

MHNG140006032019



**Misc.Criminal Application No.123/2019  
Shivram/Dilip Mankar and others**

**Order below Exh.No.1**

The applicant has moved this application under section 156(3) of Cr.PC. for directing the Police Station, Parseoni to register offence against accused/non-applicants under sections 420, 409, 468, 471, r/w 34 of the Indian Penal Code.

2. The facts of the application, in short, are as under:-

That the applicant is an illiterate and is only able to sign. He reside with his family at village Khedi, Tahsil Parseoni, District-Nagpur and has his agricultural field being survey no.196/3 admeasuring 0.96 HR there. The applicant was in need of Rs.25,000/- for sowing operations in his aforesaid field, but he could not get help from his relatives. Coincidentally, non-applicant no.2 met with the applicant and offered him money on interest, to which the applicant shown his willingness. The non-applicant no.2 asked the applicant that the loan amount will be deposited in his bank account. As the applicant was not having bank account, the non-applicant no.2 facilitated the applicant to open his bank account alongwith cheque book with the Corporation Bank, Ramtek. The non-applicant no.2 obtained the signatures of applicant on the blank cheque book and kept it with him.

3. On 25.06.2019 the non-applicant no.2 came to the applicant and offered him to pay loan of Rs.25,000/- on the condition that he has

to accompany him to the Tahsil office, Parseoni to execute writing on the stamp paper and also asked him to take his Adhar card with him. The non-applicant no.2 first offered liquor to the applicant and thereafter took him to the office of Registrar at Parseoni. The non-applicant no.2 said to the applicant that non-applicant no.1 is their officer and he is disbursing loan to needy farmers. The non-applicant no.1 asked the applicant to offer loan on the condition that he has to sign on the documents as per the wish of non-applicant no.1. Accordingly, the non-applicant no.1 prepared false documents and obtained the signature of applicant on those documents in presence of all the other non-applicants, on the pretext that they are genuine. So also, on 26.06.2019 the non-applicant no.2 took the applicant to Kanhan and obtained his signature on stamp paper. When the applicant asked the non-applicant no.2 about the loan amount, he told him that the loan amount will be deposited to his account after one month.

4. On 23.09.2019 when the applicant alongwith his son Raju Shivram Madankar had been to the Corporation bank, Ramtek to ascertain whether the loan amount is deposited to his account or not, they came to know that rupees two lakhs are lying in the account. Upon enquiry, they came to know that the non-applicant no.2 alongwith other non-applicants has misutilized the cheques, signed by and given in the custody of non-applicant no.2 by the applicant. They further came to know that all the non-applicants have cheated the applicant by getting executed sale deed of his aforesaid field in favour of the non-applicant no.1. The applicant reported this incident first to the Police Station, Parseoni and thereafter to the Police Superintendent, but no action has been taken. Hence, he has been constrained to file instant application

before this Court.

5. Heard the learned counsel Adv.Shri.Sankalp Meshram, appearing for the applicant at length. Perused record.

6. At the outset, it is pertinent to mention here that initially vide this Court order dated 28.10.2020 the instant application came to be finally adjudicated by this Court, whereby the prayer of applicant under section 156(3) of Cr.P.C. for directions to the Parseoni police to investigate into the offence came to be rejected. Being aggrieved by the said order, the applicant had preferred Criminal Revision Application No.214/2020 before the Hon'ble Adhoc DJ-2 and ASJ, Nagpur. The Hon'ble Appellate Court vide its order dated 08.01.2021 was pleased to allow the Revision by setting aside and quashing this Court order dated 28.10.2020 and was further pleased to direct this Court to decide the application afresh. Accordingly, I proceed to record my findings.

7. First I turn myself to the legal and mandatory requirements which are to be complied by the applicant before moving an application under section 156(3) of Cr.P.C. The foremost legal requirement is that the applicant should comply the provisions as contemplated under section 154(1) and 154(3) of Cr.P.C. The learned counsel for the applicant has placed his reliance in the case of **Sakeri Wasu ..vs.. State of U.P. & others** wherein the Hon'ble Supreme Court of India has held that "In this connection we would like to state that if a person has a grievance that the Police Officer is not registering his FIR under section 154 Cr.P.C., then he can approach the S.P. under section 154(3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory

result in the sense that either the FIR is still not registered or that even after registering if no proper investigation is held, it is open to the aggrieved person to file an application under section 156(3) Cr.P.C. before the learned Magistrate concerned". Further, in the case of **Priyanka Shrivastav & others ..vs.. State of U.P** the Hon'ble Apex Court has reiterated that "we have already indicated that there has to be prior application under section 154(1) and 154(3) Cr.P.C. while filing a petition under section 156(3) Cr.P.C. Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed". The ratio laid down in above cited cases has guiding effect to the instant case also. In the instant case, the applicant has filed on record the verified copy of complaint lodged by him with the Police Station, Parseoni and Police Superintendent, Nagpur (Rural).

