



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.282 OF 2023

[Gopal Chandrabhan Hadole ..Vs.. Shrikant Sakharam Ingle and Another]

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

Court's or Judge's order

Mr A. R. Ingole, Advocate for Petitioner.
Mr M. G. Sarda, Advocate for Respondent No.1
Mr M. J. Khan, APP for Respondent/State.

CORAM : M. W. CHANDWANI, J.

DATE : 7th APRIL, 2025.

1. Heard.

2. By this petition, the petitioner challenges the impugned judgment and order dated 28.02.2023 passed in Criminal Revision Application No.103 of 2022, whereby the learned Additional Sessions Judge, Akola set aside the order dated 07.04.2022 passed in Misc. Criminal Case No.118 of 2022 by the learned Judicial Magistrate First Class, Balapur, District Akola dismissing the application of respondent No.1 for direction to the police officer to investigate the matter under Section 156(3) of the Code of Criminal Procedure, 1973.

3. Learned Additional Sessions Judge, Akola partly allowed the revision application directing the Magistrate to reconsider the allegations made in the complaint afresh and follow the procedure contained under Chapter XV of the Cr.P.C.

4. The respondent No.1 herein filed an application before the learned Magistrate under Section 156(3) of the Cr.P.C. seeking directions to Police Station Balapur to investigate and to register the offence under Sections 420, 467 and 468 of the Indian Penal Code, 1860 based on the allegations of cheating, specifically

failing to execute the sale-deed despite receiving a substantial amount. The learned Magistrate held that no document is required to be seized in view of the allegations made in the complaint and therefore, he refused to direct the investigation with liberty to file appropriate complaint. The learned Additional Sessions Judge upheld the order of the learned Magistrate refusing to direct the police to investigate the alleged offence under Section 156(3) of the Cr.P.C. However, the learned Additional Sessions Judge directed the Magistrate to reconsider the allegations made in the complaint and follow the procedure contained under Chapter XV of the Cr.P.C. afresh. Feeling aggrieved with this order, the petition came to be filed.

5. It is not disputed that the order of refusal to direct the police to investigate the matter under Section 156(3) of Cr.P.C. was upheld by the learned Additional Sessions Judge. The learned Magistrate directed the complainant to file a separate complaint, the learned Additional Sessions Judge directed that the Magistrate shall consider the complaint and follow the procedure contained under Chapter XV of the Cr.P.C. which deals with private complaints filed by the parties. Ultimately, the learned Additional Sessions Judge opined to treat the application under Section 156(3) of the Cr.P.C. as complaint. There is nothing wrong with this direction, particularly since the Magistrate only refused to order police investigation but, did not conclude that the allegations made by the respondent did not constitute offences under Sections 420, 467 and 468 of the IPC. The said stage is yet to arrive, the complainant must be given an opportunity to produce all relevant material. Ultimately, if the Court finds the material sufficient, the Magistrate shall issue process. Conversely,

if the Court feels that no offence is made out, the Magistrate may proceed under Section 204 of the Cr.P.C. No fault can be seen with the impugned judgment and order dated 28.02.2023 passed in Criminal Revision Application No.103 of 2022 by the learned Additional Sessions Judge, Akola.

6. The learned Magistrate shall consider whether the allegations made in the complaint constitute any offence and proceed accordingly.

7. In the above terms, the writ petition is disposed of.

JUDGE

Tambe