

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

WRIT PETITION NO.2307 OF 2011

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|---|----------------|
| <p>1. Vijaykumar R. Prabhu
residing at Flat No.202, A Wing,
Second Floor, Om Madhusudan CHS Ltd.
Chitrakar Ketkar Marg, Vile Parle (E)
Mumbai – 400 057</p> | .. |
| <p>2. Pramod Chandrakant Chaubal
residing at Flat No.202, A Wing,
Second Floor, Om Madhusudan CHS Ltd.
Chitrakar Ketkar Marg, Vile Parle (E)
Mumbai – 400 057</p> | .. |
| <p>3. Anand H. Maheshwari
residing at Flat No.G1, B Wing,
Ground Floor, Om Madhusudan CHS Ltd.
Chitrakar Ketkar Marg, Vile Parle (E)
Mumbai – 400 057</p> | .. |
| <p>4. Bipin Parmananda Doshi
residing at Flat No.102, B Wing,
First Floor, Om Madhusudan CHS Ltd.
Chitrakar Ketkar Marg, Vile Parle (E)
Mumbai – 400 057</p> | .. |
| <p>5. Ramchandra C. Rao
residing at Flat No.101, B Wing,
First Floor, Om Madhusudan CHS Ltd.
Chitrakar Ketkar Marg, Vile Parle (E)
Mumbai – 400 057</p> | .. Petitioners |
| vs. | |
| <p>1. The State of Maharashtra</p> | .. |
| <p>2. Alka Chandewar
residing at Flat No.701, Sarla Sadan
Behind Sanjar Furniture World,
Near N. L. High School,</p> | |

S.V. Road, Malad (W)
Mumbai – 400 064

..Respondents

Mr. Girish Kulkarni, Senior Advocate for the Petitioners.
Mr. J. P. Yagnik A.P.P. for the Respondent No.1-State.
Mr. Shailesh Kantharia for the Respondent No.2.

**CORAM: A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 22nd MARCH 2024
PRONOUNCED ON : 16th APRIL 2024**

JUDGMENT: [PER- SHYAM C. CHANDAK, J.]

1) Present Petition filed under Article 226 of the Constitution of India, seeks quashing of an Order passed under Section 156 (3) of the Code of Criminal Procedure (for short 'Cr.P.C.) by the learned Metropolitan Magistrate, 10th Court, Andheri, Mumbai in Complaint No.185/SW/2011 and quashing of the consequent F.I.R. No.MECR 10 of 2011 registered with Vile Parle Police Station, Mumbai.

2) Heard Mr.Kulkarni, Senior Advocate for the Petitioner, Mr.Yagnik, learned A.P.P. for the Respondent No.1-State and Mr. Kantharia, learned Advocate for the Respondent No.2.

3) The Complaint No.185/SW/2011 was filed by Respondent No.2 wherein she alleged that, her parents had purchased a Flat bearing No.A-201 in the building known as 'Om Madhusudan Co-operative Housing Society', by an agreement dated 15th November 1986. Her father was a

member of said Society. Petitioners were office bearers of the committee of the Society. It is alleged that, a registration was granted to the Society by an Order dated 3rd October 1991, passed by the Deputy Registrar, Cooperative Societies, K-E Ward, Mumbai. However, by an Order dated 9th October 1992, the Divisional Joint Registrar de-registered the Society on the ground that, the Society was registered by making misrepresentation as to the membership and there were only 8 promoter members. The Petitioners challenged the Order of de-registration by filing an Appeal under Section 152 of the Maharashtra Co-operative Societies Act, 1960 (for short 'the Act') before the Minister (Co-operation) Government of Maharashtra being Appeal No.2798/CR/206/15-C. The said Appeal was allowed by an Order dated 30th November 1998 and a direction was given for registration of the Society. It is alleged that, in spite of the Respondent No.2's father expired on 2nd September 1997, the Petitioners showed her father as Appellant No.3 in the said Appeal, with *malafide* intention.

3.1) It is alleged that by an agreement dated 14th March 2007, Mr.Shantilal Thakkar had sold the Flat No.2/B in the Society to Petitioner No.3-Anand Maheshwari. Accordingly, the Share Certificate was transferred in the name of Petitioner No.3. However, at that time there were only 7 members in the society. Thus, the Petitioners have violated the said Order dated 30th November 1998.

