

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL REVISION APPLICATION NO. 102 OF 2014

APPLICANT : Vikas S/o. Daulatraoji Wagh, Aged
about 44 years, Occ: Service, R/o.
Police Quarters, Police Station
Kamptee, Distt. Nagpur.

//VERSUS//

RESPONDENTS : 1. State of Maharashtra, through
Secretary Ministry for Home,
Mantralaya, Mumbai.

2. State of Maharashtra, through
Superintendent of Police, Anti
Corruption Bureau, Nagpur, Civil
Lines, Nagpur.

3. Yuvraj S/o. Yeshwantrao Humne,
Aged : 41 years, Occ: Private, R/o.
Modi Padav, Kamptee, District :
Nagpur.

Mr. J.M. Gandhi, Advocate for the Petitioner.
Mr. A.R. Chutke, APP for Respondent Nos.1 and 2.
Mr. Ajinkya Y. Humne, Advocate for Respondent No.3.

CORAM : G. A. SANAP, J.
DATED : 25th JULY, 2023.

JUDGMENT

In this writ petition, challenge is to the order dated
24th January, 2014, passed by learned Special Judge, Nagpur,

whereby learned Special Judge on the complaint of respondent No.3 by exercising the powers under Section 156(3) of the Code of Criminal Procedure, 1973 (Cr.PC), directed the Deputy Superintendent of Police, Anti Corruption Bureau, Nagpur to conduct the investigation.

02] BACKGROUND FACTS:

Respondent No.3 filed a complaint against the petitioner and one Mr. Ramchandra Varthi and prayed for an order under Section 156(3) of the Cr.PC. It is the case of respondent No.3 that one Mr. Jadhav, a Police Inspector, at the relevant time, was attached to Kamptee Police Station. He had committed various illegal activities. He had filed false First Information Reports against the innocent persons. On 12th January, 2011, Police Inspector Mr. Jadhav, by accepting Rs.25,000/- (rupees twenty five thousand) from Mohanlal Rathod, had registered a crime against the respondent No.3 and others under Sections 186, 353, 323, 294, 506 read with Section 34 of the Indian Penal Code, 1860 (IPC). In the said crime, Police Inspector Mr. Jadhav beat Prashant Chahande in the police custody. The Court, after taking the cognizance of this incident, had ordered registration of a crime against the police. Respondent No.3, therefore, filed a Criminal

Case No.09/2012. Learned Special Judge, by his order dated 7th September, 2012, had ordered the Anti Corruption Bureau, Nagpur to conduct the enquiry. The enquiry, on the date of this application, was pending.

03] It is stated that due to filing of the criminal case against the Police Inspector Mr. Jadhav by respondent No.3, he was annoyed. He was waiting for an opportunity. On 20th July, 2013, he got an opportunity and made use of it. It is stated that the neighbour of respondent No.3 by name Vijay Shamkuwar and his relatives on 20th July, 2013 assaulted the respondent No.3. They damaged his maruti van. Therefore, the respondent No.3 lodged a report against said Vijay Shamkuwar and his relatives on 20th July, 2013 at Kamptee Police Station. A crime bearing No.124/2013 was registered against Vijay Shamkuwar and three others under Sections 452, 294, 506, 427 read with Section 34 of the IPC. It is alleged that Police Inspector Mr. Jadhav took the advantage of this situation. He had a grudge against the respondent No.3. Police Inspector Mr. Jadhav, therefore, misused his position and instigated the wife of Vijay Shamkuwar to lodge a false report against the respondent No.3. On the basis of the false report lodged by Anju Vijay Shamkuwar, a crime bearing No.3080/2013 was registered

against the respondent No.3 on 21st July, 2013 for the offences under Sections 294, 506 read with Section 34 of the IPC. In this crime, Police Inspector Mr. Jadhav handed over the investigation to ASI Mr. Ramchandra Varthi. ASI Mr. Ramchandra Varthi conducted the enquiry and came to the conclusion that the incident narrated in the FIR, registered on the report of Anju Shamkuwar, had not occurred.

