

MHLA090015582023



Cri.M.A. No.188/2023
Makbul Vs. Babu & Ors.

ORDER BELOW EXH-1

(Passed on 15.05.2024)

This is the private complaint filed under Section 156 (3) of Code of Criminal Procedure (in short “**Cr.P.C.**”) against accused persons for directing P.S.O. of Jalkot Police Station to register F.I.R. and investigate in the complaint for the offence punishable under Sections 441, 447, 463, 464, 465, 468, 417 and 420 read with Section 34 of Indian Penal Code (in short “**I.P.C.**”)

2. Heard learned Adv Shri.S.L.Kokane for the complainant and perused documents on record. Complaint is supported by an affidavit. It is the case of the complainant that, accused No.1 in furtherance of accused Nos.2 to 78 demarcated various plots in the field of complainant and sold them to various purchasers by making forged documents and using false signatures. Complainant alleges that due to work he is living at Hyderabad since the year 1979-80 and when he came to his village he got to know about said illegal transactions. Accused No.1 is his real brother and accused No.2 is the wife of accused No.2 in the present case. Both of these accused have in furtherance of their common intention cheated the complainant by disposing of his property .

3. Thereafter, complainant approached Jalkot Police Station and filed complaint against all accused persons but

police did not take any action. According to him, he approached S.P.,Latur but no relief is given by that office. Hence, prayed to allow the application by directing Jalkot Police Station to register FIR against accused persons.

4. I have perused the complaint and various documents filed below list **Exh.3**. Before directing the police to register an F.I.R. based on a complaint, there are three pre-conditions that must be satisfied. Those are disclosure of cognizable offence, application of judicial mind and necessity to pass speaking order. It is also necessary, to refer Section 154 of Cr.P.C. which deals with information in cognizable offence. Section 154 (3) provides, any person aggrieved by refusal on the part of an Officer-in-charge of police station to record the information referred to in Sub-section (1) may send the substance of such information, in writing and by post to the Superintendant of Police concerned who, is satisfied that such information discloses the commission of cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer sub-ordinate to him.

5. In the present case, complainant could not produce on record his written complaint given to the officer-in-charge of Jalkot Police Station. Therefore, when and at what time he had first gone to Jalkot Police Station cannot be understood. In the same manner, he could not bring on record his written complaint which is sent to the Superintendant of Police, Latur disclosing the cognizable offence as required under this section. No doubt, complainant has filed on record various copies of sale deed regarding alleged transfer of properties but those are not prima-facie sufficient enough to satisfy the Court that offence

U/Sec. 441, 447, 463, 464, 465, 468, 417 and 420 read with Section 34 of Indian Penal Code has been committed by the accused persons. Moreover, no specific allegations with regard to each accused is made in the complaint.

6. It is well settled that, when complaint case is filed, the Court has two options either to get the investigation through police under Section 156(3) of the Cr.P.C. or to proceed under Section 200 of the Cr.P.C. It is alternative procedure which the Court 'May' or 'May not' adopt at the stage of consideration of application under Section 156(3) of the Cr.P.C. Remedy under Section 156(3) is discretionary one as the provisions proceeds with word 'May'. The Court is required to pass order under section 156(3) only if, it is satisfied that the information reveals commission of cognizable offence and police aid is necessary for investigation in peculiar facts of case. Therefore, considering the complaint in hand, complainant has not satisfied the Court to issue directions U/Sec.156(3) of Cr.P.C. However, complainant is at liberty to adduce evidence and proceed in view of Section 200 of Cr.P.C. In the interest I pass following order -

ORDER

1. Application is rejected to the extent of directing investigation under Section 156 (3) of Cr.P.C.
2. Complainant is at liberty to adduce evidence and proceed under Section 200 of Cr.P.C.

Udgir
Dt. 15/05/2024.

(**N.J. Chavan**)
Judicial Magistrate F.C.
(Court No.3) Udgir.