

ABC 2016 (I) 487 BOM  
ACQUITTAL & BAIL CASES  
HIGH COURT OF BOMBAY

(A.S. Oka & P.D. Naik, JJ.)

Criminal Application No.152 of 2015

Decided on 4 May 2016

**KAILASH DATTATRAYA JADHAV & ANOTHER - Appellant(s).**

*Versus*

**STATE OF MAHARASHTRA & ANOTHER - Respondent(s).**

**Law Covered:-** (A) Code of Criminal Procedure, 1973 – Section 156(3), 397 & 482 – Quashing of the FIR – Order passed by magistrate u/s 156(3) – Pointed out by the Court – that a remedy u/s 397 is available – Submission that Revisional Court cannot quash FIR – remedy available cannot be an efficacious remedy – Held, we accept the submission made by the learned counsel – the learned Magistrate could not have passed an order u/s 156(3) post cognizance stage – strong prima facie case made out – Interim relief granted as prayed. (Para 6, 14 & 15)

(B) Code of Criminal Procedure, 1973 – Section 156 (3 ) – Power of magistrate under – Exercising of – Complaint at postcognizance stage– Held, the learned Magistrate could not have exercised the power – which is to be exercised at precognizance stage– order of the learned Magistrate is completely illegal– Apart from that the learned Magistrate completely overlooked the order & specific directions issued by the Additional Sessions Judge. (Para 6)

(C) Code of Criminal Procedure, 1973 – Section 482 – Inherent power of the Court – Exercising of – has to be exercised in rare cases – Efficacious remedy – Availability of – Normally the Applicant who seeks to invoke the jurisdiction of High Court u/s 482 – should not be permitted to invoke the same when an efficacious remedy is available under statute. (Para 6)

(D) Code of Criminal Procedure, 1973 – Section 154(1) & 156 (3) – FIR & Power of Magistrate to order investigation– on the basis of an order made directing investigation u/s 156(3) – the officer incharge of the concerned police station is under an obligation to register FIR – & to commence investigation– though there may not be any specific direction to register FIR. (Para 9)

(E) Interpretation of Statute – Code of Criminal Procedure, 1973 – Section 156(3) – An order directing investigation under – is

*not an interlocutory order but it is in the nature of a final order disposing of the complaint. (Para 10)*

(F) *Criminal Jurisprudence – Code of Criminal Procedure, 1973 – Section 156(1)&(3) – conjoint reading – Power u/s 156(3) – Exercising of – the power can be exercised only in cognizable cases. (Para 12)*

(G) *Criminal Jurisprudence – Code of Criminal Procedure, 1973 – Section 397 – Power of the High Court or the Sessions Court under – is confined to testing the legality, validity and propriety of the orders – passed by the Courts which are subordinate to the High Court or the Sessions Court – as the case may be. (Para 13)*

(H) *Code of Criminal Procedure, 1973 – Quashing of FIR – Sections 398, 399 and 401 – Conjoint reading – Revisional Court – Power of – there is no power conferred on the Revisional Court to quash FIR, registered u/s 154(1) & the investigation carried out on the basis of that – & to quash the criminal proceedings on the basis of charge sheet, which may be eventually filed – Code of Criminal Procedure, 1973 – Section 154(1). (Para 13)*

(I) *Criminal Jurisprudence – Code of Criminal Procedure, 1973 – Section 156(3) – Order under – culminates into registration of FIR – the Revisional Court is powerless to pass an order of quashing the FIR & quashing a charge sheet filed on the basis of the FIR Code of Criminal Procedure, 1973 – Sections 398, 399 and 401. (Para 13)*

(J) *Criminal Jurisprudence – Code of Criminal Procedure, 1973 – Section 156(3) – Order under – Remedy of Revision under CrPC – Held, in a case where on the basis of an order u/s 156(3), FIR is registered – the remedy of revision under the Code for challenging the order will not be an efficacious remedy at all Sections 398, 399 and 401. (Para 13)*

