Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 680 of 2021
@ SLP (Crl) No 3155 of 2018

M/s Supreme Bhiwandi Wada Manor Infrastructure Pvt. Ltd. **.... Appellant**

Versus

The State of Maharashtra & Anr. **.... Respondents**

With
Criminal Appeal No. 681 of 2021
@ SLP (Crl) No 3156 of 2018
With
Criminal Appeal No. 682 of 2021
@ SLP (Crl) No 2617 of 2018
And With
Criminal Appeal No. 683 of 2021
@ SLP (Crl) No 2628 of 2018

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1 This batch of four appeals involves similar issues and were heard together. The first two appeals arise out of an order dated 18 December 2017 of a Single Judge of the High Court of Judicature at Bombay by which two anticipatory bail applications under Section 438 of the Code of Criminal Procedure 1973 (**"CrPC"**) were allowed.

2 The details of these applications are:

(i) Anticipatory Bail (Application) No 1971 of 2016 moved by Nilesh Dayanand Chumble; and

(ii) Anticipatory Bail (Application) No 85 of 2017 moved by Mayur Jayantilal Anam.

3 The order passed by the High Court on the above applications under Section 438 of the CrPC has been questioned by the complainant in the appeals arising out of the first two Special Leave Petitions[1] under Article 136 of the Constitution. In the remaining two appeals (arising out of Special Leave Petitions[2]) the Single Judge of the High Court has on 18 December 2017 followed the order granting anticipatory bail in the two applications noted above and disposed of the complainant's challenge to the grant of anticipatory bail by the Sessions Court to (i) Diwakar Waman Patil; and (ii) Hemant Haribhau Sonawane.

4 The persons accused to whom anticipatory bail has been granted in the first two appeals are the first accused, Mayur Jayantilal Anam ("**A1**"), and the fourth accused, Nilesh Dayanand Chumble ("**A4**"). In the two companion appeals, the grant of anticipatory bail by the Sessions Court to the second accused, Hemant Haribhau Sonawane, ("**A2**") and the third accused, Diwakar Waman Patil ("**A3**") was in issue.

[1] SLP (Crl) No 3155 of 2018; and SLP (Crl) No 3156 of 2018
[2] SLP (Crl) No 2617 of 2018; and SLP (Crl) No 2628 of 2018

5 The appellant is a company incorporated under the Companies Act 1956 and engages in infrastructure projects. The appellant was awarded a contract for constructing a road which has been described as:

> "bypass work of Vishwabharati Phata – Bhinar - Vadapa Junction (km. 0/000 to 7/900, total length 7.90 km), Bhiwandi Taluka, Dist. Thane."

The four accused who are impleaded as the second respondents to these appeals were engaged by the appellant as its employees. In terms of the statement of the complainant under Section 161 of the CrPC, A1 was employed in the capacity of a General Manager. A2, A3 and A4 were employed as Liaison Officer, Liaison Assistant and Senior Liaisoning Officer, respectively. It has been alleged that their responsibilities included identifying farmers on the basis of a list provided by governmental authorities and to disburse compensation to them after verifying the authenticity of the claims.

6 The appellant filed a complaint with the Powai Police Station, Mumbai following the discovery of an alleged fraud. Thereafter, it filed a complaint before the Court of the Magistrate at Andheri in Mumbai.

