IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2368 OF 2022

Atul Ashok Mundada,
Age : 45 years, Occu. Agriculture & Business,
R/o Plot No.52, Mundada Nagar, Jalgaon,
Taluka & District Jalgaon. … **Applicant.**

Versus

1. The State of Maharashtra,

2. Kailas Pandurang Bagul,
Age 57 years, Occu. Service,
Presently Town Planner,
Valuation Department, Nashik.
R/o 3rd Floor, N.D.A. Tower,
Sambhaji Chowk, Untwadi,
Nashik, Taluka & Dist. Nashik.
Now R/o A.D.T.P. Jalgaon City Municipal Corporation,
Office of Jalgaon City Municipal Corporation,
Jalgaon, Dist. Jalgaon.

3. Nitin Balmukund Laddha,
Age : 56 years, Occu. Business,
R/o Laddha Farm House, Near Ajintha Square,
Jalgaon, Tal. & Dist. Jalgaon. … **Respondents.**

AND

CRIMINAL APPLICATION NO.2383 OF 2022

Atul Ashok Mundada,
Age : 45 years, Occu. Agriculture & Business,
R/o Plot No.52, Mundada Nagar, Jalgaon,
Taluka & District Jalgaon. … **Applicant.**

Versus

1. The State of Maharashtra,

2. Nitin Balmukund Laddha,
Age : 56 years, Occu. Business,

R/o Laddha Farm House, Near Ajintha Square,
Jalgaon, Tal. & Dist. Jalgaon. … **Respondents.**

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Advocate for Applicant in both application : Mr. Girish S. Rane.
APP for Respondent-State in both applications : Mr. D. J. Patil.
Advocate for Respondent No.2 in Appln/2368/2022 : Mr. P. R. Katneshwarkar (Senior Advocate) i/b Mr. A. R. Syed.
Advocate for Respondent No.3 in Appln/2368/2022 & Res. No.2 in Appln/2383/2022 : Mr. M. S. Deshmukh i/b Mr. S. H. Tripathi.

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CORAM : S. G. MEHARE, J.

RESERVED ON : 25.07.2024
PRONOUNCED ON : 02.09.2024

JUDGMENT :-

1. Heard the learned counsels for the respective parties.

2. The same applicant, by two separate applications under Section 156(3) of the Code of Criminal Procedure (“Cr.P.C.” for short) approached this Court under Section 482 of the Criminal Procedure Code against the orders of the learned Judicial Magistrate First Class and the learned Additional Sessions Judge rejecting his prayer to issue directions under Section 156(3) of the Cr.P.C. to order the investigation of the crime by the police against the respondents, who were the then Mayor of the Corporation and the Assistant Director, Town Planning of the Municipal Corporation, Jalgaon.

3. Before adverting to the issues raised in these applications how the applicant got the title is essential to know the nature of the property. One Tulshiram Krushna Bari as shown in the sale deed 20.04.2015, was the tenant of Gut No.97/3 measuring 56 R. of Mauza Pimprala. The recital of the said sale deed further reveals that he was holding the land under section 43 of the Tenancy Act. He paid the *Nazrana* to the Tahasildar and released the conditions. He took the Mutation Entry in his name. On, 20.04.2015, he sold it to the petitioner and others for Rs.21,00,000/- (Twenty One Lakhs). The sale deed of Field Gut 115/4 of Mouza Pimprala dated 30.12.2013 shows that Devidas Hari Bari sold it to the petitioner and one another (who was vendor cum purchaser) for Rs 15,00,000/- (Fifteen Lakhs). The applicant, Atul Mundada, took that land for development. The consent of Sou. Sonal Vivekanand Kulkarni was obtained for the registered sale deed. However, why Sou. Sonal Vivekanand Kulkarni, was consenting party to the document is not clear. The columns of the class of land in 7/12 extract of both fields attached to the sale deeds were blank. It does not reflect, whether it was a class I or Class II land. It seems that it was the tenanted land. However, everything is silent about it. The record reveals that applicant Atul, was persuading a Court proceeding since 2011. One of the petitions

