

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 6452 OF 2022

1. M/s. Crane Works India
A proprietorship firm
Mr. Dharmesh Vador
Age : 50 years, Occupation : Business
Having its office address at:
5, Kashiram Jamnadaas
Building, P. D'Mello Road,
Mumbai-400 009

... Petitioner

V/s.

1. The State of Maharashtra
Through Public Prosecutor
Bombay High Court
2. The Commissioner of Police.
Fort, Mumbai, 400001.
3. Deputy Commissioner of Police.
Borabazar Precinct, Ballard Estate, Fort,
Mumbai, 400001.
4. The Senior Inspector of Police.
Dr. Meisheri Road, Ramchandra Bhatt Marg,
Dongri, Umerkhado, Dr. Maheshwari Rd,
Mumbai-400009

... Respondents

Mr. Karan Bhosale a/w Mr. Nooralam Khan, Mr. Oves Siddiqui, Ms. Zeenat Shaikh for the Petitioner.

Mr. Amit A. Palkar, A.P.P for Respondent -State.

**CORAM : A. S. GADKARI AND
RANJITSINHA RAJA BHONSALE, JJ.**

RESERVED ON : 8th DECEMBER 2025
PRONOUNCED ON : 11th FEBRUARY 2026

JUDGMENT [Per: RANJITSINHA RAJA BHONSALE, J] :-

1) Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2) By the present petition, filed under Article 226 of the Constitution of India, the Petitioner seeks directions to the Respondent no.4 i.e. Dongri Police Station to register the F.I.R. on the basis of the Petitioner's complaint dated 28th May 2025, under Section 173 of the Bharatiya Nagari Sanhita 2023 and to conduct a fair and impartial investigation in respect of the said complaint. The Petitioner further prays that, the letter dated 12th September 2025 issued by the Respondent No.4 stating that no cognizable offence is made and that the dispute is merely a civil dispute be quashed and set aside. The Petitioner, interalia prays that this Court be pleased to direct the Respondent No.3, the Deputy Commissioner of Police to supervise and monitor the information and submit status report before this Court.

3) The summary of the Petitioner's complaint dated 20th May 2025 is as under:

3.1) The Petitioner is a partnership firm engaged in the business of providing trading and hiring of construction machinery especially cranes. That, the Petitioner came in contact with Mr. Velan Durai through a common friend Mr Sanjiv Shah of M/s. Seema Cranes Mumbai. That, Mr Velan Durani

is the sole proprietor of M/s. KVK Lifters who has engaged in the business of providing, trading and hiring of construction machinery especially cranes.

3.2) Based on the Petitioner's requirement for cranes of specific specifications, the said Mr. Velan Durai referred the Petitioner to one M/s. NASA Technical Trading FZE which according to Mr. Velan Durai were one of the most reputed and competent entities in the business concerning in cranes in Dubai. That, the NASA Technical Trading FZE were based out of Dubai and that operated from the United Arab Emirates and interalia engaged in the business of trading construction equipment. That, it was owned and managed by one Mr. Sabeer Ali Haja Mohiddin.

3.3) In the year 2022, the Petitioner was in need of specialized crane for his business purposes. He discussed the said requirements with said Mr. Velan Durai and sought his assistance. Mr. Velan Durai having realised that the Petitioner's trusted and relied upon him, allegedly developed dishonest and malicious intentions. That, taking undue advantage of the Petitioner's confidence, Mr. Velan Durai suggested certain cranes, allegedly with the deliberate intention to mislead and defraud the Petitioner and deceitfully guided him to M/s. NASA Technical Trading FZE, owned by Mr. Sabeer Ali Haja Mohiddin. That, as per the payment procedure/terms of M/s. NASA Technical FZE, the entire payment was to be deposited before delivering the crane at the Mumbai port. That, Petitioner found the said arrangement logical and reasonable acted upon the advice of Mr. Velan Durai. That, a sale deed

was executed on 5th of August 2022.

