

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 4904 OF 2025

Kamal Kumar Kesardev Agarwal and ors. ...Petitioners

Versus

Uttam Kailaschand Tierwal and anr. ...Respondents

WITH

WRIT PETITION NO. 4911 OF 2025

Kamal Kumar Kesardev Agarwal and ors. ...Petitioners

Versus

Anita Uttam Tiberwal and anr. ...Respondents

Mr. Murtaza Najmi, a/w Abhinesh Yadav and nacny Kanugo,
for the Petitioner in both.

Mr. S. S. Ghag, APP for the State.

CORAM: N. J. JAMADAR, J.

DATED: 22nd SEPTEMBER, 2025

ORDER:-

1. Heard the learned Counsel for the petitioners.
2. These petitions under Articles 226 and 227 of the Constitution of India are directed against the judgment and order dated 14th August, 2025 passed by the learned Sessions Judge in Criminal Revision Applications No.34 of 2018 and 33 of 2018, whereby the revision applications preferred by respondent No.1 – complainant against the orders of dismissal of the complaints by the learned Magistrate came to be allowed by setting aside the said orders and restoring

the complaints to the file of the learned Magistrate to decide the same afresh in accordance with law.

3. Respondent No.1 filed the complaints being CC No.500/SW/2017 and 502/SW/2017 alleging the commission of offences punishable under Sections 386, 387, 388 and 506(II) of the Indian Penal Code 1860. Respondent No.1 prayed for a direction to the jurisdictional police for investigation of the alleged offences under Section 156(3) of the Code of Criminal Procedure, 1973 ("the Code").

4. By the orders dated 2nd January, 2018 in each of the complaints, the learned Magistrate dismissed the complaints opining, *inter alia*, that recourse to the provisions contained in Section 156(3) of the Code was not warranted and even the exercise of examining the complainant and his witnesses under Section 200 of the Code would be futile.

5. Being aggrieved, respondent No.1 preferred the revision applications before the learned Sessions Judge.

6. By the impugned order, the learned Sessions Judge was persuaded to set aside the order passed by the learned Magistrate observing *inter alia* that the complainant had prayed for taking cognizance of the offences and initiating

action against accused as well. If the learned Magistrate was not inclined to direct an investigation under Section 156(3) of the Code, it was incumbent upon the learned Magistrate to follow the procedure prescribed under Chapter XV of the Code. Thus, there was fundamental defect in the procedure adopted by the learned Magistrate.

7. Mr. Najmi, the learned Counsel for the petitioners, would urge that in the complaints in question there was no specific prayer to take cognizance of the offences and proceed against the accused. Since the complainant had only prayed for a direction for investigation under Section 156(3) of the Code and the Magistrate found the said prayer wholly unsustainable there was no infirmity in the orders passed by the learned Magistrate, which would warrant interference in exercise of limited revisional jurisdiction by the learned Additional Session Judge. Mr. Najmi made an endeavour to impress upon the Court that there was no substance in the complaints and, therefore, the learned Magistrate was otherwise justified in dismissing the complaints.

8. I am afraid to accede to the submissions of Mr. Najmi. First and foremost, it is necessary to note that in paragraph Nos.12 to 14 of the complaint, the complainant had

specifically stated that cognizable offences were made out and yet the police did not take action and, therefore, the complainant was constrained to approach the learned Magistrate. In paragraph No.16 of the complaint, the complainant prayed that the Court may be pleased to deal with the accused in accordance with law for the offences committed by them.

9. In the face of the aforesaid assertions in the complaints, the learned Sessions Judge was wholly justified in observing that the complainant had also prayed for taking cognizance of the offences by the Magistrate, apart from seeking a direction for investigation under Section 156(3) of the Code. Thus the mere fact that in the prayer clause only a direction for investigation under Section 156(3) was sought was not of decisive significance.

10. Under the scheme of Chapter XV of the Code, upon perusal of the complaint, if the Magistrate comes to the conclusion that there are sufficient grounds for proceeding, he can straightaway issue process. However, it is incumbent upon the Magistrate to comply with the requirements of Section 200 of the Code and examine the complainant and the witnesses present, if any. The Magistrate can postpone

the issue of process and conduct an inquiry by himself or direct an investigation by the police. Even if the Magistrate were to dismiss the complaints, by invoking the provisions contained in Section 203 of the Code, it was incumbent upon the Magistrate to consider the statement on oath of the complainant and of the witnesses, if any, and the result of the inquiry or the investigation (if any) under Section 202, if ordered.

11. A useful reference can be made to the decision of the Supreme Court in the case of *Tula Ram and others vs. Kishore Singh*¹, wherein the legal position was expounded as under:

“15.2 Where a Magistrate chooses to take cognizance, he can adopt any of the following alternatives :

(a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightaway issue process to the accused but before he does so, he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.

(b) The Magistrate can postpone the issue of process and direct an inquiry by himself.

(c) The Magistrate can postpone the issue of process and direct an inquiry by any other person or an investigation by the police,

15.3 In case the Magistrate after considering the statement of the complainant and the witnesses as a result of investigation and the inquiry ordered is not satisfied that there are sufficient grounds for proceeding, he can dismiss the complaint.”

1 (1977) 4 Supreme Court Cases 459.

12. In the case at hand, from the perusal of the complaints, it becomes abundantly clear that the learned Magistrate was alive to the aforesaid procedural requirement, and, yet, proceeded to dismiss the complaint after finding that a direction for investigation under Section 156(3) of the Code was not warranted. Since the learned Magistrate dismissed the complaint without complying with the provisions of Sections 200 and 203 of the Code, the Revisional Court committed no error in correcting the mistake committed by the learned Magistrate as there was material irregularity in exercise of the jurisdiction by the learned Magistrate.

13. Hence, in exercise of the writ jurisdiction, no interference is warranted with the impugned orders.

14. The petitions stand dismissed.

[N. J. JAMADAR, J.]