IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.6388 OF 2019

Ganesh Ramesh Chitte .. Petitioner
v/s.
Bharati Nandkumar Pal And Ors. .. Respondents

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Mr. Sameer A. Vaidya, for the Petitioner.

Mr. Jehangir Khajotia, a/w. Mr. Yogesh Gaikwad, i/b. M/s. Bilawala & Co., for Respondent Nos. 1 and 2.

Mr. Arfan Sait, APP, for Respondent State.

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CORAM: R.G. AVACHAT, J.

DATE : 20 JANUARY 2023.

P.C:-

Heard.

2. The challenge in this writ petition is to the order dated 25 June 2018, passed by Metropolitan Magistrate (71st Court), Bandra, Mumbai, below Exhibit-1 in C.C. No.56/SW/2018. Vide order impugned herein, the Petitioner's prayer for investigation, under Section 156(3) of Code of Criminal Procedure, came to be turned down. The learned Magistrate, however, took cognizance of the offence and decided to proceed in terms of the provisions of Chapter

XV of Code of Criminal Procedure.

The Petitioner challenged the said order in the revision, but has been unsuccessful therein.

3. Respondent No.1 is the real sister of the Petitioner. Respondent No.2 is her husband. It is the case of the Petitioner that both the Respondents came to him in 2010 and induced him to become a proprietor of "Bharati Consultant Service". Both the Respondents opened a bank account in the name of Bharati Consultant Service. Both of them obtained various signatures of the Petitioner on bank related documents and even cheques as well. He was kept in the dark about operation of the bank account opened in his name. It is also his case that both the Respondents forged his signatures on various bank related documents and even cheques as well to operate the bank account. The bank account abruptly came to be closed in the recent past in 2012. It is only in 2015 he obtained the statement of his bank account to realise the Respondents to have committed various criminal activities. He, therefore, first approached Tardeo Police Station in March 2016. The police officer did not take cognizance of his report. He then also approached Post Master General, and then in February 2018, reported the matter to Vakola Police station. Since concerned Police Station Officer did not take cognizance of his report, he approached Deputy Commissioner of

Police, Bandra. Since the concerned authority did not take cognizance of the FIR lodged by him, he had no option but to approach the Court of Metropolitan Magistrate and ask for direction in terms of 156(3) Cr.P.C.

4. Learned Advocate for the Petitioner would submit that application submitted by him to the learned Metropolitan Magistrate unequivocally disclosed commission of cognizable offence by the Respondents. Learned Magistrate ought to have, therefore, directed the concerned Police Station Officer to register the crime and investigate the same. Learned Advocate took this Court through the averments in the application made to the Court of Metropolitan Magistrate. According to him, forgery and criminal breach of trust are cognizable offences. He would further submit that the authorities relied on by learned Advocate for the Respondents were based on facts involved in each of those cases. According to him, one has to go by statutory provisions. He also relied on judgments of Apex Court in *Madhao And Another vs. State of Maharashtra And Anr.*[1] and *Vinubhai Haribhai Malaviya And Others vs. State of Gujarat And Another*[2]. Learned Advocate also places on record a communication made by the postal authorities with the Petitioner herein to submit that both the Respondents were doing mail services under the name Bharati Consultant Service. According to learned Advocate, the Petitioner did

1 (2013) 5 SCC 615.
2 (2019) 17 SCC 1.

not expect any monetary benefit, nor has he received even a rupee from the bank account opened by the Respondents in his name. According to learned Advocate, it was nothing short of an economic offence. If someone happened to have been duped or cheated by the Respondents, the Petitioner may land in difficulty for no reason. According to learned Advocate, the learned Magistrate ought to have allowed the application. Since the same has not been done, the Magistrate may be directed to refer the Petitioner's application to the concerned Police Station with a direction for investigation.

5. Learned Advocate for the Respondents, on the other hand, submits that it was the bank account opened by the Petitioner himself. It was he, who has operated the bank account. The Petitioner was, thus, in the know of all the transactions of his bank account. The Petitioner can very well obtain a statement of his account and other related documents to make out his case. According to learned Advocate, the Petitioner approached various authorities. None of them consciously took cognizance of his complaints. There is inordinate delay in approaching Court of Metropolitan Magistrate. According to learned Advocate, it is a dispute between family members. According to him, the application preferred by the Petitioner was not supported by duly sworn-in affidavit. The Petitioner did forum shopping, as he approached two different police stations and even postal authorities as well. Learned Advocate made many submissions and relied on

following set of authorities:

1. Skipper Beverages Pvt. Ltd. vs. State[3].
2. Gulab Chand Upadhyaya vs. State of U.P., and Others[4].
3. Priyanka Srivastava And Another vs. State of Uttar Pradesh And Others[5].
4. Ramdev Food Products Private Limited vs. State of Gujarat[6].
5. Thermax Limited And Others vs. K.M. Johny And Others[7].
6. Vijay Kumar Ghai And Others vs. State of West Bengal And Others[8].