under Section 127 of the Maharashtra Regional Town Planning Act was filed under his Power of Attorney. He secured the orders from this Court, that the Municipal Corporation would acquire both these lands. The Municipal Corporation accordingly consented to acquire the lands. Then, the proceeding under the Land Acquisition Act (new) was initiated. Both properties were purchased for Rs.36,00,000/- (Thirty Six Lakhs). The compensation for Rs.5,98,27,436/- (Rupees Five Crore Ninety Eight Lakhs Twenty Seven Thousand Four Thirty Six) was valued just within a year of the purchase of Gut No.97/3 and three years of purchasing Gut No.115/4. Such a huge profit was made. After passing the award, the Land Acquisition Officer communicated to the Municipal Commissioner to deposit the compensation amount determined by him.

4. The applicant has further case that the Commissioner of the Municipal Corporation approved the office not put by the Planning Department on 31.01.2017 for releasing the compensation amount. However, instead of sending the said bill to the Finance Department, accused Nos.1 and 2 hatching a conspiracy and deliberately forwarded it to the office of the Mayor i.e. accused No.2. Subsequently the office notes and

other files were illegally disposed of by accused No.1. Respondent No.2 has no role to call the note sheets and the relevant papers approving the bill to deposit the money with the Land Acquisition Officer. In a nutshell, the applicant has a grievance that only with a view to put him to the loss, respondent No.2 took the officers of the Corporation into confidence and deprived him of the compensation and to deprive him, he destroyed the record and passed a forged and fabricated resolution in a meeting having no subject.

5. The applicant had lodged the report to the Superintendent of Police, Jalgaon. It was made over to the Municipal Corporation for inquiry. The inquiry was entrusted to the Deputy Commissioner, M.N.C (Administration). Then the applicant had submitted all relevant documents to him. However, he did not make an inquiry seriously. He lodged the complaint to S.P. Jalgaon on 03.03.2020. The police did not register crime. Hence, he made the complaint to the Superintendent of police. Then, he filed two separate applications under Section 156(3) of the Cr.P.C. for an order to direct the Police to investigate the crime for the offences punishable under Sections 166, 167, 177, 201, 202, 204, 218,

120-B read with Section 34 of the IPC and Sections 8 and 9 of the Maharashtra Public Records Act.

6. Both the learned Judicial Magistrate First Class as well as the learned Additional Sessions Judge declined to issue the direction under Section 156(3) of the Cr.P.C. Learned Magistrate kept the option open to the applicant to treat his application as a complaint under Section 2(d) of the Cr.P.C. He directed the applicant to intimate whether he would continue the proceeding as a complaint case on the next date. Since the applicant did not intimate, the Court of Judicial Magistrate First Class disposed of the case by subsequent order.

7. Learned counsel Mr. Rane for the applicant has vehemently argued that both the Courts have erred in law in not exercising the powers under Section 156(3) where *prima facie* cognizable offence is made out. He has vehemently argued that once the material placed before the Magistrate is sufficient to believe that the cognizable offences made out, the Court has no option except to issue the direction under Section 156(3) of the Cr.P.C. He has vehemently argued that the learned Additional Sessions Judge has passed the mechanical order and did not apply his mind. In a cut and paste practice,

he has interchanged the facts of one case with the other case. He did not even deal with the grounds of the objection and the facts pleaded in the complaint. He would submit that the acts of the accused/respondents were intentional and deliberate. The applicant had a good case on merit for an order under Section 156(3) of the Cr.P.C. He also went on to argue that the Sessions Court was so negligent while passing the impugned order that could be seen from his observation referring to Section 18 of the old Acquisition Act. He took this Court through the facts pleaded in the complaints. He relied on the bunch of case laws and argued that both orders are liable to be quashed and set aside and directions to be issued under Section 156(3) of the Cr.P.C. In alternative, he prayed for remitting the matter to the Sessions Court for passing a reasoned order.

8. Per contra, learned counsel Mr. Katneshwarkar, appearing for respondent No.2 in Criminal Application No.2368 of 2022, has strongly opposed the application primarily on the ground of tenability of the petition impugning two orders. He would submit that the subsequent orders disposing of the application on failure to intimate the Court to continue or treat the application as a complaint could not be

considered here, and if it is considered there will be conflicting opinion of the Court. He would submit that these are the two distinct orders. Hence, the applications are not tenable.

