

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 1880 OF 2010**

Anantrao Shankarrao Jagtap

Age about 67 years, Occ: Legal Practitioner,

R/o. Sai Palace, Opp. To Durga Gardens,

Nashik Road, Tal & Dist. Nashik.

.. Petitioner

(Org. Accused No.1)

vs.

1. Prakash Nivruthi Tajanpure,

Age: about 53 years, Occ: Legal Practitioner,

and Farmer, R/o: Annsaya Apartment,

Jail Road, Nashik Road, Tal. & Dist. Nashik.

2. The State,

Through the Police Inspector,

Nashik Road Police Station,

Nashik.

3. Gangubai K. Wadhavane

Age: 60yrs, Occ: Housewife,

R/o; Kelkarwadi, Sinnar Phata,

Nashik Road, Dist: Nashik.

.. Respondents

WITH**CRIMINAL WRIT PETITION NO. 2816 OF 2012**

Gangubai K. Wadhavane

Age: Adult, Occ: Housewife,

R/o; Kelkarwadi, Sinnar Phata,

Nashik Road, Dist: Nashik

.. Petitioner

(Org. Accused No.2)

vs.

1. Prakash Nivruti Tajanpure

Age: Adult, Occ: Legal Practitioner

R/o: Annsaya Apts, Jail Road,
Nashik Road, Tal & Dist: Nashik.

2. Anantrao Shankarrao Jagtap
Age: Adult, Occ: Legal Practitioner,
R/o: Sai Palace, Opp Durga Garden,
Nashik Road, Tal & Dist: Nashik.

3. The State
Through the Police Inspector,
Nashik Road Police Station,
Nashik.

.. Respondents

Mr. Harshad M. Inamdar, a/w. Sahil A Pandire, Ashok S. Pandire for the
Petitioner in WP/1880/2010 and for Respondent No.2 in WP/2816/2012.
Mr. R. S. Alange for the Petitioner in WP/2816/2012 and for Respondent
No.3 in WP/1880/2010.
Mr. H. J. Dedhia, APP, for the Respondent-State in both Petitions.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 26th OCTOBER, 2023.
PRONOUNCED ON : 06th DECEMBER, 2023.**

JUDGMENT: [PER- SHYAM C. CHANDAK, J.]

- 1) Both the Writ Petitions have been filed under Article 227 of the
Constitution of India, 1950 and under Section 482 of the Code of Criminal
Procedure, 1973, seeking quashing and setting aside of the Order dated
11th May, 2010 passed by the Learned Judicial Magistrate First Class, at
Nashik Road, District – Nashik, below Exhibit 1, in Criminal Miscellaneous

Application No.195/2010, whereby the learned Magistrate referred the said Application for investigation under Section 156 (3) Cr.PC. and pursuant to which, Nashik Road Police Station registered MAG. C.R. No.16 of 2010 on 13th May, 2010 against the Petitioners.

2) Heard Mr. Harshad Inamdar, learned Counsel for Accused no.1 and for Respondent No.3 in WP/1880/2010, Mr. R.S. Alange, learned Counsel for Accused No.2 and for Respondent No.2 in WP/2816/2012 and Mr. H.J. Dedhia, learned APP for the Respondent-State in both the Petitions.

3) Rule was granted in the Petitions on 17th July, 2012 and 22nd March, 2023 respectively. The Complainant has filed his Affidavit-in-Reply in Writ Petition No.1880 of 2010. But none present for the Complainant.

4) **Facts giving rise to these writ petitions are as under:**

4.1) Respondent No.1-Prakash Nivruti Tajanpure [*hereinafter referred to as the “Complainant”*] has filed the said Cril. Misc. Appln. No.195/2010 against the Petitioners namely, Anantrao Shankarrao Jagtap and Gangubai K. Wadhavane [*hereinafter referred to as “Accused Nos.1 and 2” respectively*]. In the application it is alleged that, the Complainant and Accused No.1 had social relations with each other. Therefore, Accused No.1 knew about the family members and properties of the Complainant. That, Sundarabai Lahanu Tajanpure [*hereinafter referred to as “Sundarabai”*] was

grandmother of the Complainant. After death of the grandfather of Complainant, Sundarabai performed second marriage. After the second marriage, Sundarabai was known as Sundarabai Laxman Aringale. Accused No.2 is daughter of Sundarabai from the second marriage. Thus, Accused No.2 is step aunt of the Complainant.