04] It is stated that the Investigating Officer ASI Mr. Ramchandra Varthi on 7th November, 2013 informed the respondent No.3 that he had submitted the report to the Police Inspector Mr. Vikas Wagh with recommendation to close the case registered against the respondent No.3. It is alleged that ASI Mr. Ramchandra Varthi told respondent No.3 that he would manage the Police Inspector Mr. Vikas Wagh but, for that purpose he would have to pay Rs.50,000/- (rupees fifty thousand). Respondent No.3 has stated that thereafter on 9th November, 2013 he along with Prashant Chahande and Gondade went to Kamptee Police Station and met Police Inspector Mr. Vikas Wagh. It is stated that at the time, Police Inspector Mr. Vikas Wagh demanded Rs.50,000/- (rupees fifty thousand) from respondent No.3 for sending final closer report in the crime registered against him.

Police Inspector Mr. Vikas Wagh told the respondent No.3 to handover the money to ASI Mr. Ramchandra Varthi. It is stated that Police Inspector Mr. Vikas Wagh threatened the respondent No.3 that if the money is not paid, then he would file charge-sheet by creating evidence against the respondent No.3. Respondent No.3 was not ready to pay the money. He, therefore, made a complaint on 9th November, 2013 to the Superintendent of Police, Anti Corruption Bureau, Nagpur. The Anti Corruption Bureau, Nagpur, on his report, did not take action against the petitioner and ASI Mr. Ramchandra Varthi. He, therefore, made an application before the learned Special Judge under Section 156(3) of the Cr.PC and prayed for investigation in the crime by the police.

05] Learned Special Judge on 24th January, 2014 passed the impugned order and directed the Deputy Superintendent of Police, Anti Corruption Bureau, Nagpur to conduct the enquiry/investigation in respect of the allegations made in the complaint. Petitioner Vikas Wagh, being aggrieved by this order, has filed this revision.

06] I have heard Mr. J.M. Gandhi, learned advocate for the petitioner, Mr. A.R. Chutke, learned Additional Public Prosecutor

for respondent Nos.1 and 2 and Mr. Ajinkya Y. Humne, learned advocate for respondent No.3. Perused the record and proceedings.

07] Initially, this matter was assigned to the Division Bench. The Division Bench, by order dated 4th February, 2014, was pleased to grant stay to the impugned order. It is seen that pursuant to the order passed by learned Special Judge impugned in this application, First Information Report (FIR) was not registered. In view of this position, by order dated 14th July, 2014, the petitioner was allowed to convert the writ petition into revision application under Section 397 of the Cr.PC. The writ petition was accordingly converted into revision application. The revision application was, therefore, assigned to the Single Bench.

08] Mr. J.M. Gandhi, learned advocate appearing for the petitioner submitted that the order passed by learned Special Judge suffers from various illegalities. Learned advocate submitted that learned Special Judge has not recorded even brief reasons for passing the impugned order. Learned advocate submitted that before passing an order under Section 156(3) of the Cr.PC, learned Special Judge was required to address the issue of sanction for registration of crime against the petitioner. The petitioner is a government servant. The petitioner being a government servant

and in view of the facts stated in the complaint, learned Special Judge was required to record the reasons as to why sanction for prosecution was not necessary before passing an order under Section 156(3) of the Cr.PC. Learned advocate submitted that the approach of learned Special Judge was mechanical. Learned advocate submitted that the order passed by learned Special Judge does not show the application of mind. Learned advocate further submitted that before passing the impugned order, learned Special Judge was required to see whether there was compliance of Section 154(3) of the Cr.PC. Learned advocate submitted that, in this case, there was no compliance of Section 154(3) of the Cr.PC and therefore, on this count also, the order cannot be sustained. Learned advocate submitted that the order under Section 156(3) of the Cr.PC is not an interlocutory order and therefore, the revision is maintainable. In order to substantiate his submissions, learned advocate has placed heavy reliance on the reported decisions in the cases of *L. Narayana Swamy Vs. State of Karnataka and Others [AIR 2016 SC 4125]* and *Anil Kumar and Ors. Vs. M.K. Aiyappa and Anr. [2014 Cr.L.J. 1 SC]*.

09] Mr. A.R. Chutke, learned Additional Public Prosecutor for respondent Nos.1 and 2 submitted that, till date, FIR has not

been registered against the petitioner, pursuant to the order passed by learned Special Judge dated 24th January, 2014. Learned Additional Public Prosecutor submitted that in view of the stay granted by this Court, further steps could not be taken pursuant to the order dated 24th January, 2014. Learned Additional Public prosecutor submitted that subject to the order of this Court, respondent Nos.1 and 2 would take necessary steps.

