



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1103 OF 2023

1. Shaikh Mohammad Khaled Mohd. Hanif
Age:49 years occu: Business
R/o. House No. 3-942/13,
Near Aurangpura,
Barudgarnal Aurangabad
Tq & Dist. Aurangabad
 2. Ajam Khan Ahmed Khan
Age: 40 Years Occu: Agri
R/o. At. Ganaga Jamuna Road Ajintha
Tq. Sillod Dist. Aurangabad
 3. Ishwar Ramesh Mahour
Age: 30 Years Occu: Member of Grampanchayt Ajintha
R/o. Hanuman Nagar, Ajintha
Tq. Sillod Dist. Aurangabad
 4. Saeed Malik Jamadar
Age: 50 Years Occu: Business
R/o. Ganaga Jamuna Road Ajintha
Tq. Sillod Dist. Aurangabad.
- ... APPLICANTS
- V/s.
1. Shital W/o. Yogesh Khandelwal
Age: 40 Years Occu: Agri & Househlod
R/o. Near S.B.I. Bank, Bus stand Road,
 2. The State of Maharashtra
Through It's Police Inspector,
Police Station Ajintha,
Tq. Sillod, Dist. Aurangabad.
- ...NON-APPLICANTS

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Mr. A.M. Inamdar, Advocate for the Applicants
Mr. Jain Vishwajeet Ramesh, Advocate for the Non-Applicant No. 1
Ms. Ashlesha S. Deshmukh, APP for the Non-Applicant No. 2 State

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CORAM : Y.G. KHOBRAGADE, J.

DATE : 27.02.2025

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of both sides it is heard finally.
2. By the present application under Section 482 of the Cr.P.C. the Applicants have prayed for quashing and setting aside the criminal proceeding bearing SCC No.404/2022 pending on the file of the learned JMFC, Sillod and order of issuance of process for the offences under Section 504, 506 read with Section 34 of the I.P.C., passed by the learned JMFC, Sillod, on 09.06.2022 .
3. The Respondent No.1 is the Ori.Complainant and the Applicants are Ori. Accused in criminal complaint SCC No.404/2022. For the sake of brevity, I would like to refer the parties to the present petition in their original capacity.
4. The learned counsel appearing for the Applicants/Accused canvassed that, the Non-applicant No.1/complainant filed the Criminal Complaint bearing SCC No.404/2022 and prayed for further investigation under Section 156(3) of the Cr.P.C. alleging that she and the accused own agricultural land at Mauja Ajintha Tq. Sillod. On 15.02.2022 at about 7.00 pm

when she was present in her agricultural field bearing gut no.162 at that time the accused nos.1 to 4 visited her and abused her in such filthy language that it made her feel ashamed and issued life threats, if she did not leave the field. Therefore, she visited the concerned police station and lodged a report but no action was taken by the Police. Therefore, the complainant filed a criminal complaint prayed for cognizance to be taken and an appropriate sentence to be awarded against the accused. However, the Complainant has neither produced the copy of report nor the Complainant approached the Superintendent of Police under Section 154(3) of Cr.P.C.. Therefore, in absence of mandatory compliance under Section 154(1) and 154(3) of Cr.P.C. the Magistrate is not empowered to take cognizance of the complaint, hence, it is not tenable in law, hence, prayed for quashing and setting aside the same.

5. It is further canvassed on behalf of the Applicants that, the complaint filed by the Complainant does not bear solemn affirmation or verification. The learned Judicial Magistrate has not recorded verification to testify contents of complaint under Section 202 of the Cr.P.C.. On 09.06.2022, the learned Magistrate issued the process without recording verification, and without considering the fact that, the contents of complaint are not on solemn affirmation/verification. Therefore, prayed for quashing and setting aside the complaint as well as order of issuance of process.

6. In support of these submissions the learned counsel appearing for the Petitioner/Accused placed reliance on the case of ***Priyanka Srivastava and Anr. V/s. State of Uttar Pradesh and Ors; (2015) 6 SCC 287***, wherein it is held that, for seeking a direction under Section 156(3) of Cr.P.C. for registration of FIR the said application/complaint must be supported by an affidavit, wherein it is held as under:

“A stage has come in this country where Section 156(3) 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 truth and also can 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 a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also 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 prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3).”

7. It further relied on ***Babu Venkatesh and Ors. V/s. State of Karnataka and Anr.; (2022) 5 SCC 639***, wherein the Hon’ble Supreme Court held in para nos. 24 to 26 as under:

“24. This court has clearly held that, a stage has come where applications under Section 156 (3) of Cr.P.C. are to be supported by an affidavit duly sworn by the complainant who seeks the invocation of the jurisdiction of the Magistrate.

26. This court further held that, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also verify the veracity of the allegations. The court has noted that, applications under Section 156 (3) of the Cr.P.C. are filed in a routine manner without taking any responsibility only to harass certain persons.