3.4) That, as the petitioner was permitted to inspect the crane, the Petitioner travelled to Kuwait on 27th July 2022 to inspect the crane. That, as the Petitioner found it to his required specifications he agreed to purchase the same. The Petitioner was assured by the said Mr. Velan Durai and Mr. Sabeer Ali Haja Mohiddin that the crane would be shipped to Mumbai. That, the Petitioner believed the said representation and fulfilled his part of the contract by making the payments. That, the Petitioner believing the representations made payments and parted with the said sum of USD 5,80,000/-. That, Mr. Velan Durai and NASA Technical Trading FZE failed to make the necessary arrangements to transport the crane from Kuwait to the Mumbai Port. That, the Petitioner had to make the arrangements for the transportation of the crane which was done with the assistance from Orchid Shipping Pvt Ltd. Despite the efforts of the Petitioner to make arrangements for the transportation of the crane, the respondents failed to move the crane to the port and shipment did not materialize. Based on the false representations, the Petitioner further incurred a futile expenditure of USD 50,000/-. Despite giving assurances the respondents failed to move crane to the port and facilitate the shipment. Due to the said conduct, the crane could not be shifted and transported to Mumbai Port. As a result of the same, the Petitioner was compelled to hire cranes to continue his business operations and the Petitioner suffered loss and hardship due to the said conduct of the Respondents. That,

the Petitioner through its Advocates letter dated 20th May 2024 called upon the Respondents to refund the said amount. That, M/s. KVK Lifters disowned all responsibility of the transaction and stated that they were handling only the shipment part. That, the reply of Mr. Velan Durai was totally contrary to the Sale Agreement dated 5th August 2022. The Respondents have neither returned the amount nor responded to the Petitioner. Consequently, the Petitioner lodged the complaint dated 28th May 2025 with the Dongri Police Station.

4) That, the Petitioner had filed mediation proceedings before the Maharashtra State Services Authorities. Despite holding several mediation meetings/sittings proceedings failed to yield any result. The Petitioners also instituted a commercial suit. That, all the aforesaid facts had been informed to the Respondent Authorities. That, the Respondent Authorities have, vide its letter dated 12th September 2025 concluded that, no offence of cheating is made out. In the background of these facts, the Petitioners had prayed that Respondent No.4 be directed to register First Information Report and conduct a fair, proper and impartial investigation.

5) Mr. Amit Palkar, learned APP for State submits that, perusal of the facts of the matter would indicate that the matter is of a civil nature and pertains to a business transaction. That, prima facie there is no element of cheating. That, even as per the Petitioner, Petitioner is engaged in the business of renting and trading of cranes and accessories and provides services

essential for the operation of the cranes. Learned APP would submit that, the Petitioner is in the same business and is aware of the nitty gritty of the business. In this background the contention of the Petitioner that he has been cheated cannot be accepted. That, even the Petitioner's own pleadings indicates that there was discussions between the parties in respect of the transactions and the business. The Petitioner has specifically stated that, after inspection of the cranes, the petitioner has found it to match the required specification and had agreed to purchase it.

5.1) Learned APP further submits that, the dispute seems to be in respect of transportation of the cranes from Kuwait to Mumbai Port. He submits that, in the present matter mediation has failed and several civil proceedings have been initiated. In this background, the conclusion arrived at by Respondent No.4 in its letter dated 12th September 2025 is correct and apt.

6) We have considered the contentions raised by the parties. By the present Petition, Petitioner seeks directions for registration of an FIR under the Criminal Procedure Code (now the BNSS). We note that, the steps which are required to be taken in the event the complaint/FIR is not registered, are clearly stated under the erstwhile Criminal Procedure Code and now under the BNSS. The Petitioner has the option to first approach the Superintendent of Police and then if in the event the grievances are not addressed approach the jurisdictional Magistrates Court if required.

7) As regards, the prayer of the Petitioner seeking directions to

register an FIR we would refer to the judgment of the Hon'ble Supreme in the case of *M. Subramaniam And Another V/s. S. Janaki And Another* reported in (2020) 16 SCC 778, wherein in paragraphs 6 and 7 it is observed that:

"6. While it is not possible to accept the contention of the appellants on the question of locus standi, we are inclined to accept the contention that the High Court could not have directed the registration of an FIR with a direction to the police to investigate and file the final report in view of the judgement of this Court in Sakiri Vasu v. State of Uttar Pradesh And Others in which it has been inter alia held as under: (SCC PP. 412-14, paras 11-18)

"11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 CrPC, then he can approach the Superintendent of Police under Section 154(3) CrPC by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) CrPC before the learned Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

12. Thus in Mohd. Yousuf v. Afaq Jahan this Court observed: (SCC p. 631, para 11)

"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 complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter."