10] Mr. Ajinkya Y. Humne, learned advocate for respondent No.3 submitted that a revision against the impugned order is not maintainable, inasmuch as the order is an interlocutory order. Learned advocate submitted that the issue of sanction for prosecution cannot be gone into at the stage of passing an order under Section 156(3) of the Cr.PC. Learned advocate pointed out that in terms of the impugned order, the Anti Corruption Bureau would be required to register the FIR and carry out the investigation. Learned advocate pointed out that depending upon the result of the investigation, the issue of sanction for prosecution would be required to be addressed. Learned advocate submitted that the copy of complaint was forwarded to the Superintendent of Police, Anti Corruption Bureau, Nagpur for necessary action. Learned advocate submitted that there is no substance in the

revision. In order to substantiate his submissions on the point of maintainability of the revision application, learned advocate has placed reliance on the following decisions:

1. *HDFC Securities Ltd. & Ors. Vs. State of Maharashtra & Anr.* [2017(1) SCC (Cri) 485].
2. *Smt. Rekha Verma and Others Vs. State of U.P. and Others* [2007(57) ACrC 241].
3. *Amarnath Agrawal Vs. Jai Singh Agrawal and Others* [2015(1) A.N.J. 168].
4. *Prof. Ram Naresh Chaudhary and Anr. Vs. State of U.P. and Ors.* [2008 CriLJ 1515].

11] At the outset, the issue of maintainability needs to be addressed. It is seen that initially, the writ petition was filed by the petitioner. However, when it was noticed that FIR was not registered and the prayer for quashing of the FIR being redundant, the petitioner was allowed to convert the writ petition into revision application. It would be appropriate, at this stage, to make a reference to the order dated 9th July, 2014, passed in this proceeding by the Division Bench of this Court. Before the Division Bench, while arguing the matter, respondent No.3 had submitted that the order under Section 156(3) of the Cr.PC is revisable by invoking the provisions of Section 397 of the Cr.PC and therefore, the challenge to the impugned order must be

considered by the Single Bench and not by the Division Bench. This submission advanced by respondent No.3 before the Division Bench was contrary to the submissions advanced before me. Be that as it may, this Court has to examine the issue of maintainability.

12] Before I proceed to consider the decisions relied upon by learned advocate for respondent No.3 on this point, it would be necessary to make a useful reference to the two decisions of the Division Bench of the Bombay High Court. The first decision is in the case of *Kailash Dattatraya Jadhav and Anr. Vs. State of Maharashtra and Anr.* [2016 SCC OnLine Bom 5030] and the second decision is in the case of *Avinash & Ors. Vs. The State of Maharashtra and Ors.* [MANU/MH/2887/2015]. As far as the decision in the case of *Kailash Dattatraya Jadhav and Anr.* (supra) is concerned, paragraph 10 is relevant for the purpose of addressing the issue. Paragraph 10 is extracted below:

“10. Now, we may turn to the decision of a Division Bench of this Court in the case of Avinash Trimbakrao Dhondage (supra). In the said decision, the Division Bench considered the decision of the Apex Court in the case of Suresh Chand Jain (supra). Ultimately, after considering various decisions including the decision of the Full Bench of Allahabad High Court in the case of Father Thomas (supra), the Division Bench relied upon the decision of a Division Bench of this

Court in case of B.S.Khatri Vs. State of Maharashtra and another 2003-ALL MR (Cri)-1925. It is in the light of the said decision of the Division Bench that in paragraph 14, the Division Bench came to the conclusion that an order directing investigation under sub Section 3 of Section 156 is not an interlocutory order but it is in the nature of a final order disposing of the complaint. That is why it was held that a revision under Section 397 of the Code would be maintainable. As far as this view taken is concerned, being the view of a coordinate Bench, we are respectfully bound by the said view. We are not shown any binding precedent which is contrary to this view.”

13] As far as the decision in the case of ***Avinash and Ors.*** (supra) is concerned, paragraphs 11 and 14 are relevant for the purpose of addressing the issue. Paragraphs 11 and 14 are extracted below:

“11. It is thus clear from the above that the investigation pursuant to the order u/s. 156(3) of the Code is not controlled by the Magistrate and that was what was held by the Supreme Court in the case of S.N. Sharma v. Bipen Kumar Tiwari and State of Bihar v. J.A.C. Saldanha and Ors., as stated in the Full Bench judgment. To repeat, after making of order u/s. 156(3) of the Code, the Magistrate has further nothing to do and the proceeding u/s. 156(3) of the Code gets terminated. Nothing remains pending before the Magistrate after such order is made. Thus, despite termination of the proceeding u/s. 156(3) of the Code of Criminal Procedure, 1973 and in the light of the principle ‘ubi jus ibi remedium’, the petitioners/applicants cannot be denied the statutory remedy of revision.