(K) *Criminal Jurisprudence – CrPC – Sections 398, 399 and 401 – Quashing of FIR – Revisional Jurisdiction of the Court – Entertaining a Revisional Application – against an order u/s 156(3) where FIR on the basis of the said order is already registered – in exercise of revisional jurisdiction, neither High Court nor Sessions Court can quash the FIR and proceedings subsequent to the FIR – Code of Criminal Procedure, 1973 – Section 156(3). (Para 13)*

(L) *Code of Criminal Procedure, 1973 – Sections 156(3) & 397 – Efficacious remedy – Registration of FIR on the basis of an order*

*u/s 156(3) – a revision u/s 397 of the Code is not at all an efficacious remedy. (Para 14)*

a

**Facts:-** On the complaint filed by the second Respondent, an order was made u/s 202, CrPC. On the basis of the said order, a report was submitted by the Police recording that no case for recording of offence was made out. On the basis of said report, the learned Metropolitan Magistrate dismissed the private complaint filed. Against the said order, a revision application was filed by the second Respondent. The learned Additional Sessions Judge partly allowed the revision application and directed the second Respondent to appear before the learned Magistrate for having a further inquiry u/s 202 of the Code. However, the learned Magistrate exercised power u/s 156(3) of CrPC.

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The learned counsel for the Applicants moved honourable Bombay High Court u/s 482, CrPC for quashing of the. At the stage of admission, the Court pointed out that a remedy under the Code is available to the Applicants. It was however submitted by the learned counsel that as the Revisional Court cannot quash FIR, even assuming that a remedy is available u/s 397, CrPC to challenge an order u/s 156(3), the said remedy cannot be an efficacious remedy. The Court observed and held that learned Magistrate could not have exercised the power at postcognizance stage which is to be exercised at precognizance stage. Relief in terms of prayed was granted.

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**Law of relief:-** The learned Magistrate could not have exercised the power Post-cognizance stage which is to be exercised at Pre-cognizance stage.

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**Held:-** In view of the settled law, when the complaint was at postcognizance stage, the learned Magistrate could not have exercised the power under sub Section 3 of Section 156 of the Code, which is to be exercised at precognizance stage. Therefore, prima facie, we are of the view that the order of the learned Magistrate dated 12 December 2013 is completely illegal. Apart from the fact that the learned Magistrate could not have exercised the power at that stage, the learned Magistrate has completely overlooked the order of learned Additional Sessions Judge and the specific directions issued by the the Additional Sessions Judge. (Para 6)

h

Therefore, the effect of an order under sub Section 3 of Section 156 is that though there may not be any specific direction to register FIR, on the basis of an order made directing investigation under sub Section 3 of Section 156, the officer incharge of the concerned police

station is under an obligation to register FIR in accordance with sub Section 1 of Section 154 and to commence investigation. (Para 9)

As held by the Apex Court, once an order is made by learned Magistrate under sub Section 3 of Section 156 of the Code directing investigation to be made, it is the legal obligation of the police officer to register FIR under sub Section 1 of Section 154 of the Code, inasmuch as registration of FIR in terms of sub Section 1 of Section 154 is a condition precedent for commencing investigation into the commission of cognizable offence. As is clear from subSection 1 of Section 156 of Code, the power under subSection 3 of Section 156 of the Code can be exercised only in cognizable cases. (Para 12)

We may make now a reference to Section 397 and Section 401 of the Code. The power of revision under Section 397 will have to be read with Section 398 of the Code. Firstly, we may note here that power of the High Court or the Sessions Court under sub Section 3 of Section 397 is of calling for the record of proceedings before any subordinate Criminal Court for the purposes of satisfying itself about correctness, legality or propriety of any finding, sentence or order recorded or passed in any proceeding before such subordinate Court. Thus, the power under Section 397 is confined to testing the legality, validity and propriety of the orders passed by the Courts which are subordinate to the High Court or the Sessions Court, as the case may be. Secondly, on conjoint reading of Sections 398, 399 and 401, it follows that there is no power conferred on the Revisional Court to quash FIR registered by the Police in accordance with subsection (1) of Section 154 of the Code and the investigation carried out on the basis of that and to quash the criminal proceedings on the basis of charge sheet, which may be eventually filed. Therefore, in a case where an order made under subSection 3 of Section 156 culminates into registration of FIR, the Revisional Court is powerless to pass an order of quashing the FIR and quashing a charge sheet filed on the basis of the FIR. Therefore, in a case where on the basis of an order under sub Section 3 of Section 156 of the Code , FIR is registered, the remedy of revision under the Code for challenging the order under sub Section 3 of Section 156 will not be an efficacious remedy at all. For the reasons which we have recorded above, even in a case where a revision application is entertained against an order under sub Section 3 of Section 156 where FIR on the basis of the said order is already registered, in exercise of revisional jurisdiction, neither this Court nor Sessions Court can quash the FIR and proceedings

