2025:BHC-AUG:24231-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

29 CRIMINAL APPLICATION NO.4522 OF 2023

1 Ramesh Nagappa Ambarkhane,
Age 63 yrs., Occ. Business,
R/o Ambarkhane Building,
Bidar Road, Udgir,
Tq. Udgir, Dist. Latur.

2 Khan Ifroz s/o Wahed Khan Pathan,
Age 47 yrs., Occ. Service,
R/o Allah Ballah Dargah,
Aurangpura Galli, Udgir,
Tq. Udgir, Dist. Latur.

… Applicants

… **Versus** …

1 The State of Maharashtra
Through Police Inspector,
Police Station, Umri,
Tq. Umri, Dist. Nanded.

2 Pandit Gangadharrao Kawale,
Age 44 yrs., Occ. Agri.,
R/o Shelgaon, Tq. Umri,
Dist. Nanded.

… Respondents

…

Mr. A.N. Sabnis, Advocate for applicants

Mr. N.R. Dayama, APP for respondent No.1

…

CORAM : SMT. VIBHA KANKANWADI &
SUSHIL M. GHODESWAR, JJ.

DATE : 26th AUGUST, 2025

<u>**ORDER**</u> **: (PER : SMT. VIBHA KANKANWADI, J.)**

1 Present application has been filed by original accused Nos.3 and 4 to challenge the order passed by learned Judicial Magistrate First Class, Umri, Tq. Umri, Dist. Nanded dated 23.08.2023 in Criminal Miscellaneous Application No.68/2023 allowing the said application and directing Umri Police Station to investigate the matter under Section 156(3) of the Code of Criminal Procedure and for quashing First Information Report consequent to the said order vide Crime No.250/2023 dated 05.09.2023, for the offence punishable under Sections 420, 467, 468, 471 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. A.N. Sabnis for applicants and learned APP Mr. N.R. Dayama for respondent No.1. Respondent No.2 though served, failed to appear.

3 Learned Advocate appearing for applicants submits that applicant No.1 (accused No.3) is the witness to the mortgaged document and

applicant No.2 (accused No.4) is the Branch Manager of Sahayog Urban Co-operative Bank Limited, Udgir, Branch at Nanded. Original accused Nos.1 and 2 had approached the bank for grant of loan of Rs.20,00,000/- and had mortgaged their property bearing Gat No.92/1 admeasuring 46 R and Gat No.99/2 admeasuring 00 H 77 R at village Manur, wherein there was also seven room constructed house in 50 x 50 sq.ft. area. A registered document was then executed, however, complainant had filed the said complaint bearing Criminal Miscellaneous Application No.68/2023 contending that original accused No.1 Balaji had sold the said property to him by registered sale deed dated 27.12.2017 for a consideration of Rs.7,70,000/-. In spite of having knowledge about the said transaction original accused Nos.1 and 2 had mortgaged the said property to bank without the consent of present respondent No.2 and it is then stated that he has been cheated and fabricated documents have been prepared. Even if we take the contents of criminal application, which was later on allowed by learned Magistrate, as it is, learned Magistrate ought to have seen that offences were not made out as against applicant Nos.1 and 2 i.e. original accused Nos.3 and 4. They have not played any part nor it was so alleged in the said complaint. At the most, he will get a civil right to get the said mortgage deed cancelled. There was no transaction between the said bank and complainant – respondent No.2. Further, as per the bank procedure, before disbursement of loan the bank had taken search report by appointing Advocate. The mortgage transaction was entered into on 08.10.2021 and on that day or prior to that respondent No.2 had not got his name mutated in 7/12 extract. His name came to be mutated on 18.08.2022 vide Mutation Entry No.1993. Original accused No.1 and 2 had not repaid the amount and, therefore, notice was issued by the bank to him on 25.07.2023. It was the pre suit notice to make an opportunity available to original accused Nos.1 and 2 to deposit the outstanding amount. It was also clarified that if the amount is not paid then the proceedings under Section 91/101 of the Maharashtra Co-operative Societies Act would be taken. Accordingly, then such proceedings were filed before the Sub Registrar, Co-operatives, Aurangabad. Therefore, the bank was taking the legal proceedings for recovery of outstanding loan amount. There was no question of cheating respondent No.2. Therefore, the lodging up of report against present applicants is wrong and it is undertaken just to harass them.

4 Per contra, learned APP strongly opposed the application and submitted that respondent No.2 had purchased said property by a registered sale deed on 27.12.2017. Property that was purchased was agricultural land bearing Gat No.99/2 admeasuring 00 H 77 R out of 01 H 53 R. Merely because his name was not then reflected in 7/12 extract, it could not have been the ground or defence for the applicants, especially applicant No.2

(accused No.4) – the Branch Manager of the Branch of Bank which extended loan to original accused Nos.1 and 2. Learned APP places on record the written communication to him by Police Sub Inspector, Police Station, Umri – the Investigating Officer, wherein it is submitted that as against applicant No.1 i.e. original accused No.3 there is no evidence, however, there is role attributed to accused No.4 i.e. present applicant No.2. It would be the part of investigation further to see as to how in spite of search report taken through concerned Advocate; the Advocate had not come to know that there is a registered document executed in respect of the part of the land which was mortgaged. The investigation is still going on and, therefore, this cannot be taken as fit case to quash the First Information Report.

