



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 506 OF 2019

Sunil Dattatray Mali,
Age 41 years, Occu: Service
R/o Tushar Building,
Govt. Officer Colony, Flat No.501,
Near Church Gate Railway Station,
Mumbai.

... Petitioner

VERSUS

1. Dr. Manisha Lalchand Mahajan,
Age 32 years, Occu: Service as
Medical Officer, PHC,
R/o Plot No.7, Tukaram Nagar,
Near Highway No.6, Bhusawal
District Jalgaon.

2. The State of Maharashtra
Through the Secretary, Home Department
Mantralaya, Mumbai.

... Respondents

Mr. Rajendrraa Deshmukh, Senior Advocate a/w Ms. Tejshree K.Nalawade
i/by Amol Sawant, Advocate for the Petitioner,
Mr. Harshal Prakash Randhir, Advocate for Respondent No.1,
Ms. Ashlesha S. Deshmukh, APP for Respondent No.2/State

CORAM : Y. G. KHOBRADE, J.

Dated : 13th February, 2025

JUDGMENT:-

1. Rule. Rule made returnable forthwith and with the consent
of both the parties and heard them finally.

2. By the present Petition under Article 227 of the Constitution of India, the Petitioner has challenged the order dated 28.02.2018, passed by the learned Judicial Magistrate First Class, Jalgaon, in Criminal Misc. Application No. 42 of 2019, whereby the prayer of the Petitioner to issue direction to the Police Station Officer, City Police Station, Jalgaon to register an F.I.R./to conduct investigation came to be turned down and directed to register the complaint under Section 200 of Cr.P.C..

3. Heard at length Mr. Rajendrraa Deshmukh, the learned Senior Counsel for the Petitioner, Mr. Harshal Prakash Randhir, the learned Advocate for Respondent No.1 and Ms. Ashlesha S. Deshmukh, the learned APP for Respondent No.2 State.

4. The learned Senior Advocate canvassed that the present petitioner is working as Class-1 employee with the Government of Maharashtra. In the year, 2016, the Petitioner was working as Private Secretary to the Hon'ble Minister of Public Health Department, State of Maharashtra, whereas, the Respondent No.1 was working as Medical Officer with Primary Health Centre, Patoda, Tq. Chalisgaon, Dist. Jalgaon. On 16.03.2016, Respondent No.1 allegedly visited the Health Minister at Mantralaya, Mumbai, however, on 21.06.2016, Respondent No.1 lodged a

false report with Marine Drive Police Station, Mumbai, alleging that on 16.03.2016, when she visited the Petitioner in his Chamber, at that time, the Petitioner outraged her modesty. On the basis of said report, Crime No. 199 of 2016 was registered against the present Petitioner with Marine Drive Police Station, Mumbai for the offences under sections 354(A) and 506 of the Indian Penal Code, 1860. The Investigating Officer conducted the investigation, but he has filed "B" summary report on 10-11-2016 for want of intimidatory evidence. However, the learned Chief Metropolitan Magistrate, Mumbai passed an order dated 06.03.2019 and thereby refused to accept the "B" summary report and issued directions for reinvestigation of the said crime and to submit report afresh.

5. The Petitioner filed Criminal Misc. Application No.42 of 2019 before the Judicial Magistrate First Class alleging that, Respondent No.1/accused illegally prepared false and fabricated Governmental documents to implicate the Petitioner due to non co-operation by the Petitioner in her illegal activities while implementing digital PHC Software programme. So also, Respondent No.1/accused destroyed the Government documents. Further, Respondent No. 1 misused her position being Medical Officer and got scratched entries in the Inward and Outward Register, prepared false and bogus leave application and produced fake medical certificate about her ailment though she was unauthorizedly absent from

duty and caused loss to the Government. Further, on 13.03.2016, Respondent No.1/accused submitted an application for earned leave w.e.f. 14.03.2016 to 16.03.2016 on the day of Holiday i.e. Sunday. Not only this, but the Respondent accused used blade and whitener to scratch the entry at Sr No. 99 in Outward Register of the office and prepared false and bogus document and availed monetary benefits for her. Therefore, the petitioner obtained copies of the relevant documents under Right to Information Act and lodged a report with City Police Station Jalgaon on 17.07.2018 for the offence punishable under sections 109, 166, 167, 177, 193, 406, 409, 420, 465, 466, 4467, 468, 470, 474,477, 120-B read with section 34 of the Indian Penal Code,1860. However, the Police authority failed to take cognizance of the complaint. Therefore, on 24.07.2018, the Petitioner again submitted reminder to the City Police Station, Jalgaon but no cognizance was taken. Therefore, on 27.07.2018, the petitioner submitted a representation with the Superintendent of Police about the said incident but no cognizance was taken. Therefore, the petitioner filed a complaint bearing Criminal M.A. No.42 of 2019 and thereby prayed for an investigation under section 156(3) of the Code of Criminal Procedure, 1973 in the said offence. On 28.02.2019, the learned Judicial Magistrate First Class (I Court) Jalgaon passed an order in Criminal M.A. No. 42 of 2019 and declined to grant investigation under section 156(3) of Cr.PC. and directed to register the complaint under Section 200 of Cr.PC.

