



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1833 OF 2023

1. Surendra Hanmanlu Gandam,
Age : 58 Years, Occ. Pensioner,
R/o. C/o. Sainath Ambegaonkar,
Sailila Building, Canal Road,
Near D-Mart, Wadi (Kh), Nanded.

2. Dayanand Narayanrao Shinde,
Age : 48 Years, Occ. Service,
R/o. Gramsevak Colony, Nagar Road,
Beed.

.. Applicants
(Orig. Accused)

VERSUS

1. The State of Maharashtra,
Through In-charge Officer,
Police Station, Georai, Dist. Beed

2. Sandesh S/o Shivajirao Potdar,
Age : 63 Years, Occ. Advocate,
R/o. Bag Pimpalgaon Tq. Georai,
Dist. Beed.

.. Respondents
(Resp. No.2/Orig. informant)

....

Advocate for the Applicants : Mr. S. J. Salunke

A.P.P for Respondent No.1/State : Mr. A. R. Kale

Advocate for Respondent No.2 : Mr. E. S. Potdar h/f Adv.

Mr. D. K. Rajput

....

CORAM : SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ

RESERVED ON : 14.01.2025

PRONOUNCED ON : 29.01.2025

JUDGMENT (PER ROHIT W. JOSHI, J):-

1. The applicants in the present matter are arrayed as accused Nos.
1 and 2 in First Information Report No. 42 of 2022 registered with

Police Station Gevrai, District Beed on 27.01.2022 for the offence punishable under Sections 166A of the Indian Penal Code (herein after referred to as 'IPC' for brevity). The said First Information Report is registered pursuant to order dated 24.01.2022 passed by the learned Judicial Magistrate First Class Court No. 2 (hereinafter referred to as 'J.M.F.C' for brevity)- Gevrai District Beed on application at Exhibit 7 in Criminal Misc. Application No. 391 of 2021. The applicant Nos. 1 and 2 were posted as Police Inspector and Police Station Officer at Police Station Gevrai on 21.03.2016. Respondent No.2-informant is an Advocate. He has stated that he had visited police station Gevrai on 21.03.2016 for lodging First Information Report against one Aniket Radheshyam Attal and 12 others for the offence punishable under Sections 420, 465, 467, 468, 471, 477-A, 120B and 109 of the IPC. He states that the present applicants were duty bound to register the First Information Report since the offence was a cognizable offence, however, they failed to perform their mandatory duty and as such committed offence punishable under Section 166-A of the I. P. C.

2. Respondent No.2 had initially filed a private complaint on 25.07.2021 against the present applicants vide Criminal Misc. Application No. 391 of 2021. The said complaint was posted for recording verification statement vide order dated 09.10.2021. Thereafter, respondent No.2 filed application dated 18.12.2021 vide Exhibit 7 stating that rather than taking cognizance of the complaint,

appropriate order could be passed under section 156(3) of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.') directing Gevrai Police Station to register First Information Report and investigate the matter. The learned J.M.F.C was pleased to pass the order dated 24.01.2022 directing the police inspector, Gevrai Police Station to register First Information Report against the present applicants for offence punishable under Section 166A of the IPC and to investigate the matter in accordance with law. In compliance of the said order, respondent No.1 has registered offence against the present applicants for offence punishable under Section 166A of the IPC on 27.01.2022 vide First Information Report No. 42 of 2022. The applicants are aggrieved by the said order dated 24.01.2022 and the First Information Report registered on 27.01.2022. They have therefore, challenged the same in the present proceeding which is filed under Section 482 of the Cr.P.C.

