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Exh 20

**IN THE
COURT OF SESSION
SESSIONS DIVISION, SINDHUDURG
AT: OROS**

[Presided over by Dr Sudhiir M Deshpande]
SESSIONS JUDGE, SINDHUDURG.

Criminal Revision Application No. 29 of 2018
(CNR MHSlO10005292018)

Anjali Pradeep Sawant
Age about 55 yrs., Occu.: Housewife
R/o X-96/8, Godrej Station Colony
Fhiroz Shah Nagar, Vikroli (East)
Mumbai 400 079

Applicant

Versus

1. Dinesh Nana Sawant
Age about 54 yrs., Occu.: Nil
R/o Urvi Park, Block No. 612
Opp. Oswal Park, Maziwada, Thane (West)
and working at Central Railway CTS
Mumbai 400 001
 2. Suresh Malvankar
An Adult, Occu.: Nil
R/o Sawantwadi Dist. Sindhudurg
 3. Sushma Bimbawnekar
An Adult, Occu.: Nil
R/o Sawantwadi Dist. Sindhudurg
- Opponents

Appearance:

Mr A S Patel, Ld advocate for the applicant
Mr S S Sawant, Ld advocate for the opponent No. 1
Mr J S Samant, Ld advocate for the opponents No. 2 and 3

JUDGMENT

(Declared on 31st day of March, 2026)

This revision application is filed by the original complainant against the order dated 05.03.2018 passed by the Ld Judicial Magistrate First Class, Kudal in the Regular Criminal Case No. 4/2018 seeking direction for investigation under section 156(3) of the Code of Criminal Procedure for the alleged offences punishable under sections 406, 418, 420, 465, 468, 471 and 120-B of the Indian Penal Code.

2] The prayer for issuing direction for registration of offences under section 156(3) of the CrPC was rejected by the Ld JMFC, Kudal and the matter was kept for recording verification of the complainant on 07.04.2018. Aggrieved by this impugned order, the present revision application is filed by the original complainant. The original accused are the opponents in the revision application.

3] Heard.

4] Mr Patel, learned counsel for the applicant (original complainant), submits that he is advancing common arguments in both revision applications arising from the impugned orders dated 05.03.2018 and 10.07.2023, refusing direction u/s 156(3) and dismissing the complaint, respectively. He contends that both revisions are maintainable; he argues that the trial Court falsely dismissed the complaint even when the complainant wanted to pursue it. He submits that there was corona period and therefore the complaint proceeding could not be attended for some time.

He submits the dismissal order dated 10.07.2023 need to be set aside. The complainant needs to be given an opportunity to prove her allegations. He submits the accused will always have the chance of moving discharge application.

5] On the order dated 05.03.2018 he submits that investigation under Section 156(3) CrPC is necessary as the matter involves serious allegations of cheating and forgery, and that the non-filing of an affidavit should not defeat the complainant's just cause, particularly when a fair trial is sought; he further explains that due to the COVID-19 pandemic, the applicant could not effectively pursue the proceedings on each date, and alleges that the accused brothers have committed forgery to grab property, while characterizing the Magistrate's order dated 05.03.2018 as mechanical and passed without proper application of mind, and therefore prays that both revision applications be allowed and the Magistrate be directed to order an investigation under Section 156(3) CrPC.

6] Mr Sawant, learned advocate for Opponent No. 1, submits that both the impugned orders are proper and legal and do not warrant interference; he contends that there is no element of forgery involved and places reliance on paragraph 7 of the order dated 05.03.2018 as being significant, further arguing that the revision applications are not maintainable as both the orders are interlocutory in nature.

7] Mr Samant, learned counsel for Opponents No. 2

and 3, submits that these opponents are merely witnesses to the documents in question and ought not to have been implicated in the present case at all; he contends that they have been unnecessarily subjected to hardship since 2018, and therefore both revision applications deserve to be dismissed, as the impugned orders are correct and justified, further emphasizing that the trial court cannot be expected to keep matters pending indefinitely while awaiting parties to take steps to prosecute the case.

8] In reply, Mr Patel submits that the complainant lady is the real sufferer and is only seeking a fair trial; he contends that the opponents have adequate remedies available in law, including the right to defend themselves and to file an application for discharge, and therefore submits that both revision applications deserve to be allowed.

9] After hearing the rival submissions and perusing the documents on record, the following points arise for my determination, on which I have recorded my findings with reasons upon consideration of the material on record and the arguments advanced.

