cases 640

3 (2019) 16 Supreme Court Cases 739.

4 2009 (2) MhLJ 426.

5 (2015) SCC OnLine Bom 5197.

6 2016 SCC OnLine Bom 5030.

grant the said relief indicates the proceedings to have come to an end so far as the complainant is concerned. Remedy of revision was, therefore, available for the complainant. The Petitioners, being prospective accused, did not have any right of audience. They also did not have any right to put-forth their defence, as it was a stage premature to grant them hearing. According to learned Advocate, the CCTV footage at the society has been formatted. Telephonic conversation and WhatsApp communication between the deceased and Petitioner No.1 needs to be retrieved. The learned Additional Sessions Judge has rightly observed that for such an exercise, investigation through police machinery was necessary. According to learned Advocate, Petitioner No.2 was the Secretary of the housing society. He tampered with CCTV footage. Residents of the society would give their statements. The quarrel between the two was so intense and utterances made by Petitioner No.1 were such, the deceased was driven to the brink of committing suicide. Petitioner No.2 caused disappearance of evidence of cognizable offence. A CCTV Technician was called. He examined the CCTV unit and opined that the memory card of the camera had been formatted on 3 December 2021 and thereby deleted incriminating evidence. According to learned Advocate, the revisional court was justified in passing the impugned order. He reiterated that the prospective accused would not be prejudiced. On registration of the FIR and investigation thereof, the police may file report under Section 173 of

Cr.P.C. Then it would be for the Magistrate to decide whether case for taking cognizance of the offence is made out on perusal of the police papers. The prospective accused have no right of hearing before taking cognizance of the offence. Learned Advocate, ultimately, urged for the dismissal of the petition. He relied on :-

- (i) State of Haryana And Others vs. Bhajan Lal And Others.⁷
- (ii) Lalita Kumari vs. Government of Uttar Pradesh And Others.⁸
- (iii) Father Thomas vs. State of U.P. & Anr.⁹
- (iv) Brijesh alias Sonu and Others vs. State of U.P. and Another.¹⁰
- (v) B.S. Khatri vs. State of Maharashtra And Another.¹¹
- (vi) Dilip Mahadeo Chivate and Others vs. Suresh Jyotiram Mhamane and Another.¹²
- (vii) HDFC Securities Limited And Others vs. State of Maharashtra And Another.¹³

8. Considered the submissions advanced. Perused the application preferred under Section 156(3) Cr.P.C. and other material, besides the authorities relied on.

Maintainability of the revision application:

9. The revision application preferred by the complainant is

7 1992 Supp (1) Supreme Court Cases 335

8 (2014) 2 Supreme Court Cases 1

9 2010 SCC OnLine All 2710

10 2016 SCC OnLine All 2862.

11 2004 (1) Mh.L.J. 747.

12 2005 SCC OnLine Bom 1782.

13 2011 SCC OnLine Bom 1986.

said to have not been maintainable, since the order passed by the Metropolitan Magistrate, directing the complainant to appear and give his statement on oath (verification of the complaint) is interlocutory in nature. There can be no two views over the fact that the said order is necessarily an interlocutory order. The complainant, in his application for the relief under Section 156(3) Cr.P.C., had specifically asked for the relief in the nature of a direction to Senior Police Inspector of Trombay Police Station, Mumbai, to register first information report and make investigation thereof. Since the said relief had not been granted, the order became final for the complainant to challenge it in revision. In view of this Court, therefore, the revision application was maintainable. True, a Magistrate in exercise of power under Section 190 of the Cr.P.C., is empowered to take a cognizance of an offence upon receiving a complaint of facts which constitute such offence. Section 2(d) defines the term “complaint” to mean any allegation made orally or in writing to a Magistrate, with a view to his taking action under Cr.P.C., that some person, whether known or unknown, has committed an offence, but does not include a police report. In the case in hand, the complainant has asked for a direction in terms of Section 156(3) of Code of Criminal Procedure. The complainant had not prayed for taking cognizance of the offence for proceeding with the matter under Chapter XV of the Cr.P.C. It is therefore, reiterated that the order passed by the Magistrate impliedly suggests the only prayer asked for by the complainant was turned down and, therefore, the

challenge thereto by filing a revision application is maintainable.

