



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

20 CRIMINAL WRIT PETITION NO. 1680 OF 2024

**CHITRA KISHOR WAGH
VERSUS
MAHEBOOB IBRAHIM SHAIKH AND ANOTHER**

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Mr. V. D. Salunke, Advocate h/f Mr. M. V. Salunke, Advocate
for the Petitioner

Ms Chaitali Chaudhari – Kutti, APP for Respondent No.2 – State

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 20.01.2025

PER COURT :-

1. Heard the learned counsel for the Petitioner at length.
2. By the present Petition under Article 227 of the Constitution of India, the Petitioner questioned the legality and validity of order dated 23.07.2024 passed by the learned Additional Sessions Judge, Beed, in Criminal Revision Application No. 21 of 2023, thereby affirmed order of issuance of process passed by the learned Judicial Magistrate on 09.12.2022 in Criminal Misc. Application No. 153 of 2021 for the offence punishable under Section 500 of the Indian Penal Code, 1860.

3. The facts which give rise to the present Petition are that, the Respondent No. 1 filed a private criminal complaint bearing Criminal Misc. Application No. 153 of 2021 before the learned Judicial Magistrate First Class, Shirur (K) alleging that, on 18.07.2021, the Petitioner/accused has given speech in the public and made defamatory statement that, the Respondent No.1 has committed rape on the girl, but the police did not arrest him. So also, the Police Authority hurriedly filed "B" summary report against Respondent No.1. The Video of the speech was recorded and uploaded on the social media platforms like WhatsApp and You-tube. According to the Respondents, the Petitioner/accused made a defamatory statement and circulated the said video clips in the society. Therefore, the conduct of the Petitioner/accused has caused his defamation, hence, on 22.07.2021, Respondent No.1 lodged a report with the Police Station, but no any action was taken by the Police. Therefore, he filed an application with the Superintendent of Police, Beed, on 02.08.2021, but N.C. report No. 358 of 2021 was came to be registered against the present Petitioner for the offence under Section 499 punishable under Section 500 of I.P.C., and he was given understanding to lodge appropriate complaint in the Court of

law. Therefore, he approached before the learned Judicial Magistrate and prayed for an inquiry under Section 156(3) of Cr. P.C.

4. On face of record it *prima-facie* appears that, on 10.01.2022, the learned Judicial Magistrate First Class, recorded the statement of Respondent No.1/complainant on oath. Thereafter, on 25.02.2022, the learned Judicial Magistrate First Class passed an order below Exh.1 and called the Report under Section 202 of the Code of Criminal Procedure from the concerned Police Station. Accordingly, on 05.04.2022, the Investigating Officer submitted it's inquiry report. On 09.12.2022, the learned Judicial Magistrate First Class, passed an order below Exh.1 in Criminal Misc. Application No. 153 of 2021 and issued process against the present Petitioner / accused under Section 499 punishable under Section 500 of the Indian Penal Code holding that, as per the Report submitted by the concerned Police Station under Section 202 of Cr.PC., *prima-facie* case is made out against the present Petitioner/accused.

5. Being aggrieved by the said order, the Petitioner/accused filed Criminal Revision Application No. 21 of 2023. On 23.07.2024, the learned Additional Sessions Judge, passed the impugned order holding that, as per inquiry report under Section 202 of Cr.PC., the

present Petitioner/accused has made defamatory statement in the public against Respondent No.1/complainant. While issuing the process, the learned Magistrate is required to consider whether *prima-facie* case is made out.

6. The learned counsel for the Petitioner canvassed in vehemence that, Respondent No.1/complainant has filed a private complaint and thereby prayed for an inquiry under Section 156(3) of Cr.P.C. However, Respondent No.1/complainant failed to comply with mandatory provisions of Section 156(3) of Cr.P.C. Therefore, the learned Magistrate as well as the learned Revisional Court ought to have dismissed the complaint for non compliance of the mandatory provisions.

