

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

916 CRIMINAL WRIT PETITION NO. 60 OF 2025

Poonamchand Gurudayalsingh Rathod

VERSUS

Pravin Icharchand Rathod And Another

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Mr. A. S. Tilwe h/for Mr. Mr. M. R. Jadhav, Advocate for the
Petitioner

CORAM : Y. G. KHOBRADE, J.

Dated : 5th February, 2025

PER COURT :-

1. Heard Mr. Tilwe, the learned counsel appearing for the
Petitioner.
2. By the present petition, the Petitioner/complainant takes
exception to the order dated 10.10.2024, passed by the learned
Additional Sessions Judge, Aurangabad in Criminal Revision
Application No. 337 of 2023 arising out of the order 26.09.2023
passed by learned JMFC Court No.3, Kannad in Criminal M.A. No.
328 of 2023, whereby the learned JMFC refused to issue direction
under section 156(3) CrPC and proceeded for recording of
verification.
3. On perusal of the record, it appears that, after the prayer
of the petitioner/complainant for investigation under section

156(3) of the Criminal Procedure Code (for short, CrPC) rejected by the learned Judicial Magistrate, Court No.2, Kannad vide order dated 26.09.2023, verification of the complainant was recorded under section 200 Cr.P.C. and thereafter process was issued against the respondents accused for the offences punishable under section 420, 409, 468, 471 read with section 34 of the Indian Penal Code (for short IPC) on 02.11.2023.

4. The learned counsel for the Petitioner canvassed in vehemence that while passing the order under section 156(3) Cr.PC, the accused have no right to give say or provisions of section 155(3) does not mandate the learned JMFC to provide an opportunity of hearing to the proposed accused. However, the learned JMFC passed an order on 26.09.2023 and provided opportunity to the accused to produce documents, therefore, said order is illegal and bad in law.

5. No doubt the proposed accused having no right to participate in the proceedings under section 156(3) Cr.PC and the learned JMFC is not bound to hear the proposed accused. However, in case in hand, the petitioner/original complainant filed a complaint bearing Criminal MA No. 328 of 2023 alleging

that he is Treasurer of Kailaswasi Gurudayalsing Rathod Magasvargiya Shikshan Sanstha, Bramhni Garade Tq. Kannad Dist. Aurangabad and on the date of lodging of the complaint, he was Secretary of the said Education Society. As per Rule 22 of the the Society's Bye-laws, the President and the Secretary of the Society are only empowered to withdraw the amount from the Bank account of the Education Society, but respondent Nos. 1 and 2/accused persons withdrawn an amount of Rs.61,04,000/- under their signatures. Therefore, they have committed an offences punishable under section 420, 409, 468, 471 read with section 34 of IPC. The Petitioner/complainant further alleged that he had approached to Kannad City Police Station on 27.08.2023, but no action was taken against the accused. Therefore, he filed Criminal M.A. 260 of 2023 (Criminal MA No.328/2023) and prayed for enquiry under section 156(3) Cr.PC. However the accused /respondents suo moto appeared in the matter and produced document.

6. Needless to say that the order dated 26.09.2023 does not show that opportunity of hearing was given to the accused but only the documents produced by the accused persons have been scrutinized. Thereafter, the learned JMFC recorded statement of

the complainant under Section 200 Cr.PC and issued process against the accused persons on 02.11.2023 for the offences punishable under section 420, 409, 468, 471 read with section 34 of IPC.

7. Indeed, the present petitioner/complainant had filed Criminal Revision Application challenging the order dated 26.09.2023 passed by the learned JMFC in Criminal MA No. 328 of 2023, however, on 10.10.2024, the learned Additional Sessions Judge, passed the impugned order and rejected the said revision on ground that after rejecting application under section 156(3), the learned Magistrate recorded verification of the complainant under section 200 Cr.PC. and issued process against the accused persons on 02.11.2023. Therefore, I do not find that there is material irregularity and the impugned order does not suffer any perversity. Hence, the Petition is dismissed.

(Y. G. KHOBRAGADE, J.)

JPChavan