10. Moreover, a Full Bench of Allahabad High Court in case of *Jagannath Verma and Ors. vs. State of U.P. & Anr.*¹⁴, has held,

“Order passed by Magistrate declining to entertain Application under Section 156(3) is matter of moment for Complainant or informant because such Order has effect of declining to issue direction to Police to register an FIR and investigate case – Avenue of Police Investigation is foreclosed by passing of Order rejecting Application – Remedy of Complainant under Section 200 stands in distinct and independent sphere and is subject to discharge of Statutory obligation – Power of Magistrate under Section 202 to postpone issuance of process and to direct an investigation to be made by Police Officer for purpose of deciding whether or not there is sufficient ground for proceeding, is distinct from an Order under Section 156 (3) – Order passed by Magistrate declining to order for registration and investigation of crime is not Interlocutory Order – Order of Magistrate rejecting Application under 156(3) can be challenged by availing remedy of Criminal Revision under Section 397.”

11. Again there can be no two views over a legal proposition that if averments made in the application make out a case of it being a cognizable offence, the Magistrate is duty bound to pass an order in terms of Section 156(3) Cr.P.C. when such relief is asked for. The question, therefore, is whether the application moved to the Magistrate discloses a commission of a cognizable offence.

¹⁴ 2014 (6) CTC 353

Learned Advocate for the complainant was right in relying on para 33 of the judgment in case of *Bhajan Lal* (supra), where it has been observed that the Police Officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, reasonableness or credibility of the said information is not a condition precedent for registration of a case. If any information disclosing a cognizable offence is laid before an Officer-in-charge of a police station, satisfying the requirements of Section 154(1) of Cr.P.C., the said police officer has no other option except to enter the said substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.

12. The complainant had, admittedly, first approached the concerned police station. Since no cognizance was taken by the Officer-in-charge of the police station, the complainant reported the matter to the Commissioner of Police. Learned Advocate for the complainant is also justified in relying on the judgment of the Apex Court in *Lalita Kumari's* case (supra) to submit that obligation to register FIR has inherent advantages. It is the first step to access the justice to a victim. It uphold the rule of law.

13. Learned Advocate for the complainant, relying on judgment in *B.S. Khatri's* case (supra), would submit that mere order directing investigation does not cause any injury of irreparable nature. Relying on the judgment in case of *Dilip Chivate* (supra) he would submit that a petition, taking exception to an order passed under Section 156 (3) Cr.P.C., is premature. There is no need to interfere at this stage, since the report that police may file as a consequence of that order, may disclose no offence. The Magistrate may drop the complaint. Learned Advocate then relied on the judgment of this Court in case of *HDFC Securities Ltd.* (supra), which has been affirmed by the Apex Court vide its judgment and order dated 9 December 2016, in Criminal Appeal No.1213 of 2016, wherein it has been held :-

“Order under Section 156(3) Cr.P.C. directing registration of FIR and submission of report after investigation – Challenge to, under S.482 Cr.P.C. or Art. 227 of Constitution of India – If premature – Held, challenge was premature.”

14. There is, however, Apex Court judgment in *Thermax Ltd.* (supra). The same is first in point of time. In case of *Thermax Limited* (supra), it has been held :

“Held, for initiation of proceedings under S.156(3), complaint must disclose essential ingredients of offences alleged – If there is flavour of civil nature, same cannot

be agitated in form of criminal proceeding.”

The Apex Court, in *Thermax Ltd.* (supra), on the basis of facts obtainable therein, has held that the Magistrate committed a grave error in calling for a report under Section 156(3) of Cr.P.C. Close reading of the said judgment would indicate the material produced on behalf of the prospective accused was also taken into consideration.