3. Learned Advocate Shri. S. J. Salunke for the applicants has raised the following contentions :-

(i) Offence under Section 166A of the IPC is not made out on account of failure to register First Information Report with respect to offences under Sections 420, 468, 477A, 120B and 109 of the I.P.C. ;

(ii) Misc. Criminal Application No. 391 of 2021 was not supported by an affidavit and was, therefore, liable to be rejected in view of judgments of Hon'ble Supreme Court in the matters of **Babu**

Venkatesh Vs. State of Karnataka reported in (2022) 5 SCC 639 and *Mrs. Priyanka Shrivastava and Another Vs. State of Uttar Pradesh reported in AIR (2015) SC 1758* ;

(iii) Application under Section 156 (3) of the Cr. P C could not have been entertained since procedure contemplated under Section 154 (3) Cr. PC. was not followed ;

(iv) Order under Section 156(3) of the Cr.PC. could not have been passed without prior sanction in view of proviso to Section 156(3) introduced vide Code of Criminal Procedure (Maharashtra Amendment) Act 2015 which has come into force w.e.f. 01.11.2016 ;

(v) The complaint and First Information Report are barred by limitation in view of Section 468(2)(b) of the Cr.PC. ; and

(vi) First Information Report registered pursuant to an illegal order also deserves to be quashed.

4. Per contra, Shri. A.R. Kale learned A.P.P representing respondent No.1 opposed the application raising contention that the applicants had failed to perform their mandatory duty of registering First Information Report with respect to a cognizable offence and were, therefore, liable to be prosecuted for the offence of disobedience of direction under law, punishable under Section 166A of the IPC. He refers to Section 154(1) of the Cr.PC and judgment of Hon'ble Supreme Court in the matter of *Lalita kumari Vs. State of Uttar Pradesh, reported in AIR 2014 SC 187* , in support of his contention. He submits that since the applicants have failed to register the First

Information Report, ingredients of Section 166A of the IPC are established. He states that Section 166-A(c) is attracted in case of failure to register First Information Report with respect to any cognizable offence and not only with respect to sections mentioned in the said provision. On the point of sanction he makes reference to Explanation to Section 197 (1) of the Cr.PC and contends that sanction is not required when a public servant is accused of offence under Section 166A of the IPC. He further makes a submission in the alternate that offence under Section 166 of the IPC is clearly made out even if it is held that Section 166A(c) is not attracted. He replies to the contention with respect to failure on the part of respondent No.2 to file an affidavit in support of his complaint/application under Section 156 (3) of the Cr.PC. by stating that it is a technical defect and criminal prosecution cannot be quashed on account of technical errors or defects.

5. The learned Advocate for respondent No.2 has also advanced submission in line with the submission made by the learned A.P.P. He further submits that sanction as contemplated under Section 156(3) of the Cr. P. C need not be prior to filing complaint and it can also be obtained subsequently. He also contends that the applicants are liable to be prosecuted for having committed breach of mandatory duty imposed by law i.e. failure to register First Information Report with respect to a cognizable offence. He argues that assuming that offence

under Section 166A(c) is not made out, the applicants are liable for prosecution for offence under Section 166. As regards sanction contemplated by proviso to Section 156 of the Cr. P. C which is introduced by Maharashtra Amendment he submits that the offence is committed on 21.03.2016 i.e. the date on which there was failure on the part of the applicants to register the F.I.R. and the Maharashtra Amendment which has come into force on 01.11.2016 will not be applicable since it cannot have retrospective operation.

6. We are concerned with Section 166A(c) of the Indian Penal Code which reads as under :-

“ 166. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine or with both.

(a).....

(b).....

(c) fails to record any information given to him under sub-section(1) of Section 154 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to cognizable offence punishable under Section 326-A, Section 326-B, Section 354, Section 354-B, Section 370, Section 370-A, Section 376, Section 376-A, [Section 376-AB, Section 376-B, Section 376-C, Section 376-D,

Section 376-DA. Section 376-DB], Section 376-E or section 509, shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.)

7. Perusal of the provision will indicate that the rigors of Section 166A(c) will be attracted only when a police officer fails to register First Information Report in relation to cognizable offence punishable under Sections 326-A, 326-B, 354, 354-B, 370, 370-A, 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB, 376-E or Section 509 of the IPC. Sections 420, 465, 467, 468, 471, 477-A, 120B and 109 are not mentioned in Section 166A(c), therefore, on account of failure to register First Information Report with respect to the said provision, the offence under Section 166-A of the IPC will not be made out. The offence under Section 166A(c) will be made out only when there is failure to register First Information Report pertaining to the Sections mentioned in the said provision.

