

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

WRIT PETITION NO.3990 OF 2017

Akriti Kakar D/o Sanjiv Kakar Petitioner
Vs.
The State of Maharashtra and Anr. Respondents

Mr. Ashok M. Saraogi for the Petitioner.
Mrs. S. D. Shinde, APP for Respondent No.1.
Ms. Rina H. Pujara for Respondent No.2.

**CORAM : NITIN W. SAMBRE &
SHARMILA U. DESHMUKH, JJ.**

DATE : 5 JUNE 2023

P. C.

1. Heard.

2. On the complaint filed by Respondent No.2 before Metropolitan Magistrate, Railway Mobile Court, Andheri Mumbai vide C. C. No.70/SW/2017, the Metropolitan Magistrate has passed the following order dated 4/8/2017:

"1. Perused complaint and documents filed on record. Heard counsel for the complainant at length.

2. Complaint reveals prima facie an information

relating to the committal of an offence which is cognizable, hence, it is necessary that such offence be investigated by the police. Matter be sent for investigation to Oshiwara Police Station U/Sec.156(3) of Cr.P.C. on due P. F. The concerned police station to register the F.I.R. immediately first, then, complete the investigation and file final report in this case. The matter is disposed off."

3. The aforesaid order is impugned in the present writ petition. It is the case of the petitioner that she is singer by profession and her services were hired pursuant to an agreement dated 10/1/2014. According to her she has discharged her obligation under the aforesaid agreement after having received honorarium. Respondent No.2 has alleged that the performance was not carried out by the petitioner as per the assurances given to respondent No.2; that there is no discharge of the obligation and the offence is alleged to have been committed.

4. The aforesaid order is questioned by the petitioner amongst other grounds on the ground that the Magistrate has failed

to apply his mind while exercising power under section 156 (3) of Cr. P. C. Learned counsel for the petitioner would urge that the learned Magistrate though, has referred to in his order, that he has perused the complaint and the documents filed on record, however has not reflected the material which has formed to be the basis for the order of issuance of process against the petitioner. By application of mind, we mean to say that the consideration and the reasons for forming an opinion for issuance of process must be reflected in the order of issuance of process. So as to substantiate such claim, support is drawn from the judgment of the Apex Court in the case of *Anil Kumar vs. M. K. Aiyappa*, 5 (2013) 10 SCC. Paragraph No. 11 of the said judgment is sought to be relied upon which reads thus:

"11. The scope of Section 156(3) Cr.P.C. 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 Cr.P.C., 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) Cr.P.C. 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."

(emphasis added)

5. In addition to above, it is also claimed that the Apex Court in the matter of *Priyanka Srivastava V. State of U.P., (2015) 6 SCC 287* has made a similar observations based on the judgment

in the matter of *Anil Kumar* (*cited supra*).

6. Our attention is also invited to the position that the views expressed in the aforesaid matter are being followed by this court in catena of judgments. While countering the aforesaid submission, learned counsel for respondent No.2 would urge that pursuant to the order, offence is already registered and that being so, this court cannot turn the clock in reverse direction quashing the order impugned. According to learned counsel, Respondent No.2 has already submitted an affidavit in support of the complaint which is found to be one of the basis for passing the order impugned thereby directing the investigation and then registration of offence. She would as such urge that the order is just and proper as the material placed on record before the learned Magistrate discloses commission of cognizable offence.

7. We have appreciated the aforesaid submission.

8. The Apex Court repeatedly in the matter of *Anil Kumar* (*cited supra*) so also in the matter of *Priyanka Srivastava* (*cited supra*) has categorically stated that the learned Magistrate are

required to consider the material available before it while dealing with the prayer under section 156(3) of Cr.P.C. and application of mind is to be reflected in the orders to be passed whereby process is issued or prayed as required. While doing so the learned Magistrate must in its order reflect the material on the basis of which the opinion is formed. In the order impugned, the learned Magistrate has only referred to complaint being perused and also the documents and has noticed that *prima facie* case is made out without assigning any reasons in support of such opinion formed by the learned Magistrate. As such the order of the learned Magistrate goes contrary to the scheme laid down by the Apex Court in the matter *Anil Kumar (cited supra)* so also in the matter of *Priyanka Srivastava (cited supra)*.

9. In view of the discussion above, the impugned order is not sustainable, as such same is quashed and set aside. We deem it appropriate to refer the parties back to the Court of Metropolitan Magistrate which shall pass an appropriate order.

10. In light of above, the petition is partly allowed in the above terms.

SHARMILA U. DESHMUKH, J.

NITIN W. SAMBRE, J.