In case of Jagannath Verma & Ors. (supra), a full Bench of Allahabad High Court has further observed that :

“57. The test as to whether a person is entitled to an opportunity of being heard in a challenge to an order passed in an original proceeding by another is not dependent necessarily on whether such a person had a right to be heard in the original proceeding. A person who is entitled to be heard in an original proceeding may legitimately assert a right to be heard when a substantive right created by an order passed in that proceeding is sought to be assailed before a higher forum at the behest of another person. But a right to be heard in revision is not excluded because a person who claims such a right was not entitled to be heard before the original order, which is assailed, was passed in the first instance or merely because a right of a hearing will not be available in the original proceedings on remand. The entitlement of a hearing at a particular stage has to be assessed independently, by considering the consequences of the proceeding in which a hearing is sought. Where a substantial right will be affected, a prejudice is likely to result or a result which has enured to the

benefit of a person is sought to be negated, a hearing can legitimately be claimed when the order is assailed in a higher forum. Natural justice in our jurisprudence is not merely a matter of statutory entitlement but is an emanation or recognition of the constitutional right to fair procedure, fair treatment and objective decision making. Hence, a prospective accused is entitled to be heard in revision under Section 397 when an order rejecting an application under Section 156 (3) is assailed. For, such a person would have a legitimate entitlement to defend the order as having been correctly made. The fact that in the event of a remand by the revisional court to the Magistrate, for fresh consideration of an application under Section 156 (3), such a person has no right of a hearing does not preclude a right of a hearing in revision when the original order rejecting an application under Section 156 (3) is assailed.”

15. In view of this Court, the Petitioners have every right to take exception to the order passed under Section 156(3) Cr.P.C.

16. Now let us turn to the merits of the matter.

Admittedly, Manav and Petitioner No.1 were emotionally involved with each other. They had such relationship for little over two years. There was a break-up for a while. Relationship resumed. Both were in the age group of 22-24 years at the material time. On the given day, i.e. on 1st December 2021, both had gone for dinner with their friends. Both returned to their housing society by 12.00 midnight. It has been averred in the application to the Magistrate

that a serious quarrel broke-out between the two in the parking lot of the society. The quarrel appears to have been serious and vociferous and disturbed the sleep of other society members. The quarrel was recorded on the CCTV footage installed in the society. After Petitioner No.1 went to her house, Manav made her repeated calls, while he was still in the parking lot and, thereafter, from the terrace of his house. It has further been averred that there was simultaneous conversation ongoing between the two on WhatsApp. A screenshot of the messages has been placed on record. Manav messaged her saying that he knew that she wanted to lose him forever. It was about 1.49 a.m. Manav then committed suicide on the terrace of his house. It has been alleged that the above sequence of events makes it clear that for the two hours, prior to the unfortunate incident, there was a deep quarrel between the two. Petitioner No.1 was the last person to speak to him. The conversation was in the nature of quarrel and was emotionally turbulent. It is apparent that, during the quarrel and the conversation on the phone/WhatsApp, Petitioner No.1 pushed and instigated Manav to such an extent that he felt that he had no other option except to commit suicide.

So far as Petitioner No.2 is concerned, it has been alleged in the application that he, being a Secretary of the society, tampered with the CCTV footage, deleted some text messages etc.

17. The Apex Court, in case of *Prof. R.K. Vijayasathy* (supra), has observed in para 9 and 10 of the judgment as follows:

“9. Section 482 of Code of Criminal Procedure saves the inherent power of the High Court to make orders necessary to secure the ends of justice. In *Indian Oil Corpn. v NEPC (India) Ltd.*, a two judge Bench of this Court reviewed the precedents on the exercise of jurisdiction under Section 482 of the Code of Criminal Procedure 1973 and formulated guiding principles in the following terms:

“12. (i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/ malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the

ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.”

