



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

CRIMINAL APPLICATION (APL) NO.64 OF 2025

Mahesh @ Madhusudhan Vllabhdas
Selarka, Aged about 71 years, Occ.
Business, R/o Suryakant Bhawan, Near
Mohan Market, Khamgaon, Tq.
Khamgaon, Dist. Buldhana.

...Applicant

// VERSUS //

1. State of Maharashtra
Through its police station officer,
Khamgaon City; Police Station Khamgaon
City, Dist-Buldhana.
2. Mukesh Vallabhadas Selarka, aged about
73 years, Occ-Business, R/o B.R.
Industries, B/1-22, 3rd Cross, 1st Stage,
Peenya, Bangalore Estate, Peenya-560058.
3. Manoj Jagdish Modi, aged about 49 years,
Occ. Business, R/o Waman Nagar,
Khamgaon, Tq. Khamgaon, Dist.
Buldhana.
4. Shashikant Madhukar Bhosale, aged about
40 years, R/o C/o Manoj Modi Waman
Nagar, Khamgaon, Tq. Khamgaon, Dist.
Buldhana.
5. Umesh Damodar Attamgan, aged about
35 years, Occ. Labourer, R/o Near Zilla
Parishad School, Shirajgaon Deshmukh,
Garadgaon, Tq. Khamgaon, Dist.
Buldhana.

... Respondents

Shri S.V. Sirpurkar, Advocate for applicant.

Shri M.J. Khan, A.P.P. for non-applicant No.1/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 24/01/2025

ORAL JUDGMENT

1. By this application, the applicant is seeking quashing and setting aside the order passed by the learned Additional Sessions Judge, Khamgaon, Dist. Buldhana in Criminal Revision Case No.26 of 2022 and order dated 29.04.2022 passed by the learned Judicial Magistrate First Class, (Court-1), Khamgaon in Criminal Misc. Application No.40 of 2022.

2. As per the contention of the applicant, he is permanent resident of Khamgaon, Tq. Khamgaon, Dist. Buldhana. He had lodged report to the Police Station, Khamgaon on 04.10.2021 against respondent Nos.2 to 5 regarding preparation of the false documents, and filing of false claim over the immovable property. However, no action was taken by the Police. A copy of the said report was sent to the District Superintendent of Police as per the provisions of Section 154(3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C."). It is further contention that, as no actions were taken by the Superintendent of Police therefore, applicant was constrained to file an application under Section 156(3) of the Cr.P.C. before the learned Judicial Magistrate First Class, Khamgaon. In the said application, the

applicant requested the Court to direct the Concerned Authority to register the offence. The dispute is in respect of shop property in which there is a shop which is facing towards the road occupied by the National Medical as a tenant since last ten years. The applicant and his three brothers were the owners of the said house property including shop. Out of which, 1/4th share of the applicant is by way of co-owner and 1/4th share is purchased from his brother late Umesh Vallabhdas Selarka. Thus, he acquired 50% of the ownership. But in order to take the forcible possession of shop premises, the conspiracy was entered into by the respondent No.2 namely Mukesh Vallabhdas Selarka and created false document in collusion with respondent Nos. 3 and 4 and attempted to take the forcible possession. The applicant had filed the civil suit which was registered as Regular Civil Suit No.312 of 2012 in the Court of Civil Judge Senior Division, Khamgaon, even the respondent No.2 was party to the said suit.

3. It is further contention of the applicant that respondent No.2 has given complaint on 11.08.2021 to Municipal Council relating to the renovation effected by the applicant however, no action was taken. The false document is created and on the basis of false document, respondent No.3 has further created a tenancy agreement and therefore, the applicant prayed for action against the respondents but the learned

Judicial Magistrate First Class, Khamgaon has rejected the application. Being aggrieved by the order of learned Judicial Magistrate First Class, Khamgaon, the applicant has preferred the revision bearing No.26 of 2022 which is also dismissed by the learned Additional Sessions Judge, Khamgaon, Dist. Buldhana and therefore, this petition.

