



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

CRIMINAL WRIT PETITION NO. 1443 OF 2024

Dashrath Madhav Khedkar
Age: 55 years, Occu. Agri.,
R/o Tinkhadi, Tq. Pathardi,
Dist. Ahmednagar

... PETITIONER

VERSUS

The State of Maharashtra
Through Police Inspector
Pathardi Police Station,
Tq. Pathardi, Dist. Ahmednagar

... RESPONDENT

....

Mr. A. R. Hange, Advocate for the Petitioner
Mr. S. M. Ganachari, APP for the Respondent – State

....

CORAM : Y. G. KHOBRAGADE, J.

RESERVED ON : 07.02.2025

PRONOUNCED ON : 14.02.2025

JUDGMENT :-

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

2. By the present Petition under Article 227 of the Constitution of India, the Petitioner challenged the order dated 03.04.2024 passed by the learned Judicial Magistrate First Class, Pathardi, District Ahmednagar, in Criminal (O) M.A. No.27 of 2024, whereby prayer of the Petitioner for issuance of directions

against the Police Station Officer, Pathardi Police Station, District Ahmednagar, to register F.I.R./ to conduct investigation has been declined.

3. Heard at length Mr. Hange, the learned counsel for the Petitioner and the learned APP for State.

4. Mr. Hange, the learned counsel appearing for the Petitioner canvassed that, the Petitioner filed a complaint Criminal (O) M.A. No.27 of 2024 and stated that, series of crimes are registered as against the accused No.1 Shri Balu @ Balasaheb Govind Khedkar and his associates as under:-

Sr. No.	Crime Nos.	Offences U/s
1	Crime No.193 of 2013	Sec. 395, 365 of I.P.C.
2	Crime No.159 of 2011	Sec. 326 of I.P.C.
3	Crime No.377 of 2013	Sec. 395, 341, 365 of I.P.C.
4	Summary Case No.425 of 2022	Section 382 of Cr.PC

5. It is further canvassed that, on 14.01.2024, at about 5.30 p.m., when the petitioner was returning from Ahmednagar and reached near Mali Babhulgaon, Nagar Road, at that time, the accused Shri Dashrath Madhav Khedkar with his four unknown associates blocked his way, assaulted him with hockey stick and thrown chilli

powder in his eyes and forcefully took out Rs.50,000/-, i.e. 100 currency notes of Rs.500/ from his pocket. The Accused also issued a life threat, saying that if the petitioner lodged a report about the incident, he would be killed. The accused then fled from the spot. The said incident was witnessed by Shri Yogesh Bapurao Bade and Shri Jagdish Ankush Khedkar. Therefore, the Petitioner has made out a *prima-facie* case for taking cognizance for cognizable offences. However, the learned J.M.F.C., failed to consider the facts and circumstances of the case and, instead of treating the complaint under Section 200 of Cr.P.C., could have passed an order under Section 156(3) of the Code of Criminal Procedure. However, the learned J.M.F.C., treated the complaint u/s 200 of Cri. P.C., hence, impugned order is illegal bad in law.

6. According to the learned counsel for the petitioner, when the petitioner specifically prayed for order under Section 156(3) of Cri.P.C., therefore, it is mandatory on the part of the learned Magistrate either to grant the prayer for further investigation or to reject the said prayer. However, the learned Magistrate is not empowered to convert the complaint u/s 156(3) of the Cri.P.C. into a chapter case, i.e. a private complaint u/s 200 of Cri. P. C.. However,

the learned Magistrate passed the impugned order and directed the petitioner to give his statement on oath. Therefore, the impugned order is illegal and bad in law, hence, prayed for quash and set aside the same.

7. To buttress these submissions, the learned counsel for the Petitioner placed reliance on Order dated 05.05.2020, passed by this Court (Coram: R. G. Avachat, J.) in ***Criminal Writ Petition No.1808 of 2018, Dr. Mamta Mahindra Kabra Vs. State of Maharashtra***, and order dated 17.03.2023 passed by this Court (Coram: Kishore C. Sant, J.) in ***Criminal Writ Petition No. 1641 of 2022, Dattatray Raghunath Kale Vs. The State of Maharashtra and others***, wherein, it is held that, the Petitioner had sought an order under Section 156(3) of Cr.P.C., therefore, the learned Magistrate was not justified in passing the order directing the placement of the matter for recording Petitioner's statement on oath under Chapter XV (complaints to Magistrates) of Cr.P.C.