9. The tone of his argument was that the respondents were public servants. Section 486 of the Maharashtra Municipal Corporation Act protects the acts done by the public servant in good faith. They had performed their official duties. He has referred to the amended provisions of Section 156(3) of the Cr.P.C of the State of Maharashtra and argued that since the sanction was not obtained, the Magistrate was not empowered to pass an order under Section 156(3) directing the investigation by police. Respondent No.2 did not commit an offence. Therefore, no offence is made out. That apart his role was only to place the office notes before the meeting. None of the grounds raised in the application constitute a cognizable offence. Since a cognizable offence is not made out to order investigation under Section 156 (3) of Cr.P.C. Relying on the few case laws, he prayed to dismiss the applications.

10. Learned counsel Mr. Karpe, appearing for Mayor in both cases, adopted the arguments on law points advanced by learned counsel Mr. Katneshwarkar. He added that as per

Section 48 Clause (B) of the Municipal Corporation Act, the Corporation Secretary is a custodian of the papers and documents. The mayor is not the custodian of the documents. Therefore, he cannot be blamed for destroying the record. He, being the Mayor had to sign the papers placed for his approval or sanction. The applicant did not join all 48 Corporators, who had passed the resolution unanimously. That goes to show that the petitioner has a personal grievance against the mayor. The view taken by the Magistrate is a possible view. In every case, powers under Section 156(3) of the Cr.P.C. shall not be exercised. The order of the Sessions Judge indicates the application of mind. He also relied on certain case laws. He would submit that filing such false and frivolous complaints deterring the public servants in discharging their duties is an abuse of the process of law.

11. Both learned counsels for the respondents would submit that the applicant is barely interested in compensation. The legal remedy is available to him. He cannot apply such a coercive method to recover the compensation. They again prayed to dismiss the applications.

12. In reply, learned counsel Mr. Rane has argued that in the case of *Sanjay* relied upon by him, it has been clarified when the sanction is required for taking cognizance against the public servant. The sole exception under the amended provisions of Section 156(3) is that the public servant must discharge or commit the act in his official capacity. While dealing with the issue of sanction, the nature of the act alleged is important. He would submit that the judgment of *Nikhil* relied upon by the respondent has been redundant in view of the case of XYZ relied upon by him wherein the word "may" used in Section 156(3) has been read as "shall" by the Supreme Court. Therefore, on an application under Section 156(3) if the cognizable offence is made out, the Magistrate is bound to direct the investigation. He relied on the case of ***Sindhu Janak Nagargoje Vs. State of Maharashtra and others in Criminal Appeal No.2351 2023 (arising out of SLP (Cri.) No.5883 of 2020)***. In that case, the case of ***Lalita Kumari Vs. State of Uttar Pradesh and others ; (2014) 2 SCC 1*** was considered, and it has been observed that in view of the ratio laid down in such cases the registration of FIR is mandatory under Section 154 of the Cr.P.C. if the information discloses commission of cognizable offence. He further relied on the case of ***Shadakshari Vs. State of Karnataka and others ; MANU***

Supreme Court 0042 of 2024. A complaint was filed against the applicant for irregularly creating the documents of property in the name of the deceased person despite knowing that those were fake documents, such as the death certificate, family tree of the original successor of the land of the appellate etc., for illegal gain. The accused/respondent No.2 had filed a petition under Section 482 of the Cr.P.C. for quashing of the FIR registered on the above allegations. The High Court recorded the findings that there were specific and serious allegations against respondent No.2, even as to the creation of the death certificate of a living person. A reading of the FIR made out a case for investigation, and it was too premature to interfere with such FIR. Adverting to the case of Lalita Kumari, the High did not interfere, though granted liberty to respondent No.2 to seek his legal remedy in the event of any adverse report is made. Subsequently, a report under Section 173 of Cr.P.C. was submitted for the offences punishable under Sections 471, 468, 467, 465, 420, 409, 409, 466 and 423, read with Section 34 of the IPC. Again, respondent No.2 approached the High Court under Section 482 of the Cr.P.C. for quashing the complaint dated 19.12.2016. The question before the Court was whether sanction was required to prosecute respondent No.2 (public servant), who faces accusation, amongst others, of creating

fake documents by misusing his official position as a Village Accountant, thus the public servant?