3.2) In view of an Application under Section 101 of the Act filed by the Society on 7th September 2001, the Assistant Registrar had granted a Recovery Certificate in favour of the Society for an aggregate amount of Rs.3,85,000/- against certain defaulting members. Said members refused to pay the said amount. However, the Petitioner No.1 dishonestly induced the Respondent No.2's mother to deposited with him Rs.60,000-to-65,000/- as her contribution for paying the outgoings charges of the Society, with an assurance that, if the defaulter member pays their outstanding, said amount will be returned or adjusted. However, the Petitioners misappropriated that amount. Thus, all the Petitioners have committed an offence punishable under Sections 420, 465, 467, 468, 471 read with 34 and 114 of I.P.C.

4) In view of the complaint and the documents enclosed therewith the learned Metropolitan Magistrate observed that, the complaint and the documents disclose the cognizable offence. Even though the Respondent No.2 has made a written complaint of the offence, the concerned Police Station failed to take a cognizance thereof. As held in the case of *Ramesh Kumari V/s. State (NCT of Delhi) and others., (2006) 1 SCC (Cri.) 678*, provisions of Section 154 of Cr.P.C. are mandatory. The police officer concerned is duty bound to register the case on receiving an information disclosing cognizable offence. In view of the judgment of the Hon'ble Supreme Court in case of *Srinivas Gundluri and Ors. v/s. M/s.*

SEPCO Electric Power Construction and Anr., in Criminal Appeal No.1377/2010 and 1378/2010, decided on 30.07.2010, when the complaint discloses a cognizable offence, then the Magistrate instead of applying his mind to the complaint for deciding whether or not there is sufficient ground for proceedings, may direct the police for investigation. For these reasons, the learned Magistrate passed the impugned Order dated 10th June 2011 and sent the said complaint to Vile Parle Police Station for investigation under Section 156(3) of Cr.P.C. with directions to register an F.I.R., inquire and investigate into the matter and submit report under Section 156 (3) of Cr.P.C. As a result, the police registered the impugned F.I.R. No.MECR 10 of 2011 against the Petitioners.

5) Mr. Kulkarni, learned Senior Advocate for the Petitioners submitted that, the complaint does not constitute the alleged offence. The Respondent No.2 has not availed the provisions of Section 154 (1) and (3) of Cr.P.C. before filing said complaint. For these defects, according to the learned Senior Advocate, the impugned Order and said F.I.R cannot be held as legal, hence, the same may be quashed.

6) Mr.Yagnik, learned A.P.P. has resisted the Petition.

7) Mr.Kantharia, learned Advocate for the Respondent No.2 submitted that there is compliance with Section 154 (1) of Cr.P.C., however, he conceded that there is no compliance with Section 154 (3) of Cr.P.C.

8) Considering the rival submissions, reference to following decisions is essential here.

(i) Priyanka Srivastava and Anr. Vs. State of Uttar Pradesh and Ors.¹

(ii) Smt. Saritha Sekhar and Ors. Vs. State of Karnataka and Ors.²

(iii) Shilpa Kishore Vs. the State of Karnataka and Ors.³

(iv) Babu Venkatesh and Ors. Vs. State of Karnataka and Anr.⁴

(v) Sayed Anwar Ahmed & Anr. vs. The State of Maharashtra & Anr.⁵

9) In the case of Priyanka Srivastava (Supra) it is held that, there has to be prior application under Section 154 (1) and 154 (3) of Cr.P.C. while filing a petition under Section 156 (3) of Cr.P.C. Both the aspects should be clearly spell out in the application and necessary documents to that effect should be filed.

10) In the instant case, the documents enclosed with the complaint include a written complaint dated 23rd August, 2010, addressed to Vile Parle Police Station. This is, no doubt, a compliance with Section 154 (1) of Cr.P.C. However, Section 154 (3) of Cr.P.C. requires that, any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in Sub-Section (1) may send the

1 (2015)6 SCC 287.

2 Criminal Petition No.7866/2022 a/w. Criminal Petition No.833/2023 (Karnataka High Court).

3 Special Leave Petition (Crl.) No.8931-8932/2023 arising out of Criminal Petition. No.7866/2022 a/w. Criminal Petition No. 833 of 2023.