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a subsequent to the FIR, as what can be gone into by the Court in revisional jurisdiction is the issue of legality, validity and propriety of the orders passed by a subordinate Criminal Court. (Para 13)

b Therefore, we accept the submission made by the learned counsel for the Applicants that a revision under Section 397 of the Code is not at all an efficacious remedy in view of registration of FIR on the basis of an order under sub Section (3) of Section 154 of the Code. (Para 14)

**Counsel:-** For Appellant(s): Mr.Niranjan Mundargi i/by Mr. Sandip R. Khurkute, Adv.

For Respondent(s): Dr. F.R. Shaikh, APP

c **Cases Referred:-**

1. Avinash Trimbakrao Dhondage Vs. State of Maharashtra 2016-ALL MR (Cri)-985. (Para 1)
2. Madhu Bala Vs. Suresh Kumar and others (1997)8-SCC-476. (Para 4)
- d 3. Suresh Chand Jain Vs. State of Madhya Pradesh (2001)2-SCC-628. (Para 4)
4. Father Thomas Vs. State of Uttar Pradesh 2011-Cri.L.J.-2278. (Para 4)
5. Jagannath Verma Vs. State of Uttar Pradesh 2015-ALL MR (Cri) Journal 129. (Para 4)
6. Amar Nath Vs. State of Haryana 1977-AIR-SC-2185. (Para 4)
7. State of Maharashtra Vs. Shashikant Eknath Shinde 2013-ALL MR (Cri)-3060. (Para 4)
- e 8. Siddharam Satlingappa Mhetre Vs. State of Maharashtra (2011)1-SCC-694= ABC 2011(I) 240 SC= ACR 2011(I) 240 SC. (Para 4)
9. B.S.Khatri Vs. State of Maharashtra and another 2003-ALL MR (Cri)-1925. (Para 10)

f **ORDER**

g **A.S. OKA, J.:** - 1. Submissions of learned counsel for the Applicants were heard on the earlier date. We have also heard learned APP. The challenge in this application under Section 482 of the Code of Criminal Procedure, 1973 ('Code') is to the first information report ('FIR') registered at Sakinaka Police Station, Andheri, Mumbai. The quashing of the FIR is sought by the Applicants. When the application was called out for admission, we pointed out to the learned advocate for the Applicants that a remedy under the Code is available to the Applicants in view of the decision of a Division Bench of this court in the case of h **Avinash Trimbakrao Dhondage Vs. State of Maharashtra 2016-ALL MR (Cri)-985** The Division Bench of this Court by the said decision

June 2016

held that an order made by learned Magistrate under subsection 3 of Section 156 of the Code is not an interlocutory order, but it is a final order on an application/complaint under subsection 3 of Section 156 of the Code. The Division Bench held that a remedy of revision under Section 397 of the Code is available against the said order. a

2. Learned counsel for the Applicants urged that the remedy under Section 397 of the Code is not at all an efficacious remedy inasmuch as the Revisional Court or the Sessions Court has no power to quash the FIR. He submitted that the law is well settled. As a consequence of an order being made under sub Section 3 of Section 156 of the Code, the officer incharge of concerned Police Station is under an obligation to register FIR in accordance with sub Section 1 of Section 154 of the Code. His submission is that as the Revisional Court cannot quash FIR, even assuming that a remedy is available under Section 397 of the Code to challenge an order under sub Section 3 of Section 156, the said remedy cannot be an efficacious remedy. b c

