



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

**CRIMINAL WRIT PETITION NO.895 OF 2024**

SHRI. ANIL RAMCHANDRA BABHALE

VS

THE STATE OF MAHARASHTRA THR. PSO, PS, KUHI DIST. NAGPUR

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

*Court's or Judge's order*

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Mr. S.P. Bhandarkar, Advocate for the petitioner/s  
Ms S.N. Thakur, APP for the respondent/State  
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**CORAM : ANIL S. KILOR, J.**

**DATE : 11<sup>th</sup> FEBRUARY, 2025**

1. This petition takes exception to the order below Exh.1 dated 03.05.2023 passed by the learned Judicial Magistrate First Class, Kuhi in Criminal Misc. Application No.59 of 2022, directing the concerned police station to investigate the matter and submit a report as per Section 202 of the Code of Criminal Procedure (CrPC).

2. The learned counsel for the petitioner points out that the learned Judicial Magistrate First Class committed error in considering the complaint filed by the petitioner as under Section 202 of the CrPC. Whereas, the complaint was filed under Section 156(3) of the CrPC. He further submits that under Section 156(3) of the CrPC if the investigation is directed, even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police

station to register the FIR. For that purpose, he has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of ***Mohd. Yousuf Vs. Afaq Jahan (SMT) and Another***<sup>1</sup>.

3. The learned APP, on the other hand, supports the impugned order and submits that there is no merits in the present matter.

4. Having gone through the record and the impugned order, I find substance in the submission of the learned counsel for the petitioner that the learned Magistrate considered the case of the petitioner, as the application was filed under Section 202 of the CrPC and not under Section 156 (3) of the CrPC.

5. The Hon'ble Supreme Court of India, in the case of ***Mohd. Yousuf***(supra), has observed thus:

*"7. Chapter XII of the Code contains provisions relating to "information to the police and their powers to investigate", whereas Chapter XV, which contains Section 202, deals with provisions relating to the steps which a Magistrate has to adopt while and after taking cognizance of any offence on a complaint. Provisions of the above two chapters deal with two different facets altogether, though there could be a common factor i.e. complaint filed by a person. Section 156, falling within Chapter XII deals with powers of the police officers to investigate cognizable offences. True, Section 202, which falls under Chapter XV, also refers to the power of a Magistrate to "direct an investigation by a police officer". But the investigation envisaged in Section 202 is different from the investigation contemplated in Section 156 of the Code.*

<sup>1</sup> (2006) 1 SCC 627

8. *The various steps to be adopted for investigation under Section 156 of the Code have been elaborated in Chapter XII of the Code. Such investigation would start with making the entry in a book to be kept by the officer in charge of a police station, of the substance of the information relating to the commission of a cognizable offence. The investigation started thereafter can end up only with the report filed by the police as indicated in Section 173 of the Code. The investigation contemplated in that chapter can be commenced by the police even without the order of a Magistrate. But that does not mean that when a Magistrate orders an investigation under Section 156(3) it would be a different kind of investigation. Such investigation must also end up only with the report contemplated in Section 173 of the Code. But the significant point to be noticed is, when a Magistrate orders investigation under Chapter XII he does so before he takes cognizance of the offence.*

9. *But a Magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the Code. A reading of Section 202(1) of the Code makes the position clear that the investigation referred to therein is of a limited nature. The Magistrate can direct such an investigation to be made either by a police officer or by any other person. Such investigation is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further. This can be discerned from the culminating words in Section 202(1) i.e.*

*"or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding".*

10. *This is because he has already taken cognizance of the offence disclosed in the complaint, and the*

*domain of the case would thereafter vest with him.*

*11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.”*

6. In view of the above referred observations of the Hon’ble Supreme Court, I am of the opinion that the learned Judicial Magistrate First Class, Kuhl has committed error in considering the application of the applicant under Section 202 of the CrPC while calling police report.

7. In the circumstances, I am of the opinion that the matter needs to be remanded back to the learned Judicial Magistrate First Class, Kuhl to reconsider it. Accordingly, I pass the following order:

- (i) The writ petition is **partly allowed**.
- (ii) The order below Exh.1 dated 03.05.2023

passed by the learned Judicial Magistrate First Class, Kuhi in Criminal Misc. Application No.59 of 2022, is hereby quashed and set aside, with direction to the learned Judicial Magistrate First Class, Kuhi to reconsider the matter in light of the above referred judgment of the Hon'ble Supreme Court of India in the case of *Mohd. Yousuf*(supra).

The writ petition is **disposed of** accordingly.

(ANIL S. KILOR, J.)