



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1378 OF 2022

Kamalbai w/o. Vilas Waghmare,
Age: 55 years, Occ : H.H. R/o Shirur Tajband,
Tq. Ahmedpur, Dist. Latur.

... **PETITIONER**

V/s.

1. Gunda @ Gundaji S/o Devrao More
Age: 70 years, Occu: Labour
2. Ashok S/o Dagdoba Gaikwad
Age: 60 years, Occu: Labour
3. Manohar S/o Narayan Kamble
Age: 50 years, Occu: Labour
4. Ravi S/o Laxmikant Eklare
Age: 30 years, Occu: Labour

All R/o Shivajinagar Mukhed,
Tq. Mukhed, Dist. Nanded.

5. The State of Maharashtra
Through P.S.O. Police Station, Ahmedpur,
Tq. Ahmedpur, Dist. Latur.

... **RESPONDENTS**

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Mr. K.T. Shirurkar, Advocate for the Petitioner
Ms. K.K. Naik, APP for the Respondent-State
Mr. Aniket Avhad h/f. Nitin S. Kadarale, Advocate for the Respondents

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CORAM : Y.G. KHOBRADE, J.
DATE : 21.02.2025

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith and with the consent of both the sides the petition is heard finally at the admission stage.
2. By the present petition under Article 227 read with Section 482 of the Cr.P.C., the Petitioner takes exception to the order dated 29.06.2022, passed by the learned Sessions Judge, Ahmedpur, Dist. Latur in Criminal Revision Application No.3/2019 and thereby upheld the order of refusal of directions u/s 156(3) of Cri. P. C. passed by the JMFC, Court No.2, Ahmedpur in Cri. Misc. Application No.213/2018 on 20.04.2019.
3. In brief facts giving rise to the present petition are that, the Petitioner filed Cri. Misc. Application No. 213/2018 before the learned JMFC, Ahmedpur, alleging that, she is owner and in possession of agricultural land bearing Survey No.123 total ad-measuring 1 H 25 R in pursuance of sale-deed executed in the year 2008. Her husband was serving with the Mumbai Municipal Corporation. She alone is cultivating the said land, however, the Respondent Nos.1 to 4 (Accused) by taking disadvantage executed the agreement to sale in respect of her agricultural field and under her fake and false signature prepared documents i.e. Agreement to Sale. Since the Respondent Nos. 1 to 4/Accused created false and fabricated agreement to sale, therefore, they have committed an offence punishable under Section 119, 120,

420, 120-B, 463, 464, 467, 468, 470, 471, 474, 141, 142 read with Section 34 of the I.P.C., hence, prayed for direction to register an FIR and further investigation under Section 156(3) of the Cr.P.C. The Complainant/Petitioner further alleged that, the Respondent No.1 filed a Civil Suit bearing RCC No.258/2014 before the Civil Court, Ahmedpur and prayed for decree of specific performance of the contract on the basis of false and fabricated agreement to sale.

4. On 20.04.2019, the learned JMFC passed an order holding that, the present Respondent No.1 has already instituted a civil suit bearing RCC No.258/2014 and prayed for decree of specific performance of the contract on the basis of same cause of action, so also, the dispute between the Petitioner and Respondents are of civil nature, hence, rejected the prayer of the Petitioner/Complainant for issuance of further investigation under Section 156(3) of the Cr.P.C.

5. Being aggrieved by said order the Petitioner/Complainant filed Criminal Revision Application No.3/2019. On 29.06.2022, the learned Revisional Court passed the impugned order holding that, the allegations made in the complaint itself does not constitute an offence as alleged. The learned trial Court considered allegations made in the complaint and declined to pass an order under Section 156(3) of the Cr.P.C.

6. In the 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 a FIR on receiving information of cognizable offence, the Magistrate is not bound to refer the matter to police under section 156(3) of the Code.

7. 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 paragraph No. 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).”

8. 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 paragraph Nos. 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.”

9. On consideration of the scope of Section 156(3) of Cr.P.C., as it is in discretionary nature. The Hon'ble Supreme Court in cited cases held that, the provision of Sec. 156(3) of Cri. P. C. 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 Cr.P.C., unless cognizable offence is made out. If the learned Magistrate is satisfied about existence of such cognizable offence then directions for investigation u/s 156 (3) of Cr.P.C. can be issued. Therefore, considering the allegations made in Criminal M.A. No. 42 of 2019, about tampering of documents, cheating, forgery, criminal breach of trust by conspiracy, common intention and abetment does not warrant any investigation through police machinery under section 156(3) of Cr.P.C.

10. In the case in hand, the Petitioner/Complainant specifically alleged that, on 25.08.2011, her signature were obtained on blank paper by the Accused No.1. Subsequently, the Accused Nos.1 to 4 in furtherance of common intention prepared false and bogus agreement to sale in respect of her land bearing survey no.123 situated at village Hokarna with an intention to grab said land.

11. Needless to say that, the present Respondent No.1 has already instituted a civil suit bearing RCC No.258/2014 and prayed for decree of specific performance of contract. Therefore, the Petitioner/Complainant can

raise objections in her defence by filing Written Statement in said civil suit. The Petitioner can also examine the hand writing expert, if she desires. Therefore, I do not find that, the impugned orders passed by both the Courts below suffer from any infirmity, illegality or are bad in law, hence, no interference is called at the hands of this Court. Accordingly, the petition is dismissed. Rule is discharged.

[Y.G. KHOBRADE, J.]