

**(2022) 12 BOM CK 0087**

**In the Bombay High Court**

**Case No : Criminal Application (APL) No.110 Of 2015**

Bano Rahim Chaudhari And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

**Date of Decision : 20-12-2022**

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 36, 154, 154(1), 154(3), 156(3), 200, 482

Indian Penal Code, 1860 — Section 34, 166, 167, 403, 406, 409, 417, 420, 465, 468

**Citation : (2022) 12 BOM CK 0087**

**Hon'ble Judges :** Rohit B. Deo, J;Urmila Joshi-Phalke, J

**Bench :** Division Bench

**Advocate :** M.P.Khajanchi, Raheel Mirza, M.J.Khan

**Final Decision :** Allowed/Disposed Of

## Judgement

Urmila Joshi-Phalke, J

1. Heard learned counsel Shri M.P.Khajanchi for applicants, learned counsel Shri Raheel Mirza for non-applicant No.2, and learned Additional Public Prosecutor Shri M.J.Khan for non-applicant No.1/State. By consent, the matter is heard finally.

2. By this application under Section 482 of the Code of Criminal Procedure (CrPC), applicants seek following reliefs:

"[a] quash the Criminal Complaint Case No.228 of 2014 filed by the respondent no.2 under Section 156(3) of Criminal Procedure Code against Applicants before learned Judicial

Magistrate First Class, Mangrulpir, Distt.Washim;

[b] quash and set aside the order dated 10th February, 2015 passed by learned Judicial Magistrate First Class, Mangrulpir, in the said Criminal Complaint Case No.228 of 2014, and

[c] quash the First Information Report registered by Respondent No.1 – Police Station Officer, Police Station, Mangrulpir, against the applicants for the alleged offences under Sections 166, 167, 403, 406, 409, 417, 420, 465 and 468 read with Section 34 of Indian Penal Code.”

3. As per contention of applicants, non-applicant No.2 filed a criminal complaint bearing No.228/2014 before learned Judicial Magistrate First Class at Mangrulpir seeking direction to register offence against them in view of Section 156(3) of the Code of Criminal Procedure. It is alleged by the complainant that applicants, who were officers and employees of the Municipal Council, Mangrulpir, committed various irregularities during the period from years 2005-2006 to 2009-2010. It is further contention of the complainant that the said irregularities have been noted in the Washim District Local Fund Audit Report of the year 2012 and, therefore, he had lodged report with Mangrulpir Police Station on 10.11.2014 for criminal action against wrong doers. However, since the police have not taken any action, he filed a criminal complaint before learned Judicial Magistrate First Class at Mangrulpir. It is contention of applicants that though no offence is made out against applicants, learned Magistrate without application of mind directed to register First Information Report against applicants. In fact, the President of the Municipal Council has no direct control over day to day financial business of the Municipal Council. A Public Interest Litigation bearing No.54/2013 was also filed before this Court in which initiation of criminal proceedings against office bearers and officers of the Municipal Council for irregularities committed was prayed. Learned Magistrate had not considered the same before issuing directions. As per contention of applicants bare perusal of the order of learned Magistrate would demonstrate that it does not even reflect application of mind by learned Magistrate so as to conclude that cognizable offences are made out. The order passed by learned Magistrate is illegal and not following the due procedure of law. Learned Magistrate committed error in entertaining proceedings under Section 156(3) of the CrPC as there was no compliance under Section 154(3) of the CrPC by the complainant. The complainant also did not file necessary documents to show that there was compliance on the part of the complainant in respect of provisions under Section 154(3) of the CrPC. Before availing recourse under provisions of Section 156(3) of the CrPC, the complainant has to comply provisions of Section 154(3) of the CrPC. Therefore, the order passed by learned Magistrate deserves to be quashed and set aside.

4. In response to notice, the State and the non-applicant 2 supported the order passed by learned Magistrate, it is submitted on behalf of non-applicant 2 that he complied with provisions of Section 154(3) of the CrPC. It is further submitted that bare perusal of Sections 154(3) and 156(3) of the CrPC, reveals that exercise of powers under Section 156(3) of the CrPC is not qualified by any such condition. It is further submitted that non-applicant 2 has filed report to non-applicant No.1 on 10.11.2014 and forwarded copy of the same to the Superintendent of Police. Thus, there is compliance of the same. Hence, the application deserves to be rejected.

5. Learned counsel Shri M.P.Khajanchi for applicants contended that without compliance of Section 154(3) of the CrPC the application under Section 156(3) of the CrPC was entertained by learned Magistrate. In support of his contention, he placed reliance on various judgments of the Honourable Apex Court. He relied on the decision of the Honourable Apex Court in the case of XYZ vs. State of Madhya Pradesh and ors reported at 2002 SCC Online SC 1002 wherein the Honourable Apex Court has referred the judgment of its Constitution Bench in the case of Lalita Kumari vs. Government of Uttar Pradesh wherein the law is summarized as in following extract of decision:

“119. Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.”

The Constitution Bench of the Honourable Apex Court in the case of Sakiri Vasu vs. State of U.P., reported at (2008) 2 SCC 409 discussed magistrates’ powers under Section 156(3) of the CrPC are discussed. The same is reproduced below:

“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.”

