

MHND160008522022



**Crim.M.A. 114/2022
Anita Omkar Ubale Vs.
Sadashiv Waman Ubale**

ORDER BELOW EXH. 1

Perused the application. Heard Ld. advocate for applicant. The alleged offences are punishable under section 498(A), 323, 504, 506, 420 read with section 34 of Indian Penal Code.

2) The applicant has filed this application for issuing direction to investigate the crime as per section 156(3) Criminal Procedure Code. It is the contention of applicant that, the applicants marriage was performed with Omkar Ubale who was the son of the accused no. 1. She was residing with accused no. 1 to 4. On 07/07/2021 her husband namely Omkar Ubale has committed suicide. The Accused no. 1 to 6 have harassed the applicant by assaulting her and by mental torture. The accused no. 1 to 6 are abusing the applicant in filthy language. There was landed property bearing gut No. 202 in name of applicants husband. The applicant and her husband was in possession and in cultivation of the aforesaid property. But after the death of the applicants husband the accused no. 1 started obstructing the applicant for cultivation of the said property. Further it is contended that, after the death of applicants husband accused no. 1 has obtained the heirship certificate. But the same is misused by accused no. 1 and 2 and transfer the landed property in the name of accused

no.2. The accused no. 1 to 6 are the relatives of her deceased husband. They have assaulted and caused harassment to the complainant. Therefore, applicant went at Police Station Tamsa for lodging FIR on 06/04/2023, but the police officer has not recorded her complaint. Therefore, the applicant forward the complaint on 11/05/2022 to the Superintendent of Police at Nanded. Despite that, FIR was not registered against the accused. Therefore, applicant constrained to file the present application.

3) The power to direct investigation is discretionary power as the word “may” is used in section 156(3) of Criminal Procedure Code. However, such discretion is to be exercised judiciously. On perusal of record, it appears that, there is civil litigation between parties on the ground of landed property Gat no. 202 of village Wadgaon Tq. Hadgaon as well as there is dispute about the heirship certificate obtained by the parties. Further perusal of complaint it appears that, the applicant has directly forwarded complaint to the police Superintendent of police at Nanded, on 06/05/2022 and same is acknowledged by the concerned officer of S.P. Office Nanded on 11/05/2022. Further it appears that, the complaint only stated that, he went at Tamsa Police Station on 06/04/2022, but has not produced document/application which was addressed to the police inspector of Tamsa police station.

4) In this circumstances I am guided by the principal laid down in **The Hon'ble Apex Court in case of Priyanka Shrivastav V/s State of U.P. (2015) 6 SCC 287**, wherein *it is held that, “there has to be prior applications under sections*

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.” Hence, considering the nature of the offence previous enmity between parties and as the provisions of section 154 of the Code of Criminal Procedure is not complied by the complainant and therefore, the direction under section 156(3) of the Code of Criminal Procedure cannot be issued for the above said reasons.

5) Therefore considering above discussion it appears that, the applicant has not complied with the Provisions of section 154(3) of Criminal Procedure Code. Further there is previous dispute between the parties. In this circumstances, I pass following order.

ORDER

- 1) Application is rejected.
- 2) The applicant may appear before the court for recording of his evidence as per section 200 Criminal Procedure of Code, if he desire so.

(Pronounced in the open court.)

Hadgaon
Date :- 02/08/2021

(Amarjeet B.Jadhav)
Judicial Magistrate First Class,
Hadgaon

((4))

CERTIFICATE

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

Name of steno : Sau A.S.Godam,

Name of court : CJJD & JMFC, Hadgaon

Date of Order : 02.08.2024

order signed by Presiding Officer on : 02.08.2024

order uploaded on : 05.08.2024