5 Before turning to the scrutiny of facts, we would like to consider the legal position. Certainly, we are guided by the decision in **Priyanka Srivastava vs. State of U.P.** [(2015) 6 SCC 287], when it comes to passing an order under Section 156(3) of the Code of Criminal Procedure, wherein it has been observed that :

> "27. In our considered opinion, a stage has come in this country where Section 156(3) Code of Criminal Procedure 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 truth and also can 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 a routine manner without taking any responsibility whatsoever only to harass certain persons.

That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or Under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

We have already indicated that there has to be prior applications Under Section 154(1) and 154(3) while filing a petition Under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the 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 cases 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."

5.1 In **Anurag Bhatnagar and another vs. State (NCT of Delhi) and another** [2025 SCC OnLine SC 1514], the Hon'ble Supreme Court had formulated five points and point No.1 was "(I) Whether an application under Section 156(3) of the CrPC could have been filed without approaching the police authorities." The relevant observations are thus :

"21. Sub-section (3) of Section 154 CrPC lays down that if the information of a cognizable offence given to the officer-in- charge of the police station is not being recorded or is being refused to be recorded, the informant may send the substance of the said information to the Superintendent of Police concerned in writing and by post, who upon being satisfied that such information discloses a cognizable offence will either direct for the investigation of the offence or may himself investigate the same.

22. A plain and simple reading of Section 154 CrPC as a whole makes it imperative upon the informant to first approach the officer-in-charge of the police station for the purposes of lodging an FIR in respect of a cognizable offence and where the Police refuses to record such information, the remedy is to approach the concerned Superintendent of Police. It is only when no action is taken even by the Superintendent of Police and the information of commission of a cognizable offence is not being recorded by the officer-in-charge of the police station or even by the Superintendent

of Police, that the person aggrieved or the informant may move the court of the Magistrate concerned to get the FIR registered and lodged with the concerned police station.

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26. On a conspicuous reading of the provisions of Sections 154, 156 and 190 of the CrPC together, it is crystal clear that an informant who wants to report about a commission of a cognizable offence has to, in the first instance, approach the officer-in-charge of the police station for setting the criminal law into motion by lodging an FIR. However, if such an information is not accepted by the officer-in-charge of the police station and he refuses to record it, the remedy of the informant is to approach the Superintendent of Police concerned. It is only subsequent to availing the above opportunities if he is not successful, he may approach the Magistrate under Section 156(3) CrPC for necessary action or of taking cognizance in accordance with Section 190 of the CrPC.”

5.2 Further, in **Anurag Bhatnagar**, (supra), it is observed in paragraph No.29 that “It is well recognized in law that the person aggrieved must first exhaust the alternative remedies available to him in law before approaching the court of law. In other words, he cannot ordinarily approach the court directly.“ Thus, herein also it has been held that the directions in **Priyanka Srivastava** (supra), are mandatory.

5.3 Now, recently, in **S.N. Vijayalakshmi and others vs. State of Karnataka and another** [Criminal Appeal No.3302 of 2025 (@ Special Leave Petition (Criminal) No.8626 of 2024)], after taking note of the decisions including **Priyanka Srivastava** (Supra) it has been observed thus :

> "We sum up our conclusions on this score as follows : (i) Directions issued in **Priyanka Srivastava** (Supra) are mandatory; (ii) Guidelines laid down in **Priyanka Srivastava** (Supra) operate prospectively; (iii) Non-filing of the supporting affidavit is a curable defect, but must be cured before the Magistrate passes any substantive order on the complaint/application, and; (iv) if the Magistrate proceeds without the requisite affidavit, such order/any consequential orders/proceedings can be quashed on the sole ground of non-compliance with **Priyanka Srivastava** (Supra)."

5.4 Though this case was mainly in respect of non filing of FIR, yet the last is relevant for us in **Priyanka Srivastava** (supra), wherein it has been observed thus :

> "26. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the

same."

6 Thus, taking into consideration the legal position now, when we peruse the order and complaint application that was made, it can be seen that though it was stated that written complaint was sent by respondent No.2 under RPAD on 30.06.2023 to the Police Station, on 04.07.2023 to office of Sub Divisional Police Officer and on 10.07.2023 to Superintendent of Police, Nanded, part of the compliance appears to have been made, however, supporting affidavit appears to have not been filed. There is verification that was appended to application/complaint, but no affidavit. Certainly, there is difference between verification and affidavit. The impugned order by learned Judicial Magistrate First Class, Umri dated 23.08.2023 also does not say that he has perused the affidavit along with other documents. Under such circumstance, there appears to be no compliance of the provisions under Section 154(3) of the Code of Criminal Procedure as are mandatory under the above decisions of the Hon'ble Supreme Court. On this count alone the said order as well as First Information Report that came to be registered in consequent to said order deserves to be quahsed and set aside.