14. Insofar as the question framed by us is concerned, we

find that there is a passing reference in paragraph No. 31 made by the Division Bench about availability of several efficacious alternative statutory remedies under the Criminal Procedure Code to challenge the order u/s. 156(3). We think though it is obiter dicta, nevertheless the same is binding on us as we respectively agree with the said view, for the above reasons that the order u/s. 156(3) of the Code not being an interlocutory order, but being a final order in a proceeding u/s. 156(3) of the Code would certainly be revisable under the revisional powers of the Sessions Court or the High Court. The Division Bench in the case of B.S. Khatri v. State of Maharashtra & another (supra), however, clearly held that the exercise of extraordinary jurisdiction under Article 226 of the Constitution should not be made for considering the challenge to order u/s. 156(3) of the Code with which again we respectfully agree. We, however, state that the bar to exercise extraordinary jurisdiction under Article 226 of the Constitution is the one of self-imposed rule. We, however, hold that the order u/s. 156(3) of the Code not being an interlocutory order, would obviously be revisable. We thus hold that the order u/s. 156(3) of the Code of Criminal Procedure, 1973, is not an interlocutory order, but is a final order terminating the proceeding u/s. 156(3) of the Code and that the revision u/s. 397 or Section 401 of the Code would lie.”

14] In the above two decisions, the Division Bench of the Bombay High Court, while addressing the issue of maintainability of the revision against the order under Section 156(3) of the Cr.PC, has held that the order passed under Section 156(3) of the Cr.PC finally disposes of the application and therefore, the said order is not an interlocutory order, but it is in the nature of final order. It is

held that the order under Section 156(3) of the Cr.PC, not being an interlocutory order, would be revisable. It is held that a revision against the order under Section 156(3) of the Cr.PC is maintainable.

15] It is necessary to consider the decisions relied upon by learned advocate for respondent No.3 on this point. The decisions of other High Courts namely Allahabad High Court and Chhattisgarh High Court were rendered by learned Single Judges and therefore, in my view, the same in the teeth of the two decisions of the Division Bench of the Bombay High Court, are not applicable. The decision in the case of *HDFC Securities Ltd. & Ors.* (supra) has to be considered. In this case, the Hon'ble Supreme Court has not dealt with the issue of maintainability of the revision against the order passed by the Magistrate under Section 156(3) of the Cr.PC. The issue involved before the Hon'ble Supreme Court in this case, was with regard to the maintainability of petition under Section 482 of the Cr.PC for quashing the FIR registered pursuant to the order passed under Section 156(3) of the Cr.PC. In this background, the Hon'ble Supreme Court has held that the accused cannot approach before the High Court at the stage of issuance of process. It is further

observed that the powers under Section 482 of the Cr.PC should be sparingly used. The Hon'ble Supreme Court maintained the order passed by the High Court, rejecting the petition under Section 482 of the Cr.PC.

16] In my view, the issue involved before the Hon'ble Supreme Court in the case of *HDFC Securities Ltd. & Ors.* (supra) and the issue involved before me, is different. The issue involved before me has been squarely covered by two decisions of the Division Bench of the Bombay High Court. Therefore, in my view, the decision in the case of *HDFC Securities Ltd. & Ors.* (supra) is not applicable to the facts of this case. The issue of maintainability has to be addressed keeping in mind the law laid down in the two decisions of the Bombay High Court. Accordingly, I conclude that the revision application is maintainable against the impugned order. In this case, after the order under Section 156(3) of the Cr.PC, FIR has not been registered. In this case, therefore, the challenge is limited to the legality and propriety of the impugned order within the four corners of the law.