...

13. The same view was taken by this Court in *Dilawar Singh v. State of Delhi* (JT vide para 17). 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.

...

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.

...

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.

...

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) CrPC or other police officer referred to in Section 36 CrPC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover, he has a further remedy of filing a criminal 10 complaint under Section 200 CrPC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

(emphasis supplied)

6. Thus, the Honourable Apex Court held that invocation of jurisdiction of learned Magistrates under Section 156(3) of the CrPC. Learned Magistrates have judicial discretion in directing the police to investigate but this discretion cannot be exercised arbitrarily and must be by judicial reasoning.

7. Learned counsel Shri M.P.Khajanchi for applicants further relied on the decision of the Honourable Apex Court in the case of *Priyanka Srivastava* and

another vs. State of Uttar Pradesh and others reported at (2015) 6 SCC 287 wherein it is held that where applications under Section 156(3) of the CrPC are filed the power under section 156(3) of the CrPC warrants application of judicial mind. It is further held that a stage has come in this country where Section 156(3) of the CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. It is further indicted that there has to be prior applications under Sections 154(1) and 154(3) of the CrPC while filing a petition under Section 156(3) of the CrPC. Both aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under Section 156(3) of the CrPC be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law.

8. Learned counsel Shri M.P.Khajanchi for applicants submitted that in the present case there is no compliance either under Section 154(1) or under Section 154(3) of the CrPC before filing application under Section 156(3) of the CrPC nor application was supported with the affidavit. Thus, there is no compliance in view of observations of the Honourable Apex Court in the case of Priyanka Srivastava and another vs. State of Uttar Pradesh and others cited supra and, therefore, the order passed by learned Magistrate deserves to be quashed.

9. On the other hand, learned counsel Shri Raheel Mirza for non-applicant No.2 submitted that there is due compliance under Section 154(3) of the CrPC. The order passed by learned Magistrate is legal and proper one and no interference is called for.

10. We have considered rival submissions. Before advertng to facts of the present case, it is necessary to refer relevant Sections of the CrPC and the same are reproduced below, which read thus:

"154. Information in cognizable cases. - (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub- section (1) shall be given forthwith, free of cost, to the informant.

(3) 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 officer shall have all the powers of an officer in charge of the police station in relation to that offence.”

Section 156. Police officer’s power to investigate cognizable case. - (1) Any officer in charge of a police station may, .....

(2) No proceeding.....

(3) Any Magistrate empowered under Section

190 may order such an investigation as above-mentioned.”

11. Thus, in view of section 154(3) of the CrPC, when 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 subsection (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 officer shall have all the powers of an officer in charge of the police station in relation to that offence. Thus, before exercising the action under 156(3) of the CrPC, there should be compliance in view of Section 154(3) of the CrPC. It is time and again clarified by the Hon’ble Apex Court that learned Magistrate has discretion in directing the police to investigate but this discretion cannot be exercised arbitrarily and must be guided by judicial reasoning. The Constitution Bench of the Honourable Apex Court held regarding registration or non-registration of information what is necessary is only information given to the police must disclose the commission of cognizable offence.

12. In the case of Priyanka Srivastava and another vs. State of Uttar Pradesh and others cited supra, the Honourable Apex Court has observed that it needs to be reiterated that learned Magistrate to remain vigilant with regard to allegation made and nature of allegation and not to issue direction without proper application of mind. It is held by the Honourable Apex Court that power under Section 156(3) of the CrPC warrants application of judicial mind and, therefore, before resorting Section 156(3) of the CrPC, there has to be prior applications under Sections 154(1) and 154(3) of the CrPC. The Honourable Apex Court held that aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed and said application under Section 156(3) be supported by an affidavit.

13. The order dated 10.2.2015 passed by learned Magistrate, Mangrulpir, which reads thus:

“Perused the facts of an application. Heard counsel for applicant. Offence is cognizable and investigation requires at the hands of police. Hence, P.S. Mangrulpir is hereby directed to register the crime. Cognizance taken under Section 156(3) of Cr.PC.”

14. Thus, it is apparent that learned Magistrate has not assigned any reason on the basis of which he came to conclusion that cognizable offences are made out. The order no where discloses that the application is supported with the affidavit and there is due compliance under Sections 154(1) and 154(3) of the CrPC. Thus, in view of the decision of the Honourable Apex Court in the case of Priyanka Srivastava and another vs. State of Uttar Pradesh and others cited supra, there is no compliance before resorting Section 156(3) of CrPC.

15. In the light of the above circumstances, we proceed to pass following order:

ORDER

(1) The criminal application is allowed.

(2) The First Information Report vide Crime No.M-45/2015 punishable under Sections 166, 167, 403, 406, 409, 417, 420, 465, and 468 read with Section 34 of the Indian Penal Code is hereby quashed.

(3) The informant is at liberty to comply in view of the decision in Priyanka Srivastava and another vs. State of Uttar Pradesh and others reported at (2015) 6 SCC 287.

The writ petition is allowed and disposed of. Rule is made absolute in the aforesaid terms. No costs.