8. Apart from this, in the case of **Jignesh Patel ..vs.. Edrich Miranda & others** cited supra, the Hon'ble Apex Court has further held that "The warrant for giving a direction that an application under section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour 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)". In the instant case also, the applicant has filed his affidavit to the effect that he has made allegations against accused persons with conscious state of mind and in the event his contentions are found false, he is liable for prosecution under sections 199 and 200 of Cr.P.C. Thus it can be said that the applicant has duly complied the provisions laid down in sections 154(1) and 154(3) Cr.P.C. before

preferring a petition under section 156(3) Cr.P.C. Hence, I do not find any legal impediment in allowing the application.

9. Now I turn myself to the factual aspects of the case. The applicant has filed on record the copy of alleged sale deed dated 25.06.2019 purported to have been executed by deceased applicant Shivram Madankar in favour of non-applicant no.1 Dilip Mankar. The alleged sale deed being registered document carries presumption as to its correctness. Further, the copies of alleged transaction between the applicant and non-applicant no.1 being available in public domain, it cannot be said that the applicant has no access to it. However, the applicant has also filed on record the copy of one affidavit dated 26.06,2019 purported to have been sworn by him before the Executive Magistrate, Parseoni. It bare perusal goes to show that the applicant has swear that he is selling his disputed land to the non-applicant no.1 Dilip Mankar. Thus there is serious contradiction as regards date of execution in between the alleged sale deed dated 25.06.2019 and alleged affidavit dated 26.06.2019. The alleged affidavit ought to have been executed prior to the date of execution of alleged sale deed. It prime facie probablises the contention of applicant that he has been cheated by the non-applicants. The above discussed contradiction certainly has bearing to this case and in my opinion it needs to be investigated. Whatever might be the outcome of investigation, but investigation needs to be directed in this case.

10. Apart from it, Adv.Shri.Sankalp Meshram for the applicant has invited my attention to para no.2 of the application. The applicant in para no.2 of his application has contended that he was told by the

the non-applicant no.2 that the loan amount will be deposited in his bank account. But as the applicant was not having bank account, the non-applicant no.2 facilitated the applicant to open his bank account alongwith cheque book with the Corporation Bank, Ramtek. The non-applicant no.2 obtained the signatures of applicant on the blank cheque book and kept it with him, which are subsequently used in commission of offence. Obviously, the task of seizure of alleged cheque book is to be performed by the police machinery and the common man has no access to it. In view of the aforesaid contentions, it can be said that the evidence required in the present matter is of such a nature that the applicant has no access to it and that it can be collected by the police machinery only.

11. The learned counsel for the applicant Adv.Shri.Sankalp Meshram has further placed his reliance in the case of Srinivas Gundluri ..vs.. Ms.Sepco Electric Power Construction 2010 AIR SCW 5315, Panchabhai Popatbhai Butani ..vs.. State of Maharashtra 2010 Cr.L.J. 2723, Masuman ..vs.. State of UP 2007 ALJ(1) 221, Babul ..vs.. State of Rajasthan 2009 Cr.J.J. 4346, Santosh Kumari ...vs.. State of UP 2007 Cr.L.J. 3869, State of Maharashtra ..vs.. Shashikant Eknath Shinde 2013 All MR (Cri.) 3060 and Yogiraj Surve ..vs.. State of Maharashtra 2013 All MR (Cri.) 2059 and contended that in the cited cases it has been held and reiterated that the Magistrate may allow the application under section 156(3) Cr.P.C. if he finds that a cognizable offence is made out. The facts of the cases cited above do squarely apply to the facts of the case in hand. In the instant case also, the applicant has prima facie succeeded to prove that a cognizable offence is made out. Hence, this is the best case to direct the police to investigate into the

matter as per section 156(3) of Cr.P.C.

Hence, in view of the facts and circumstances of application, discussion noted above and in view of the guidelines laid down in abovesited cases, the instant application deserves to be allowed. In the result proceed to pass the following order:-

**ORDER**

1. The prayer of applicant under section 156(3) of Cr.P.C. is hereby allowed.
2. The Police Station Officer, Police Station, Parseoni is directed to investigate the crime and to submit his report within one month.

Parseoni.  
Date-23.02.2021.

Sd/-  
(N.R.Bhalgat)  
JMFC, Parseoni, Dist.Nagpur.

Argument heard on	22.02.2021
Order passed on	23.02.2021
Transcription ready on	23.02.2021
Order checked and singed on	23.02.2021

**CERTIFICATE**

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

**Name of Stenographer**-Abhijit Yeshwant Kulkarni