13. The expression of "official duty" defined in the case of ***State of Orissa Vs. Ganesh Chandra Jew; (2004) 8 SCC 40*** was referred to, which means the act or omission must have been done by the public servant in the course of his service and that it should have been done in discharge of his duty. Section 197 of the Code of Criminal Procedure does not extend its protective cover to every act or omission done by a public servant while in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. Further, it was held that a view can be taken that manufacturing of such documents or fabrication of records cannot be a part of the official duty of a public servant. If that be the position, the High Court was not justified in quashing the complaint as well as the charge sheet in its entirety, more so when there are two other accused persons besides respondent No.2.

14. He further relied on the case of ***Sanjay Nathmal Jain and others Vs. The State of Maharashtra and others; MANU/MH/4412/2023***. The facts of that case, were that the

landlord was interested in seeking possession of the premises let out to tenants. The tenants had filed the suit for injunction against the landlord and subsequent purchasers restraining them from obstructing their possession over the property. The landlord committed suicide. The deceased left the suicide note. However, no offence was registered. Tenants were called to the Police Station, and they were detained for more than 24 hours. While they were in police custody, the premises were demolished. The documents were executed from them in the presence of the police personnel. The contents of the document were approved by PI of Police Station. The documents were to the effect that the tenants were voluntarily surrendering tenancy rights in favour of the landlord. The landlord had filed an application under Section 156(3) of the Cr.P.C. The learned Magistrate after verification of the complaint, directed the inquiry under Section 202 of the Code of Criminal Procedure. However, dissatisfied with the said order, the revision was preferred before the learned Sessions Court. The learned Sessions Court, by its order, directed that his application be forwarded to the concerned Police Station for investigation under Section 156(3) of the Cr.P.C. That order was impugned before the High Court. The High Court observed that *prima facie* perusal of the facts on record indicates that the

cognizable offences were committed, and in such circumstances, it was not open for the Magistrate to refuse investigation under Section 156(3) of the Cr.P.C. Thus, once cognizable offence is made out, it is duty of the Magistrate to exercise powers under Section 156(3) and direct investigation therein.

15. He further relied on the case of ***Kisan Baliram Rathod and others Vs. State of Maharashtra ; MANU/MH/4486/2023***. In this case, the question was regarding the sanction under Section 197 of the Cr.P.C. The case of ***Station House Officer, CBI/ACB/Banglore Vs. B. A. Shrinivasan and another; 2020 ALL SCR (Cri.) 163,*** was referred. In the said case, the Hon'ble Supreme Court held that the protection under Section 197 of the Cr.P.C. is available to the public servants when an offence is said to have been committed 'while acting or purporting to act in discharge of their official duty', but where the acts are performed using the office as a mere cloak for unlawful gains, such acts are not protected. In order to come to the conclusion whether the claim of the accused that the act he did in the course of the performance of his official duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence

to establish it. The question of sanction should be left open to be decided in the main judgment which may be delivered upon the conclusion of the trial.

16. Further, he relied on the case of ***XYZ Vs. State of Madhya Pradesh and others ; 2022 SCC OnLine SC 1002***. The facts of this case were that the victim/appellant was working as a Yoga Instructor at some institute. Respondent No.2, at the relevant time, was the Vice Chancellor of the institute. It was alleged against him that he touched the victim inappropriately at the institute, upon which she disengaged herself and shouted at him. She lodged a complaint with the police station, apprehending that the police had not taken any action. She found that no action had been taken on her complaint. She again filed another complaint to the Superintendent of Police and both the Superintendent and to the P.S. Gole Ka Mandir again on 24.02.2020. Eventually, the appellant moved to the Judicial Magistrate First Class, Gwalior, under Section 156(3) of the Cr.P.C. on 26.02.2020. The JMFC directed the police to file a status report. It appears that the proceedings before the JMFC were delayed due to the onset of the Covid-19 pandemic. The Internal Complaints Committee was constituted. Again the case of Lalita Kumari was considered in this case.