Points		Findings
1.	Whether the Trial Courts' order is correct, legal and proper?	Yes
2.	Whether the Trial Court has conducted any irregular proceeding?	No
3.	What Order?	The revision application is dismissed.

REASONS

As to Point No. 1 and 2

10] The contention that the impugned order is interlocutory in nature is not tenable in law. An interlocutory order is one which is purely interim and does not affect the substantive rights of the parties. The order dated 05.03.2018, whereby the Magistrate declined to direct investigation under Section 156(3) CrPC but proceeded to take cognizance, is not purely interlocutory but an intermediate order affecting the mode of proceeding. Therefore, the impugned order cannot be classified as an interlocutory order. The revision application is, therefore, tenable.

11] The scope of the revisional court is circumscribed and supervisory in nature, confined to examining the correctness, legality, and propriety of the impugned order, as well as the regularity of the proceedings before the learned Magistrate. It is well settled that revisional jurisdiction is not equivalent to appellate jurisdiction and does not permit a re-appreciation of evidence or substitution of the court's own findings merely because another view is possible. The revisional court is primarily concerned with jurisdictional errors, patent illegality, material irregularity, or manifest perversity in the order under challenge. Interference is therefore warranted only where the impugned order suffers from non-application of mind, is arbitrary or perverse, or where there has been a miscarriage of justice owing to procedural impropriety or illegality committed by the trial court.

12] I have perused the impugned order. In paragraph 4, the learned Trial Court has correctly appreciated the legal position governing Section 156(3) of the CrPC. In paragraph 5, the Trial Court has observed that although the complaint discloses cognizable offences, there is no material on record to indicate that the complainant had approached the police authorities in the first instance. It is further noted that there is no evidence to show that the police failed to act upon any such complaint, if made. The Trial Court has treated this as a fundamental defect while considering the prayer for directions under Section 156(3) of the CrPC.

13] The second defect pertains to the absence of an affidavit in support of the complaint, which has been dealt with by the Trial Court in paragraph 6. The mandatory requirement of filing the complaint on affidavit is not complied with in the present case. However, it is noteworthy that the Trial Court did not summarily reject or dismiss the complaint; instead, it proceeded to take cognizance of the complaint and the allegations therein. The Trial Court further observed that the alleged offences are primarily based on documentary evidence. In such circumstances, rather than directing an investigation under Section 156(3) of the CrPC, the Trial Court kept the matter for recording the examination of the complainant on 07.04.2018. (It is pertinent to note that) The CrPC does not contemplate a stage termed as “verification” of the complainant; the correct stage is that of examination of the complainant. Be that as it may.

14] In my opinion, the complainant ought to have first approached the concerned police station before invoking the jurisdiction of the Magistrate under Section 156(3) CrPC. The scheme of the CrPC also provides that, in the event of inaction by the local police, the complainant may approach the Superintendent of Police. However, no material has been placed on record to show that any such steps were taken. Mr Patel has argued that the requirement of filing an affidavit, though generally insisted upon, is not mandatory in every case.

15] It may also be observed that a direction under Section 156(3) of the CrPC operates at the pre-cognizance stage, whereas the examination of the complainant is a post-cognizance step. Thus, the act of taking cognizance of the offences alleged in the complaint is itself a significant judicial exercise. In fact, the complainant ought to be satisfied that the Court has applied its mind and taken cognizance of the alleged offences, rather than insisting upon a direction under Section 156(3) of the CrPC. In this view of the matter, the rejection of the prayer under Section 156(3) by the Trial Court is justified and cannot be construed as diluting or disregarding the allegations made in the complaint. Accordingly, I hold that the impugned order passed by the Trial Court is legal and proper, and no irregularity or illegality is found in the proceedings conducted by the Trial Court. Hence, I answer Point No. 1 in the affirmative and Point No. 2 in the negative.

16] Though the revision is maintainable as the impugned order is not interlocutory, no case of illegality, impropriety, or perversity is made out warranting interference under revisional jurisdiction. The revision application is devoid of merit and, therefore it is liable to be dismissed.

ORDER

1. The revision application is dismissed.
2. The record of proceedings be sent back to the Trial Court.
3. In the circumstances, no order as to costs.
4. The revision application is disposed of.

Sd/-

(Dr Sudhiir M Deshpande)
Sessions Judge
Sindhudurg-Oros

All concerned to act upon digitally signed uploaded copy of this order, the printout of which can be verified from the official website of this court. In this regard attention of all concerned is invited to the authority of the Hon'ble High Court of Bombay (Bench at Aurangabad) **Shital Krushna Dhake v. Krushna Dhake**, MANU/MH0285/2018.