13. The same view was taken by this Court in Dilawar Singh v. State of Delhi (NCT of Delhi SCC para 118). We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under Section 156(3) CrPC, and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order(s) as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) CrPC.

14. Section 156(3) states:

"156. (3) Any Magistrate empowered under Section 190 may order such an investigation as abovementioned."

The words "as abovementioned" obviously refer to Section 156(1), which contemplates investigation by the officer in charge of the police station.

15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII CrPC. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can

issue a direction to the police to do the investigation properly, and can monitor the same.

16. The power in the Magistrate to order further investigation under Section 156(3) is an independent power and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide Section 173(8). Hence the Magistrate can order reopening of the investigation even after the police submits the final report, vide State of Bihar v. J.A.C. Saldanha (SCC: para 19 AIR para 19).

17. In our opinion Section 156(3) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

18. It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution.

7. The said ratio has been followed in Sudhir Bhaskarrao Tambe Hemant Yashwant Dhage and Others", in which it is observed. (SCC p 278, paras 2-4)

"2. This Court has held in Sakiri Vasu v. State of U.P. that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being

done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) CrPC. If such an application under Section 156(3) CrPC is made and the Magistrate is, prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in Sakiri Vasu case because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.

3. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156(3) CrPC and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.

4. In view of the settled position in Sakiri Vasu case, the impugned judgment of the High Court cannot be sustained and is hereby set aside. The Magistrate concerned is directed to ensure proper investigation into the alleged offence under Section 156(3) CrPC and if he deems it necessary, he can also recommend to the SSP/SP concerned a change of the investigating officer, so that a proper investigation is done. The he cannot himself investigate (as investigation is the job of the police). Parties may produce any material though they wish before the Magistrate concerned. The learned Magistrate shall be uninfluenced by any observation in the impugned order of the High Court.”

8) In our opinion, prayers of the petitioner seeking registration of an

FIR cannot be entertained. As a matter of fact, cognizance of the complaint was taken and the same was inquired into. After an enquiry the complainant was informed that the dispute is of a civil nature. Further, if the Petitioner's grievance is that the Police Station is not entertaining the request of registration of FIR under Section 154 of the Code of Criminal Procedure (now section 173 of the BNSS), then in that eventuality the Petitioner can approach the Superintendent of Police under Section 154(3) (now section 173 (4) of the BNSS) by making a complaint in writing to the Superintendent of Police. In the event, the Superintendent of Police does not entertain the complaint in as much as there are no directions for registration of an FIR or carrying out proper investigation it is always open for the Petitioner to file an application under Section 156(3) of the CrPC before the learned Magistrate (now section 175 (3) of the BNSS). Upon such Application being filed, the learned Magistrate after considering the complaint is empowered to pass appropriate directions. Learned Magistrate can direct a registration of an FIR or that proper investigation be carried out in cases where complaint is of improper or inadequate investigation. The law also envisages a situation where the Learned Magistrate can monitor the said investigation. Section 156(3) Cr.P.C. (now 175 (3) of BNSS) provides for supervision by the Magistrate on the police to ensure that the police are infact performing their duties as envisaged under the law.

9) We note that, the Petitioner in the present case has an alternative

remedy to approach the concerned Superintendent of Police under section 154(3) of the Code of Criminal Procedure (now section 173(4) of the BNSS) and further if the complaint is not entertained approach the learned jurisdictional Magistrate under Section 156(3) of the Cr.P.C. (now 175 (3) of the BNSS). In the aforesaid circumstances, we are not inclined to entertain the present Petition. It is open for the Petitioner to avail of the alternative remedy by approaching the learned Magistrate and pursuing his legal rights, as may be permissible in law. We would clarify here that this Court has not expressed any opinion on the merits of the matter or whether or not the Petitioner's case discloses criminal activity/offence.

10) In view of the above, Petition is dismissed, leaving the Petitioner to avail of the alternative remedy as provided in law. Rule is accordingly discharged.

(RANJITSINHA RAJA BHONSALE, J.)

(A. S. GADKARI)