4 Criminal Appeal No.252 of 2022 (Supreme Court for quashing).

5 2017 SCC OnLine 3972

substance of such information in writing and by post, to the Superintendent Police concerned for the needful. In the case in hand, as fairly conceded, there was no compliance by Respondent No.2 to avail the redress provided under Section 154 (3) of Cr.P.C. when the police did not take cognizance of her written complaint. However, the learned Magistrate overlooked the aforesaid non- compliance with Section 154 (3) of Cr.P.C. before passing the impugned Order.

11) Bare look at the impugned Order shows that, said Order has been passed by the learned Magistrate only for the reason that the complaint *prima facie* disclosed the commission of a cognizable offence punishable under certain Sections of the I.P.C. However, not a single reason is recorded by the learned Magistrate as to why he is satisfied that there is *prima facie* case of a cognizable offence of the forgery, cheating committed against the Respondent No.2. Similarly, from the impugned Order it is not intelligible as to how the learned Magistrate verified the truth of the complaint and veracity of the allegations therein. According to us, considering the narration and allegations in the complaint, the learned Magistrate was expected to record some reasons as regards the *prima facie* case of the cognizable offence and veracity of the complaint.

12) Perusal of complaint reveals that, it is not explained as to how the Respondent No.2 is directly victim of the offence of forgery and

cheating. As regards the payment of Rs.60,000-to-65,000/- in the year 2001, the complaint is silent as to exactly when said amount was paid to the Petitioner No.1, as alleged. There is no supporting document. Moreover, the Respondent No.2 herself has stated that, it was her mother's contribution for paying the outgoing charges of the Society. The alleged dishonest inducement in this regard was restricted to Petitioner No.1, yet, without giving details, all the Petitioners have been blamed for misappropriation of the said amount. The offence of showing the Respondent No.2's deceased father as Appellant No.3 with *malafide* intention, transfer of the Share Certificate and misappropriation of the money of Respondent No.2's mother were occurred at different times. However, no prompt complaint thereof was lodged. On the contrary, all the offences clubbed together for the sake of said complaint.

13) In the backdrop, in our opinion, before passing the impugned Order the learned Magistrate failed to properly consider the complaint and the documents enclosed therewith and that, there is non compliance with Section 154 (3) of Cr.P.C. by the Respondent No.2. Thus, the learned Magistrate acted mechanically and passed the impugned Order. In the backdrop, the impugned Order is not sustainable in law.

14) Our conclusion above is well supported by the settled position of law and as has been enunciated by this Court in the case of *Sayed Anwar*

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that, “While dealing with a complaint seeking an action under Sub-Section (3) of Section 156 of Cr.P.C, the learned Magistrate cannot act mechanically. He is required to apply his mind to the contents of the Complaint and the documents produced along with the Complaint. An Order passed on the said complaint must record reasons in brief which should indicate application of mind by the Magistrate. However, it is not necessary to record detailed reasons. The power under Sub-Section (3) of Section 156 is discretionary. Only because on plain reading of the complaint, a case of commission of cognizable offence is made out, an Order of investigation should not be mechanically passed. In a given case, the learned Magistrate can go in to the issue of the veracity of the allegations made in the complaint. The learned Magistrate must also consider the other relevant aspects such as the inordinate delay on the part of the Complainant. The nature of the transaction and pendency of civil proceedings on the subject are also relevant considerations. Necessary averments regarding compliance with Sub-Sections (1) and (3) of Section 154 of the Cr.P.C. should be incorporated with material particulars. Moreover, the documents in support of the said averments must be filed on record”.

15) Conspectus of the above discussion is that, the impugned Order dated 10th June 2011, passed in C.C.No.185/SW/2011 by learned

Metropolitan Magistrate, 10th Court, Andheri, Mumbai and consequent F.I.R. No.MECR No.10 of 2011 registered with Vile Parle Police Station, Mumbai, both are not sustainable in law. As a result, the impugned Order and said F.I.R. are liable to be quashed and accordingly, are quashed and set aside.

16) Writ Petition is allowed in terms of prayer clause (b).

16.1) Rule is made absolute.

(SHYAM C. CHANDAK,J.)

(A. S. GADKARI, J.)