8. The learned A.P.P. offers alternate interpretation to the said provision. He submits that there is 'comma' after the word “*fails to record any information given to him under sub-section (1) of Section 154 of the Cr.PC, 1973*”, these words are followed by the words, “*in relation to cognizable offence punishable under Sections*” appear. His contention is that offence under Section 166-A of the IPC is made out on failure to register any cognizable offence as per Section

154(1) and also when offence is not registered with respect to offences specifically mentioned in 166A(c). He therefore, contends that apart from sections which have been mentioned in Section 166A(c), the said provision will be attracted in case of failure to register offence with respect to any cognizable offence, in view of Section 154(1) of the Cr.PC.. He submits that the amplitude of Section 154(1) will not be restricted by specific reference to some of the sections of the Indian Penal Code in Section 166-A of the IPC.

9. We are unable to accept the interpretation offered by the learned A.P.P. All the sections of the Indian Penal Code which have been mentioned specifically in Section 166-A are cognizable offences under the first schedule appended to the Cr.PC. It is no doubt true that a police officer is duty bound to register First Information Report, when information pertaining to a cognizable offence is received by him. Failure to register First Information Report will amount to breach of statutory duty imposed under Section 154(1) of the Cr. P. C. However, the question that falls for consideration is as to whether, such a police person, who has failed to register First Information Report with respect to a cognizable offence will be liable for prosecution and punishment under Section 166A(c) of the I.P.C. even if the offence does not pertain to specific sections mentioned in Section 166A(c). We find that all the provisions which have been specifically mentioned are pertaining to cognizable offence. If the

intention of the Legislature was to punish a police person under Section 166A(c) for failure to register First Information Report with respect to any cognizable offence, specific provisions of IPC would not have been mentioned in Section 166A(c). The reason for mentioning the said provisions is that offence under Section 166A(c) will be constituted only when there is failure on the part of the police persons to register offence pertaining to the provisions specifically enumerated in Section 166A(c). If the interpretation of learned A.P.P. is accepted, the words, 'in relation to cognizable offence punishable under Sections 326-A, 326-B, 354, 354-B, 370, 370-A, 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB, 376-E or 509' shall be rendered superfluous. It is well settled that, the Legislature does not use or employ any word without any reason. Every word in Section has a specific meaning and it cannot be ignored as a surplusage. If the interpretation offered by the learned A.P.P. is accepted, the said words will be rendered meaningless. The provision is clear and precise and does not admit any other interpretation than the one that we have adopted i.e. offence under Section 166A(c) will be committed by a police person only when there is refusal/failure on his part to register offence which are specifically mentioned in Section 166A(c) and not on failure to register First Information Report with respect to a cognizable offence which is not mentioned in the said provision.

10. In view of the aforesaid, we hold that Section 166A(c) is not attracted in the present case since the failure on the part of the applicants was not to register First Information Report with respect to any provision specifically mentioned in Section 166A(c), and that it was pertaining to sections 420, 465, 467, 468, 471, 477-A, 120-B and 109 IPC I.e. cognizable offences which are not mentioned in Section 166A(c).

11. The alternate submission by the learned A.P.P is that even if Section 166A (c) is not attracted, Section 166 of the Indian Penal Code will certainly be attracted. Section 166 of the Indian Penal Code provides punishment for simple imprisonment up to one year or fine or both against a public servant who knowingly disobeys any direction of law relating to his conduct as public servant intending to cause or knowing that his conduct is likely to cause injury to any person. Failure to register First Information Report in case of non cognizable offence will amount to disobedience of a direction of law i.e. Section 154(1) of the Cr.P.C.. However, in order to proceed with prosecution of a public servant under Section 166, previous sanction of the State Government will be needed in view of mandate of Section 197 of the Cr.P.C.. The explanation to Section 197 (1) will not be attracted in case a public servant is prosecuted under Section 166.

