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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 1293 OF 2017

Mr.Tansukhlal Pannalal Jain,
Age: 48 years, Occ.: Business,
Residing at Uran Bazar Peth,
Taluka Uran, Dist. Raigad.

... Applicant.

V/s.

1. The State of Maharashtra
Through the Mumbra Police
Station, Dist. Thane.

2. Mr.Rajaram Ragho Taware.
Age: 52 years, Occ: Labour
R/at Haware House,
Near Chowdhary Chawl,
Thakur Pada, Mumbra, Thane.

... Respondents.

Mr.Ambadas Chatuphale with W.F.Correia & Dillen D. Soeiro
for the Applicant.

Ms.Sangita Phad, APP for the Respondent-State.

Mr.Vijay Gharat with Mr.Vaibhav Jagdale for Respondent No.2.

Mr.Amol Suryawanshi, PSI, Mumbra Police Station is present.

CORAM : RANJITSINHA RAJA BHONSALE , J.

RESERVED ON : 7th July 2026.

PRONOUNCED ON : 11th September 2026

JUDGMENT :-

1) By the present Application filed under section 482 of the Code of Criminal Procedure, 1973 (now section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023), the Applicant seeks to quash and set aside the

order dated 1st October 2016 passed by the learned Judicial Magistrate, First Class, Court No.1, Thane below Exhibit-1 in OMA No.824 of 2015 and also seeks to quash and set aside the FIR No.I-165 of 2017 dated 7th April 2017 registered pursuant to the order dated 1st October 2016 with Mumbra Police Station, Thane under sections 420, 406, 465, 467 and 34 of the Indian Penal Code (for short “IPC”).

2) Heard Mr. Ambadas Chatuphale for the Applicant. Ms. Sangita Phad, APP for the Respondent-State, and Mr. Vijay Gharat for Respondent No.2.

3) In the present case, the FIR has been registered on the basis of the order dated 1st October 2016 passed by the Judicial Magistrate, First Class, Court No.1, Thane passed in a private complaint filed by Respondent No.2/ original Complainant under section 200 of the Code of Criminal Procedure, 1973 (for short “Cr.PC.”).

4) The allegations in brief are as under:

4.1) Accused No.1 visited original Complainant/ Respondent No.2 to discuss a proposal for joint development of land bearing Survey No.59, Hissa No.2 of village- Ballondkhare admeasuring about 31 gunthas on 50:50 percent basis. That, Respondent No.2. was induced to execute a power of attorney in favour of accused Bhanudas Shivdas Naik. That, after the power of attorney dated 24th May 2007 was prepared, Bhanudas

Naik obtained signatures of Respondent No.2 and other co-owners. That, accused No.1– Bhanudas Shivdas Naik did not give copies of the power of attorney to Respondent No.2. That, accused No.1 asked Respondent No.2 to execute the agreement by luring them of getting a good price. Accused No.1 along with the present Applicant have allegedly changed the contents of the power of attorney and prepared fabricated documents by attaching, removing and changing the last page of the power of attorney.

4.2) The power of attorney was then attested by original accused No.3, the Notary before whom Respondent No.2 and the witnesses allegedly never appeared to sign. That, accused No.3 did not properly notarize and register the power of attorney. That, accused No.1 and the present Applicant allegedly used the forged and fabricated power of attorney and transferred the land of Respondent No.2 to accused No.3. That, accused No.4, the Talathi in collusion with the agents illegally manipulated the record of the land for an unlawful profit and caused wrongful loss to Respondent No.2.

4.3) Mutation entries were carried out without following the legal procedure. Photographs of few persons have been used on the power of attorney. Accused Nos.5 and 6 were also beneficiaries as the Application filed before them was rejected on *sou moto* basis without following the due process of law. That, the Applicant executed a registered sale-deed in

respect of the said land with vendors on 18th May 2009. The accused caused wrongful loss to Respondent No.2 and wrongful gain to themselves by committing the offence.

5) Mr.Chatuphale, learned Advocate appearing for the Applicant submitted that,

5.1) When the order dated 24th August 2015 was passed directing the original Complainant to lead evidence under section 200 of Cr.P.C., it was not appropriate for the Magistrate to then pass an order dated 1st October 2016 directing investigation under section 156(3) of Cr.P.C.

