

(2025) 08 BOM CK 0237

In the Bombay High Court

Case No : Criminal Application No. 616 Of 2025

Friya Kaiyomerz Palia

APPELLANT

Vs

Archana Nilesh Kotwal

RESPONDENT

Date of Decision : 11-08-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 154(1), 154(3), 156(3)
Indian Penal Code, 1860 — Section 120B, 420

Citation : (2025) 08 BOM CK 0237

Hon'ble Judges : S. M. Modak, J

Bench : Single Bench

Advocate : Carl Patel, Sanaea Umrigar, Lakesh Zade, H. J. Dedhia

Final Decision : Disposed Of

Judgement

S. M. Modak, J

1. Heard learned Advocate for the Applicants, against whom till today there is no adverse order passed by the learned Magistrate and also heard learned Advocate for the Respondent No. 1-Complainant and also heard learned APP. That is how issue of locus of the "applicants/proposed accused to challenge the order" is involved in this application.

2. The Respondent No. 1 filed a complaint before the Court of the then Metropolitan Magistrate, Girgaon. The complaint is on page no.16. The complaint is filed against in all four persons. Four persons are present Applicants. The Complainant has prayed for:-

a) issuance of the process against the accused and

b) at the same time to issue direction to the Police to conduct the investigation under Section 156 (3) of the Criminal Procedure Code.

It is for the offence of cheating under Section 420 of the Indian Penal Code and Section 120-b of the Indian Penal Code. Submission is the prayers are self-

contradictory. The order of issuance of the process is an order which is always passed at post-cognizance stage. Whereas investigation under Section 156(3) is always at pre- cognizance stage. During pendency of the complaint, the learned Magistrate on 15.12.2021 passed the following order:-

"The Complainant to comply under Section 154(3) of the Criminal Procedure Code."

3. The present Applicants, against whom there is no adverse order up till now, are praying for quashing of the said order. The learned Advocate made the following submissions:-

(a) There is no inherent power in the Criminal Court thereby directing the Complainant to comply with certain requirements of the law, which is, in fact a lacuna in the complaint and it will amount to rectifying the lacuna and if it is allowed it will cause prejudice to the accused. Reliance is placed on observations in case of Bindeshwari Prasad Singh Vs. Kali Singh (1977) 1 SCC 57. Ratio is when an order is passed by the Magistrate, there is no power to review it or recall it.

(b) The reliance is also placed on the observations in the case of Priyanka Srivastava and Anr. Vs. State of U.P. and Ors. (2015) 6 SCC 287 and more specifically, observations in para no. 31. The Hon'ble Supreme Court has insisted upon the filing of the prior applications under Section 154(1) and 154(3) of the Criminal Procedure Code prior to filing a proceeding under Section 156 (3) of the Criminal Procedure Code.

(c) The submission is if the defect in the complaint is cured as per the order of the learned Magistrate and in future, if the F.I.R. is registered, it will cause serious prejudice and will damage the reputation of the Applicants.

4. There is a challenge on behalf of the Respondent to the maintainability of this application. For the reason, the Applicants have no locus to challenge order 15/12/2021 and consequently, the order directing compliance with the provisions of Section 154 (3) of the Code cannot be said to be an order adverse to the interest of the Applicants.

Consideration

5. There cannot be dispute about observations of the Hon'ble Supreme Court about compliance of the provisions of the Section 154(1) and Section 154 (3) of the Criminal Procedure Code. The Complainant who is seeking the direction under Section 156 (3) of the Criminal Procedure Code must first comply with those provisions and he needs to plead it in the complaint. The purpose of giving such direction is to have some checks on the filing of complaints seeking such directions. When the Hon'ble Supreme Court has realized that there are more and more instances of misuse of powers under Section 156 (3) at the instance of the private complaints, these directions were given. We can gather it from opening paragraph of judgment of Priyanka Srivastava and Anr. (supra). It reads

thus :-

"Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind." (para no 27)

6. The Hon'ble Supreme Court further observed :-

"Issuing a direction stating "as per the application" to lodge an F.I.R. creates a very unhealthy situation in society and also reflects the erroneous approach of the learned Magistrate." (para no. 28)

7. It is true if there is a cognizable offence, as per the provisions of Section 154 (1) of the Criminal Procedure Code, the Police are bound to record it in the register maintained for the cognizable offences. Whereas as per Section 154 (3) of the Criminal Procedure Code, the Complainant is required to send a copy of the complaint to higher Police Officers, if the Officer in-charge of the police station will not register the F.I.R.. When the learned Magistrate has issued direction, it implies that the Complainant has not taken recourse to the provisions of Section 154 (3) of the Criminal Procedure Code. It is settled law that prior to 01.07.2024 the accused is not having any locus before the Court of the JMFC. It does not mean that such proposed accused cannot approach this Court. Even if the proposed accused approaches this Court, the issue is "whether such application is to be entertained".

8. I am not in favour of the entertaining this application. The reason is learned Magistrate has directed the Complainant to comply with the provisions of Section 154(3) of the Criminal Procedure Code. This direction is nothing but a direction given in light of the observations made by the Hon'ble Supreme Court in the case of Priyanka Srivastava and Anr. (supra) . The relevant observations are :-

"We have already indicated that there has to be prior applications under Sections 154(1) and 154 (3) while filing a petition under Section 156 (3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed." (para 31).

9. The observations in that judgment are binding on all the litigants who are approaching the Court and on all the Courts. So it cannot be said that by giving that direction, the learned Magistrate has exceeded his jurisdiction. It cannot be said that by giving those directions, he has exercised any inherent power. If such directions are given in the light of the observations of the Hon'ble Supreme Court which is law of the land, in fact the learned Magistrate has obeyed those directions.

10. It cannot be said that by giving the direction, the learned Magistrate has reviewed his own order. It is for the reason that earlier to giving those directions, there was no order passed. In fact by giving those directions, the Complainant is asked to comply with those provisions. So, there is no merit in this application. It

has to be dismissed. Hence, the application is disposed of.

11. If any action is taken by the Police or if any order is passed by the learned Magistrate against the Applicants, they are at liberty to take appropriate steps before the appropriate Court.