10. The High Court, in the exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, is required to examine whether the averments in the complaint constitute the ingredients necessary for an offence alleged under the Penal Code. If the averments taken on their face do not constitute the ingredients necessary for the offence, the criminal proceedings may be quashed under Section 482. A criminal proceeding can be quashed where the allegations made in the complaint do not disclose the commission of an offence under the Penal Code. The complaint must be examined as a whole, without evaluating the merits of the allegations. Though the law does not require that the complaint reproduce the legal ingredients of the offence verbatim, the complaint must contain the basic facts necessary for making out an offence under the Penal Code.”

18. Section 306 of IPC speaks of offence of abetment of suicide, while Section 107 of IPC speaks of abetment of a thing. For better appreciation, Section 107 is reproduced below:-

“107. **Abetment of a thing.**—A person abets the doing of a thing, who—**First** — Instigates any person to do that thing; or

Secondly —Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that

conspiracy, and in order to the doing of that thing; or

Thirdly — Intentionally aids, by any act or illegal omission, the doing of that thing.

.....

.....”

19. “Mens rea” is an essential ingredient of an offence of abetment. There has to be something on record to establish or show that the accused had guilty mind and in furtherance of that state of mind, he abetted the crime. The ingredients of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous (*Gurcharan Singh vs. State of Punjab*)¹⁵.

20. Reading of the averments in the application to the Magistrate does not lead this Court to prima facie observe that Petitioner No.1 had quarreled with Manav with an intention to drive him to commit suicide.

Exchange of text messages between the two, at the relevant time, was as under:-

“ Whatever it is	1:44 AM
I want to decide now	1:44 AM
I am calling your brother	1:44 AM
You don’t know what you did	1:49 AM
You lost	1:49 AM

15 (2020) 10 Supreme Court Cases 200

	Manav	1:49 AM
	For your life	1:49 AM
	I know you want	1:50 AM
	That	1:50 AM
	Have a good life	1:50 AM
What	8:01 AM	
I passed out manav	8:06 AM"	
Mom was sleeping next to me		

21. It appears that Petitioner No.1 was even not in the know to have received the aforesaid messages. Otherwise, she would not have texted Manav "I passed out manav Mom was sleeping next to me". It was a message forwarded by her little past 8.00 in the morning. The Petitioners have also placed on record exchange of WhatsApp messages between the two during the period from 27 November to the fateful time. The same suggests that the deceased did not like Petitioner No.1 to have been friendly with another boy. He suspected her to have been in relation with him. He, therefore, repeatedly asked Petitioner No.1 to swear and say to have no such kind of relation with a boy named in the conversation. Petitioner No.1 even sworn in the name of her mother. The conversation suggests that Manav wanted to have physical relationship with Petitioner No.1, during the relevant time. Be that as it may, it was at the most lovers' quarrel. By no stretch of imagination, Petitioner No.1 can even remotely be attributed with an intention (*mens rea*) to have quarrelled with Manav and the same compelled him

to end his own life.

22. There is another aspect of the matter. The Senior Inspector of Trombey Police Station submitted his report on 27 September 2022 to the Court of Sessions, seized of the revision application. It was the report of enquiry into unnatural/accidental death of Manav. It has been reported therein that the complainant gave statement that Manav was 24 years of age, graduated in Commerce Stream. He would assist him in the business. The complainant informed the Police Officer that Manav was under depression for some days before the incident. Even on enquiry with Manav, he did not disclose the complainant any reason as to why he was under depression. The complainant suspected Manav to have committed suicide due to depression. It has also been reported that memory card of the CCTV camera and cell phone of the deceased and that of Petitioner No.1 have been seized. During the enquiry, upto the filing of the report, the Enquiry Officer concluded that there was no material to suggest someone to have abetted suicide.

23. In the aforesaid factual backdrop, the learned Additional Sessions Judge ought not to have directed the Officer of the concerned Police Station to register an FIR and make investigation thereof. In view of this Court, the order impugned herein is liable to be set aside.

24. In the result, the petition succeeds in terms of prayer clause
(ii).

(R.G. AVACHAT, J.)