5.2) The evidence was already recorded in compliance of the provisions of section 200 of Cr.P.C., the issuance of process was postponed under section 202 of Cr.P.C. and the police report was awaited.

5.3) The inquiry under section 202 is only to assist the Court in deciding whether to proceed further to issue process or to dismiss the complaint.

5.4) The order of investigation under section 156(3), which is passed under Chapter XII of Cr.P.C. is required to be passed at pre-cognizance stage. That, once the inquiry is ordered under section 202 of Cr.P.C., then the stage is that of post-cognizance. That, the Court ought not to have gone back to order investigation under section 156(3) once the course under section 202 of Cr.P.C. has been adopted.

5.5) Even on merits, Respondent No.2 has not explained the delay of more than six years, nor has taken any steps to clear the title. That, on the ground of delay, it was a fit case for dismissal under section 203 of Cr.P.C.

5.6) The Court has failed to consider the law laid down by the Hon'ble Supreme Court in the case of *Lalita Kumari v. Government of U.P.*, reported in 2014 (2) SCC 1 in respect of conduct of preliminary inquiry before registration of FIR in cases where there is abnormal delay/laches in initiating criminal prosecution.

6) Mr. Vijay Gharat, learned Advocate appearing for Respondent No.2 submitted that:

6.1) A *prima facie* case has been made out as alleged in the said complaint and FIR. That, in case where serious allegations of fraud, forgery etc. have been made out, this Court ought not to entertain such matters under section 482 of Cr.P.C.

6.2) Learned Advocate for Respondent No. 2 places reliance upon the following judgments :

6.3) The Hon'ble Supreme Court in the case of *Accamma Sam Jacob v. State of Karnataka*, reported in 2026 SCC OnLine SC 585, has observed that :

“49. This Court further observed that in cases where serious allegations of fraud, forgery, trespass and criminal conspiracy

affecting a large group of persons were involved, the High Court ought to have exhibited restraint while invoking its inherent jurisdiction under Section 482 CrPC.”

6.4) The Hon’ble Supreme Court in the case of *Mona Panwar v. High Court of Judicature of Allahabad*, reported in (2011) 3 SCC 496, has observed that:

“23. Normally, an order under Section 200 of the Code for examination of the complainant and his witnesses would not be passed because it consumes the valuable time of the Magistrate being vested in inquiring into the matter which primarily is the duty of the police to investigate. However, the practice which has developed over the years is that examination of the complainant and his witnesses under Section 200 of the Code would be directed by the Magistrate only when a case is found to be a serious one and not as a matter of routine course. If on a reading of a complaint the Magistrate finds that the allegations therein disclose a cognizable offence and forwarding of the complaint to the police for investigation under Section 156(3) of the Code will not be conducive to justice, he will be justified in adopting the course suggested in Section 200 of the Code.”

7) The question which arises for consideration in the present matter is whether once the Magistrate takes cognizance of the offence and adopts the procedure under Chapter-XV of Cr.PC., is it permissible in law to resort back to the pre-cognizance stage and direct inquiry under section 156(3) of Cr.PC.

8) Perused the entire record.

9) A private complaint was filed on 19th August 2015 and was registered as OMA No.824/2015 before the Magistrate, Thane. On 19th

August 2015, learned Magistrate passed the following order:

“Read Complaint. Heard Learned Counsel for Complainant at length. Put up the case for orders on 24/8/2015:”

9.1) On 24th August 2015, the learned Magistrate passed the following order:

“ Order below Exh.1

The present Application is filed by the Complainant stating that he has been cheated by the persons mentioned as accused in the application. Documents have been forged and fabricated by them. The record has been manipulated and mutation entry has been carried out without following legal procedure. A Power of Attorney is also manipulated and the land belonging to the complainant and witnesses is transferred in the name of one of the Accused. It is also stated that there was a proposal of development of land belonging to the complainant and co-owners.

2) Heard learned Counsel for the Complainant at length. He read out many criminal provisions mentioned in Code of Criminal Procedure for a quite long time in presence of the Complainant and then argued on the matter. The learned Counsel for the Complainant was pressing that the report under Section 156(3) of Cr.P.C. should be called. But looking into the facts of the case, it appears prima facie that the nature of the dispute is civil one. Considering all the facts, I pass following order.

ORDER

Complainant to lead evidence as per Section 200 of Cr.P.C.”