17] The challenge to the order is mainly on the ground that it was passed by learned Special Judge in the absence of a valid

sanction for prosecution. The question is whether the sanction was required before passing the order under Section 156(3) of the Cr.PC or not. The petitioner, according to respondent No.3 at the relevant time, was working as Police Officer. It is stated that the acts, alleged to have been done by him, were under the colour of official duty. It needs to be stated that the order under Section 156(3) of the Cr.PC always invites cascading effects and consequences as far as the accused is concerned. The police in terms of the order under Section 156(3) of the Cr.PC is duty bound to register the FIR and carry out the investigation. The Court is, therefore, required to take abundant care and precaution before passing an order under Section 156(3) of the Cr.PC. The Magistrate, at the time of passing an order under Section 156(3) of the Cr.PC, is required to apply mind to the facts of the case and record brief reasons in support of the order. The reasons recorded in the order must be sufficient to indicate application of mind. The reasons may be brief but, the same must be sufficient to rule out the possibility of mechanical approach by the Court. It is to be noted that when the government servant is involved in the case, the Magistrate is required to address the issue of sanction for prosecution in the order.

18] In the context of the issue of sanction, it is necessary to consider the two decisions of the Hon'ble Supreme Court in the cases of ***L. Narayana Swamy*** (supra) and ***Anil Kumar and Ors.*** (supra). In these decisions, the Hon'ble Supreme Court has considered and dealt with the issue of necessity of sanction at the stage of an order under Section 156(3) of the Cr.PC. In the case of ***L. Narayana Swamy*** (supra), the issue has been addressed in paragraph 12. Paragraph 12 is extracted below:

“12. Second judgment in the case of Anil Kumar referred to above is directly on the point. In that case, identical question had fallen for consideration viz. whether sanction under Section 19 of the P.C. Act is a pre-condition for ordering investigation against a public servant under Section 156(3) of Cr.P.C. even at pre-cognizance stage? Answering the question in the affirmative, the Court discussed the legal position in the following manner:

“13. The expression “cognizance” which appears in Section 197 Cr.PC came up for consideration before a three-Judge Bench of this Court in State of U.P. v. Paras Nath Singh [(2009) 6 SCC 372 : (2009) 2 SCC (L&S) 200 : (AIR 2009 SC(Supp) 1615)], and this Court expressed the following view: (SCC pp. 375, para 6) (PP. 1616-1619, Paras 3 to 12).

“6. ... ‘10. ... And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned, the cognizance of any

offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the person to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words 'no' and 'shall' makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.' [Ed.: As observed in State of H.P. v. M.P. Gupta, (2004) 2 SCC 349, 358, para 10 : 2004 SCC (Cri) 539.] : (AIR 2004 SC 730, PP. 734-735, Para 10)"

14. In State of W.B. v. Mohd. Khalid [(1995) 1 SCC 684 : 1995 SCC (Cri) 266 : (AIR 1995 SC 785)], this Court has observed as follows:

"13. It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that

an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out.” [Ed.: As considered in State of Karnataka v. Pastor P. Raju, (2006) 6 SCC 728, 734, para 13 : (2006) 3 SCC (Cri) 179 : (AIR 2006 SC 2825, PP. 2828-2829, Para 9).]

The meaning of the said expression was also considered by this Court in Subramanian Swamy case [(2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666 : (AIR 2012 SC 1185)].

15. The judgments referred to hereinabove clearly indicate that the word “cognizance” has a wider connotation and is not merely confined to the stage of taking cognizance of the offence. When a Special Judge refers a complaint for investigation under Section 156(3) Cr.PC, obviously, he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage. When a Special Judge takes cognizance of the offence on a complaint presented under Section 200 CrPC and the next step to be taken is to follow up under Section 202 Cr.PC. Consequently, a Special Judge referring the case for investigation under Section 156(3) is at pre-cognizance stage.

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21. The learned Senior Counsel appearing for the appellants raised the contention that the requirement of sanction is only procedural in nature and hence, directory or else Section 19(3) would be rendered otiose. We find it difficult to accept that contention. Sub-section (3) of Section 19 has an object to achieve, which applies in circumstances where a Special Judge has already

rendered a finding, sentence or order. In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate can not order investigation against a public servant while invoking powers under Section 156(3) Cr.PC. The above legal position, as already indicated, has been clearly spelt out in Paras Nath Singh [(2009) 6 SCC 372 : (2009) 2 SCC (L&S) 200 : (AIR 2009 SC (Supp) 1615)] and Subramanian Swamy [(2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666 : (AIR 2012 SC 1185)] cases.”

Having regard to the ratio of the aforesaid judgment, we have no hesitation in answering the question of law, as formulated in para 7 above, in the negative. In other words, we hold that an order directing further investigation under Section 156(3) of the Cr.P.C. cannot be passed in the absence of valid sanction.”

