

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1219 OF 2018
WITH
CRIMINAL APPLICATION NO. 1273 of 2019

Sakharam s/o Dagduji Jadhav

Age : 80 years, Occ : Pensioner & Agriculture

R/o Plot No.9, Deogiri Housing Society,

Khokadpura, Aurangabad.

..Petitioner

VERSUS

1. State of Maharashtra
Through AGP (Hon'ble High Court of judicature of
Bombay Bench at Aurangabad), Aurangabad.
2. Rameshkumar S/o Jitmal Bagdiya,
Age: 60 yrs, Occu: Busniess,
R/o: Plot No. 5, Gururamdasnagar, Maheshnagar,
Baijipura Road, Aurangabad.
3. Ashwin S/o Rameshkumar Bagdiya,
Age: 28 yrs, Occu: Busniess,
R/o: Plot No. 5, Gururamdasnagar, Maheshnagar,
Baijipura Road, Aurangabad.
4. Sambhaji S/o Daulat Shinde,
Age: 55 yrs, Occu: Business,
R/o: Peer Bazar, Patil Niwas, Osmanpura,
Aurangabad.
5. Sanjay @ Raju Katariya,
Age: 45 yrs, Occu: Service,
R/o: Plot No. 5, Gururamdasnagar, Maheshnag
Baijipura Road, Aurangabad.
6. Sandip S/o Kisan Rathod,
Age: 30 yrs, Occu: Business,
R/o: Galli No. 4, Hanuman Nagar, Near Sudhakar
Naik School, Pundliknagar Road, Near Water Tank,
Garkheda Parisar, Aurangabad.
7. Happy Seth Sardarji,
Age: 55 yrs, Occu: Business,

R/o: Osmanpura, Near Gurudwara, Aurangabad.

Mob No. 9850140061.

..Respondents

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Advocate for the Petitioner : Mr. Joshi Rahul G.

APP for Respondent/State : Mr. S.B. Narwade

Advocate for Respondent No.2, 3 & 5 : Mr. S.P. Shah

Advocate for Respondent No.4 : Mr. V.S. Sakhare h/f Mr. S.A. Ambad

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CORAM : S.G. MEHARE, J.

DATED : AUGUST 05, 2024

ORDER :-

1. Heard the learned counsel for the petitioner and learned counsel for the respondents.
2. The petitioner has impugned the order of the learned Judicial Magistrate First Class, Aurangabad, dated 01.10.2016, passed in Criminal M.A. No.1341 of 2016 on the application/complaint under Section 156(3) and 200 of the Criminal Procedure Code.
3. The Trial Court recorded the finding that there was no material to believe that the offence under Section 307 of the Indian Penal Code is made out. The Revisional Court also dismissed the revision by the order dated 04.07.2018 in Criminal Revision No.222 of 2016.
4. The learned counsel for the petitioner would submit that the prayers were twofold. Firstly, the prayer was for directing the police to register the crime under Section 156(3), and in alternative, the application be treated complaint. If the Court was of the opinion that the petitioner has no case to direct the police under Section

156(3), the Trial Court should have passed the order under Section 202 of the Criminal Procedure Code. None of the Courts below granted him an opportunity to prove the allegations. The matter was serious. The JCB was taken into the field forcefully. The plants were uprooted. The Tahsildar had drawn the panchnama of the removal/cutting of the plants and trees. The tone of his argument was that once the complaint is filed, the Court shall pass an order under Section 156(3) or 202 of the Criminal Procedure Code. To bolster his argument, he relied on the case of Pranati Das Vs. State of West Bengal, 2020 SCC Online Cal 132. In that case, the complaint was rejected on the report submitted by the officer in charge of the police station. It has been further observed that our Apex Court has also observed in the decision cited by Learned Magistrate (Priyanka Shrivastava Vs. State of U.P) that in an appropriate case, the Magistrate would be well advised to verify the truth and also verify the veracity of the allegations contained in the petition of complaint. This judgment is self-speaking. The Magistrate must apply the mind based upon the veracity of the allegation. In other words, it may be stated that barely lodging the complaint is not sufficient. The allegations should inspire confidence that the cognizable offence has happened.

5. As against this, counsel for the contesting respondent submits that the issuance of the order under Section 156(3) and 202

of the Criminal Procedure Code is not a mechanical process. There should be sufficient material to form an opinion that it is a matter in which action is required to be taken to make justice with the person knocking on the doors of the Court of law. The complaint is silent. The complainant suppressed the fact from the Court in the pleading that some of the portions of the same land were purchased by the respondents from the complainant and after litigation, he handed over its possession. The portion which was sold to the respondents was not demarcated by boundaries. Since the petitioner was disinterested in handing over the possession after receiving the consideration, he was searching for a cause to lodge the complaint, and he automatically got the right and tried to encash it.

6. Section 200 speaks of the examination of the complainant, and Section 202 speaks of the postponement of issue of process. The law is crystal clear. Hence, no discussion that the complainant or any witnesses present should be examined under Section 200 the Magistrate is bound to examine the complainant and witnesses and it should be recorded whether other witnesses are present in the Court or not. Thereafter, the question of issuance of summons would come up. Then, the Magistrate may issue summons to the accused to order an inquiry under Section 202 or dismiss the complaint under section 203. After considering the statement of the complainant on oath or witness, the Magistrate is satisfied that there

are no sufficient grounds for proceeding, then he shall dismiss the complaint. For taking the cognizance there must be sufficient ground to proceed with the matter. Issuing of summons is not a matter of course. There should be sufficient grounds to initiate the action against the opponent.

