

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3141 OF 2014

1. Dr. Mohammad Shad Haji Israr Alam Siddiqui

Occupation: Doctor, Age : about 32 years,
Residing at Building No. 106/108,
Room No: 26, 2nd Floor,
Wali Mohammed Mansion,
Shuklaji Street, 2nd Kamathipura Lane,
Mumbai – 400 008.

2. Dr. Yasin Mirza

Occupation: Doctor, Age: about 54 years,
Residing at 304, Bombay Sahara Society,
Dr. A. K. Nair Road, Mumbai – 400 008.

...Petitioners

V/s.

1. Mujhibur Rehman Haji Israr Alam Siddiqui

Adult Indian Inhabitant
Occupation: Business, Age: 42 years.
Residing at Flat No.705, 7th Floor,
A-Wing, Building No.2, Humera Park,
Pathan Wadi, Rani Sati Marg,
Malad (East), Mumbai – 400 097.

2. State of Maharashtra

At the instance of Nagpada Police Station.

...Respondents

Mr. Viral Rathod, a/w. Siddharth Desai, Vishwatej Jadhav, i/b. Kevin Gala,
for the Petitioners.

Mr. B. P. Pandey, a/w. Ridhima M. i/b. Vivek B. Pandey, for Respondent
No.1.

Mr. Y. M. Nakhwa, A.P.P. for the Respondent No.2-State.

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

DATE : 4th DECEMBER, 2023.

JUDGMENT: [PER- A. S. GADKARI J.]

1) By the present Petition under Article 226 of the Constitution of India, the Petitioners, Accused in M.E.C.R. No. 111 of 2014 registered with Nagpada Police Station, Mumbai for the offences punishable under Sections 406, 420 read with Section 34 of the Indian Penal Code, 1860 registered in pursuance of Order dated 10th March, 2014 passed by the learned Metropolitan Magistrate, 25th Court, Mazgaon, Mumbai in C.C. No.54/SW/2014, have prayed for quashing of the said criminal case along with Order dated 10th March, 2014 passed by the learned Magistrate under Section 156(3) of Cr.PC.

2) Heard Mr. Viral Rathod, learned counsel for the Petitioner, Mr. B. P. Pandey learned Advocate for Respondent No.2 and Mr. Nakhwa, learned APP for the Respondent No.2-State. Perused record produced before us.

2.1) Record indicate that by an Order dated 28th September, 2015 rule and interim relief was issued in the present Petition.

3) Respondent No.1 had filed the said compliant i.e., C.C. No.54/SW/2014 before the learned trial Court. The learned Magistrate passed the impugned Order dated 10th March, 2014, which is reproduced herein below for the sake of brevity:

“Perused the complaint and documents annexed with complaint. Heard Advocate for Complainant. Averments in

complaint prima facie discloses cognizable offence. Hence complaint be sent for investigation to P. S. Nagpada as per section 156(3) of Cr.P.C.”

4) The Hon’ble Supreme Court in the case of *Anil Kumar & Ors. vs. M. K. Aiyappa and Anr. reported in(2013) 10 SCC 705* has held as under:

“11. The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed case examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.”

5) Perusal of impugned Order clearly indicates that, the observations made by the Hon'ble Supreme Court in paragraph 11 of Anil Kumar's case (Supra) are squarely applicable to the impugned Order. It further indicates that, what weighed with the Magistrate to Order investigation under Section 156(3) of Cr.P.C. has not been reflected in it. This ground alone is sufficient for quashing the impugned Order dated 10th March, 2014.

6) Accordingly, the impugned Order dated 10th March, 2014 passed by the learned Magistrate in C.C. No. 54/SW/2014 is quashed and set aside. As a consequence thereof, First Information Report bearing M.E.C.R No. 111 of 2014 registered with Nagpada Police Station, Mumbai is also quashed and set aside.

7) Petition is allowed in terms of prayer clause (a).

8) Rule is made absolute in the aforesaid terms.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)