6. Submissions made by learned Advocate were based on observations of the Apex Court in case of *Priyanka Srivastava* (supra) and the other authorities relied on. Only with a view to avoid a repetition, submissions made by learned Advocate are not adverted to.

7. Considered the submissions advanced. Perused the authorities relied on. Also gone through averments made in the complaint. It is a complaint dated 20 June 2018. The title thereof itself suggests it being a complaint in terms of Section 2(d) of the Code of Criminal Procedure. It is true that the prayer therein was for

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3 2001 (59) DRJ 129
4 2002 SCC OnLine All 1221
5 (2015) 6 Supreme Court Cases 287
6 (2015) 6 Supreme Court Cases 439
7 (2011) 13 Supreme Court Cases 412
8 (2022) 2 Supreme Court Cases (Cri) 787

direction to the concerned Police Station Officer to make investigation, in view of Section 156(3) Cr.P.C. The learned Magistrate, after having gone through the allegations made in the complaint, preferred to proceed as per the provisions of Chapter XV of Cr.P.C.

8. In case of *Priyanka Srivastava* (supra), the Apex Court observed thus:

> “The duty cast on the Magistrate while exercising power under Section 156(3) CrPC cannot be marginalised. The power under Section 156(3) CrPC warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 CrPC. The Magistrate exercising power under Section 156(3) CrPC has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has to bear in mind that sending the matter for investigation would be conducive to justice and then he may pass the requisite order. There has to be prior applications under Sections 154(1) and 154(3) CrPC while filing a petition under Section 156(3) CrPC. Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. A litigant at his own whim cannot invoke the authority of the Magistrate under Section 156(3) CrPC. A principled and really aggrieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when perverted litigants take this route to harass their fellow citizens, efforts must be made to scuttle and curb the same. A number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution,

> are being filed. Consequently, in an appropriate case, the truth and veracity of the allegations made can be verified by the Magistrate, regard being had to the nature thereof."

9. In case of *Ramdev Food Products Pvt. Ltd.* (supra), the Apex Court observed:

> "D. Criminal Procedure Code, 1973 – Ss. 156(3), 154 and 202 – Preliminary enquiry prior to registration of FIR permissible in cases instantiated in para 120.6 of Lalita Kumari, (2014) 2 SCC 1 – Preliminary enquiry when may be directed by Magistrate instead of straightaway directing lodgment of FIR – Principles explained – Reiterated, that while prompt registration of FIR is mandatory, checks and balances on power of police are equally important – Power of arrest or investigation is not mechanical and it requires application of mind – Delicate balance has to be maintained between the interest of society and liberty of an individual."

10. The facts of the case in hand admittedly indicate that the Petitioner was proprietor of Bharati Consultant Service. The bank account was opened in his name. Statement of bank account could have been very well available for him whenever he would have asked for. All the documents, which are alleged to have been forged by the Respondents, must be available with the bank in which the Petitioner had the bank account. When the alleged offence dates back to the year 2010-2012, he approached Tardeo police station on 5 March 2016, i.e. about four years after the closure of the bank account. When Officer of the Tardeo Police Station did not take cognizance of his report, he

approached Vakola Police Station about two years thereafter. To be specific, on 26 February 2018. In the meantime, he made complaint to Post Master General and even to officials of the co-operative housing society. According to the Petitioner, the Respondents earned huge amount illegally and invested the same in acquiring 4/5 tenements under SRA scheme.

11. Reading between the lines suggest that there must have been some dispute between the Petitioner on one hand and his real sister and her husband on the other, over monetary dealings. Had the Petitioner really been a victim of the alleged acts committed by the Respondents, he would not have delayed lodging of a report. Learned Magistrate was, in the facts and circumstances of the case, justified to observe that the case was based on documentary evidence and the same could be placed on record by the Petitioner. Learned Magistrate was justified in not taking recourse to Section 153(3) Cr.P.C. This Court finds no reason to interfere with the order impugned herein. It is, however, clarified that this order shall not be meant to have given a clean chit to the Respondents herein. So far as third persons are concerned, even the Petitioner may become liable to whatever dealings allegedly took place through his bank account.

12. With the aforesaid observations, the petition stands dismissed.

(R.G. AVACHAT, J.)