

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.493 OF 2024

Reliable Solutions & Ors.] .. Appellants
vs.
State of Maharashtra & Anr.] .. Respondents

Mr.Satyavrat Joshi a/w Reena Prajapati i/b Samay Pawar for the Appellants.

Mr.D.J. Haldankar, APP for the State.

Mr.Rajesh Khobragade, for Respondent No.2.

PSI N.D.Borade, Naupada Police Station, Thane City, present.

**CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ**

DATE : 18th JULY, 2024.

P.C.

1] The designated Court (under MPID Act), Thane and Additional Sessions Judge, Thane, while pronouncing upon the Criminal Miscellaneous Application No.365/2023 filed by one Jayendra Ravindra Tarke against Reliable Solutions through its proprietor Abhijit Sanjay and other accused persons, seeking a direction to Naupada Police Station, Thane, to register FIR and investigate the same as per Section 156(3) of the Code of Criminal Procedure, for commission of the offence punishable under Section 120-B, 405, 406, 415, 420, 503 and 504 read with 34 of the Indian Penal Code , as well as under Section 3 and 4 of the Maharashtra Protection of Interest of Depositors (In

RAJSHREE
KISHOR
MORE

Digitally signed
by RAJSHREE
KISHOR MORE
Date:
2024.07.22
14:56:41
+0530

Financial Establishments) Act, 1999, on 12.10.2023, passed the following order :-

- "1] Prayer of the applicant/complainant for directing investigation by police of Naupada police station as per Section 156(3) of Cr.P.C. is rejected.
- 2] The complaint be kept for recording verification statement of the complainant on next date i.e. 26.10.2023.
- 3] Applicant/complainant to note."

2] In arriving at the said conclusion, the order make reference to the decision of the Apex Court in case of **Priyanka Srivastava and Others vs. State of U.P. and Others, (2015) 6 SCC 287**, which contemplate compliance to be ensured under Section 154(1) and 154(3) of the Criminal Procedure Code before filing of Application under Section 156(3) of the Code.

Noting that there is no requisite compliance, as no acknowledgment of Office of Commissioner of Police, Thane is placed on record and since this was specifically conceded to in Para 8 of the order, assuming that there is compliance of Section 154(3), the order specifically records as under :-

"8] Assuming arguendo that there is due compliance of Section 154(3) of Cr.P.C., then also looking to the fact that registered Office of the accused is situated at Dhule, that accused are residents of Pune, that the complainant had met the accused at Pune and the fact that according to the complainant himself, various FIRS are registered at Pune, to my mind, it would not be proper to directly give direction to police to register FIR. If the alleged investment of complainant and others is by way of the same transaction for which FIRs are already registered at Pune, then at the most complainant and other investors would be witnesses in those FIRs registered at Pune. To my mind, instead of directing investigation under Section 156(3) of Cr.P.C., it would be proper for the Court to take cognizance and after recording verification of statement of the complainant under Section 200 of Cr.P.C., further course of action is decided."

3] Thus, considering the fact that the registered office of the Respondent No.1 was at Dhule and they are residents of Pune and the complainant had met the accused at Pune and various FIRs are registered at Pune, the Special Judge, recorded that it would not be appropriate to directly give directions to police to register FIR and instead before taking cognizance, he deemed it appropriate to have the verification statement of

the complainant recorded under Section 200 of the Code before the future course of action is decided.

With the aforesaid directions, the prayer of the complainant to permit investigation by police under Section 156(3) of the Code was specifically rejected.

4] The complainant, thereafter, moved the Application at Exhibit 6, seeking withdrawal of the complaint, with liberty to file Application, whenever an occasion arises. The complaint against the Appellant was disposed off as withdrawn on 02.12.2023.

Upon the order being passed on 16.01.2024, Criminal Miscellaneous Application No.24/2024 was filed by the same complainant Jayendra Tarke against the Proprietor of Reliable Solutions and others, with reference to the earlier complaint that was lodged but was withdrawn, seeking the very same relief i.e. issuance of order under Section 156(3) of the Cr.P.C. and directing Naupada Police Station to register the FIR under the provisions of IPC as well as Section 3 and 4 of the MPID Act. This Application was verified by Jayendra Tarke on 16.01.2024.

It is this Application, which is allowed by the very same Judge, directing Naupada Police Station to register the FIR and investigate into it.

It is this order, which is assailed before us in the present Appeal by the Respondents i.e. Reliable Solutions and its Proprietor and the persons connected therewith.

5] We have heard the learned counsel Mr.Satyavrat Joshi for the Appellant, Mr.Rajesh Khobragade for the complainant and the learned APP Mr.D.J. Haldankar for the State.

Mr. Joshi is perfectly justified in submitting that the course of action adopted by the Special Judge is completely incorrect as on the earlier occasion in the backdrop of the same allegations, when the relief to direct investigation under Section 156(3) of the Code through Naupada Police

Station was rejected and this rejection was not only on the ground of non compliance of Section 154(3) of the Code but also in the wake of specific observation in Para 8, and hence according to him, the conclusion derived by the learned Judge is completely erroneous.

6] The learned counsel for the Complainant, do not dispute that the second complaint is in fact replica of the first one, but he would make a feeble attempt to justify the same by submitting that, on the second occasion there was compliance of Section 154(3) of the Code, as a letter was forwarded to the Commissioner of Police, Thane, on 01.01.2024 and therefore the objection pointed out in the first order no longer subsist. However, neither the learned counsel for the complainant nor the the learned APP is in fact able to justify the observation in Para 8 by the learned Judge and as to what justified circumvention of this procedure, resulting into a direction to register the FIR and investigation to be conducted by Naupada Police Station on it being registered under Section 156(3) of the Code.

When we perused the impugned order, in Para 8 the learned Judge has merely recorded that prima facie offences under Indian Penal Code and Maharashtra Protection Of Interest of Depositors Act, as alleged in the complaint are made out against the accused persons and they require deep probe by the police, unmindful of the fact that as regards the very same complaint, he had opined that considering that the accused persons are outside his jurisdiction, he would like to have a verification statement of the complainant recorded under Section 200 of the Code, before he take cognizance of the complaint.

While dealing with the identical accusation for the second time, he, however, adopted a different view without offering any justification in adopting the said course of action.

7] For the aforesaid reasons, we are unable to find any justification in the impugned order directing investigation to be conducted under Section

156(3) of the Code, through Naupada Police Station, as prayed in the complaint.

Since we find the action under Section 156(3) of the Code completely unjustified, it must result in quashing of the FIR, once again resorting to the procedure what he indicated in the previous order.

After quashing of the FIR and the action directed to be undertaken by the Naupada Police Station under Section 156(3) of the Cr.P.C. , it is open for the learned Judge to revert back to the proceedings, which are initiated on Miscellaneous Application No.365/2023 and proceed ahead from the stage of recording of verification statement of the complainant as directed by order dated 12.10.2023.

Since the learned counsel for the complainant submit that these are the proceedings under MPID Act, we deem it appropriate that, upon a complaint being preferred, the learned Judge shall carry out procedure under Chapter XV, as expeditiously as possible.

Appeal is allowed in the aforesaid terms.

[MANJUSHA DESHPANDE, J.]

[BHARATI DANGRE, J.]