9.2) On 23rd September 2015, the evidence of the Complainant was recorded which is at Exh.4 on the file of the learned Magistrate Court. After recording the said deposition of the Complainant, the Magistrate proceeded to call for report under section 202 of Cr.P.C. This was done by an order dated 6th November 2015 which reads thus:

“ORDER

“Perused Complaint and the documents. Heard the learned Counsel for the Complainant. My learned Predecessor by order dated 24.8.2015 passed below Exh.1 ordered to lead the evidence u/s. 200 of the Cr.PC. Accordingly the Complainant has recorded verification. The accused are not residing with the local jurisdiction of this Court. Hence call for report u/s 202 from the concerned police station.”

The concerned Police Station filed its report on 6th April 2016. As per the report, no offence of any nature as alleged in the complaint is made out.

9.3) After receipt of the report, the learned Magistrate passed order dated 20th July 2016 calling for the say of the APP and Police Station under section 156(3) of Cr.PC. On 1st October 2016, the learned Magistrate passed the following order:

“ORDER

Perused the Exh.1 and the documents. Heard learned Advocate for the Applicant. It is alleged in the Exh.1 that the accused forged documents and that the accused have sold the property by means of Complainant's forged power of attorney. The matter thus requires detail investigation. Despite calling say of APP and P.S. Mumbra on 20.7.2016, no say is filed even though reminder was sent to police station. Hence the application is allowed u/sec.156(3) Cr.PC. directing the concerned Police Station to investigate the case under Sec. 156(3) of Cr.PC. immediately.”

9.4) On the basis of the order dated 1st October 2016, Mumbra Police Station registered the FIR bearing No.I-165/2017 on 7th April 2017 under sections 420, 406, 465, 467 and 34 of Indian Penal Code (for short “IPC”) against six accused including the present Applicant

as accused No.2. It is this order dated 1st October 2016 and the registration of FIR which are impugned in the present Application.

10) Chapter XV of Cr.P.C. is titled as “Complaints to Magistrates” and comprises of sections 200 to 203 of Cr.P.C. Section 200 provides for examination of the Complainant, 201 provides for procedure to be adopted by the Magistrate not competent to take cognizance of the case. Section 202 provides for postponement of issuance of process and section 203 provides for dismissal of the Complain.

11) Section 200 provides for examination of the Complainant. When the Magistrate is taking cognizance of the offence on the complaint made before him, the Magistrate is required to examine on oath the Complainant and the witnesses present, if any, and the substance of such examination is to be reduced in writing. Under section 202, the Magistrate on receipt of the complaint of an offence which he is authorized to take cognizance or which is made over to him under section 192 may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding in the matter. In case the accused is residing at a place beyond the area in which the said Magistrate exercises his jurisdiction, it

would be mandatory for the Magistrate to conduct an inquiry. In the inquiry conducted under of section 202(1), the Magistrate may, if he deems fit, take evidence on oath under section 200 of Cr.P.C. Under section 203, after considering the statements on oath of the Complainant and the witnesses, if any, and the result of the inquiry under section 202, the Magistrate has two options i.e. either to dismiss the complaint under section 203 in case he is of the opinion that no sufficient ground is available for proceeding with the complaint or he can issue process under section 204 of Cr.P.C.

12) Section 203 of Cr.P.C. provides that, after considering the statements on oath of the Complainant and the witnesses and the resultant inquiry or investigation under section 202, if the Magistrate is of the opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint after briefly recording the reasons for doing so. If the complaint is not dismissed under section 203 of Cr.P.C., the proceedings are then commenced before the Magistrate under Chapter XVI of Cr.P.C. by issuing process under section 204. Under section 204, if in the opinion of the Magistrate taking cognizance of the offence there is sufficient ground for proceeding and the case is a summons case, the Magistrate shall issue summons for attendance of the accused, and if the case is a warrant case, he may issue warrant or, if he thinks fit, a

summons, for causing the accused to be brought or to appear at a certain time before the Magistrate or before the Court having jurisdiction.

13) On the other hand, Chapter XII of Cr.P.C. deals with information to the Police and their powers to investigate and comprises of sections 154 to 176. This Chapter deals with the information given to the Police and the powers of the Police to investigate the complaints filed under section 154(1) and (3) of Cr.P.C. This Chapter provides for procedure for investigation by the Police Officer, the powers of Police Officers to investigate, the manner in which the report is to be submitted, the power to hold investigation or preliminary inquiry, power to require attendance of witnesses, examination of witnesses, recording of confessions and statements, medical examination and other procedural aspects of the investigation.

