

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****WRIT PETITION NO.4549 OF 2017**

Kantilal Manilal Bauva
Residing at 502, B Wing,
Sutravihar CHS, M. K. Road,
Naupada, Thane (W) 400 602

.. Petitioner

vs.

1) State of Maharashtra

..

2) Ramdas Kisan Waghchaure
Bhima Devde Chawl,
CTS No.91/4, Near Thane
Railway Station, Naupada,
Thane (W)

.. Respondents

Mr.Sanjeev Kadam with Aditi Rajput, Prashant Raut and Pratik Deshmukh
for the Petitioner.

Mrs. A. A. Takalkar, A.P.P for the Respondent No.1-State.

Mr. Swapnil V. Walve for the Respondent No.2.

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

RESERVED ON : 16th JANUARY, 2024

PRONOUNCED ON : 22nd FEBRUARY 2024

JUDGMENT: (PER SHYAM C. CHANDAK, J.)

1) Present Petition filed under Articles 226 and 227 of the
Constitution of India read with Section 482 of the Code of Criminal
Procedure, challenges the F.I.R. bearing No.I-305 of 2017, registered with

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Naupada Police Station, District Thane, for the offences punishable under Sections 465, 466, 467, 471, 504 and 120B read with section 34 of Indian Penal Code.

2) Heard Mr.Sanjeev Kadam, learned counsel for Petitioner, Mrs.A. A. Takalkar, learned A.P.P for the Respondent No.1-State and Mr.Swapnil V. Walve, learned Advocate for the Respondent No.2. Perused the record.

3) Record reveals that, by an Order dated 23rd July 2018, this Court noted that, since the Respondent No.2 has already appeared before this Court, the need to issue further notice is obviated. Further, it was made clear that, if the Respondent No.2 does not appear on the next date or is not represented, the matter would proceed with, in his absence and until the next date, charge-sheet not to be filed. Rule was granted *vide* Order dated 27th February 2019 and ad-interim Order was continued, when Mr. Shinde, learned A.P.P for the Respondent No.1-State and Mr.S. V. Walve, learned Advocate for the Respondent No.2 waived service of notice.

4) Facts giving rise to this Petition are as under :

4.1) The Respondent No.2 filed the said Misc. Application No.408 of 2017 before the Judicial Magistrate First Class, at Thane, District Thane, wherein it is stated that Bhima Bhagoji Devde was maternal grand father of the Respondent No.2 (for short "Bhima"). Bhima had taken 787 *sq. var* land

on lease in Survey No.95, Hissa No.1 plus 4A, under registered deed No.246/1951 (*'Property No.1', for short*) from the said land owner Mr. Laxman Balkrishna Patil. Bhima had also obtained 552.5 sq. mtrs. land (1105 *sq. var*) on lease in Survey No.95, Hissa No./Plot No.8, Tikka No.23, CTS No.91, Hissa No.4, Plot No.7 from its owner Mr. Malhar Balkrishna Patil under registered deed No.58/1951 (*Property No.2', for short*). Thereafter, Bhima constructed 13 rooms on Property No.1 and 16 rooms on Property No.2 and gave it on rent to different tenants. Bhima expired on 8th May 1983. Pursuant to the 'Will' of Bhima, the Respondent No.2 and his brother became owner of said 'Devde Chawl'.

4.2) It is stated that, in the year 1990, the Petitioner dishonestly deceived the Respondent No.2 and induced him to enter into a Development Agreement and give a Power of Attorney in respect of Property Nos.1 and 2 in favour of the Petitioner. At that time, paragraph Nos.1, 2, 4, 8 and 12 in the Development Agreement were left blank and the Petitioner falsely stated that after the tenants vacated the rooms, the said blank paragraphs will be filled in and the documents will be registered. However, the Petitioner avoided the same on one or other pretext. Thereafter, the Petitioner falsely shown himself as owner of the properties and obtained illegal possession of certain two rooms. Thereafter, the Petitioner made an unwanted demand.

Therefore, the Respondent No.2 issued a legal notice and informed the Petitioner that if the development work is not started as per the Development Agreement within one month, the Development Agreement and the Power of Attorney shall stand canceled, however, in vain. Thereafter, the Petitioner filed an Application with the Assistant Commissioner, Navpada Prabhat Samiti, Thane to transfer Devde Chawl in his name. The Respondent No.2 objected the said Application by his reply. On 6th February 2014, the Respondent No.2 received a notice from Thane Municipal Corporation to attend for hearing on 12th February, 2014. Meanwhile the respondent No.2 learnt that, the Petitioner got the Development Agreement registered with the help of a false declaration and Power of Attorney. Then, the Petitioner submitted those papers to the Government Office got the Property No.1 transferred in his name and thus, became its owner. It is alleged that, in all these illegal acts, accused No.2 helped the Petitioner.