4. Heard Shri Sirpurkar, learned counsel for the applicant. He submitted that the learned Magistrate committed an error in not going to the contents of the application wherein the petition has disclosed that the co-owner of the said property obtained exclusive possession from the tenant after filing of suit against the said tenant. The learned trial Court has failed to observe that the false document of power of attorney was executed by the original non-applicant No.1 in the conspiracy with the other original non-applicant for the purposes of grabbing and unlawful possession of the said shop and therefore, it amounts an offence of creation of false document. The learned Sessions Court has also ignored the said fact and erroneously observed that there is no compliance of Sections 154(3) of the Cr.P.C., while in the complaint itself it is stated that the information was given by the District Superintendent of police but no action was taken and therefore, the learned Sessions Judge ought to have considered the grounds of revision and ought to have quashed and set aside the order passed by the learned Judicial Magistrate First

Class, Khamgaon. Both the orders passed by the Courts below are erroneous and therefore, the action is required and the application deserves to be allowed.

5. The learned APP supported the order passed by the learned Judicial Magistrate First Class, Khamgaon, Dist. Buldhana and the order passed by the learned Additional Sessions Judge, Khamgaon.

6. After perusal of the application and complaint, it shows that applicant had made prayer in the application to issue direction under Section 156(3) Cr.P.C. to the Police Station Officer. It is alleged by the applicant that, the application before the learned Judicial Magistrate First Class, Khamgaon that, he is the owner of the same property and obtained exclusive possession from the tenant. He has $\frac{1}{4}^{\text{th}}$ share by inheritance and $\frac{1}{4}^{\text{th}}$ share he has purchased from his brother. Thus, he acquired 50% of the ownership. However, in order to take forcible possession of the shop premises, the conspiracy was entered into by the respondent No.2 and created false document in collusion with the respondent Nos. 3 and 4 and attempted to take the forcible possession. Thus, offence punishable under Sections 463, 467, 468, 471 and 123 read with Section 34 of the Indian Penal Code attracts and therefore, the action is required against

the present non-applicants and therefore, he filed an application for seeking directions of investigation under Section 156(3) of the Cr.P.C.

7. While considering the application, the learned Judicial Magistrate First Class, Khamgaon has considered, that the applicant has only lodged report to the concerned Police Station but as per the mandatory compliance of Section 154(3) of the Cr.P.C. he ought to have sent the substance of such information in writing and by post to the Superintendent of Police. But the complainant only mentioned that, he forwarded the copy to the Superintendent of Police without supporting any acknowledgment copy of the said complaint.

8. It is further observed that, though it is contended by the applicant that the accused Nos.1 to 4 have created the false document, no single document in respect of the same is on record and also observed that the dispute is of a civil nature but by giving colour of criminal proceeding to the said dispute, the application is filed and therefore, the application is rejected. The learned Sessions Judge has also observed that, after perusal of the impugned order passed by the learned trial Court, it shows that, it has considered all the aspects and right to refuse to sent the complaint for the investigation under section 156(3) of the Cr.P.C.

9. After going through the rival submission of the parties, the four questions which arises for the consideration is, whether the applicant has made out the case to sent his application for the investigation purpose. For that purpose, the relevant Sections 154 and 156 of the Cr.P.C. are to be looked into. Section 154 of the Cr.P.C. deals with information in cognizable cases, the relevant provision would be section 154(3) of the Cr.P.C. which read as under:-

“Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such other officer shall have all the powers of an officer in charge of the police station in relation to that offence.”

10. Section 156 of the Cr.P.C. states about police officer’s power to investigate cognizable offence, which read as under:-

“(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.”

11. Thus, if there is a grievance regarding that police not taking action on giving report by any person that person is under obligation to submit the report or the information to the superior officer by sending

the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him. Before filing an application under Section 156 of the Cr.P.C. this compliance is required.

12. As far as the present case is concerned, though learned counsel for the applicant submitted that there is a compliance of Section 154(3) of the Cr.P.C. but, it only shows that the application before addressed to the Police Station Officer copy of the same is forwarded to the various authorities which is not the compliance in view of Section 154(3) of Cr.P.C.

13. Coming to the provisions under section 156(3) of the Cr.P.C., if Section 156(3) of the Cr.P.C. is considered along with sub-section (1) of Section 156 of the Cr.P.C., then it is clear that, if cognizable offence is disclosed, the learned Magistrate may direct for registration and to investigate into complaint. Under sub-section (1) an Officer-In-Charge of the Police Station is authorized to investigate any cognizable case without order of the Magistrate. Hence, when the application is moved to the Magistrate will not work like a postman but he has to

examine whether from reading of the application/ Complaint under Section 156(3) of the Cr.PC, *prima facie* commission of offence is disclosed or not. If he find that no commission of offence was disclosed, he can reject the application and if he finds that *prima facie* commission of cognizable offence was disclosed, he will direct for registration and investigation of such complaint. If the Magistrate finds that though *prima facie* commission of offence was disclosed but it does not require investigation as no recovery or discovery is necessary in that case, then he may proceed as a complaint case. However, if the learned Magistrate finds *prima facie* no commission of offence was disclosed he can reject the application.

