

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

Writ Petition No. 4613 of 2021

Bank of Baroda through

Chief Manager

v/s.

The State of Maharashtra & anr.

... Petitioner

... Respondents

Mr Kafil A Khan a/w. Sana Khan a/w. Shakir Qureshi i/b KSK Legal for the petitioner.

Mr Kuldeep Patil for respondent No.2-CBI.

Mr K V Saste, APP for the State.

Mr Abad Ponda, Sr. Advocate, Ms. Pooja Kothari, Ms. Deepa Shetty, Ms. Azraa Millwalla i/b. Rashmikanth & Partners for respondent No.3.

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

DATE : 20 June 2023

P.C. :

The challenge in the petition is to the order passed below Exhibit 1 in Case No. 54/SW/2019 on 11 September 2019 by the Metropolitan Magistrate, Girgaon, Mumbai in exercise of powers under Section 156(3) of the Cr. P.C.

2. While assailing the aforesaid order, the submissions are that the learned Magistrate has got himself impressed only by the magnitude of

the transaction and has failed to record any reasons in support of recording satisfaction, making a case for order under Section 156(3) of the Cr.P.C. So as to substantiate the aforesaid contentions, the counsel for the petitioner has relied on the judgment of the Apex Court in the matter of *Anil Kumar v/s. M.K. Aiyappa¹ & Priyanka Srivastav & anr. v/s. State of U.P. & Ors.²*. He would further urge that the issue raised in the complaint is already subject matter of the investigation by the respondent-CBI in which accused persons are charge-sheeted and facing trial. He has relied on the charge-sheet submitted before the Special CBI Court, Sessions Court, Mumbai in R.C. No. 06/E/2014-CBI/BS & FC/Mumbai. According to him, once the very same offence is investigated by the CBI and accused persons are charge-sheeted, the Magistrate lacks the jurisdiction in passing the order impugned thereby directing parallel investigation in the matter.

3. In view of judgment of Apex Court in the matter of *Vinubhai Haribhai Malaviya & Ors. v/s. State of Gujarat & anr.³*, the remedy available to the petitioner is to approach before the very same Court before which the prosecution is pending for redressal of his grievance.

4. In the aforesaid background, Mr. Abad Ponda, learned senior counsel submits that on instructions he is not pressing the complaint

1 (2013) 10 SCC 705

2 (2015) 6 SCC Page-287

3 (2019) 17 SCC Page-1

Exh.1 referred in paragraph No.1.

5. The statement is accepted.

6. The Complaint case stands disposed of.

7. Learned Metropolitan Magistrate shall pass appropriate order accordingly.

8. Mr. Abad Ponda would urge that in view of the grievance of the respondent-complainant, he has to have some remedy in the matter and he would like to take recourse to such remedy so as to address his grievance.

9. As such, we deem it appropriate to grant liberty to the complainant in the aforesaid complaint case to take recourse to such remedy as is permissible and available in law.

10. Needless to clarify that as a sequel of the statement that the complaint is not pressed, the order impugned dated 11 September 2019 passed in Complaint Case No.54/SW/2019 is also set aside.

11. The petition accordingly stands disposed of.

R.N. LADDHA, J.

NITIN W. SAMBRE, J.