12. That apart, in the present case, the First Information Report is

registered pursuant to an order passed by the learned J.M.F.C. under Section 156(3) of the Cr.P.C.. Two provisos have been added after Section 156(3) of the Cr.P.C. vide Maharashtra Act No. 33 of 2016. The amendment was brought into force w.e.f. 01.11.2016. The first proviso prescribes that no Magistrate shall order an investigation under sub section 156(3) against any public servant in respect of any act done by him while acting or purporting to act in discharge of his official duties except with the previous sanction of the Government under Section 197 of the Cr.P.C. Such sanction is admittedly not received till date. The second proviso prescribes that in case where proposal is sent to the sanctioning authority and no decision is taken thereon for a period of 90 days then the sanction shall be deemed to be granted. In the present case previous sanction was not granted by the sanctioning authority before the learned J.M.F.C. passed order for registration of First Information Report under Section 156(3) of the Cr.P.C., likewise no proposal is sent to the sanctioning authority for grant of sanction and as such question of deemed sanction also does not arise. The order passed by the learned J.M.F.C. directing registration of First Information Report will, therefore, not be sustainable even if offence was to be registered under Section 166 of the Indian Penal Code. Consequently, the First Information Report which is registered pursuant to such order will also not be maintainable and will have to be quashed.

13. We also need to refer to Section 468 of the Cr.P.C. which provides for limitation for taking cognizance of offences. Section 468(2) of the Cr.P.C. provides limitation of one year for offence which is punishable with imprisonment for a term not exceeding one year. Offence under Section 166 of the IPC is punishable with six months and as such the limitation for taking cognizance of the said offence will be governed by Section 468(1)(b) of the Cr.P.C. Perusal of Criminal Misc. Application No. 391 of 2021 demonstrates that the applicants had refused to register First Information Report on 21.03.2016 and as such have allegedly committed the offence on the said date. The Criminal Misc. Application which was initially filed as a private complaint is dated 15.07.2021 and it is filed on 16.07.2021. The limitation of one year had already expired on 21.03.2017. The complaint is filed after a period of over four years and three months from the date on which the limitation has expired. In this complaint an application dated 18.12.2021 was filed praying that direction may be issued to respondent No.1 to register offence against the applicants as per Section 156(3) of the Cr.P.C. There appears to be delay of over four years and three months in filing the complaint. The delay is not explained at all. Normally, the delay can be explained to the J.M.F.C. while he decides as to whether cognizance should be taken or not. However, in the present matter respondent No.2 had initially filed a private complaint under Section 200 of the Cr.P.C. and as such

respondent No.2 ought to have explained the delay in the complaint itself. The order directing Magistrate under Section 156(3) Cr. P.C is passed without considering the aspect of delay. Delay can be condoned in the interest of justice even if not explained. However, even on this aspect nothing is mentioned in the complaint or the order passed by the learned Magistrate directing registration of the FIR. We need not comment much on the aspect of delay since we have already held on merits that the offence under Section 166A(c) is not made out and order under Section 156 (3) of the Cr. P. C could not have been passed directing investigation for offence under Section 166 of the IPC as well, since prior sanction of the appropriate authority is not granted or even deemed to be granted which is a statutory prerequisite as per proviso to Section 156 of the Cr. P. C.

14. There is another aspect which was very seriously canvassed by the learned Advocate for the applicants. He submitted that the private complaint which was thereafter treated as application under Section 156(3) of the Cr.P.C. was not supported by affidavit and the same ought to have been rejected on this count alone. In support of his contention he has placed reliance on two authorities of the Hon'ble Supreme Court viz *Babu Venkatesh and Others and State of Karnataka and another* (supra) and *Mrs. Priyanka Srivastava and Another* (supra) referred in paragraph No.3 above. The Hon'ble Supreme Court has held in the matter of Mrs. Priyanka Srivastava (supra) as

under :-

“In our considered opinion, 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.