3. Learned counsel for the Applicants also submitted that the view that an order allowing/granting application/complaint under sub Section 3 of Section 156 of the Code is not an interlocutory order, may also need reconsideration inasmuch as by passing the said order, cognizance is not taken of the offence by the Criminal Court. d

4. As far as the implication of directions under sub Section 3 of Section 156 is concerned, he invited our attention to the law laid down by the Apex Court in case of *Madhu Bala Vs. Suresh Kumar and others (1997)8-SCC-476*. He pointed out that as held by the Apex Court, on the basis of an order of a Magistrate to investigate, even in absence of a specific direction to register FIR, the Police is bound to register FIR and bound to investigate into the same. Relying upon the decision of Apex Court in the case of *Suresh Chand Jain Vs. State of Madhya Pradesh (2001)2-SCC-628*, he urged that when a Magistrate passes an order under sub Section 3 of Section 156 of the Code, he passes the said order at a precognizance stage. He also invited our attention to a decision of Full Bench of Allahabad High Court in the case of *Father Thomas Vs. State of Uttar Pradesh 2011-Cri.L.J.-2278*. He invited our attention to the finding recorded by the Full Bench of Allahabad High Court wherein it was held that an order passed by a Magistrate directing investigation under sub Section 3 of Section 156 of the Code is an interlocutory order and a revision application is not maintainable against such order. He also invited our attention to another Full Bench e f g h

a decision of Allahabad High Court in the case of *Jagannath Verma Vs. State of Uttar Pradesh 2015-ALL MR (Cri) Journal 129*. In the said  
a decision, the Full Bench of Allahabad High Court has considered the entire law on the point and without disturbing the decision in the case of *Father Thomas (supra)*, it was held that an order rejecting an application/complaint under sub Section 3 of Section 156, is not an interlocutory order and it is a revisable order. He also invited our  
b attention to a well known decision of the Apex Court in case of *Amar Nath Vs. State of Haryana 1977-AIR-SC-2185*, which deals with the scope of the term "interlocutory order". He also placed reliance on a decision of another Division Bench of this Court in the case of *State of Maharashtra Vs. Shashikant Eknath Shinde 2013-ALL MR (Cri)-3060*.  
c Lastly, he relied upon a decision of the Apex Court in the case of *Siddharam Satlingappa Mhetre Vs. State of Maharashtra (2011)1-SCC-694= ABC 2011(I) 240 SC= ACR 2011(I) 240 SC*.

d 5. Before advertng to the issue of availability of an efficacious remedy, we must advert to the facts of the case in brief. Learned counsel for the Applicants pointed out that on the complaint filed by the second Respondent, an order was made under Section 202 of the Code. On the basis of the said order, a report was submitted by the Sub Inspector of Police of Saki Naka Police Station on 30 September 2009 recording that no case for recording of offence was made out. On the basis of said report, the learned Metropolitan Magistrate  
e dismissed the private complaint filed by the second Respondent vide order dated 16 November 2000. Against the said order, a revision application was filed by the second Respondent. The learned Additional Sessions Judge, Mumbai, by order dated 27 January 2012  
f partly allowed the revision application and directed the second Respondent to appear before the learned Magistrate for having a further inquiry under Section 202 of the Code. Perhaps, without noticing the said order of the Sessions Court that by the impugned order dated 12 December 2013, the learned Magistrate purportedly exercised power under sub Section 3 of Section 156.

g 6. In view of the settled law, when the complaint was at postcognizance stage, the learned Magistrate could not have exercised the power under sub Section 3 of Section 156 of the Code, which is to be exercised at precognizance stage. Therefore, prima facie, we are of  
h the view that the order of the learned Magistrate dated 12 December 2013 is completely illegal. Apart from the fact that the learned Magistrate could not have exercised the power at that stage, the

learned Magistrate has completely overlooked the order of learned Additional Sessions Judge and the specific directions issued by the the Additional Sessions Judge. a