17. The learned counsel Mr. Katneshwarkar relied on the case of this Bench in ***Criminal Application No.2816 of 2018 Nikhil s/o Dhondiram Katke Vs. The State of Maharashtra and others, dated 25.04.2019***. In that case, an application under Section 156(3) of the Cr.P.C. was filed. However, instead of directing the investigation, the learned Magistrate granted liberty to the applicant to adopt the later course under Section 200 of the Code by treating the application filed by the applicant as a complaint under Section 2(d) of the Code. In that case, various pronouncements of the different High Courts, and Hon'ble Supreme Court were placed before the Court. The Court considered those judicial pronouncements. The case of ***Dhariwal Tobacco Products Ltd. and others Vs. State of Maharashtra and another; AIR 2009 SC 1032*** was also referred to. In that case, it was held that there is no impediment entertaining the present petition (under Section 482 of the Cr.P.C.) even after efficacious remedy is available to the petitioner.

18. In Nikhil's case (supra), this Court referred to the case of ***Panchbhai Popatbhai Butani and others Vs. State of Maharashtra and others; 2010(1) B. Bom.C.R.(Cri.) 1***, in which

the Full Bench held that reference to the provision of Section 190 in Section 156(3) of the Code is merely to determine the jurisdiction of the Magistrate to whom the application has to be made by the aggrieved person or the complainant. It does not controls the powers of the Court to direct registration and/or investigation as contemplated under Section 156(3) of the Code. It has also been observed that the detail factual allegations are not necessary for an application under Section 156(3) Cr.P.C. nor any format has been prescribed for the same, including the prayer clause. It is for the complainant or the aggrieved person to decide, whether he wishes the matter to be invested under Section 156(3) of the Code, or whether his application is to be treated as a regular “complaint” under section 200 of the Code. It is for the complainant or aggrieved person to bring it to the notice of the Court under Section 156(3) of the Code that despite intimation to police, it has failed to act and investigate into a cognizable offence in accordance with law. In the aforesaid Panchabhai's case, the then Lordship further elucidated that once such a petition under Section 156(3) is presented, the learned Magistrate is free to exercise appropriate jurisdiction in accordance with law and at the request of the complainant. But, it cannot be rejected by the Court merely on the ground that it does not

contain the proper prayer clause insofar as it discloses the commission of a cognizable offence. In paragraph No.55 of the aforesaid Panchbhai"s case, has observed thus:

> *"55. ..... Even in Criminal jurisprudence, the law of pleading is applicable to certain extent. Thus, where a person files a complaint under section 200 of the Code of Criminal Procedure, he is expected to state the facts, giving details and correct versions which would amount to committing of an offence alleged. It has to satisfy the basic ingredients of such an offence and it is expected of the complainant to make a proper complaint as contemplated under section 2(d) of the Code with appropriate prayers. In contradistinction to this, such strict rule of pleadings cannot be made applicable to the provisions of section 156 (3) of the Code as it is result of a default and even intimation in appropriate format may suffice the purpose in some cases. That certainly does not mean that under section 156 (3) properly drafted petition cannot be moved. Rather if a petition with complete facts, stating detailed and definite events essential to constitute the offence alleged to have been committed is presented and the prayers have been made, discretion of the Magistrate would be much wider than merely directing investigation in terms of section 156(3) and the Court even could take cognizance of the offence if the complaint is filed under section 200 of the Code. If a complaint does not disclose a cognizable offence with proper facts, it may be liable to be dismissed and/or rejected by the Magistrate."*

19. The learned counsel Mr. Katneshwarkar also referred to the case of ***Ramdeo Food Products Vs. State Gujarat; AIR 2015 SC 1742.*** It has been observed in paragraph No.22 as follows;

> *"22. Thus, we answer the first question by holding that the direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice, it is considered appropriate to straightway direct investigation, such a direction is issued. Cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed" Category of cases falling under Para.120.6 in Lalita Kumari (supra) may fall under Section 202. Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case."*

20. In Nikhil"s case (supra), it has also been observed that the application under Section 156(3) would fall within the category of such applications cannot be turned as a 'complaint' under Section 2(d) of the Code. Moreover, as described above, there is a distinction between the application under Section

156(3) and a complaint defined under Section 2(d) of the Code. But it cannot be overlooked that the powers under Section 156(3) warrants application of judicious mind, and the applicant or aggrieved person, on its own whim, invoke the authority of the Magistrate. It is to be borne in mind that the use of word "may" in Section 156(3) instead of "shall" is very significant and clearly indicates the discretion to be exercised by the Magistrate in the matter, and he can, in appropriate cases, refuse to order an investigation. Therefore, it is fallacious to appreciate that, after receiving the application under Section 156(3), the Magistrate is duty-bound to pass an order to register the case and investigate if the cognizable office is disclosed.