7. Section 156(3) Cr.P.C. provides for the powers of the Magistrate to order such an investigation as provided under sub-section (1) and (2) of the said section. Under this section, the investigation order may be directed before examining the complainant and taking cognizance.

8. The Hon'ble Supreme Court in Dilawar Singh Vs. State of Delhi, AIR 2007 SC 3234 observed that Section 156 falling within Chapter XII, deals with powers of police officers to investigate cognizable offences. Investigation envisaged in Section 202 contained in Chapter XV is different from the investigation contemplated under Section 156 of the Cr.P.C. Chapter XII of the Cr.P.C. contains provisions relating to "information to the police and their powers to investigate". Whereas Chapter XV, which contains Section 202, deals with provisions relating to the steps which a Magistrate has to adopt while and after taking cognizance of any offence on a complaint. Provisions of the above two chapters deal with two different facets altogether, though there could be a common factor i.e. complaint filed by a person. Section 156, falling within Chapter XII deals with powers

of the police officers to investigate cognizable offences. True, Section 202, which falls under Chapter XV, also refers to the power of a Magistrate to "direct an investigation by a police officer". But the investigation envisaged in Section 202 is different from the investigation contemplated in Section 156 of the Cr.P.C. The various steps to be adopted for investigation under Section 156 of the Cr.P.C. have been elaborated in Chapter XII of the Cr.P.C. Such investigation would start with making the entry in a book to be kept by the officer in charge of a police station, of the substance of the information relating to the commission of a cognizable offence. The investigation started thereafter can end up only with the report filed by the police as indicated in Section 173 of the Cr.P.C. The investigation contemplated in that chapter can be commenced by the police even without the order of a Magistrate. But that does not mean that when a Magistrate orders an investigation under Section 156(3) it would be a different kind of investigation. Such investigation must also end up only with the report contemplated in Section 173 of the Cr.P.C. But the significant point to be notice is, when a Magistrate orders investigation under Chapter XII he does so before he takes cognizance of the offence. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of Cr.P.C. If he does so, he is not to examine the complainant on oath because he was not taking

cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all, registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of Cr.P.C. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Cr.P.C. that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Cr.P.C. only thereafter.

9. In case of Suresh Chand Jain Vs. State of Madhya Pradesh and another, AIR 2001 SC 571, it has been observed that any judicial Magistrate, before taking cognizance of the offence, can order investigation under S. 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the

cognizable offence in a book kept by the officer-in-charge of the police station as indicated in S. 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under S. 156(3) of the Code that an FIR should be registered, it is the duty of the officer-in-charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.

10. The Hon'ble Supreme Court in Mohd. Yousuf Vs. Smt. Afaq Jahan and Anr, AIR 2006 SC 705 observed that Section 156 falling within Chap. XII, deals with powers of Police Officers to investigate cognizable offences. Investigation envisaged in s. 202 contained in Chap. XV is different from the investigation contemplated under S. 156. The investigation contemplated in Chap. XII can be commenced by the police even without the order of a Magistrate. But that does not mean that when a Magistrate orders an investigation under S. 156(3) it would be a different kind of investigation. Such investigation must also end up only with the report contemplated in S. 173. But the significant point to be noticed is, when a Magistrate orders investigation under Chap. XII he does so before he takes cognizance of the offence. But a Magistrate need not order any such Investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the

procedure envisaged in Chap. XV of the Code. A reading of S. 202(1) of the Code makes the position clear that the investigation referred to therein is of a limited nature. Such investigation is only for helping the Magistrate to decide whether or no there is sufficient ground for him to proceed further.

11. Perused the complaint. There is no pleading that some portion of the land arising out of the same field survey number has been sold to the respondents and handed over to them. The learned Counsel for the petitioner was unable to satisfy the Court that there were pleadings as such in the complaint. In these circumstances, there is a great possibility of claiming the portion of the land which the respondent had purchased. The pleadings were not specific. There was no material before the Court. Hence, the Court has correctly considered that neither it was a case falling under Section 156(3) nor a complaint under Section 200.

12. This Court has also gone through the papers as referred to by the learned counsel for the petitioner and satisfied that the material before the Court was not sufficient to believe that the allegations were sufficient to proceed with the matter. It seems to be just assumptions and presumptions of the petitioner that he was tried to be killed, and the non-applicants tried to encroach upon the portion of his land. Issuing the process against anybody is not a mechanical process. There should be sufficient material to believe that

a cognizable offence is made out, or at least there should be some material to proceed to take criminal law in motion. Nothing is on record that may inspire the confidence to exercise the powers under Section 156(3) or 200 of the Criminal Procedure Code. The complaint was devoid of merit and rightly rejected by both Courts. The writ petition is devoid of merit. Hence, it stands dismissed. No order as to costs.

13. Criminal Application No.1273 of 2019 stands disposed of.

(S.G. MEHARE, J.)