7. Now, we turn to the issue of availability of an efficacious remedy. The law is well settled. Extraordinary jurisdiction of this Court under Section 482 of the Code has to be exercised in rare cases and normally the Applicant who seeks to invoke the jurisdiction of this Court under Section 482 of the Code, should not be permitted to invoke the same when an efficacious remedy is available under statute. b

8. At this stage, we may make a reference to the well settled legal position as regards effect of the order made by learned Magistrate under sub Section 3 of Section 156 of the Code directing investigation. For this purpose, we may advert to the decision of Apex Court in case of *Madhu Bala (supra)*. Paragraphs 8 and 10 of the said decision reads thus : c

*"8. From a combined reading of the above provisions it is abundantly clear that when a written complaint disclosing a cognizable offence is made before a Magistrate, he may take cognizance upon the same under Section 190(1)(a) of the Code and proceed with the same in accordance with the provisions of chapter XV. The other option available to the Magistrate in such a case is to send the complaint to the appropriate police station under Section 156(3) for investigation. Once such a direction is given under sub section (3) of Section 156 the police is required to investigate into that complaint under subsection (1) thereof and on completion of investigation to submit a "police report" in accordance with Section 173(2) on which a Magistrate may take cognizance under Section 190(1) (b) but not under 190(1)(a). Since a complaint filed before a Magistrate cannot be a "police report" in view of the definition of "complaint" referred to earlier and since the investigation of a "cognizable case" by the police under Section 156(1) has to culminate in a "police report" the "complaint" as soon as an order under section 156(3) is passed thereon transforms itself to a report given in writing within the meaning of Section 154 of the Code, which is known as the first information report (FIR). As under Section 156(1), the police can only investigate a cognizable "case", it has to formally register a case on that report.* d e f g

10. From the foregoing discussion it is evident that whenever a Magistrate directs an investigation on a "complaint" the h

a police has to register a cognizable case on that complaint treating  
the same as the FIR and comply with the requirements of the above  
Rules. It, therefore, passes our comprehension as to how the direction  
of a Magistrate asking the police to "register a case" makes an order  
of investigation under Section 156(3) legally unsustainable. **Indeed,**  
even if a Magistrate does not pass a direction to register a  
b case, still in view of the provisions of Section 156(1) of the  
Code which empowers the police to investigate into a  
cognizable "case" and the Rules framed under the Indian  
Police Act, 1861 (the police) is duty bound to formally register  
a case and then investigate into the same. The provisions of the  
Code, therefore, do not in any way stand in the way of a Magistrate  
c to direct the police to register a case at the police station and then  
investigate into the same. In our opinion when an order for  
investigation under Section 156(3) of the Code is to be made the  
proper direction to the police would be "to register a case at the  
police station treating the complaint as the first information report  
and investigate into the same." (emphasis added)  
d

9. Therefore, the effect of an order under sub Section 3 of  
Section 156 is that though there may not be any specific direction to  
register FIR, on the basis of an order made directing investigation  
under sub Section 3 of Section 156, the officer incharge of the concerned  
police station is under an obligation to register FIR in accordance with  
e sub Section 1 of Section 154 and to commence investigation.

10. Now, we may turn to the decision of a Division Bench of this  
Court in the case of *Avinash Trimbakrao Dhondage (supra)*. In the said  
decision, the Division Bench considered the decision of the Apex Court in  
the case of *Suresh Chand Jain (supra)*. Ultimately, after considering various  
f decisions including the decision of the Full Bench of Allahabad High  
Court in the case of *Father Thomas (supra)*, the Division Bench relied upon  
the decision of a Division Bench of this Court in case of *B.S.Khatri Vs.*  
*State of Maharashtra and another 2003-ALL MR (Cri)-1925*. It is in the  
light of the said decision of the Division Bench that in paragraph 14, the  
g Division Bench came to the conclusion that an order directing  
investigation under sub Section 3 of Section 156 is not an interlocutory  
order but it is in the nature of a final order disposing of the complaint.  
That is why it was held that a revision under Section 397 of the Code  
would be maintainable. As far as this view taken is concerned, being the  
h view of a coordinate Bench, we are respectfully bound by the said view.  
We are not shown any binding precedent which is contrary to this view.