7 Even alternatively if we consider the case on merits, then it can be seen that as against applicant No.1 the Investigating Officer in his say has made a specific statement that taking into consideration the statements of

witnesses there is no role played by applicant No.1 as is transpiring; yet it appears that he has not filed report under Section 169 of the Code of Criminal Procedure as against applicant No.1 yet. Rather he had arrested original accused No.3 i.e. applicant No.1 and in view of order of anticipatory bail in his favour bail has been granted to him. That means, there is still a hanging sword on applicant No.1. Immediately after it is revealed that a particular accused has not played any role in the commission of crime, then it is bounden duty of Investigating Officer to file a report under Section 169 of the Code of Criminal Procedure. He cannot keep the hanging sword on the head of such accused. The role attributed to applicant No.1 is that he is the witness to mortgage deed. The complaint application/First Information Report is totally silent on the point as to how applicant No.1 could have had knowledge about sale of land by original accused No.1 in favour of somebody else about three or more years prior to date on which mortgage deed was executed. Mere statement that he conspired with other accused is not sufficient. Specific role then will have to be attributed.

8 Now, as regards applicant No.2 (original accused No.4), who is Branch Manager of the Bank and has extended the loan to original accused Nos.1 and 2, important point to be noted is that when a loan is advanced by a Co-operative Bank, then it will have to be certified by the Directors of the

Bank also. Applicant No.4 is in the capacity of Chairman of Sayayog Urban Co-operative Bank Limited, Udgir. Now, if the Investigating Officer says that role has not been played by Chairman of the Bank, then how it can be said that Branch Manager had conspired with original accused Nos.1 and 2. Nothing has been done by him in his individual capacity. Further, it appears that requisite legal procedure was adopted by the Bank before disbursing the amount. When search report through an Advocate was also taken, then the question of common intention will not arise. From the investigation papers, which have been made available, it can be seen that after respondent No.2's name came to be mutated on 18.08.2022, original accused No.2, who is wife of accused No.1, has filed objection/appeal to Tahsildar, which then came to be rejected on 01.06.2022. However, in the said order there is a reference to Special Civil Suit No.9/2021 pending before learned Civil Judge Senior Division, Bhokar, which appears to have been filed by original accused No.2 – wife and two minor sons against original accused No.1 – husband. Respondent No.2 appears to be the defendant in that case. Therefore, already the civil suit was pending when respondent No.2 filed Criminal Miscellaneous Application No.68/2023 on 22.08.2023 and there is total suppression of said fact by respondent No.2. Taking into consideration the fact that applicant No.2 i.e. accused No.4 had adopted the legal procedure, it cannot be stated that he had common intention.

9 Even if for the sake of arguments the facts are taken as it is, also it can be seen that the facts in the application and First Information Report will not attract the ingredients of offences. In order to attract Section 420 of the Indian Penal Code the facts do not disclose that at any point of time present applicants had made any kind of representation or statement to the informant which can be said to be amounting to dishonestly inducing him (person deceived) to deliver any property etc. For having a conviction under Section 467, 468 of the Indian Penal Code the prosecution will have to prove forgery as defined under Section 463 of the Indian Penal Code. Section 463 of the Indian Penal Code prescribes that whoever makes any false document or part of a document with intent to cause damage or injury to the public or to any person with intent to commit fraud, then he can be said to have made a forgery. Now, false document has been defined under Section 464 of the Indian Penal Code. Here, it was the original document that was entered into, that too, it was registered. Necessary stamp duty has been paid and after execution of the said document the bank has extended the loan. In this entire process respondent No.2 was not involved at all. Learned Magistrate ought to have considered the facts of the case and also ingredients of offence before passing such order under Section 156(3) of the Code of Criminal Procedure. The application was lacking in all the respects. Therefore, consequently the impugned order is illegal. Therefore, it deserves to be set

aside. Hence, following order.

ORDER

i) Criminal Application stands allowed.

ii) Order passed by learned Judicial Magistrate First Class, Umri, Tq. Umri, Dist. Nanded dated 23.08.2023 in Criminal Miscellaneous Application No.68/2023 stands quashed and set aside and consequently First Information Report vide Crime No.250/2023 dated 05.09.2023 registered with Police Station, Umri, for the offence punishable under Sections 420, 467, 468, 471 read with Section 34 of the Indian Penal Code, 1860, stands quashed and set aside as against applicants viz. 1) **Ramesh Nagappa Ambarkhane** and 2) **Khan Ifroz s/o Wahed Khan Pathan**.

(SUSHIL M. GHODESWAR, J.) **(SMT. VIBHA KANKANWADI, J.)**

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