

(1)

Cri.M.A. No. 157/2023

MHAU100006792023



ORDER BELOW EXH. 1 IN CRI. M.A. No. 157/2023

(Padmakar V/s. PI Khultabad and ors)

01. This application has been filed for passing direction under Section 156 (3) of Cr.P.C. to the Police for investigation.

02. It is alleged by the applicant that, he purchased the property bearing Gut No. 126 admeasuring 8H89R situated at Mhaismal Tq. Khultabad Dist. Aurangabad from its original owner namely Dhondiram Dada Harne by registered sale deed and according the name of Dhondiram has been deleted from Municipal record. However, in the year 1997-98, TILR, Khultabad increased the area of said Gut number on paper and accordingly mutation entry No. 815 dated 12/03/201998 has been taken. As per mutation, the revenue officer has taken entry that said mutation has been taken as per order of Collector, Aurangabad dated 20/02/1967 but no such order is exist. The revenue officer has taken entry of extend area of 2 H 22 R against the name of Dhondiram out of the Gut No. 126. Dhondiram Dada Harne died in the year 2000 and thereafter, the entry of the name of accused Nos. 2 and 11 and predecessor of accused Nos. 3 to 10 being heirs has been taken by them in revenue record by joining hands with concerned revenue officer. Thereafter, they sold 60 R land to Pradipshing Karkotak and Jitsingh Karkotak and 1H 62R to Shaikh Rirajoddin and also taken its entry in revenue record. Thereafter, in the year 2012 the heirs of Dhondiram have

(2)

Cri.M.A. No. 157/2023

again taken entry of extended 80 R portion of Gut No. 126 by joining hands with revenue officers and sold it to Sanjay Kenekar, Yusufkhan, shaikh Jamir and Vijay Shirsat and also taken its mutation entry. Thereafter, Tahshildar Khultabad called inquiry report from Mr. T. S. Shirsat, Nayab Tahshildar and accordingly, he gave report that said entry of extended area has been taken by making overwriting and also given suggestion for conducting enquiry of concerned. Thereafter, applicant called record from revenue department and asked information about person, who is responsible for preparing said forged record. Thereafter, on 30/09/2015, the Tahshildar office informed him that said record has been prepared during the tenure of accused Nos. 12 to 16. Thereafter, he also applied for getting sanction to take legal action against the concerned employee but nothing has been communicate to him by concerned department. Thereafter, he also lodged report with Khultabad Police Station on 16/06/2023 but the police have also not taken any action. Hence, he is constrained to file this application.

03. In view of Section 156 (3) of the Cr.P.C. the Magistrate may give directions to the Police to investigate in to cognizable offence. However, before adverting to the provisions of Section 156 (3) of the Cr.P.C. there has to be compliance for the provision of Section 154 of Cr.P.C. Further it will be apposite to rely upon the Judgment of Hon'ble Apex Court in ***Priyanka Shrivastava Vs. State of U.P. in criminal appeal No. 781/12.*** In this judgment, the Hon'ble Apex Court held that the provision of Section 156(3) of Cr.P.C. can be invoke only when there is a compliance of Section 154 of the Cr.P.C. Moreover, the Hon'ble Apex Court also held that every applications under Section 156 (3) of Cr.P.C. must be supported by the affidavit that the procedure under Section 154 of Cr.P.C. has been compiled with.

(3)

Cri.M.A. No. 157/2023

04. The alleged offence is punishable under cognizable sections. This application is supported by e-affidavit. It is seen from record that the applicant lodged report with Police Station, Khultabad on 16/06/2023 but no action is seen to be taken. Thereafter, as per Section 154(3) of Cr. P. C., applicant has to approach S. P. Aurangabad against the act of refusal of concerned PSO. But it is not seen to be happened in this proceeding. Therefore, the proper compliance of directions issued in the case of ***Priyanka Shrivastava Vs. State of U.P.*** (cited supra) is also not seen to be done by applicant.

05. In the short, it is alleged that accused by joining hand with each other prepared forged record and made bogus transaction of extended area. Said allegations are based upon documentary evidence. Applicant explained the allegations properly. He also produced documentary evidence in support of the allegation. Here it is necessary to mention the observations given in the case of ***M/s. Skeeper Beverages Pvt. Ltd. Vs. State***, (2001 SCC on line Delhi). In the said case, Hon'ble Delhi High Court observed that,

"It is true that Section 156(3) of the Code, empowers a Magistrate to direct the police to register a case and initiate investigations but this power has to be exercised judiciously on proper grounds and not in mechanical manner. In those cases where the allegations are not very serious and the complainant himself is in possession of evidence to prove his allegations there should be no need to pass orders u/s. 156(3) of the Code. The discretion ought to be exercised after proper application of mind and only in those cases where the Magistrate is of the view that the nature of the allegations is such that the complainant himself may not be in a position to collect and produce evidence before the court and interests of justice demand that the police should step in to held the complainant. The police assistance can be taken by a Magistrate even u/s. 202(1) of the Code after taking cognizance and proceeding with the complaint under Chapter

(4)

Cri.M.A. No. 157/2023

XV of the Code as held by Apex Court in 2001(1) Supreme Page 129 titled "Suresh Chand Jain vs. State of Madhya Pradesh."

06. In the matter in hand, as discussed earlier, the allegations are seen to be explained properly by the applicant. He also produced sufficient documentary evidence in support of the allegation. Therefore, the applicant is seen in position to bring sufficient evidence in support of his case. Moreover, the police assistance can be taken u/s. 202(1) of the Code after taking cognizance in order to bring relevant material on record, if required. Therefore, no purpose is seen in passing direction to investigate the matter under Section 156(3) of Cr.P.C. Having said that, the present application squarely falls within the ambit of definition of the complaint given under Section 2 (d) of Cr.P.C. Therefore, instead of disposing of the present application, the applicant can be given liberty to proceed with the application as a private complaint. Hence, following order is passed.

∴ ORDER ∴

1. The prayer for direction under Section 156 (3) of the Cr.P.C. is rejected.
2. The applicant is at liberty to proceed with the present application as a complaint as per Chapter 15 of the Cr.P.C.
3. The applicant shall intimate to this Court on or before next date whether she wishes to proceed with the case as a complaint, in default of which the application stand disposed off.

Date:-15/04/2024

(V. H. Khedkar)
Judicial Magistrate First Class
Khultabad.

(5)

Cri.M.A. No. 157/2023

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment/order are same, word to word, as per the original Judgment.

Name of the Stenographer :- ***Akash S. Chavan***
(Stenographer Grade-III)

Court :- Khulatabad

Date :- 15/04/2024

Judgment/order signed by :- 15/04/2024
the presiding officer on

Judgment/order uploaded on :- 16/04/2024