4.2) It is alleged that Sundarabai, Complainant's father Nivruti Lahanu Tajanpure, Bhausahab Lahanu Tajanpure and Madhukar Lahanu Tajanpure had entered into a registered Partition Deed dated 4th July, 1972 bearing Serial No.1296/72 registered on 20th July, 1972. As recorded in the said Partition Deed, lands bearing Survey No.190/1 and Survey No.299, out of which $\frac{1}{4}$ share, were the self-acquired property of the Complainant's grandfather. Sundarabai has no right or interest in the said lands. However, the rest three executant gave the land bearing Survey No.299 to Sundarabai and entitled her to cultivate the said land till her life time, as a provision of her maintenance. Further, it was decided that after death of Sundarabai, Survey No.299 will be divided equally amongst father Nivruti Lahanu Tajanpure, Bhausahab Lahanu Tajanpure and Madhukar Lahanu Tajanpure. However, Accused Nos.1 and 2, with an intention to grab Survey No.299, prepared a false and bogus 'Will Deed' dated 1st July, 1994 in the name of Sundarabai by showing her name as Sundarabai Lahanu Tajanpure, even though she was not medically fit between May, 1994 to August, 1994.

Thereafter, both the accused used the said bogus 'Will Deed' as genuine for the purpose of entry in the 7/12 record. Thus, both the accused have committed the offences punishable under Sections 406, 418, 420, 468 and 471 read with 34 of the Indian Penal Code, 1860.

5) After considering the above allegations in the said Application and the documents annexed, the learned Magistrate held that the Application discloses the allegations of cognizable offences. Therefore, thorough investigation is needed at the hands of the Police. According to the Complainant, the Accused have committed criminal breach of trust, forgery and cheating. Hence, by the impugned order, the learned Magistrate referred the said Application for investigation under Section 156 (3) of Cr.P.C. to Nashik Road Police Station with a direction to register the crime against both the Accused, to make an investigation and submit the report as per Chapter 12 of the Cr.P.C. Therefore, Nashik Road Police Station registered the said Application at M.A.G.C.R. No.16 of 2010 on 13th May, 2010 against the Petitioners. Hence, these Writ Petitions.

6) The respective learned Counsels for Accused Nos.1 and 2 have submitted that the allegations levelled in the Application are general and vague in nature. So, it does not constitute the offences alleged. Even though, the alleged offences were committed in the year 1994, the said Application was filed very late. Hence, the narration in the Application is nothing but

false and concocted. There is no averment in Application that, first the Complainant lodged the F.I.R. and since the said F.I.R. was not acted upon, the Complainant filed the said Application for the needful. In the backdrop, the impugned Order of referring the Application under Section 156(3) of the Cr.P.C. for registration of the Crime and investigation, is not sustainable in law. Hence, the impugned Order and the consequent F.I.R. bearing MAG. C.R. No.16 of 2010 are liable to be quashed and set aside and so the said Application.

7) Learned APP submitted that looking at the allegations in the said Application, there is *prima facie* case against both the Accused. Therefore, the learned Magistrate is right in referring the said Application for registration of the crime and investigation, under the impugned Order. Learned APP further submitted that this is an exceptional case, therefore, the fact that the said Application is not preceded by filing of the F.I.R. under Section 154 (1) and sending the substance of the information under Section 154 (3) of the Cr.P.C., is of no consequence. In the backdrop, there is no substance in the Writ Petitions, hence, the same are liable to be dismissed.

8) As held in the case of *Dharmeshbhai Vasudevbbhai and Ors vs. State of Gujarat and Ors*¹, “It is well settled that any person may set the criminal law in motion subject of course to the statutory interdicts. When an

1 2010 2009 CRI.L.J. 2969

offence is committed, a first information report can be lodged under Section 154 of the Code of Criminal Procedure. A complaint petition may also be filed in terms of Section 200 thereof. However, in the event for some reasons or the other, the first information report is not recorded in terms of sub-section (1) of Section 156 of the Code, the magistrate is empowered under sub-Section (3) of Section 156 thereof to order an investigation into the allegations contained in the complaint petition. Thus, power to direct investigation may arise in two different situations – (1) when a first information report is refused to be lodged; or (2) when the statutory power of investigation for some reason or the other is not conducted.”.

9) On careful scrutiny of the said Application, we noticed that the said Application does not mention that prior to filing of the same, the Complainant approached the Police Station and filed the F.I.R. alleging that both the Accused have forged the ‘Will Deed’ and used it as a genuine. As observed in the case of *Panchabhai Popatbhai Bhutani & Ors. vs. State of Maharashtra*², cited by learned Counsel Mr. Harshad Inamdar, in the scheme of the Cr.P.C., it is difficult to hold that, even without approaching the Police Officer-in-charge of a Police Station, a complaint can be made to the Court in terms of Section 156(3) of the Cr.P.C. Therefore, it is held that, “*Normally a person should invoke the provisions of Section 154 of the Code before he*

² 2010 All MR (Cri) 244

can take recourse to the powers of the Magistrate competent to take cognizance under Section 190 of the Code, under Section 156(3). Atleast an intimation to the police of commission of a cognizable offence under Section 154(1) would be a condition precedent for invocation of powers of the Magistrate under Section 156(3) of the Code. We would hasten to add here that this dictum of law is now free from exception". Similarly, in *Priyanka Srivastava and Another vs. State of Uttar Pradesh and Ors*³, it is held that, there has to be prior applications under Section 154(1) and 154(1) of Cr.P.C. while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed.

