

MHKO110020262022



ORDER PASSED BELOW EXH.04 IN
CRIMINAL MISC.APPLICATION
NO. 406/2022

(Imtiyaj Saeed Desai Versus Sou.Parvin
 Imtiyaj Desai etc.7)

This is an application filed by the applicant to issue direction in order to investigate offence punishable under Section 120-B, 406, 426 read with 34 of the Indian Penal Code, as per Section 156(3) of Code of Criminal Procedure, 1973.

Brief contentions of the applicant are as under :-

02. That accused No.1 is wife of the complainant and accused Nos.2 to 7 are marriage mediator. Marriage between the complainant and accused No.1 was solemnized on 04-10-2020 at Chikkodi, District:Belgaon. Thereafter, accused No.1 came for matrimonial abode. Due to matrimonial abode accused No.1 conceived. Therefore, the complainant conducted HIV test of the accused No.1 on 20-05-2021 at Shrutika Imagine and Diagnostic Centre, Mangalwar Peth, Kolhapur. The said report shows that accused No.1 is reactive for HIV. Therefore, again on 02-06-2021 the complainant conducted HIV test of the accused No.1. The same came in consonance with report dated 20.05.2021. The complainant contended that after perusal of the report it appears that accused No.1 is HIV Positive. However, the accused hide the said facts from the complainant and solemnized marriage with him. Accordingly, the accused No.1 to 7 cheated the complainant. Hence, he has filed present application and seek direction to refer the complaint under Section 156(3) of Code of Criminal Procedure for investigation to the Police Station.

03. During argument Ld. Advocate to the complainant reiterated contentions of the application. In support of his argument he place on his reliance on document filed alongwith list of document at Exh.03.

04 I have also gone through the allegations made in the complaint. The application supported with affidavit as per dictum laid down by Hon'ble Supreme Court in ***Criminal Appeal No. 781/2012 in case of M/s. Priyanka Shrivastav and another Vs. State of U.P. And other decided on 19.03.2015.*** It is settled law that the complainant can not seek relief of referring his complaint under Section 156 (3) of Code of Criminal Procedure as a matter of right. The Hon'ble Supreme Court in the said decision has observed that, before referring complaint under Section 156 (3) of Code of Criminal Procedure application of judicial mind is necessary. The Hon'ble Supreme Court in para No. 26 and 27 has observed as under :-

Para No. 26 : At this stage it is seemly to state that power under section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the state of section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really aggrieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigation's takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.

Para No. 27 : In our considered opinion, a stage has come in this country where Section 156(3) of Cr. P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing

orders under a statutory provision which can be challenged under framework of said Act or under Article 226 of the Constitution of India. But it can not be done to take undue advantage in a criminal court as if somebody is determined to settle the scores. We have already indicated that there has to be prior applications under Section 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. The warrant for giving a direction that an the application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavor 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. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.

05. Thus, as per the ratio of the said decision it is duty of the magistrate to verify the nature of the allegations. Now turning back to the facts of the present complaint, it is important to mention that, complainant has filed her own affidavit. However, as settle provision of law it is incumbent upon the complainant to file complaint before the Super indent of Police as per Section 154(3) of code of Criminal Procedure. But in present complaint the complainant failed to comply aforesaid mandatory provision. From the perusal of the allegation of the complaint, it appears that there is a

matrimonial dispute between the complainant and accused. Material on record are prima facie not satisfactory to refer present complaint for investigation. It is not necessary to straight way order an investigation under Section 156(3) of the Cr.P.C.. Even otherwise considering the nature of allegations, I pass the following order.

- ORDER -

- 1) Prayer of applicant for referring the matter for investing under Section 156(3) of the Criminal Procedure Code, 1973 is rejected.
- 2) Complaint is put up for verification, applicant to proceed as per Section 200 of the Criminal Procedure Code, 1973.

Peth-Vadgaon
Date :- 28.04.2023.

(S.D.Shirsat)
02nd Judicial Magistrate, Peth-Vadgaon