7. To buttress these submission the learned counsel for the Petitioner relied on the case of ***Sayed Anwar Ahmed and Another Vs. State of Maharashtra and Another, 2017 ALL M.R. (Cri) 4457***, wherein the Division Bench of this Court has held that, while dealing with an application seeking action under Section 156(3) of Cr.P.C., it is necessary to comply with sub-section (1) and (3) of Section 154 of Cr.P.C. and observed in paragraph No. 25 as under:-

“25. To summarise,

(a) While dealing with a Complaint seeking an action under Sub-Section (3) of Section 156 of Cr.PC, the learned Magistrate cannot act mechanically. He is required to apply his mind to the contents of the Complaint and the documents produced along with the Complaint ;

(b) An Order passed on the said Complaint must record reasons in brief which should indicate application of mind by the Magistrate. However, it not necessary to record detailed reasons;

(c) The power under Sub-Section (3) of Section 156 is discretionary. Only because on plain reading of the Complaint, a case of commission of cognizable offence is made out, an Order of investigation should not be mechanically passed. In a given case, the learned Magistrate can go in to the issue of the veracity of the allegations made in the Complaint. The learned Magistrate must also consider the other relevant aspects such as the inordinate delay on the part of the Complainant. The nature of the transaction and pendency of civil proceedings on the subject are also relevant considerations;

(d) When a Complaint seeking an action under Sub-Section (3) of Section 156 is brought before the learned Metropolitan Magistrate or the learned Judicial Magistrate, it must be accompanied by an affidavit in support as contemplated by the decision of the Apex Court in Priyanka Srivastava. The affidavit must substantially comply with the requirements set out in Chapter VII of the Criminal Manual and especially paragraphs 5 and 8 which are quoted above; and

(e) Necessary averments recording compliance with Sub-Sections (1) and (3) of Section 154 of the CrPC should be incorporated with material particulars. Moreover, the documents in support of the said averments must filed on record.”

8. He further relied on *Devidas Waman Shinkar and others Vs. State of Maharashtra and others, (2018) 2 Bombay CR (Cri.) 185*, wherein the case of *Sayed Anwar* cited (supra), was considered and held that, the application for issuance of direction to the Investigating Officer under Section 156(3) of Cr.P.C. shall be supported by affidavit duly sworn in by the Applicant, who seeks invocation of jurisdiction of Magistrate and non filing of affidavit in support of the averments in application/ complaint, is mere irregularities cannot be accepted.

9. In the case in hand, *prima-facie* it appears that though the Respondent No.1/complainant filed a complaint Criminal Misc. Application No.153 of 2021 and thereby prayed for an inquiry under Section 156(3) of Cr.P.C. on ground that, he had lodge a report with the concerned Police Station on 22.07.2021, but no any action was taken. Thereafter, he approached the Superintendent of Police, Beed, with written complaint on 02.08.2021. Thereafter, Shirur Police Station registered a N. C. No. 358 of 2021 under Section 499, 500 of I.P.C. and given understanding to him to approach the Court. However, on 10.01.2022, the learned Judicial Magistrate First Class, examined the complainant on oath. Thereafter, on 25.02.2022, the learned J.M.F.C. passed an order below Exh.1 in Criminal Misc.

Application No.153 of 2021 and called the investigation report under Section 202 of Cr.P.C. from the concerned Police Station. Accordingly, after investigation, on 05.04.2022, the Investigating Officer submitted it's detail report, which shows that, the petitioner/Accused has made defamatory statement against Respondent No.1/complainant in the public and circulated the video on social media.

10. On 09.12.2022, the learned Judicial Magistrate First Class, passed an order and issued process against the present Petitioner/accused for the offence under Section 499 punishable under Section 500 of I.P.C., after considering and being satisfied that, as per the investigation report under Section 202 of Cr.P.C., the complainant has made out *prima-facie* case against the accused.

11. Since the offence under Section 499 punishable under Section 500 of I.P.C., is non-cognizable one, therefore, to my view, Section 154 sub-section (1) and (3) does not come into play, because, as per Section 154(1) of Cr.P.C., if the Police Authority failed to take cognizance in respect of cognizable offence, then the complainant is required to submit an application u/s 154(3) of Cri. P. C., with the Superintendent of Police of the concerned district and even if the

Superintendent of Police did not take any cognizance, then the victim of the complainant having right to approach before the Court by private complaint. Thereafter, the learned Magistrate is required to consider whether there is compliance of Section 154(1) and (3) of Cr.P.C. or not while making order u/s 156 (3) of Cri. P. C.

12. In the case in hand, the learned Magistrate himself satisfied that, the complainant has made out *prima-facie* case against the present Petitioner for the offence under Section 499 punishable under Section 500 of Cr.P.C. and issued process. The learned Revisional Court passed the impugned order and affirmed order of issuance of process passed by the learned Judicial Magistrate First Class, which does not appear perverse and illegal. Therefore, no interference is called at the hands of this Court to disturb findings of both the courts below. So also, no *prima-facie* case is made out for issuance of notice against the Respondents. In view of above discussion, present Writ Petition is dismissed. No order as to cost.

[Y. G. KHOBRAGADE, J.]

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