8. Per contra, the learned APP submits that, the petitioner made allegations about committing robbery by snatching amount of Rs. 50,000/-from his pocket after throwing chilli powder in his eyes,

issuance of life threat and witnessing said incident by two witness. However, the petitioner neither produced any document to show that he lodged the report nor produced an injury certificate to corroborate the assault with Hockey sticks and throwing Chilli Powder in his eyes. Therefore, the story narrated by the petitioner does not inspire confidence and it is concocted story, hence, no *prima-facie* case is made out for cognizable offences. Therefore, considering the law laid down in the case of ***Sachin Raosaheb Jadhav Vs. The State of Maharashtra, 2015 Cri. Law Journal 733***, the learned Magistrate passed the impugned order calling upon the Petitioner to give his statement on oath to testify allegations made in the complaint. Therefore, impugned order is just and proper, hence, prayed for dismissal of the Petition.

9. Upon hearing both sides, the point that falls for my consideration is whether the learned J.M.F.C., can either issue directions for further investigation u/s 156(3) of Cri.P.C. straightaway or reject the prayer for further investigation u/s 156(3) of Cri. P. C., or even the learned Magistrate can call upon the complainant to give his statement on oath under Section 200 of Cr.P.C., if the learned Magistrate was not *prima-facie* satisfied that, the complainant/

petitioner failed to made out for further investigation of alleged crime under Section 156(3) of Cr.PC?.

10. It is submitted that, the learned trial Court considered the case of ***Sachin Raosahab Jadhav***, cited (supra), wherein 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. Therefore, considering the scope of Sec. 156(3) of Cr.P.C., as well as law laid down by the Hon'ble Supreme Court in then cited cases, it is not mandatory on part of the learned Magistrate to issue directions for investigation in each and every complaint instituted u/s

156 (3) of Cri. P. C., unless cognizable offence is made out and the learned Magistrate is satisfied about existence of such cognizable offence.

14. In case-in-hand, the Petitioner filed a complaint Criminal (O) M.A. No.27 of 2024 alleging that, on 14.01.2024, at about 5.30 p.m., when he was coming from Ahmednagar on his motorcycle and reached near Mali Babhulgaon, Nagar Road, at that time, the accused Shri Dashrath Madhav Khedkar with his four unknown associates blocked his way and assaulted him with hockey stick and thrown chilli powder in his eyes and robbed him by snatching of Rs.50,000/- from his pocket and issued life threat in case he lodge the report and fled away from the spot.

15. It is submitted that, though the petitioner alleged about committing offence of robbery against him by throwing chilly power in his eyes, however, the Petitioner has not produced any document to show that soon after occurrence of incident of robbery he lodged the Report with the concern Police Station. The petitioner has also not produced any document to show that, he was approached to the Medical Officer for medical treatment for injuries which he allegedly

received due to assault and to show symptoms about pouring of chilli powder in his eyes.

16. It is contended on behalf of the petitioner that, on 19.01.2024, the petitioner had lodged the Report with the Senior Police Officer but no action was taken, hence, the petitioner approached with the Superintendent of Police under Section 154(3) of Cr.P.C., but still no action has been taken, therefore, the petitioner prayed for inquiry/investigation under Section 156(3) of Cr.P.C. On 03.04.2024, the learned J.M.F.C. passed the impugned order holding that, the Petitioner/complainant failed to prove his *prima-facie* case to issue directions of investigation under Section 156(3) of Cr.P.C. and called upon the Petitioner to give his statement under Section 200 of Cr.P.C..

17. On perusal of the complaint filed by the petitioner it itself appears that, the Petitioner failed to file the complaint Criminal (O) M.A. No.27 of 2024 on affidavit/solemn affirmation as per law laid down in case of ***Priyanka Srivastava and another***, cited (supra). Therefore, this fact itself creates doubt about the occurrence of the alleged incident. Hence, calling upon the petitioner to give a

statement on oath u/s 200 of Cri.P.C., does not appear to be illegal or bad in law. Therefore, the Writ Petition is dismissed. Rule discharged.

[Y. G. KHOBRAGADE, J.]

SMS