10) It is the settled position of law and as has been enunciated by this Court in the case of *Sayed Anwar Ahmed & Anr. vs. The State of Maharashtra & Anr.*,⁴ "*While dealing with a Complaint seeking an action under Sub-Section (3) of Section 156 of Cr.P.C, the learned Magistrate cannot act mechanically. He is required to apply his mind to the contents of the Complaint and the documents produced along with the Complaint. An Order passed on the said Complaint must record reasons in brief which should indicate application of mind by the Magistrate. However, it is not necessary to record detailed reasons. The power under Sub-Section (3) of*

³ (2015) 6 SCC 287

⁴ 2017 SCC OnLine Bom 3972

Section 156 is discretionary. Only because on plain reading of the Complaint, a case of commission of cognizable offence is made out, an Order of investigation should not be mechanically passed. In a given case, the learned Magistrate can go into the issue of the veracity of the allegations made in the Complaint. The learned Magistrate must also consider the other relevant aspects such as the inordinate delay on the part of the Complainant. The nature of the transaction and pendency of civil proceedings on the subject are also relevant considerations. Necessary averments recording compliance with Sub-Sections (1) and (3) of Section 154 of the Cr.P.C. should be incorporated with material particulars. Moreover, the documents in support of the said averments must be filed on record”.

11) In the case in hand, there is no dispute that the offence alleged took place in the year 1994, the Complainant however, did not lodge the F.I.R. or the said Application promptly. It was not the case that had if the Complainant lodged the F.I.R. under Section 154 of the Cr.P.C., the police would have failed to act upon it, instantly. The facts of the case do not show that there was possibility of the evidence of commission of the offence being destroyed and/or tampered with. Hence, this was not an exceptional case where non-recourse to the remedies under Section 154(1) and 154 (3) of Cr.P.C. could have been exempted. These short comings, however, have not been noticed by the learned Magistrate before passing the impugned Order.

12) Nowhere in said Application and in his affidavit-in-reply Respondent No.1 has stated as to when he came to know that the 'Will Deed' is bogus and on what basis he has been claiming so. According to the Complainant, Accused No.1 has forged the 'Will Deed' and got it Notarised. But the name of the said Notary/Advocate is not stated in the complaint and the affidavit-in-reply. It is not explained as to how Accused No.2 was involved in forging the Will. Thus, the allegation or assertion that the 'Will Deed' is bogus, is vague. As can be gathered from the said Application, it was supported by the documents as per the list stated at the end. But there is neither reference of the 'Will Deed' in the list of the documents nor a copy thereof was annexed. As such, there was no adequate verifiable material to conclude that the Petitioners have committed the alleged offences and to pass the impugned Order. This shows that the impugned Order is lacking proper application of mind. In fact, the impugned Order is recorded only because the said Application makes a claim of the commission of a cognizable offence of forgery, cheating and breach of trust etc. Even copy of the said 'Will Deed' is not annexed to the affidavit-in-reply.

13) Conspectus of the above discussion is that Cril. Misc. Appln. No.195/2010 was suffering from legal infirmity *i.e.* not lodging the F.I.R. under Section 154 (1) and sending the substance of the information under

section 154 (3) of Cr.P.C. to the superior of the Police. The said Application was not supported by the bogus 'Will Deed'. Except vague assertion that the 'Will Deed' is bogus, there was nothing in the Application to prima facie conclude so. There is great delay in filing the said Application, which is not satisfactorily explained. The learned Magistrate, therefore, ought not to have entertained the said Application and acceded to the request of the Complainant for the investigation under section 156(3) of the Cr.P.C. by passing the impugned Order dated 11th May, 2010. Consequently, the MAG. C.R. No.16 of 2010 has been registered *qua* the Petitioners on 13th May, 2010 by Nashik Road Police Station. Thus, the impugned Order is a result of an unsuitable consideration of the material by the learned Magistrate. This is not permissible in law. As a result, the impugned Order dated 11th May, 2010 and the MAG. C.R. No.16 of 2010 are liable to be quashed. As such, there is no point in continuing the Criminal Miscellaneous Application No.195/2010, therefore, the same is also liable to be quashed. We order, accordingly.

- (i) The impugned Order dated 11th May, 2010, is hereby quashed and set aside. Consequently, the MAG. C.R. No.16 of 2010 registered on 13th May, 2010 at Nashik Road Police Station against both the Accused/Petitioners and the Criminal Miscellaneous Application No.195/2010 are quashed and set aside;

(ii) Writ Petition No. 1880 of 2010 and Writ Petition No. 2816
of 2012 are allowed in the aforesaid terms.

14) Rule is made absolute.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)

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