14. The Hon'ble Apex Court in the cases of *Madhu Bala ..vs.. Suresh Kumar and others*, reported in AIR 1997(35) ACC 371 and *Central Bureau of Investigation through S.P. Jaipur ..vs.. State of Rajasthan and another* reported in AIR 2001(42) ACC 451, were considered in para 9 of the aforesaid judgment wherein it is held that:-

“The provisions of the Code therefore do not in any way stand in the way of a Magistrate to direct the police to register a case at the police station and then investigate into the same. In our opinion when an order for investigation under Section 156(3) of the Code is to be made the proper direction to the police would be “to register a case at the police station treating the complaint as the first information report and investigate into the same.”

15. It has been held by the Hon'ble Apex Court in the case of ***Central Bureau of Investigation*** (Supra) as follows:-

“What is contained in sub-section (3) of Section 156, is the power to order the investigation referred to in sub-section (1), because the words “order, such an investigation as above mentioned” in sub-section (3) are in mistakable clear as referring to the other sub-section. Thus the power is to order an “officer-in-charge of a police station” to conduct investigation.”

16. The Hon'ble Apex Court in the case of ***Madhu Bala*** (Supra) was related with the direction by the Magistrate to the police for investigation. According to the Apex Court if the learned Magistrate has directed for the investigation under Section 156(3), Cr.P.C. the Police has to register case on such complaint treating it as FIR. The proper direction to the police would be “to register a case at the Police Station treating the complaint as the first information report and investigate into the same”. Hence, the aforesaid observation is not in support of the contention of the argument of the present applicant as far as the observation of the Hon'ble Apex court in the case of ***Central Bureau of Investigation*** (Supra) is concerned, “the provisions of sub-section (3) of section 156 was considered and it was observed by the Apex Court that under sub-section (3) of section 156, the power of the Magistrate was to direct for investigation referred to in sub-section (1) of section 156 because in sub-section (3) it has been mentioned that Magistrate may order such an investigation as mentioned in sub-section (1). It means the Magistrate

can direct investigation by Officer-In-Charge of Police Station. However, it cannot be stretched to direct the investigation by C.B.I. It has not been held by the Apex Court or by the High Court that the learned Magistrate was not required to consider the contents of application and merely if the application was moved he was required to direct for registration and investigation of the case without considering the contents of the application.

17. Thus, in view of Section 156 (3) of the Cr.P.C. *prima facie* commission of offence is to be disclosed. The Magistrate has to find out whether the *prima facie* commission of offence was disclosed or not and if the *prima facie* offence is not disclosed, he can reject the application.

18. Coming to the facts of the present and the observation of the Magistrate as well as the Sessions Court which shows that though applicant has alleged that false and forged document is prepared and with the help of false and forged document, the possession was taken forcefully from the applicant which is not supported by the applicant by adducing any material before the Magistrate for issuing such direction. When the complaint is presented before the Magistrate in which a request was made for taking action as mentioned in Section 2(d) of the Cr.P.C., which defined “complaint”, the Magistrate is expected to apply his mind. The Magistrate has to ascertain whether the contention made

in the petition complaint constitute any offence. If the offence is not constituted then Magistrate is expected to take a decision as to whether the matter needs to refer the police for investigation as provided in Section 156 (3) of the Cr.P.C. or needs to proceed further as provided in Section 2(d) of the Cr.P.C. and subsequent Section of Chapter-XV of the Cr.P.C. There is a distinction with the Magistrate in this regard though police officer is duty bound to register case on receiving information of cognizable offence, the Magistrate is not bound to refer the matter to the police under Section 156(3) of the Cr.P.C.

19. In the light of the above provisions and if the facts of the present case are taken into consideration, apparently which shows that there was a civil dispute and the attempt was made to give a criminal colour to the said dispute. The learned Magistrate and learned Session Judge has rightly considered the said and rightly rejected the application. No interference is warranted in the order made by the learned Judicial Magistrate First Class as well as in the order of learned Additional Sessions Judge, Khamgaon. In view of that, the application is deserved to be rejected. Accordingly, I proceed to pass the following order:-

The application is **rejected**.

(URMILA JOSHI-PHALKE, J.)