The warrant for giving a direction that an 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). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the case where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being

filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

15. The direction that application under Section 156(3) must be supported by affidavit came to be reiterated by the Hon’ble Supreme Court in the case of Babu Venkatesh (supra). The Hon’ble Supreme Court has taken note of the said direction issued in the matter of Mrs. Priyanka Srivastava (supra) and was pleased to dismiss application filed under Section 156(3) of the Cr.P.C. on the ground that it was not supported by the affidavit.

16. The Hon’ble Supreme Court has also held in the matter of Mrs, Priyanka Srivastava (supra) that an application under Section 156(3) will not be maintainable in the event the police authority does not register First Information Report in relation to a cognizable offence unless the informant takes recourse to Section 154(3) of the Cr.P.C. which provides that any person aggrieved by a refusal on the part of an officer-in-charge of a police station to register First Information Report may send the substance of such information, in writing to the Superintendent of Police concerned. The Superintendent of Police upon receipt of such information is required to consider as to whether the information discloses commission of a cognizable offence , and in case he has arrived at the satisfaction that cognizable offence is disclosed, he may conduct investigation in the matter himself or direct

some other police officer to conduct the investigation. The Hon'ble Supreme Court has held that the application under Section 156(3) should not be entertained unless recourse to Section 154(3) of the Cr. P.C. is taken by the informant who is aggrieved by refusal to register the First Information Report. This procedure is also not followed in the present matter by respondent No.2. The application under Section 156(3) of the Cr.P.C. filed by respondent No.2 was also liable to be rejected on this count.

17. The learned Advocate for respondent No.2 has filed a note of argument dated 17.01.2025, raising contentions in addition to the ones that were raised by him during the course of hearing held on 14.01.2025. The following three contentions have been raised in the said note of argument.

(i) Maharashtra State Amendment introduced vide Code of Criminal Procedure (Maharashtra Amendment) Act 2015 is repugnant to Section 197 of the Code of Criminal Procedure and as such it is void and unenforceable.

(ii) The Code of Criminal Procedure Maharashtra Amended Act, (herein after referred to as " Cr. P. C. Maharashtra Amendment Act 2015") has come into force with effect from 01.11.2016 and the applicants had committed offence by not registering First Information Report in relation to cognizable offence on 31.03.2016 i.e. prior to the commencement of the said Act. He states that, Code of Criminal

Procedure Maharashtra Amendment Act cannot have retrospective operation and as such requirement of sanction will not be required in the case at hand.

(iii) He states that Section 166A(c) of IPC will be attracted in every case where there is refusal on the part of police authority in registering First Information Report with respect to any cognizable offence and not only offences that has been specifically enumerated in the said provision. For this purpose he has placed reliance upon notifications issued by Government of India Ministry of Home Affairs dated 10.05.2013, 12.10.2015 and 06.02.2014.

18. As regards the ground regarding repugnancy between Code of Criminal Procedure Maharashtra Amendment Act and Section 197 of the Code of Criminal Procedure, the argument is recorded only to be rejected. The Code of Criminal Procedure Maharashtra Amendment Act 2015 has received Presidential assent and is published in the Maharashtra Government Gazette after having received the assent on 30.08.2016. The said contention is therefore, rejected in view of Article 254(2) of the Constitution of India.

19. As regards the second contention that the offence was allegedly committed on 21.03.2016 and the Code of Criminal Procedure Maharashtra Amendment Act which has come into force on 01.11.2016 does not have retrospective effect and as such shall not be

applicable to the case at hand, the said contention is also fallacious. The two provisos to Section 156 introduced vide Maharashtra Amendment Act of 2015 reads as under :-

“ Provided that, no Magistrate shall order an investigation under this section against a person who is or was a public servant as defined under any other law for the time being in force, in respect of the act done by such public servant while acting or purporting to act in the discharge of his official duties, except with the previous sanction under section 197 of the code of Criminal Procedure, 1973 or under any law for the time being in force :

Provided further that, the sanctioning authority shall take a decision within a period of ninety days from the date of the receipt of the proposal for sanction and in case the sanctioning authority fails to take the decision within the said stipulated period of ninety days, the sanction shall be deemed to have been accorded by the sanctioning authority.”