6. The learned Senior Counsel for the petitioner canvassed that, the petitioner filed the complaint and specifically made out a case for cognizable offence of cheating, forgery, criminal breach of trust by conspiracy, common intention and abetment with the help of Officer and employees of the Public Health Department, under sections 109, 166, 167, 177, 193, 406, 409, 420, 465, 466, 467, 468, 470, 474, 477, 120-B r/w section 34 of I.P.C., which are of serious nature. Therefore, the Ld. Judicial Magistrate could have directed investigation under section 156(3) of Cr.P.C., instead of directing to register it under section 200 Cr.P.C. Therefore, impugned order is illegal and bad in law.

7. In support of this submission, the learned Senior Counsel placed reliance on the following cases as under:

i) ***Ramesh Kumari Vs. State (NCT of Delhi) & others, (2006) 2 Supreme Court Cases 677***, wherein the Hon'ble Supreme Court has observed in paragraph Nos. 3 and 4 as under:

“3. Genuineness or otherwise of the information can only be considered after registration of the case. Genuineness or credibility of the information is not a condition precedent for registration of a case. We are also clearly of the view that the High Court erred in law in dismissing the petition solely on the ground that the contempt petition was pending and the appellant had an alternative remedy. The ground of alternative remedy nor pending of the contempt petition would be no substitute in

law not to register a case when a citizen makes a complaint of a cognizable offence against the Police Officer.

4. *That the Police Officer mandatorily registers a case on a complaint of a cognizable offence by the citizen under Section 154 of the Code are no more res integra. The point of law has been set at rest by this Court in the case of State of Haryana and Ors. v. Bhajan Lal and Ors., [1992] Supp. 1 SCC 335. This Court after examining the whole gamut and intricacies of the mandatory nature of Section 154 of the Code has arrived at the finding in paras 31 and 32 of the judgment as under:*

31. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the concerned police officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157. (As we have proposed to make a detailed discussion about the power of a police officer in the field of investigation of a cognizable offence within the ambit of Sections 156 and 157 of the Code in the ensuing part of this judgment, we do not propose to deal with those sections in extenso in the present context). In case, an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who is satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of Section 154 of the Code."

ii) ***Lallan Chaudhary & others Vs. State of Bihar & another,***

(2006) 12 Supreme Court cases 229, wherein, the Hon'ble Supreme Court has held in paragraph No.10 as under:

“10. The mandate of Section 154 of the Code is that at the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence, the police officer concerned cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not relevant or credible. In other words, reliability, genuineness and credibility of the information are not the conditions precedent for registering a case under Section 154 of the Code.”

iii) The learned Senior counsel further relied on the case of **Sakiri Vasu Vs. State of Uttar Pradesh & others, (2008) 2 Supreme Court Cases 409**, wherein, in paragraph Nos. 11, 13 and 17, the Hon'ble Supreme Court observed as under:

“12. Thus in Mohd. Yousuf vs. Smt. Afaq Jahan & Anr. JT 2006(1) SC 10, this Court observed:

The clear position therefore is that any judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing

investigating under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.

13. The same view was taken by this Court in Dilawar Singh vs. State of Delhi JT 2007 (10) SC 585 (vide para 17). We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under Section 156(3) Cr.P.C., and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order orders as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) Cr.P.C.17.

17. In our opinion Section 156(3) Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) Cr.P.C., though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

8. Per contra, Respondent No. 1 filed an affidavit in reply and denied the averments made in the complaint. Adv. Harshal Prakash Randhir, the learned counsel for the Respondent No.1 canvassed that, the petitioner has suppressed material fact that, though the Investigating Officer submitted “B” summary report on 10.11.2016, in Crime No. 199 of 2016 was registered against the present Petitioner with Marine Drive Police Station, however, vide order

dated 06.03.2019, the learned Chief Metropolitan Magistrate refused to accept the “B Summary” report and directed the Investigating Officer to reinvestigate in the crime and to submit report. It is further canvassed that, the Respondent No.1 is a Public servant, therefore, in absence of sanction u/s 197 of Cri. P. C., from the competent authority, the Respondent No. 1 can not be prosecuted. So also, the allegations made in the complaint are vexatious and it is just a counterblast to the FIR lodged by the Respondent No.1 with Marine Drive Police Station, Mumbai about outrage of her modesty. Therefore, the learned trial Court has rightly passed the impugned order in order to test veracity of the complaint, hence, prayed for dismissal of the Petition.