14) The Hon'ble Supreme Court in the case of *Devarapally Lakshminarayana Reddy v. V. Narayana Reddy*, reported in (1976) 3 SCC 252 has observed that;

“17. Section 156(3) occurs in Chapter XII, under the caption : “Information to the Police and their powers to investigate”; while Section 202 is in Chapter XV which bears the heading: “Of complaints to Magistrates”. The power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by Section 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) can be invoked by the

Magistrate before he takes cognizance of the offence under Section 190(1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3). It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173. On the other hand, Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under Section 202 to direct, within the limits circumscribed by that section an investigation “for the purpose of deciding whether or not there is sufficient ground for proceeding”. Thus the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him.

18. In the instant case the Magistrate did not apply his mind to the complaint for deciding whether or not there is sufficient ground for proceeding; but only for ordering an investigation under Section 156(3). He did not bring into motion the machinery of Chapter XV. He did not examine the complainant or his witnesses under Section 200 CrPC, which is the first step in the procedure prescribed under that chapter. The question of taking the next step of that procedure envisaged in Section 202 did not arise. Instead of taking cognizance of the offence, he has, in the exercise of his discretion, sent the complaint for investigation by police under Section 156.

19. This being the position, Section 202(1), first proviso was not attracted. Indeed, it is not necessary for the decision of this case to express any final opinion on the ambit and scope of the first proviso to Section 202(1) of the Code of 1973. Suffice it to say, the stage at which Section 202 could become operative was never reached in this case. We have therefore in keeping with the well established practice of the Court, decided only that much which was essential for the disposal of this appeal, and no more.

(Emphasis Supplied)

15) The Hon'ble Supreme Court in the case of *National Bank of Oman v. Barakara Abdul Aziz*, (2013) 2 SCC 488 has observed that;

“8. We find no error in the view taken by the High Court that the CJM, Ahmednagar had not carried out any enquiry or ordered investigation as contemplated under Section 202 CrPC before issuing the process, considering the fact that the respondent is a resident of District Dakshin Kannada, which does not fall within the jurisdiction of the CJM, Ahmednagar. It was, therefore, incumbent upon him to carry out an enquiry or order investigation as contemplated under Section 202 CrPC before issuing the process.

9. The duty of a Magistrate receiving a complaint is set out in Section 202 CrPC and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 CrPC is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202 CrPC is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:

(i) on the materials placed by the complainant before the court;

(ii) for the limited purpose of finding out whether a *prima facie* case for issue of process has been made out; and

(iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have.”

16) This Court in the case of *Pandurang Shripati Magadum Vs Rajaram Ragho Taware* in Criminal Writ Petition No. 3420 OF 2017 decided on 24th February 2025, observed that :

“12. In view of the aforesaid settled position of law, we have cautiously looked into the subject complaint in the light of the Orders passed therein by the learned Magistrates and as reproduced above. On such exercise being carried, we noticed that the Orders dated 20.07.2015, 24.08.2015 and 06.11.2015 were

passed by different Magistrates. Similarly, the Orders dated 20.07.2016 and 01.10.2016 were passed by different Magistrates. From all this noted above, it is evident that, since inception the erstwhile learned Magistrates were intending to proceed with the complaint under 'Chapter XV' and not under 'Chapter XII' of Cr.P.C. This approach of the learned Magistrate is appropriate in the light of the facts and circumstances, as the said learned Magistrates wanted to ascertain as to whether there is substance in the complaint to proceed further with the case or not, because the A4, A5 and A6-Petitioner were in public service. Secondly, the accused were not residing within the local jurisdiction of the said Magistrates' Court. Therefore, by taking judicial notice of the allegations in the complaint i.e., taking cognizance of the complaint, the first learned Magistrate perused the complaint, heard the counsel for the complainant and adjourned the matter to 24.08.2015 for passing the Order. Accordingly, the Order dated 24.08.2015 was passed to lead the evidence u/S.200. Thereafter, the subsequent learned Magistrate recorded the verification/examination u/S.200 and passed the Order dated 06.11.2015 and called for the report u/S.202. of Cr.P.C.