19] In the case of **Anil Kumar and Ors.** (supra), the issue has been addressed in paragraphs 8 and 13. Paragraphs 8 and 13 are extracted below:

“8. We may first examine whether the Magistrate, while exercising his powers under Section 156(3), Cr.P.C., could act in a mechanical or casual manner and go on with the complaint after getting the report. The scope of the above mentioned provision came up for consideration before this Court in several cases. This Court in Maksud Saiyed case (supra) examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under

Section 156(3) and held that where a 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.

13. Learned senior counsel appearing for the appellants raised the contention that the requirement of sanction is only procedural in nature and hence, directory or else Section 19(3) would be rendered otiose. We find it difficult to accept that contention. Sub-section (3) of Section 19 has an object to achieve, which applies in circumstances where a Special Judge has already rendered a finding, sentence or order. In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3), Cr.P.C. The above legal position, as already indicated, has been clearly spelt out in Paras Nath Singh and Subramaniam Swamy cases (supra)."

20] The principle of law culled out from the above two decisions supports the submissions advanced by learned advocate for the petitioner. It is held that in case of a complaint alleging corruption by a public servant, the order directing investigation under Section 156(3) of the Cr.PC cannot be passed in the absence of a valid sanction. In my view, the proposition of law culled out from the decisions cited (*supra*) is, therefore, applicable to the facts of this case. In this case, admittedly, there was no sanction for initiation of prosecution or for directing further investigation. The complaint made by respondent No.3 is silent about the sanction for prosecution of the accused. In my view, on this ground, the order passed by learned Special Judge cannot be sustained.

21] Perusal of the impugned order would show that in such a serious matter, learned Special Judge has not taken proper care. Learned Special Judge was required to record brief reasons in support of his satisfaction to direct the investigation under Section 156(3) of the Cr.PC. In this case, considering the fact that the accused are the government servants, learned Special Judge was required to deal with the issue of sanction for prosecution briefly. The said issue was not at all addressed by learned Special Judge. Similarly, the learned Special Judge has failed to record even brief

reasons for passing an order under Section 156(3) of the Cr.PC. The approach of the learned Special Judge, as can be reflected from the order, was mechanical and casual. The order passed without recording the reasons indicates non-application of mind to the facts stated in the complaint. Therefore, in my view, on this count also, the order cannot be sustained.

22] It is further seen that before passing an order under Section 156(3) of the Cr.PC, learned Special Judge was required to address the issue of compliance of Section 154(3) of the Cr.PC. Learned Special Judge for the purpose of addressing this issue was required to take into consideration the material facts set out in the complaint. Perusal of the complaint would show that there is only a reference of the complaint made to the Anti Corruption Bureau, Nagpur on 9th November, 2013. There is no mention in the complaint about the compliance of Section 154(3) of the Cr.PC. It needs to be stated that the learned Special Judge was required to take this aspect into consideration.

23] The Hon'ble Supreme Court in the case of *Sakiri Vasu Vs. State of U.P. & Ors. [AIR 2008 SC 907]* has held that, if a person has a grievance that his FIR has not been registered by the

Police Station Officer, then his first remedy is to approach the Superintendent of Police under Section 154(3) of the Cr.PC or other Police Officer referred to in Section 36 of the Cr.PC. It is held that, if despite approaching the Superintendent of Police or the other Officer referred to in Section 36 of the Cr.PC his grievance still persists, then he can approach a Magistrate under Section 156(3) of the Cr.PC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 of the Cr.PC. The complainant was, therefore, required to make a specific averment in the complaint with regard to the compliance of Section 154(3) of the Cr.PC. In my view, on this count also, the order cannot be sustained. It is further seen that learned Special Judge has not addressed this issue. Learned Special Judge was required to deal with this issue in view of the law laid down by the Hon'ble Supreme Court in the case of *Sakiri Vasu* (supra).

24] In the facts and circumstances, I am of the opinion that the impugned order suffers from manifest illegality. The order, therefore, cannot be sustained. Accordingly, the application is **allowed**.

The impugned order dated 24th January, 2014, passed by learned Special Judge, Nagpur in Miscellaneous Criminal Application No.2949 of 2014, is quashed and set aside. The application made by respondent No.3, being Miscellaneous Criminal Application No.2949 of 2014, is accordingly dismissed.

25] Rule is made absolute in the above terms.

(G. A. SANAP, J.)

Vijay