

	<p style="text-align: center;"><u>Order passed below Exh.1 in Cri.M.A.No.23/2021</u> (Passed on this 21st day of February, 2022) <u>Laxman -Vrs.- Usha & Ors.</u> CNR No. MHLA060002712021</p>
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01] This is an application filed by applicant against the non-applicants under section 156(3) of the Code of Criminal Procedure (for short 'Cr.P.C.'). For the offence punishable U/Sec. 119, 120, 420, 467, 468, 470, 471, 474, 406, 409, 188, 120-B, 141, 142, r.w. 149/34 of the Indian Penal Code (For short 'I.P.C.'). Out of alleged offence some offence are cognizable.

02] Ld. Advocate Shri. B.K. Murkute vehemently submitted that, after commission of alleged offence, the aggrieved applicant on 28.01.2021 had been to P.S. Ahmedpur and had informed the incident. However, P.S. Ahmedpur did not register crime on the basis of report given by applicant. It is further argued that, the applicants has made compliance under Sec. 154(3) of the Cr.P.C. Hence, sought the relief to direction given to P.S. for investigation against non-applicants.

03] As far as compliance under Sec.154(3) of the Cr.P.C. is concerned. The Ld. Advocate for applicant has submitted that, applicant has complied the mandate of Sec.154(3) of the Cr.P.C. It is important to here that, the applicant has sent report to the Superintendent of Police, Latur in writing and through R.P.A.D. He has filed it's receipt on record. Thereby, applicant has complied the mandate of Sec.154(3) of the Cr.P.C.

04] In view of above discussion, after compliance under

section 154(3) it would be necessary to see that the investigation at the hands of police, it is necessary. Perused the application and documents filed in support of the complaint. It reveals that, the nature of alleged offence arise out of the Civil dispute between the parties. It means that, previous enmity between them.

05] Further, it is borne out from perusal the record of case that, accused Nos.03 and 04 are appeared through their respective advocates. They have filed their respective says and huge of documents on record. Thereby, they have tried to established that, they did not committed any alleged offence against them. Ld. Advocate for the applicant has submitted that, the matter is fixed for pre-cognizance stage. Therefore, the accused have no right to filed their say.

06] Accused No.03 has further placed his reliance on the following cases:-

1] Manoharibhai Muljibhai Kakadia & Anr. Vrs. Shaileshbhai Mohanbhai Patel & Ors. (Criminal Appeal No.577/2012) date of decided 01/10/2012. "Wherein the Hon'ble Apex Court has observed that, "This is a plain requirement of Section 401 (2) of the Code. If the revisional court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in the complaint to have committed crime have, however, no right to

participate in the proceedings nor they are entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of th matter by the Magistrate for issuance of process. We answer the question accordingly. The judgments of the High Courts to the contrary are overruled." I have given my thoughtful consideration above cited case. The case in my hand is at pre-cognizance stage. Therefore, the fact mentioned in the above cited case at present case are very different. Hence, the observation held by the Hon'ble Apex Court in cite (supra) *Manoharibhai* is not with due respectful applicable.

2] P.Pitchiyappan Vs. Karpagam & Ors. Criminal R.C. (MD.1517) date of decided 09/02/2021, "Wherein the Hon'ble Apex Court has held that, the learned Magistrate, by holding that the complaint is of civil in nature, that genealogy and the property rights of the petitioner were not clarified and that the petition seeking to register a criminal case for the civil dispute does not contain sufficient factual particulars, dismissed the petition."

3] Central Bureau of Investigation, Hyderabad Vrs. K. Narayana Rao Criminal Appeal No.1460/2012 decided on 21/09/2012, "The Hon'ble Apex Court has held that, after completion of the investigation, the CBI filed charge sheet along with the list of witnesses and the list of documents against all the accused persons. In the said charge sheet, Shri.K. Narayana Rao, the respondent herein, who is a legal practitioner

and a panel advocate for the Vijaya Bank, was also arrayed and A-6. The duty of the respondent herein as a panel advocate was to verify the documents and to give legal opinion. The allegation against him is that he gave false legal opinion in respect of 10 housing loans. It has been specifically alleged in the charge sheet that the respondent herein (A-6) and Mr. K.C. Ramdas (A-7) the valuer have failed to point out the actual ownership of the properties and to bring out the ownership details and name of the apartments in their reports and also the falsity in the permissions for construction issued by the Municipal Authorities."

4] Gajanan Laxman Bhalchandra Vs. Rangrao Amrutrao Deshpande And.....[1981] 83 BOMLR 12 decided on 22/04/1980, the Hon'ble High Court the directing issue process under Section 500 of the Indian Penal Code against the advocate to set aside.

07] As mentioned earlier, the matter is for fixed for argument below Exh.01. This is pre-cognizance stage. After considering the observation held in above said cases are very different from the present case. However, as the case, at pre-cognizance stage, the respective says and documents adduced by accused Nos. 03 and 04 cannot be consider. Likewise, accused Nos.01 and 02 are appeared; but they did not adduced any material on record.

08] However, considering the nature of allegation in the

application it relied up on the documents, I do not found that, there is investigation required at the hand of police. Whether the accused have committed or not the alleged cognizable offence can be very well ascertained on the basis of previous dispute between them and after verification of applicant and examination of the witnesses under Sec. 200 of the Cr.P.C. As a sequel to the aforesaid discussion, I come to the firm conclusion that, the investigation by the police does not seem to be required. Hence, this is not a fit case for investigation under Sec.156 (3) of the Cr.P.C. In the light of the aforesaid discussion, the following order is passed:-

-: ORDER :-

1. The prayer of 156(3) of the Criminal Procedure Code is hereby rejected.
2. Case be put up for verification of applicant under Sec.200 of the Criminal Procedure Code.

(Dictated and pronounced in open Court).

Place :- Ahmedpur.

Date :- 21.02.2022

(Shyam S. Tondchire)
Judicial Magistrate First Class,
Ahmedpur.