11. We must note here that there is no finding recorded in the decision of *Avinash Trimbakrao Dhondage (supra)* that in view of availability of remedy under Section 397 of the Code, an application under Section 482 of the Code cannot be entertained. On the contrary, paragraph 16 suggests that the Court considered the prayer made across the bar for exercising power under Section 482 of the Code on the ground that there was an abuse of process of law and ultimately, in the facts of the case, the Division Bench held that in none of the cases before it, inherent power deserved to be exercised.

12. As held by the Apex Court, once an order is made by learned Magistrate under sub Section 3 of Section 156 of the Code directing investigation to be made, it is the legal obligation of the police officer to register FIR under sub Section 1 of Section 154 of the Code, inasmuch as registration of FIR in terms of sub Section 1 of Section 154 is a condition precedent for commencing investigation into the commission of cognizable offence. As is clear from subSection 1 of Section 156 of Code, the power under subSection 3 of Section 156 of the Code can be exercised only in cognizable cases.

13. We may make now a reference to Section 397 and Section 401 of the Code. The power of revision under Section 397 will have to be read with Section 398 of the Code. Firstly, we may note here that power of the High Court or the Sessions Court under sub Section 3 of Section 397 is of calling for the record of proceedings before any subordinate Criminal Court for the purposes of satisfying itself about correctness, legality or propriety of any finding, sentence or order recorded or passed in any proceeding before such subordinate Court. Thus, the power under Section 397 is confined to testing the legality, validity and propriety of the orders passed by the Courts which are subordinate to the High Court or the Sessions Court, as the case may be. Secondly, on conjoint reading of Sections 398, 399 and 401, it follows that there is no power conferred on the Revisional Court to quash FIR registered by the Police in accordance with subsection (1) of Section 154 of the Code and the investigation carried out on the basis of that and to quash the criminal proceedings on the basis of charge sheet, which may be eventually filed. Therefore, in a case where an order made under subSection 3 of Section 156 culminates into registration of FIR, the Revisional Court is powerless to pass an order of quashing the FIR and quashing a charge sheet filed on the basis of the FIR. Therefore, in a case where on the basis of an order under sub Section 3 of Section 156 of the

a Code , FIR is registered, the remedy of revision under the Code for challenging the order under sub Section 3 of Section 156 will not be an efficacious remedy at all. For the reasons which we have recorded above, even in a case where a revision application is entertained against an order under sub Section 3 of Section 156 where FIR on the basis of the said order is already registered, in exercise of revisional jurisdiction, neither this Court nor Sessions Court can quash the FIR and proceedings b subsequent to the FIR, as what can be gone into by the Court in revisional jurisdiction is the issue of legality, validity and propriety of the orders passed by a subordinate Criminal Court.

c 14. Therefore, we accept the submission made by the learned counsel for the Applicants that a revision under Section 397 of the Code is not at all an efficacious remedy in view of registration of FIR on the basis of an order under sub Section (3) of Section 154 of the Code.

d 15. We have already come to a prima facie conclusion in the facts of the case that the learned Magistrate could not have passed an order under sub Section 3 of Section 156 of the Code. In view of the strong prima facie case made out, we are inclined to grant interim relief in terms of prayer clause (d).

16. Accordingly, we pass following order :

(a) Rule. Learned APP waives service for Respondent State;

(b) There will be interim relief in terms of prayer clause (d).

**Result:-** Ordered accordingly.

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ACQUITTAL & BAIL CASES  
HIGH COURT OF GUJARAT  
(K.J. Thaker, J.)  
Criminal Appeal No. 2162 of 2005  
Decided on 31 March, 2016

g STATE OF GUJARAT

- Appellant(s).

Versus

RABARI BALDEVBHAI SOMABHAI

- Respondent(s).

h **Law Covered:-** Code of Criminal Procedure, 1973 – Section 378 – Appeal against Acquittal – Indian Penal Code, 1860 – Section 325, 323, 504 & 506(2) – Injury – Nature of – Cross-examination –