



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.99/2022

Manisha Manohar Faye and Ors. .VS. State of Maharashtra and Others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. P Bhandarkar, Advocate for petitioners.
Mr. K. R. Lule, A.PP for respondent No.1.
Mr. R. M. Patwardhan, Advocate for respondent Nos. 2 and 3.

CORAM : ANIL L. PANSARE AND RAJ D. WAKODE, JJ.
DATE OF RESERVING THE ORDER : NOVEMBER 24, 2025.
DATE OF PRONOUNCING THE ORDER : NOVEMBER 26, 2025.

Heard.

2. The petitioners have approached this Court seeking to quash Misc. Criminal Application No.151/2019, filed under Section 156(3) of the Criminal Procedure Code, 1973 ("Code") before Judicial Magistrate First Class, Nagpur, seeking direction to police to register First Information Report ("FIR") against the petitioners for the offences punishable under Sections 420, 436, 463, 465, 467, 471, 474, 166, 167, 217, 218 read with Sections 34 and 109 of the Indian Penal Code, 1860. The petitioners have also challenged the order dated 29.11.2021 passed by learned Magistrate in Misc. Criminal Application No. 151/2019, issuing process.

3. Prior to issuing process, the Magistrate has passed an order dated 04.05.2019 by which he has treated application filed under Section 156(3) of the Code to be complaint under Section 190 read with Section 200 of the Code and called upon the complainant to lead evidence.

4. Mr. S. P. Bhandarkar, learned counsel for the petitioners, submits that the application filed under Section 156(3) of the Code must be supported by an affidavit, which is absent here. In support, he has relied upon judgment of the Supreme Court in the case of **Priyanka Srivastava and anr. Vs. State of Uttar Pradesh and Ors.; [(2015) 6 SCC 287]**.

5. In our view, since the learned Magistrate has not ordered investigation but has treated the application filed under Section 156(3) of the Code as a complaint under Section 190 read with Section 200 of the Code, the requirement of affidavit will not be relevant. The argument is, thus, without any merit.

6. Another limb of the argument is that the Magistrate cannot suo motu convert application under Section 156(3) of the Code into complaint under Section 200 of the Code. In support, the petitioner has relied upon judgments of the Supreme Court in **Suresh Chand Jain .Vs. State of Madhya Pradesh [(2001) 2 SCC 628]** and **Mohd. Yousuf Vs. Afaq Jahan (Smt) and anr.; [(2006) 1 SCC 627]** as also judgment of the Allahabad High Court in **Ram Babu Gupta Vs. State of Uttar Pradesh; [2001 SCC OnLine All 264]**.

7. We have gone through these judgments to find that the Supreme Court or the Allahabad High Court have not laid down a law that application filed under Section 156 (3) of the Code cannot be treated as complaint under Section 190 read with Section 200 of the Code. In all the aforementioned cases, the Court has distinguished the Magistrate's powers to direct investigation under Section 156(3) of the Code on one hand and under Section 200 of the Code on the other. These judgments, will be of no help to the petitioners.

8. The issue, whether application filed under Section 156(3) of the Code can be treated as a complaint under Section 190 read with Section 200 of the Code, has been dealt with in detail by Single Judge of this Court (Aurangabad Bench) in **Atul Ashok Mundada .Vs. State of Maharashtra and Ors. [Criminal Application No.2368/2022, decided on 02.09.2024]**. The Court considered various judgments of the Supreme Court as well as of this Court and held as under:

“25. The law is settled on the powers under Section 156(3) of Cr.PC., the Court does not find substance in the complaint the Magistrate is not bound to direct the investigation under Section 156(3). The Magistrate has the discretion to exercise the powers under that section. Granting an opportunity to treat the application under Section 156(3) as a complaint under Section 200 of the Cr.PC. is not illegal.”

9. The aforesaid findings having been based on judgments of the Supreme Court, we do not find any reason to take a different view, particularly when we do not find any impediment in the provisions of the Code to treat the application filed under Section 156 (3) of the Code to be a complaint under Section 190 read with Section 200 subject, however, the application fulfills the requirement of ‘Complaint’ defined under Section 2(d) of the Code. In the present case, the petitioners have not challenged the order on this count viz. the complaint does not disclose necessary ingredients as required under Section 2(d) of the Code. Therefore, the discretion used by the Magistrate cannot be faulted on this ground.

10. The last limb of argument is that along with petitioners, were made few public servants as accused. The sanction to prosecute them under Section 197 of the Code has been admittedly not accorded. Therefore, the Magistrate could not have passed order under Section 156(3) or under Section 190 of the Code because the proviso to both the provisions as applicable in the Maharashtra,

prohibits the Magistrate to take cognizance of the offence without prior sanction.

11. This argument has been rightly countered by learned A.P.P. so also learned counsel appearing for the informant, contending that public servants have not questioned the order of issuance of process. According to them, the absence of sanction to prosecute the public servant will at the most affect the order taking cognizance to the extent of public servant and not against the petitioners, who are private persons.

12. We find substance in the submissions so made by the respondents. The order of taking cognizance or issuance of process will be bad in law to the extent of public servants having been passed without compliance of Section 197 of the Code. The public servants have not questioned the proceedings or the order of taking cognizance of the offence. The petitioners who are private persons, have no locus to challenge the said order. The issue of sanction qua public servant would have no effect upon the allegations against the petitioners which relates to allegations under the provisions of the IPC.

13. Put all together, there is no substance in the petition. The petition is accordingly dismissed.

(JUDGE)

(JUDGE)