13. However, it appears that, meanwhile, no report was submitted. It also appears that the learned Magistrate was not properly assisted in the matter or informed about the Orders previously passed. Hence, said learned Magistrate passed the Orders dated 20.07.2016 and 01.10.2016, directing investigation u/S.156 (3) of Cr.P.C., which finally led to registration of the impugned F.I.R. This is wholly in contrast to the scheme of the Cr.P.C. which, in the above circumstances, provides for inquiry/investigation under Section 202 only and not investigation under Section 156 (3) thereof. Thus, on this count alone the impugned F.I.R. is liable to be quashed."

17) The Hon'ble Supreme Court in the case of *Sadiq B. Hanchinmani v. State of Karnataka*, 2025 SCC OnLine SC 2334, has observed that:

*"37. At this juncture, it would be apposite to refer to the position of law enunciated in *Madhao v. State of Maharashtra*, (2013) 5 SCC 615 : (2013) 4 SCC (Cri) 141, wherein it was held that:*

'18. When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose

the commission of an offence. The Magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence itself. As said earlier, in the case of a complaint regarding the commission of cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156(3).'

(emphasis supplied)

38. In the background of the factual position, the JMFC's Order dated 18.01.2018 cannot be faulted. Enough material is available to justify a full-fledged investigation by the police. The JMFC, to our mind, had rightly referred the matter for investigation to the police since a prima facie case stood made out against the accused, in view of the material that was available with the JMFC. In *Ramdev Food Products Private Limited v. State of Gujarat*, (2015) 6 SCC 439 : (2015) 3 SCC (Cri) 192, three learned Judges of this Court opined:

'13. We may first deal with the question as to whether the Magistrate ought to have proceeded under Section 156(3) or was justified in proceeding under Section 202(1) and what are the parameters for exercise of power under the two provisions.

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22. Thus, we answer the first question by holding that:

22.1. The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone the issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued.

22.2. The cases where Magistrate takes cognizance and

postpones issuance of process are cases where the Magistrate has yet to determine “existence of sufficient ground to proceed”. Category of cases falling under para 120.6 in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] may fall under Section 202.

22.3. Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case.

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38. *In Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy [(1976) 3 SCC 252 : National Bank of Oman v. Barakara Abdul Aziz [(2013) 2 SCC 488 : Madhao v. State of Maharashtra [(2013) 5 SCC 615 : Rameshbhai Pandurao Hedau v. State of Gujarat [(2010) 4 SCC 185 : the scheme of Sections 156(3) and 202 has been discussed. It was observed that power under Section 156(3) can be invoked by the Magistrate before taking cognizance and was in the nature of pre-emptory reminder or intimation to the police to exercise its plenary power of investigation beginning with Section 156 and ending with report or charge-sheet under Section 173. On the other hand, Section 202 applies at post-cognizance stage and the direction for investigation was for the purpose of deciding whether there was sufficient ground to proceed.’*

(emphasis supplied)

18) Perusal of the orders dated 19th August 2015, 24th August 2015, deposition of the Complainant dated 23rd September 2015 and the order dated 6th November 2015 are clearly indicative of the fact that the Court took cognizance of the complaint and proceeded with the complaint under Chapter XV of Cr.P.C. and not under Chapter XII of the Cr.P.C. In the present case, it appears that the order dated 1st October 2016 by which it was directed for investigation to be conducted under section 156(3) of Cr.P.C is not in line with the object and scheme as provided

under the Cr.P.C. It is, in fact, contrary to the provisions of the Cr.P.C.

19) In the present case, there is clear procedural illegality in passing the order dated 1st October 2016 directing investigation under section 156(3) of Cr.P.C. An FIR cannot be registered or sustained on the basis of an untenable or illegal order.

20) Perusal of the orders dated 24th August 2015, 6th November 2015 and 20th July 2016 indicates that by passing these orders the Court took cognizance of the matter and proceeded with the matter as it thought appropriate to adopt the procedure under Chapter XV and sections 200 to 203 of Cr.P.C. The learned Magistrate took cognizance and postponed the issuance of process, as the Magistrate was yet to determine the existence of sufficient grounds to proceed with the matter. If on reading the complaint, the Magistrate was of the opinion that a cognizable offence is made out, the order under section 156(3) would have been passed. That is not the situation in the present case. In the present case, after the cognizance was taken, orders were passed so as to enable the Court to ascertain as to whether there was any material substance in the complaint to proceed further in the matter. Some accused were not residing within the local jurisdiction of the Court. The Court under section 202 of Cr.P.C postponed the issuance of process and directed inquiry/ investigation by the Officer for the purpose of deciding

whether or not there is sufficient ground for proceeding with the matter.