4.3) In view of said narration, the learned Judicial Magistrate, First Class, Thane passed the following Order on 12th August, 2017 :

“Perused. Heard. Police are directed to make investigation under Section 156 (3) of Cr.PC.”

4.4) Hence, police registered the impugned F.I.R.

5) Mr.Kadam, learned Counsel for the Petitioner submitted that, even though the subject F.I.R. has been challenged on various grounds, the

main ground is non-compliance with the provisions of Section 154 (1) and (3) of the Cr.P.C. Learned counsel submitted that, the learned Magistrate has failed to consider that, prior to filing of the said Misc. Application, the Respondent No.2 has not filed a proper F.I.R. under Section 154 (1) of Cr.P.C. and nor took any effort to avail the remedy provided in Section 154 (3) of the Cr.P.C. for non-registration of his F.I.R. by the concerned police station. Thus, there was no proper consideration of the Misc. Application before passing the impugned Order under Section 156 (3) of the Cr.P.C. for directing the investigation. Hence, on this count alone the impugned F.I.R. is liable to be quashed.

6) Learned A.P.P. submitted that considering the record appropriate orders may be passed.

6.1) Mr. Swapnil V. Walve for the Respondent No.2 has submitted that, the narration in the Misc. Application has clearly made out a case of serious offence. There was sufficient compliance with the provisions of Section 154 of the Cr.P.C. before filing of the Misc. Application. As such no fault can be found with the impugned F.I.R. Hence, Petition be dismissed.

7) As observed in the case of *Panchabhai Popatbhai Bhutani & Ors. vs. State of Maharashtra*¹, it is difficult to hold that, even without approaching the Police Officer-in-charge of a Police Station, a complaint can

¹ 2010 All MR (Cri) 244

be made to the Court in terms of Section 156 (3) of the Cr.P.C. Therefore, it is held that, “*Normally a person should invoke the provisions of Section 154 of the Code before he can take recourse to the powers of the Magistrate competent to take cognizance under Section 190 of the Code, under Section 156 (3). Atleast an intimation to the police of commission of a cognizable offence under Section 154 (1) would be a condition precedent for invocation of powers of the Magistrate under Section 156 (3) of the Code. We would hasten to add here that this dictum of law is not free from exception*”. Similarly, in *Priyanka Srivastava and Another vs. State of Uttar Pradesh and Ors*², 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 shall be filed. Therefore, in the case in hand, before filing the complaint, the Complainant should have complied with the provisions of Section 154 (1) and 154 (3) of Cr.P.C.

8) As held in the case of *Sayed Anwar Ahmed & Anr. vs. The State of Maharashtra & Anr.*,³ “*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*

² (2015) 6 SCC 287

³ 2017 SCC OnLine Bom 3972

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 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 recording 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.

9) In the case in hand, even though in the Misc. Application No.408 of 2017 it is stated the Respondent No.2 had filed the complaint with the concerned police station but the police did not take cognizance of this offence, copy of the said complaint is not annexed with the Misc.

Application. Similarly, there is no averment in the in the Misc. Application that as the police did not take cognizance of the complaint, the Respondent send the substance of the information (complaint), in writing and by post, to the higher police authority in compliance with Section 154 (3) of the Cr.P.C. There were no circumstances indicating that there was possibility of causing disappearance of evidence of the crime so as to excuse the compliance of Section 154 (1) & (3) of Cr.p.C. In this background, the learned Magistrate ought not to have entertained the said Application and acceded to the request of the Respondent No.2 to direct the investigation under section 156 (3) of Cr.P.C. That apart, the impugned Order does not show a single reason which prompted the learned magistrate to pass the impugned Order. In fact, the impugned Order is too cryptic to accept it as a result of an application of mind. In the backdrop, the impugned F.I.R. is liable to be quashed. Hence, following Order.

10.1) The F.I.R. bearing C.R. No.I-305 of 2017 registered with Naupada Police Station, Thane is hereby quashed and set aside.

10.2) Writ Petition is allowed in terms of prayer clause (a).

10.3) Rule is made absolute.

(SHYAM C. CHANDAK,J.)

(A. S. GADKARI, J.)