



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

906 CRIMINAL WRIT PETITION NO. 1823 OF 2024

KAILAS MARUTI ANDHALE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

....

Mr. Nisargraj B. Garje, Advocate for the Petitioner

Ms. Ashelsha S. Deshmukh, APP for the Respondent No.1-State

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 13.02.2025

PER COURT :-

1. Heard. The learned counsel for the Petitioner at length.

2. By the present Petition, the Petitioner takes exception to the order dated 04.09.2024 passed by the learned Additional Sessions Judge, Beed in Criminal Revision Application No. 2/2024 whereby the prayer for registration of an FIR under Section 156(3) of Cr.P.C. has been declined and the complaint was put for recording of statements of the Petitioner / Complainant under Section 200 of Cr.P.C.

3. Indeed, the Petitioner / Complainant filed a complaint Criminal Misc. Application No.101 of 2023 before the Judicial

Magistrate First Class, Ashti and prayed for investigation under Section 156(3) of Cr.P.C. for the offence punishable under Section 166, 166(A), 166(C), 167, 420, 463, 465, 474, 471 and 109 of Indian Penal Code on ground that suit bearing R.C.S. No.42 of 2017, between the parties is pending with respect to the property situated at Mauje Andhalewadi Tahat Pokhari before the Competent Court. So also, the Misc. Civil Appeal No.43 of 2019 is also pending. On 04.12.2019, the learned Appellate Court passed an order below Exh.5 and directed to maintain the status-quo in respect of above said property. However, Respondent Nos. 2 to 10 prepared false and fabricated documents and disobeyed the order of status-quo and also prepared bogus map and measurement chart, therefore, the present Petitioner lodged a report with the concerned Police Station, but no action has been taken. Therefore, the Petitioner / Complainant filed Criminal Misc. Appln. No.101 of 2023 before the learned JMFC, Ashti. However, on 19.06.2023, the learned JMFC First class, Ashti passed an order and refused to issue directions under Section 156(3) and treated the Complaint under Section 200 of Cr.P.C. Being aggrieved by the said order, the present Petitioner filed Cri. Revision Application No.42 of 2024 before the Sessions Court on 04.09.2024, the learned Additional Sessions Judge, Beed passed the impugned order and

dismissed the Revision of the Petitioner on the ground that the nature of complaint is in respect of breach of order of status-quo and the complaint does not fall within the ambit of Section 156(3) of Cr.P.C.

4. Needless to say that, by the present Petition, the Petitioner challenged the order dated 04.09.2024 passed by the learned Additional Sessions Judge affirming the order dated 19.06.2023 passed by the learned JMFC in Criminal M.A. No.101 of 2023. On perusal of the complaint, it appears that some civil litigations between the Complainant and Respondent Nos. 2 to 10 pending before the Competent Court. As per the contention of the Complainant, the dispute between the parties about their rights over the property Gut No. 188, 257, 366, 370, 537, 581, 587, 613, 614, and 623 and house property 41 and 42 were decided in Civil Suit No. 115 of 1990. Subsequently, on 04.12.2019, the learned Appellate Court passed an order below Exh.5 in Appeal No. 43 of 2019 and directed both the parties to maintain status-quo. However, Respondent Nos. 2 to 10 allegedly disobeying the said order of status-quo and prepared false and bogus measurement chart / map.

5. 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.

6. 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).”

7. 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.”

8. In case-in-hand as stated above the Petitioner / Complainant filed a complaint alleging that the Respondent Nos. 2 to 10 have prepared false and bogus map and measurement chart in breach of order of status-quo passed by the learned First Appellate Court on 04.12.2019 below Exh. 5 in Civil Appeal No.43 of 2019 which does not require further investigation as contemplated under Section 156(3) of Cr.P.C. Therefore, I do not find that the findings recorded by the learned both the Courts below are perverse, illegal and bad in law and no interference is called at the hands of this Court. Hence, the Writ Petition is dismissed.

[Y. G. KHOBRAGADE, J.]