21) As observed hereinbefore the inquiry and investigation under Section 202 of the CrPC is to see if there is material available, if the allegation make out a prima facie case. By passing the said order, the Court had taken cognizance of the complaint, heard the complainant, recorded evidence, and passed the order. The order dated 24th August 2015 is passed for leading evidence under section 200 which was recorded on 23rd September 2015. The Court, after recording of evidence and examination of witnesses under section 200, called for a report under section 202 of Cr.P.C.

22) The Cr.P.C. does not provide for reverting back to a stage of section 156(3) after the Complainant has been examined and inquiry has been conducted under section 202(1) of Cr.P.C. One must remember that the action under section 156(3) of Cr.P.C, is taken by the Magistrate due to the powers vested in the Magistrate by virtue of Section 190 of Cr.P.C. Section 190 deals with cognizance of offences by Magistrate and forms part of Chapter XIV which deals with conditions necessary for initiation of proceedings. Section 156 deals with the power of police officer to investigate cognizable cases. The powers under section 156(3) is in the nature of supervising and directing the police officers to investigate a cognizable case and comes under chapter XII which primarily deals with

the information to the Police and their power to investigate. The inquiry under section 202(1) of Cr.PC is a limited inquiry or investigation only for the purpose to ascertain and decide whether or not there is sufficient ground for proceeding in the matter. Under the Cr.PC., an inquiry or investigation under section 202 is provided for and only in respect of the what is stated in Section 202(1) of the CrPC. The scope of the inquiry/investigation under Section 202(1) is limited and restricted to ascertaining if there is any merit/truth in the allegations and to assist at a conclusion whether process is required to be issued or not. It is pertinent to note that, it is not the case of the Complainant that he had filed complaint under section 154(1) of Cr.PC. and on refusal on the part of the Officer In-charge of the police station to record the said information he had approached the concerned Superintendent of Police under section 154(3) and that no action was taken. It is pertinent to note and keep in mind that, there is difference in the investigation under section 156(3) of Cr.PC. and section 202 of Cr.PC.

23) In an inquiry under section 202 of Cr.PC there is on record some evidence and what section 202 inquiry does is to ascertain whether there is sufficient evidence to proceed further. Direction under section 156(3) are issued when the Magistrate is of the opinion that, there is credible material available, there is no reason to postpone the issuance of

process and an investigation can be ordered immediately. If the Magistrate is of the opinion that, there is a need to find out if there exists sufficient ground to proceed. In this view, it would not be permissible for a Magistrate to revert back to the pre-cognizance stage and order an investigation under section 156(3) of Cr.PC, when cognizance is taken under section 202 of Cr.PC. One must also keep in mind that a proceeding under section 156(3) culminates in a report/chargesheet under section 173 of Cr.PC and an enquiry under section 202 of Cr.PC culminates under section 203 or 204 of Cr.PC. In these facts, continuation of the said FIR would be an abuse of the process of law.

24) The question is answered accordingly. Considering the aforesaid facts and provisions of Cr.PC. as discussed hereinabove, I am of the view that learned Magistrate has misdirected himself in passing the order dated 1st October 2016. The resultant registration of FIR No.165/2017 dated 7th April 2017 is also therefore untenable. The FIR could not have been registered. In view of the aforesaid discussion, the order dated 1st October 2016 and the FIR are liable to be quashed and are hereby quashed and set aside.

25) In view of the above, Petition is allowed in terms of prayer clause (a).

26) The matter is remanded back to the Judicial Magistrate, First

Class, 1st Court, Thane to proceed to consider the report dated 6th April 2016 submitted by the Investigating Officer on 7th April 2016 and decide the matter in accordance with law. Considering that the complaint pertains to the year 2015 this Court is sure that the Judicial Magistrate, First Class, 1st Court, Thane will take up the matter on a priority basis and as expeditiously as possible.

(RANJITSINHA RAJA BHONSALE, J.)