



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.273/2025

M/s. Confidence Petroleum India
Limited, Through it's Authorized
Representative Mr Jayant Ray,
R/o 34 A, Confidence Tower,
Central Bazar Road,
Ramdeshpeth, Nagpur-440010.

... PETITIONER

...VERSUS...

State of Maharashtra, through
Police Station Officer,
Police Station, Sitabuldi
Tq. Dist. Nagpur

...RESPONDENT

Shri Y.P. Bhelande, Advocate for petitioner
Shri A.A. Madiwale, Advocate for respondent /State

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 10.07.2025

ORAL JUDGMENT

. Heard finally by consent of the parties.

2. By this petition, the petitioner has challenged the
order passed by the learned Judicial Magistrate First Class-9,

Nagpur in Criminal M.A. No.1730/2024 dated 15.01.2025, directing the complainant to enter into the witness box for recording the verification.

3. The learned Counsel for the petitioner submitted that the petitioner has approached to the learned Judicial Magistrate First Class by filing the application under Section 156(3) of the Criminal Procedure Code for seeking direction to register the FIR against the accused therein. The petitioner entered into an agreement for sale of vehicle (Tanker) with the accused Mehul Anilkumar Patni on 22.07.2022 for the consideration of Rs.2,10,00,000/- that is approximately Rs.15 lakh per tanker. Out of the said tankers, only 12 tankers were in working conditions so the final consideration of Rs.1,80,00,000/-, out of which the petitioner have already paid of Rs.1,72,00,000/- to the accused by way of RTGS and remaining balance amount of Rs.8,00,000/- was to be paid after the accused hands over the documents of the said tanker. Thus the accused was under obligation to forward clear title of the said tankers without any encumbrances along with other

relevant documents of the said tankers as per the terms of the agreement to sale. It was agreed between the petitioner and accused that “The owners hereby covenant with the purchaser that owners shall transfer the said vehicles to the name of the purchaser in the records of R.T.O. authorities, Insurance Authorities and other concerned and competent authorities; owner will provide N.O.C. to purchaser of the said vehicle after clearing all the backlogs in terms of RTO Documentation, PESO License, Insurance’s and Challans, Taxes, Litigations, Parking charges if any etc.”

4. That out of the said 12 tankers the accused didn’t supply the necessary documents of the 3 tankers namely 1) GJ 06 AU 4554, 2) GJ 06 AX 5427 and 3) GJ 06 AV 3020. Even after repeated request and constant pursuance for month by the complainant and, therefore, the petitioner who is the complainant smelled foul play and intention of the present accused and on inquiry he came to know that said vehicles are already hypothecated with the Union Bank of India, Badodara Branch and at the relevant time, the petitioner came to know

that despite the vehicles were hypothecated with the bank against the loan amounts, the fact was not disclosed to present petitioner and obtained the amount. Thus, the accused have deceived, cheated and defrauded the complainant, therefore he approached to the Judicial Magistrate First Class, Nagpur by filing an application under Section 156(3) of the Criminal Procedure Code.

5. Instead of taking the cognizance of the application and giving directions by passing the reasoned order, the Judicial Magistrate First Class stated it as a complaint under Section 200 of the Criminal Procedure Code and passed an order below Exhibit-1 directing the present petitioner to enter into the witness box for verification. In support of his contention, he placed reliance on the decision of this Court in ***Prime Downtown Estates Pvt. Ltd. Vs. Omkara Assets Reconstruction Company and ors.*** Reported in ***Law Finder Doc ID-2689546*** and ***Nirmal Bang Securities Private Limited Vs. State of Maharashtra, through Mumbai Police MRA Marg, Mumbai,*** reported in ***Law Finder Doc ID 864747, 2017 (2) AIR BomR***

(Cri) 457, wherein the law regarding the application under Section 156-E and the consideration therein are dealt by the Division Bench of this Court by referring various decisions of the Hon'ble Apex Court. He further placed reliance on the order of this Court in ***Writ Petition No.895/2024 (Shri Anil Ramchandra Babhale Vs. The State of Maharashtra thr. PSO, PS, Kuhi Dist. Nagpur)***.

6. Learned APP supported the order passed by the learned Judicial Magistrate First Class.

7. On giving a careful consideration to the submissions and the law laid down by the Hon'ble Apex Court in case of ***Piryanka Shrivastava and another v. State of U.P, and another (2015) 6 SCC 287 as well as Lalita Kumari Vs. State of Utter Pradesh, and others 2014 (2) SCC 1***, the law has been summarized in paragraph No.25 of the said decision which reads as under:

“25. To summarise,

(a) While dealing with a Complaint seeking an

action under Sub-Section (3) of Section 156 of Cr.P.C., the learned Magistrate cannot act mechanically. He is required to apply his mind to the contents of the Complaint and the documents produced along with the Complaint;

(b) An Order passed on the said Complaint must record reasons in brief which should indicate application of mind by the Magistrate. However, it not necessary to record detailed reasons;

(c) The power under Sub-Section (3) of Section 156 is discretionary. Only because on plain reading of the Complaint, a case of commission of cognisable offence is made out, an Order of investigation should not be mechanically passed. In a given case, the learned Magistrate can go in to the issue of the veracity of the allegations made in the Complaint. The learned Magistrate must also consider the other relevant aspects such as the inordinate delay on the part of the Complainant. The nature of the transaction and pendency of civil proceedings on the subject are also relevant considerations;

(d) When a Complaint seeking an action under Sub-Section (3) of Section 156 is brought before the learned Metropolitan Magistrate or the learned Judicial Magistrate, it must be accompanied by an affidavit in support as contemplated by the decision of the Apex Court in Priyanka Srivastava. The affidavit must substantially comply with the requirements set

out in Chapter VII of the Criminal Manual and especially paragraphs 5 and 8 which are quoted above; and

(e) Necessary averments recording compliance with Sub-Sections (1) and (3) of Section 154 of the Cr.P.C. should be incorporated with material particulars. Moreover, the documents in support of the said averments must filed on record."

8. The Hon'ble Apex Court in case of ***Mohd. Yousuf Vs. Afaq Jahan (SMT) and another*** reported in ***(2006) 1 SCC 627***, wherein it is observed that:

"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.

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."

9. In view of the above referred observation of the above, I am of the opinion that the learned Judicial Magistrate First Class, Nagpur has committed an error in considering the application of the applicant filed under Section 156 of the Criminal Procedure Code and treated as complaint under Section 200 of the Criminal Procedure Code.

10. In the circumstances, I am of the opinion that the matter needs to be remanded back to the learned Judicial Magistrate First Class, Nagpur, to reconsider the same. Accordingly, I proceed to pass the following order:

ORDER

i) The Writ Petition is partly allowed.

ii) The order below Exhibit-1 dated 15.01.2025 passed by learned Judicial Magistrate First Class Court-9, Nagpur in Criminal Misc. Application No.1730/2024, is hereby quashed and set aside with direction to the learned Judicial Magistrate First Class Court-9, Nagpur to reconsider the matter in light of the above referred judgment of the Hon'ble Apex Court in case of *Mohd. Yousuf (supra)*.

iii) The learned Magistrate is directed to disposed of this application expeditiously.

11. The Writ Petition is disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

R.S. Sahare