


MHAH160012242023 	<u>ORDER PASSEED BELOW EXH.1</u> <u>IN</u> <u>Cri. M.A.NO.242/2023</u> <i>Laxmibai Ghodke Vs.Sandeep Ghodke.</i>
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: ORDER :

1. Heard, learned counsel Shri. A.K. Dhumal, for the complainant, at length.
2. He argued that the accused has committed an offence under Section 420 and 406 of Indian Penal Code, 1860. Therefore, the complaint is required to be sent for investigation u/s 156(3) of the Code of Criminal Procedure.
3. Perused the record of the case. The present case is filed by the complainant against the accused alleging that the accused have committed offence under Section 420 and 406 of the IPC. I have carefully examined the recitals of the complaint. The present complaint is filed as per the provision of Section 156(3) of the Cr.P.C. From the perusal of Section 156(3) of the Code of Criminal Procedure, it is clear that it is not mandatory for the Magistrate to allow every application which has been moved under Section 156(3) of the Code of Criminal Procedure. It can be allowed only if a cognizable case is made out and the circumstance of the case are such that the direction can be made for investigation of the case. It is the judicial discretion of the Magistrate to make an order for investigation under Section 156(3) of the Code of Criminal Procedure. On the other hand mere cognizable offence is not sufficient to pass order for investigation. If the application would have

been rejected, then it was open to the petitioner either to part with the proceeding or to file complaint under Section 200 of the Code of Criminal Procedure. A Magistrate is not bound to direct for investigation in every offence which is cognizable one.

4. The question arises whether this is a fit case in which the discretion for directing to make an investigation of the crime is required to be exercised. The section 420 and 406 of I.P.C merely defines cheating, criminal breach of trust. According to the complainant the informant the accused is her nephew and working in the office of Grampanchayat of Unchkhadak Village. The complainant is old aged lady therefore, she relied on the accused and by taking the disadvantage of illiterate old aged complainant, the accused taken the gold ornaments as well as cash amount of the complainant by committing breach of trust of complainant and cheated the her. When complainant got knowleged of the said fact, she gave understanding to the complainant, hence, accused executed a deed wherein he admitted his guilt. But, thereafter, he refused the return of money and other gold ornaments of complainant to her. The complainant tried to lodged report at police but, police refused to entertain the complaint of complainant. Therefore, by way of filing the present complaint, complainant prayed directions be given to investigate the matter as per Section 156 (3) of the Code of Criminal Procedure, 1973.

5. Perused the complaint and the documents filed along-with the complaint. The complainant had filed various documents along with list at Exh. 3. I have perused the application moved by complainant for getting orders under Section 156 (3) of Cr.P.C. and the criminal complaint filed by complainant. It is the main contention

of complainant that the accused had dishonestly and by cheating the innocent complainant misappropriated her gold ornaments and cash amount for his own use. I have carefully perused the documents filed on record. On these grounds he prayed to allow his application and forward the case for further investigation as per Section 156(3) of the code of criminal Procedure.

6. In this case though *prima facie* it appears that the accused persons have committed cognizable offence but as per the record, the complaint of complainant is totally depends on the documentary evidence which have already produced by the complainant on record. However, forwarding the case as per section 156(3) will be conducive to justice and save valuable time of this Court. But now a days by sending the complaint for investigation to concerned police it take too much time to investigate the crime and file report before the court. Though Section 156(3) says about sending case for investigation in cognizable offence but it is not mandatory on court to send the same. The offence under Section 420 and 406 of I.P.C are cognizable and triable by the Magistrate of First Class. In view of the provisions contained under Section 156(3) of Cr.P.C, the magistrate is empowered to order an investigation under Section 156(1) and (2). There is no dispute that the Magistrate of First Class is empowered under Section 190 of the Cr.P.C to take cognizance.

7. Furthermore, considering the facts and nature of offence in present complaint, it appears that most of the transactions between the complainant and accused are documentary in nature.

The present case is totally depends on the documentary evidence, which is already available with the complainant. Therefore, on sending this complaint for investigation it will take time to submit the detailed report which automatically take time to conduct hearing of complaint. Hence, the prayer to send the complaint for investigation under section 156(3) of the Cr.P.C is liable to be rejected.

8. As per the provisions of Cr.P.C if the prayer seeking direction for investigation under section 156(3) of the Cr.P.C is rejected, remedy to the complainant is not closed and it is still open for it to proceed with the case as complaint case. Therefore, the complainant can proceed with his complaint under Section 200 of the Cr.P.C. as a complaint case. Hence, I pass following order :

: O R D E R :

1. The prayer to send the complaint for investigation under Section 156(3) of the Code of Criminal Procedure is hereby rejected.
2. The complainant is directed to proceed with the complaint under Section 200 of the Code of Criminal Procedure, as a complaint case.

(Dictated and pronounced in open Court).

Date:13.10.2023

(S.A. Parwatkar)
Judicial Magistrate First Class
Akole.