



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

910 CRIMINAL WRIT PETITION NO. 206 OF 2025

HARJIT SINGH S/O TIRATH SINGH SAWHNEY

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

....

Mr. Harjit Singh S/o Tirath Singh Sawhney, Petitioner party-in-person

Ms. Ashlesha S. Deshmukh, APP for the Respondent No.1-State

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 20.02.2025

PER COURT :-

1. The Petitioner party-in-person craves leave to correct name of Respondent No .4. Leave granted. The Petitioner to carry out amendment forthwith.
2. Heard, Petitioner party-in-person at length.
3. By the present Petition, the Petitioner takes exception to the order dated 28.08.2024 passed by the learned Additional Sessions Judge, Aurangabad in Criminal Revision Application No.48 of 2021 thereby upholding the order dated 18.02.2021 passed by the learned third Judicial Magistrate First Class, Aurangabad in Criminal Misc. Application No.2428 of 2020.

4. It is the contention of the Petitioner Complainant that, he is a joint owner of the property with his mother and sister in CTS No.17016 admeasuring about 270.4 square meters situated at Main Road Osmanpura, Aurangabad. On 09.12.1993, Ms. Gurbachan Kaur his mother died. On 04.02.2009 his father Tirath Singh died. Smt. Satwant Kaur W/o Kulwant Singh Johar died on 04.01.2011 and the father of Respondent No.2 Mr. Kulwant Singh died on 08.10.2006 leaving behind joint undivided property. However, the accused No.2 is trying to establish her legal right over joint family property CTS No.17016, on 11.03.2013 a false and bogus General Power of Attorney has been executed by one Kawaljit Kaur pretending to be the owner of CTS No.17016. The names of Kawaljit Kaur and accused No.2 are recorded in the City Survey Records without obtaining succession certificate.

5. It is further alleged that, the accused No.2 falsely showed a portion of CTS No.17016 in subdivision under the name of deceased Inder kaur W/o Harnamsingh and deceased Gurubachan Kaur. Therefore, the Applicant visited the City Police Station and lodged a complaint but no action was taken. Therefore, on 03.11.2020 he lodged a complaint with the Commissioner of Police but no action

was taken. Thereafter, the Petitioner/original complainant filed a complaint and prayed for investigation under Section 156(3) of Cr.PC.

6. Needless to say that, the learned Judicial Magistrate First Class Court No.3 Aurangabad, passed an order on 18.02.2021 and rejected said complaint because the Petitioner/ Complainant failed to comply with mandatory directions of the Hon'ble Supreme Court laid down in case of ***Priyanka Srivastava and another Vs. State of U.P. and others, Supreme Court Criminal Appeal No.781 of 2012, (2015) 6 SCC 287 : (MANU/SC/0344/2015).***

7. Being aggrieved by said order of rejection of complaint, the petitioner approached before the learned Revisional Court u/s 397 of Cr.PC. On 28.08.2024, the learned Revisional Court passed the impugned order holding that, the Petitioner Complainant has not filed an affidavit in compliance of law laid down by the Apex Court in case of ***Priyanka Srivastava*** cited (supra) and dismissed the Revision.

8. The Petitioner party-in-person canvassed that, he has filed affidavit in support of his complaint and disclosed fact of lodging of Report under Section 154(1) of Cr.PC. but no action was taken,

hence, he approached the Commissioner of Police under Section 154(3) of Cr.P.C.. Therefore, there was mandatory compliance with the order passed by the Hon'ble Supreme Court in case of *Priyanka Srivastava* cited (supra).

9. In case of *Shrideep Associates-vs-State of Maharashtra, Cri.WP Nos./5128,5129,5153/2021 heard by Justice Bharati H. Dangre*, where the Bombay High Court Held that an application u/s 156 (3) of Cr.P.C., should not be entertained without demonstrating prior compliance with the procedure outline in Sec. 154(3) of Cr.P.C.

10. I have gone through the contents of Criminal Misc. Application No.2428 of 2020 instituted by the present Petitioner. In Paragraph Nos. 1 and 2, the Petitioner has described about details of Joint property and death of co-sharers in the property, CTS No.17016 (h) No.5-1-55. In paragraph No.4, 5, 6, and 7, the Petitioner described how the property was managed and allegedly executed a relinquishment deed/General Power of Attorney. In para No.8, the Petitioner stated about filing a written complaint to the Commissioner of Police on 03.11.2020 but no action was taken.

11. Section 154(1) of Cr.P.C. provides for giving information to the Police about committing of cognizable offences. Sub-Section 3

of Section 154 provides 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 substance of such information, in writing and by post, to the Superintendent of Police.

12. In *Priyanka Srivastava and another Vs. State of U.P and others, Supreme Court Criminal Appeal No.781 of 2012, (2015) 6 SCC 287 : (MANU/SC/0344/2015)*, it is held that, if mere allegations are taken to be sufficient, there would be flood of the registration of the cases in compliance of the order passed under Section 156(3) of the Code of Criminal Procedure. The application of power under this section is to be made when circumstance really justify for it. Though the complainant has complied with the provisions of Section 154(3), the application is required to be supported by an affidavit. The Hon'ble Supreme Court in para 27, held thus:-

“In our considered opinion, a stage has come in this country where Section 156(3) of Cr.P.C. Applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case the learned Magistrate would be well advised to verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in routine manner without taking any responsibility whatsoever

only to harass certain persons...”

“The warrant for giving a direction that an the application U/s. 156(3) be supported by an affidavit so that the person making the application should be conscious and endeavour to see that, no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for the prosecution in accordance with law. This will deter him to casually invoke the authority of Magistrate Under section 156(3).”

13. Therefore, as per the law laid down by the Hon’ble Apex court in cited case Sec. 154(3) is a mandatory provision. However, in case-in-hand, the Petitioner has not made averment in complaint that he lodged a written Report to the concerned Police Station under Section 154(1) of Cr.P.C. to show that the accused had committed cognizable offences but no action was taken. The petitioner failed to file affidavit regarding the efforts made by him under Section 154(1) and 154(3) of Cr.P.C.. Further, the truthfulness of the contents of the complaint has not been described. Merely, the Petitioner stated in complaint about lodging of report with the Commissioner of Police on 03.11.2020 it does not comply with sub-Section 1 of Section 154 of Cr.P.C. Both the courts below concurrently held that, the Petitioner

Complainant has not complied with mandatory provisions of Section 154(1) and Section 154(3) of Cr.P.C. Therefore, I do not find any substantial ground to interfere with the findings, hence, the Criminal Writ Petition is dismissed at the threshold.

[Y. G. KHOBRAGADE, J.]

HRJadhav