21. He further relied on the case of ***Sainath Ramrao Thombre Vs. State of Maharashtra and another ; 2018 ALL MR (Cri.) 2151***. In that case, it has been held that the complaint filed after 01.11.2016 (Amendment to Section 156(3) Maharashtra), without obtaining sanction, when the amended provision was in force, Magistrate, had no jurisdiction to issue direction for the investigation without sanction.

22. The arguments of the learned counsel of respondent/Mayor were also the same that in view of Section 482 of the Maharashtra Municipal Corporation Act, and Section 21 of the IPC and 197 of the Cr.P.C., Magistrate had no jurisdiction to issue direction for investigation without sanction. He referred to Section 197 of Cr.P.C. and raised the point that only action against the public servant could be taken if not done in discharge of the official duty. However, if the official duties were discharged or acts purported to be done in discharge of official duties, the public servants are protected under Section 197 of the Cr.P.C. He reiterate similar arguments of learned counsel Mr. Katneshwarkar about the powers of the Magistrate under Section 156(3) and pointed out that it cannot be mechanically exercised. There must be satisfaction of the Magistrate.

23. He also raised the point that the order dismissing the petition for default is not maintainable in the present applications. The learned Magistrate had refused to issue direction under Section 156(3) but granted liberty to the complainant to keep the said application as complaint under Section 2(d), the time was granted to intimate the Court by the next date. That order was assailed in revision. The learned

Sessions Court also dismissed the said revision. Accordingly, on 17.09.2021, learned Magistrate pleased to dispose of the complaint in view of non-compliance of the order dated 07.02.2021. Therefore, that order could not be challenged in these applications. He also challenged the locus of the applicant, and submits that the allegations that the accused counter file the noting of the office of Jalgaon City Municipal Corporation in that event, the Commissioner or Officer appointed by him through the proper person to raise and lodge the complaint. The Commissioner of the Corporation by its letter dated 26.12.2019, specifically stated that in this matter, no criminal act causing financial loss to the Municipal Corporation occurred. Therefore, the applicant had no locus to file the applications.

24. Learned counsel for the respondents also argued that it is not the rule of law to issue the investigation under Section 156(3). Magistrate has to pass the appropriate orders after application of mind. If the Magistrate does not find it necessary to take cognizance, he may postpone the issuance of the process. The law laid down in Lalita Kumari relied upon by the applicant was also considered in the case of Ramdeo Food Products (Supra).

25. The law is settled on the powers under Section 156(3) of Cr.P.C., the Court does not find substance in the complaint the Magistrate is not bound to direct the investigation under Section 156(3). The Magistrate has the discretion to exercise the powers under that section. Granting an opportunity to treat the application under Section 156(3) as a complaint under Section 200 of the Cr.P.C. is not illegal.

26. The question has been raised can the petitioner seek to quash the order of disposing of the case since he did not inform the Court to treat the application as a complaint.

27. The facts reveal that the applicant did not opt to treat the application as a complaint. Hence, the learned Magistrate dispose of the application as he did not exercise the powers under Section 156 (3) of the Cr.P.C. In the circumstances, it would be difficult to accept the case of the applicant that order disposing of the application finally could be impugned before this Court. He can not play hot and cold at a time.

28. The burden was on the petitioner to satisfy the Court that there was a material to direct investigation under Section 156(3) of the Cr.P.C. The learned Magistrate, after discussing

the facts and some case laws, passed the order rejecting the prayer under Section 156(3) of the Cr.P.C. The reasons have also been recorded that there is no actual necessity of any investigation for the collection of the evidence as the complaint was based upon documentary evidence. There was no possibility of destroying or tampering with the evidence. It would be a drastic step to give directions to lodge an FIR against an individual, specially, when the documentary evidence is available on record. Therefore, it would not be proper to issue directions for investigation under Section 156(3) of the Cr.P.C. The application squarely falls within the ambit of definition of complaint under Section 2(d) of Cr.P.C. The order was speaking. It reflects that the Court has applied the mind.