20. Perusal of the first proviso shall indicate that it creates an embargo on the jurisdiction/power of the Magistrate to order an investigation under the said Section against public servants in respect of any offence committed while acting or purporting to act in discharge of the official duty. The prohibition therefore, applies as on the date of the order. After 01.11.2016, in the absence of prior

sanction, a Magistrate cannot pass an order under Section 156(3) of the Cr. P. C for investigation of the offence against a public servant if such offence is committed or purported to be committed in discharge of his official duties. The date of offence is not relevant. Even if offence is committed prior to 01.11.2016, no order under Section 156 can be passed without prior sanction after 01.11.2016. The bar operates in relation to the power to pass order under Section 156(3) of the Cr. P. C. In the present case, the complaint was filed by respondent No.2 on 25.07.2021 and prayer for treating it as an application under Section 156(3) was made thereafter on 18.12.2021. The said application came to be allowed vide order dated 24.01.2022. The dates of filing of complaint and order directing investigation are subsequent to 01.11.2016 i.e. the date of commencement of Maharashtra Amendment. We therefore hold that the proviso as introduced by Code of Criminal Procedure Maharashtra Amendment Act 2015 will be applicable to the present case and the Magistrate had no jurisdiction to order investigation against the applicants without there being prior sanction, actual or deemed from the competent sanctioning authority qua Section 166 of the IPC. Similar view is taken by this Court in the matter of Mr. Sainath S/o Ramrao Thombre Vs. State of Maharashtra and another reported in (2018) 1 AIRBomR (Cri) 479. (relevant paragraphs 9, 10 & 12) are as under :-

“ 9. It is thus apparent, as has been rightly submitted by the learned Advocate for the applicant, whenever, a direction is sought to be issued under Section 156(3) of the Cr. P.C. 1973 against a public servant in respect of any act done by such public servant while acting or purporting to act in the discharge of his official duties, a Magistrate cannot order investigation without their being a previous sanction obtained under Section 197 of the Cr. P. C or under any other law for the time being in force. The second proviso is in the nature of a deeming provision and the person applying for sanction can proceed to file a complaint if the sanctioning authority fails to grant sanction within ninety days of the application for seeking sanction. In the matter before hand, when according to the averments in the complaint, the respondent No.2 had applied for sanction to the Superintendent of Police, Osmanabad on 27.09.2016, the amended provision of Section 156(supra) had not come into force and which came in force only on 01.11.2016. Therefore, when the law did not expect her to have obtained previous sanction when she actually applied for it, apparently no fault could be found with her in filing complaint without such sanction.

10. However, a careful look into the facts and law would reveal that when actually the respondent No.2 filed the complaint on 20.12.2016 the amended provision of Section 156 of Cr. P.C were already in force and going by the clear wording of the first proviso (supra) in fact the mandate of law required a Magistrate not to pass any order for investigation under Section 156(3) except with a previous sanction. Therefore, even though when the

respondent No.2 actually sought sanction from the Superintendent of Police, the law did not require any such previous sanction as a condition precedent for a Magistrate to direct investigation under Sub-section (3) of Section 156, as on the date on which the impugned order was passed by the learned Magistrate on 23.12.2016 his powers were curtailed by the legislature and the condition laid down by the first proviso (supra) would indeed go to the root of the jurisdiction of a Magistrate in directing investigation under that provision. In short, as on the date of which the learned Magistrate passed the order directing such investigation by the impugned order, his jurisdiction was circumscribed by the newly added proviso. When admittedly no sanction was obtained before passing of the impugned order, the learned Magistrate had no jurisdiction to issue direction for the investigation.

12. In substance, we conclude that the learned Magistrate had no jurisdiction to pass the impugned order directing investigation for want of sanction and for this reason alone the application deserves to be allowed in toto.”