27. This court has further held that, prior to the filing of a petition under Section 156 (3) of the Cr.P.C., there have to be applications under Section 154 (1) and 154 (3) of the Cr.P.C. This court emphasizes the necessity to file an affidavit so that the persons making the application should be conscious and not make false affidavit. With such a requirement, the persons would be deterred from causally invoking authority of the Magistrate, under Section 156 (3) of the Cr.P.C. In as much as if the affidavit is found to be false, the person would be liable for prosecution in accordance with law.”

8. Per contra, the learned counsel appearing for the Non-Applicant No.1 canvassed that, the Complainant/Non-applicant No.1 instituted the complaint SCC No.404/2022 and specifically made averment that, on the day of incident i.e. 15.02.2022 at about 7.00 pm., she was present in her field at that time all accused visited her and abused her in such a filthy language to feel her ashamed and issued life threats, if she did not leave the field. Therefore, the accused have committed an offence punishable under Sections 504, 506 of IPC, however, both the offences are non-cognizable. Therefore, the complainant prayed for cognizance to be taken and an appropriate sentence to be awarded.

9. It is further canvassed that, at the bottom of complaint the Assistant Superintendent of the JMFC put a rubber stamp “affidavit”, therefore, the complainant has sworn the complaint and there is no defect. Thereafter, on satisfaction, the learned JMFC, Sillod passed an order on 09.06.2022 and issued process against the Applicants/accused for the offence punishable under Section 504, 506 read with Section 34 of the I.P.C., hence, prayed for dismissal of the complaint.

10. Having regard to the submissions canvassed on behalf of both the sides, I have gone through the record. It is a matter of record that, the Non-applicant No.1/complainant filed the criminal complaint SCC No.404/2022 and prayed investigation u/s 156(3) of Cri. P. C., for the offences under Section 504, 506 read with Section 34 of the I.P.C. The said complaint is supported by neither verification nor solemn affirmation by the Non-Applicant no. 1. The Complainant has not solemnly affirmed contents of complaint by verifying and by making statement on solemn affirmation that its contents are true and correct to the best of her personal knowledge. It further appears that, the learned Magistrate has not recorded verification of the complainant to testify truthfulness of contents of complaint as provided under Section 200 of Cr.P.C. and passed the impugned order of process on 09.06.2024.

11. Needless to say that, Section 154(i) of Cr.PC provides that every information relating to commission of cognizable offence is to be given to the police officer/officer in charge of a police station orally. Section 154(3) provides that, any person aggrieved by refusal on part of an officer in-charge of police station to record the information referred in sub-section (1) may send substance of such information in writing to the Superintendent of Police who shall have powers to inquire into the complaint for the cognizable offence. Section 156(3) of Cr.P.C. provides that, any Magistrate empowered under Section 190 may order such an investigation for the cognizable offences.

12. In the case of *Priyanka Srivastava and Babu Venkatesh cited (supra)*, it is held that, prior to filing of complaint under Section 156(3) of Cr.P.C. there must be compliance of Section 154(1) and 154(3) of Cr.P.C. In the case in hand, though the Complainant contended that she had visited the concerned police station and lodged a report, no action was taken by the Police. The Complainant alleged stated that the accused have committed the offence punishable under Section 504, 506 read with Section 34 of the I.P.C. which are non-cognizable offences. Therefore, the Complainant was required to file a complaint u/s 200 of Cri. P. C. as defined under Section 2 (d) of Cr.P.C. On perusal of the complaint it appears that, in para no.4 the complaint made averment about lodging of report but no date and time is described.

13. The Assistant Police Inspector attached with Ajintha police station filed an affidavit and stated that as per station diary, no complaint was found registered or inwards on 15.02.2022 and 16.02.2022. However, one complaint bearing inward no.154/2022, dated 23.02.2022, was received through the office of the Sub-Divisional Magistrate at Police Station Ajintha. Therefore, it shows that the Complainant did not approach the concerned police station under Section 154(1) of Cr.P.C. or under Section 154(3) of Cr.P.C. So also, the complaint is not verified on solemn affirmation and the learned Magistrate has not verified the complaint under Section 200 of Cr.P.C.

14. Therefore, considering the law laid down by the Hon'ble Supreme Court in *Priyanka Srivastava and Babu Venkatesh cited (supra)*, the complaint is bad for want of necessary compliances. Therefore, the continuation of proceedings would certainly amount to an abuse of the process of law, hence, it is liable to be quashed and set aside. Accordingly, I am inclined to grant the present application and proceed to pass the following order:

ORDER:

- i) Criminal Application No.1103/2023 is allowed.
- ii) The criminal proceeding bearing SCC No.404/2022 pending on the file of the learned JMFC, Sillod, is hereby quashed and set aside.

iii) Resultantly, the order dated 09.06.2022 passed by the learned JMFC, Sillod is hereby quashed and set aside.

iv) Rule is made absolute in the above terms.

[Y.G. KHOBRADE, J.]