9. Needless to say that, the present Petitioner/original complainant filed Criminal M.A. No. 42 of 2019 against the present Respondent No.1 and prayed for directions against the Police Machinery to investigate in respect of cognizable offences of cheating, forgery, criminal breach of trust by conspiracy, common intention and abetment with the help of Officer and employees of the Public Health Department as contemplated u/Ss. 109, 166, 167, 177, 193, 406, 409, 420, 465, 466, 467, 468, 470, 474, 477, 120-B r/w section 34 of I.P.C. According to the Petitioner/complainant, he faced trial in Crime No. 199 of 2016 and acquitted from the charges

under section 354(A), 506 of IPC. The present Respondent No. 1 does not dispute that, at the relevant time, she was working as Medical Officer with Primary Health Centre, Patoda, Tq. Chalisgaon, Dist. Jalgaon. Therefore, to see whether she had moved an application for leave or tampered or forged any Government record, Outward/ Inward Register, investigation through Police agency is not required as said documents are Public Record and it can easily be produced and can be proved by leading substantial evidence. The allegations made in the complaint prima facie appears about manufacturing, tampering or forging of official record while discharging official duty and said documents can easily be produced by the petitioner and can prove in evidence.

10. In case of ***Sachin Raosaheb Jadhav Vs. The State of Maharashtra, 2015 Cri. Law Journal 733*** it is held that, when a petition or complaint is presented before the Magistrate, in which a request is made for taking action as mentioned in section 2(d) of the Code, the Magistrate is expected to apply his mind. The Magistrate has to ascertain whether the contentions made in the petition/complaint constitute any offence. If they constitute some offence then the Magistrate is expected to take decision as to whether the matter needs to be referred to police for investigation as provided in section 156(3)

of the Code or he needs to proceed further as provided in section 200 and subsequent sections of Chapter XV of the Code. There is a discretion with the Magistrate in this regard. Though police officer is duty bound to register case on receiving information of cognizable offence, the Magistrate is not bound to refer the matter to police under section 156(3) of the Code.

11. In the 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)*, wherein 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).”

12. In recent judgment dated 16.01.2025, ***Criminal Appeal No.352 of 2020, Om Prakash Ambadkar Vs. The State of Maharashtra and others, MANU/SC/0134/2025***, passed by the Hon'ble Supreme Court it is held in para 24 as under:-

“24. Thus, there are prerequisites to be followed by the complainant before approaching the Magistrate Under Section 156(3) of the Code of Criminal Procedure which is a discretionary remedy as the provision proceeds with the word 'may'. The Magistrate is required to exercise his mind while doing so. He should pass orders only if he is satisfied that the information reveals commission of cognizable offences and also about the necessity of police investigation for digging out of evidence neither in possession of the complainant nor can be procured without the assistance of the police. It is, thus, not necessary that in every case where a complaint has been filed Under Section 200 of the Code of Criminal Procedure the Magistrate should direct the Police to investigate the crime merely because an application has also been filed Under Section 156(3) of the Code of Criminal Procedure even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, with the assistance of the court or otherwise. The issue of jurisdiction also becomes

important at that stage and cannot be ignored.”

13. Considering the scope of Section 156(3) of Cr.P.C., as it is in discretionary nature as well as law laid down by the Hon'ble Supreme Court in the cited cases, it is not mandatory to the learned Magistrate to issue directions for investigation in each and every complaint instituted u/s 156 (3) of Cr.P.C., unless cognizable offence is made out and the learned Magistrate is satisfied about existence of such cognizable offence. Therefore, considering the nature of allegations made in Criminal M.A. No. 42 of 2019, alleging about tampering of documents, cheating, forgery, criminal breach of trust by conspiracy, common intention and abetment with the help of Officer and employees of the Public Health Department, does not warrant any investigation through Police Machinery under section 156(3) of Cr.P.C.

14. On perusal of the impugned order it prima faie appears that, the learned trial Court has considered documents produced by the Petitioner below list Exh.3 which are public documents and place of commission of offence while discharging official duty, it would be proper to deal being a complaint case u/s 200 of Cri. P. C., instead of directing investigation under section 156 (3) Cr.P.C., which does not appear to be illegal, bad in law. Therefore, to my view the petitioner

has not made out substantial grounds to interfere with the findings recorded by the learned Judicial Magistrate, hence, I am not inclined to grant present petition. Accordingly, the Criminal Writ Petition is dismissed. Rule is discharged.

(Y. G. KHOBRAGADE, J.)

JPChavan