21. As regards the contention that section 166A(c) of the IPC will be attracted in the event of failure on the part of the police officer in registering First Information Report with respect to every cognizable offence even though the said sections are not specifically mentioned in Section 166A(c), the learned Advocate has placed reliance upon aforesaid three circulars issued by the Government of India. At the

outset, the said circulars are not binding on us. Even otherwise failure to follow circular does not amount to offence. At the most it may give reason to start departmental inquiry. Even otherwise, the circulars dated 10.05.2013 and 12.10.2015 are in the nature of advisory to police authority advising that even if there is uncertainty in relation to territorial jurisdiction of the police station, the police authority must register First Information Report if cognizable offence is disclosed from the complaint/information received.

22. The third circular dated 06.02.2014 is issued in the light of law laid down in the matter of Lalita Kumari. The learned Advocate relies on the following sentence at page No.2 of the said circular

“It may be mentioned that Section 166 A of Cr.PC prescribes a penalty of imprisonment up to two years and also fine for non-registration of a FIR for an offence described under Section 166 A.”

23. The said sentence clearly states that Section 166A of the IPC shall apply in cases of non registration of First Information Report for offence mentioned under Section 166-A of the IPC. The circular does not support the contention of the learned Advocate for respondent no.2. It rather clarifies that Section 166A will be attracted only in cases of failure to register offence with respect to provision mentioned therein and not with respect to failure to register First Information Report with respect to any other cognizable offence.

24. The learned Advocate has placed reliance on the judgment of the Hon'ble Supreme Court in the matter of *Lalita Kumari (supra)*. The law laid down in the said judgment cannot be disputed. However, it does not help respondent No.2 to advance further his argument that failure to register First Information Report with respect to cognizable offence will be punishable under Section 166A(c) of the IPC.

25. He has then relied upon judgment of the Hon'ble Supreme Court in the matter of *M. Karunanidhi Vs. Union of India reported in AIR 1979 SC 898* and *Deep Chand Vs. State of Uttar Pradesh reported in AIR 1959 SC 648*. The said judgments are pressed into service to contends that Section 156(3) as amended by the Code of Criminal Procedure Maharashtra Amendment Act by inserting two provisos is repugnant to Sections 190 and 197 of the Code of Criminal Procedure there cannot be any quarrel with the law laid down in the aforesaid two judgments. However, since presidential assent has been obtained as noted above, the ratio laid down in the said judgments is not of any assistance to the learned Advocate for respondent No.2.

26. In the light of aforesaid, we sum up our conclusions as under :-

(A) Offence under Section 166A(c) of the IPC is not made out in case where a officer-in-charge of police station refuses to register

offence with respect to a cognizable offence, except when the refusal to register the offence is with respect to sections enumerated under Section 166A(c) of the IPC. In other words, if failure to register offence is with respect to cognizable offences not included under Section 166A(c) of the IPC, the offence under the said provision will not be made out.

(B) The impugned order dated 24.01.2022 also cannot be pressed into service in order to prosecute the applicants under Section 166 of the IPC since prior sanction as contemplated by proviso to Section 156 is neither obtained nor deemed to be granted.

(C) The private complaint/ application filed by the respondent No.2 is liable to be rejected as barred by limitation since delay of over four years and three months is not explained and also because that it will not be in the interest of justice to condone the delay since it will not serve any fruitful purpose in as much as prior sanction for prosecution under Section 166 of the IPC is not obtained and Section 166A(c) of the IPC is not attracted at all.

(D) The impugned order directing investigation under Section 156(3) of the Cr.PC is liable to be quashed since the application was not supported by an affidavit and also on the ground that procedure under Section 154(3) was not followed prior to filing of the said application.

27. In view of the aforesaid, we are of the considered opinion that

the order dated 24.01.2022 passed by learned J.M.F.C. Court No.2, Gevrai District Beed, in Criminal Misc. Application No. 391 of 2021 directing respondent No.1 Police Inspector Gevrai Police Station to register First Information Report against the applicants for offence punishable under Section 166A of the IPC and consequent First Information Report No. 42 of 2022 registered by the said police station on 27.01.2022 for offence under Section 166A of the IPC are liable to be quashed and are quashed accordingly.

(ROHIT W. JOSHI)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

Y.S. Kulkarni