29. Learned revisional Court also passed the order in detail, considering the facts of the case and after hearing the respective learned counsels. The learned revisional Court discussed the procedure for the recovery of the compensation passed under the Land Acquisition Act. The revisional Court observed that the dispute is with respect to the disbursing of the amount by the Municipal Council, Jalgaon, to the petitioner. It is further observed that it appears from the record

that there was a correspondence with the Municipal Council by the petitioner himself as well as through the Land Acquisition Officer for compensation. If it is a fact, then instead of getting the execution of the award through proper forum, it appears that petitioner is saddling the responsibilities over respondent Nos.2 and 3. The revisional Court has specifically observed that it appears that the petitioner failed to follow the statutory procedure or requirement strictly under the Land Acquisition Act. Instead of following the procedure to get the compensation for his acquired lands, it appears that the petitioner was bent upon targeting respondents Nos.2 and 3. Respondent Nos.2 and 3 were neither interested parties to the award nor part of any dispute that arises to have the apportionment of the award or any part thereof. Therefore, the Court expressed the opinion that it is not the case to issue directions to the police under Section 156(3) of the Cr.P.C. to investigate the matter. It has upheld the order of the learned Judicial Magistrate First Class.

30. Both orders impugned before this Court were passed after applying mind. Both Courts have exercised the discretion to exercise powers under Section 156 (3). They did not

mechanically pass the orders as prayed. Hence, there is no reason to interfere with the impugned orders.

31. The objection has been raised that the respondents were public servants. Therefore, the sanction under Section 197 is essential. The learned counsels for the respondents have advanced the arguments and relied upon the case laws. However, the learned Judicial Magistrate First Class did not touch the issue.

32. Section 197 of the Cr.P.C. provides that when the prosecution is against the public servant, the Court shall not take cognizance of such offences, except with the previous sanction of his employer. The State of Maharashtra added two provision to Section 156(3) of the Cr.P.C., which provides that no Magistrate shall order an investigation under that Section against the public servant as defined under any other law for the time being in force, in respect of the acts done by such public officer, while acting or purporting to act in discharge of his official duties, except with previous sanction under Section 197 of the Cr.P.C. or under any law for the time in force. Admittedly, the petitioner did not produce any such application addressed to the competent authority. The allegations levelled

against the respondents purporting to act in the discharge of their official duties. There was nothing to believe that respondents exceeded their powers and does an extraneous act which was not their official duty. Therefore, the Court accepts the arguments of the learned counsel for respondent Nos.2 and 3 that the application was bad for no previous sanction as per Section 197 of the Cr.P.C. (Maharashtra Amendment).

33. The applicants were interested in getting compensation for the acquisition of land. It also smells foul from the nature of the allegation. The dispute might have probably arose between the then Mayor and the applicant. Therefore, the compensation was not paid even though the Municipal Commissioner had put the note.

34. The question is whether changing the administrative decision is an offence?

35. The financial decisions in Administration are flexible, and depend on the situation demands. Their decision does not bind them if the expenses over the different head are not feasible. It's a policy decision of the institutions. Here, there was no case that the respondent Nos.2 and 3 denied the passing of the award. Mere misplacing or missing the papers

did not affect the rights of the petitioner nor it is an offence. However, the reasons best known to the applicant, why he was insisting on recovering the amount without taking proper recourse from the Court of law. The allegations do not reflect that the respondents had ill intentions in not implementing the office notes. The acquiring body has a right to verify the facts. The contents of the complainant do not make out a cognizable offence against the respondents. Filing such a complaint seems to be a sheer pressurizing tactic on the public servants. The impugned orders are legal and proper.

36. For the above reasons, both criminal applications stand dismissed with costs of Rs.25,000/- each to be paid to the respondent Nos.2 and 3, respectively.

37. R and P be returned to the learned Trial Court.

(S. G. MEHARE, J.)

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vmk/-