7 On 11 May 2016, the Metropolitan Magistrate at the 66th Court, Andheri, Mumbai passed an order under Section 156(3) of the CrPC directing the police to investigate into the complaint. For convenience of reference, the order of the Magistrate is extracted below:

> "Perused complaint filed by complainant viz. M/s Supreme Bhiwandi Wada Manor Infrastructure Pvt. Ltd. through its authorized signatory Mr. Uday Prabhakar Joshi, supported with his affidavit. Heard Ld. Advocate Mr. K.K. Shukla for complainant. Perusal of documents placed on record. It is alleged by complainant that accused persons in collusion with each other prepared false documents in respect of the land situated at Four Lanning of Wada-Bhiwandi State Highway No. 35, State Highway Manor-Wada No 34 and Bhiunar Wada Junction work of construction of road handed over to complainant. It is further alleged by complainant that, accused Nos 1 and 2 in collusion with accusd Nos 3 to 12 induced complainant to part with and pay amounts to accused Nos 3 to 9, showing them to be land owners. It is further alleged complainant that, accused have prepared fraudulent report and used a forged documents, as a genuine. Considering the nature of allegations, in support of the alleged offences, which is cognizable in nature, investigation by…required in this matter. Accordingly, I passed following order.
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> ORDER
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> 1 Present matter be sent for investigation to Powai police station.
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> 2 Concern police official, is hereby directed to investigate the matter under Section 156(3) of Criminal Procedure Code, and filed the report at the earliest.
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> 3 There is only prayer to send matter for investigation hence it is treated as miscellaneous application and accordingly, it is finally disposed off. "

8 Following the order of the Magistrate, a First Information Report being FIR No 2 of 2016 was registered on 24 May 2016 with the Powai Police Station for alleged offences under Sections 418,419,420, 405, 467,468, 471, 474, 120 B read with Section 34 of the Indian Penal Code.

9 The substance of the allegation is that the accused did not hand over the cheques due to the farmers for their lands taken over for the project and got the cheques released in the names of other persons thereby defrauding the company and misappropriating its fund. It has been alleged that in 2015, the company had handed over the work of disbursing the land acquisition amounts due to the affected

farmer to five employees including the respondent-accused who are engaged on the job of the road construction project between Wada and Wadape Junction. It has been alleged that they made “66 fake and bogus tenants”, without attaching necessary papers of land acquisition with an intention to obtain personal gain, resulting in a fraud of Rs 87,76,755. Details of the amounts which were allegedly misappropriated were furnished together with the complaint. Moreover, it was alleged that the accused had with the help of twelve farmers prepared 7/12 extracts, measurement sheets and power of attorney documents and had withdrawn an amount of Rs 68 lacs (approx.) by cheque for the purpose of giving compensation to the farmers. However, it is alleged that the amount was misappropriated. Furthermore, it has been alleged that between 2014 and 2015, the accused had fabricated certificates of the Gram Panchayat Vadpe, Bhinar, Gorsai, Nimbavali and Kawad in respect of village lands and forest land showing the names of nine persons and deposited an amount of around Rs 1.57 crores against their names fraudulently. It has been further alleged that the accused in the name of 10 fake occupants withdrew an amount of Rs. 1,84,30,400 by forging and fabricating documents for their personal gain. There are allegations in the complaint to the effect that the accused were also involved in a fraud of around Rs 5.28 crores by fabricating documents pertaining to the occupants of lands and making nominal payments to villagers.

10 Two of the accused named in the FIR moved the Sessions Court for the grant of anticipatory bail. By its orders dated 13 February 2017 and 16 February 2017, the

Sessions Court granted anticipatory bail to A2 and A3. Applications for anticipatory bail were also moved before the Bombay High Court by A1 and A4.

11 On 24 January 2017, the High Court granted interim protection against arrest to A1. The High Court granted interim protection from arrest to A4 on 16 February 2017. The grant of anticipatory bail to A2 and A3 also became a subject matter of a similar challenge by the complainant before the High Court. Eventually, by its order dated 18 December 2017, the High Court granted anticipatory bail to A1 and A4. In consequence it disposed of the petitions questioning the grant of anticipatory bail by the Sessions Court to A3 and A4.

12 The High Court has justified the grant of anticipatory bail in a brief order of two paragraphs which it would be convenient to extract at the present stage. The High Court held:

> "2. The record indicates that the complainant Mr. Uday Joshi has filed a complaint bearing C.C.No.506/SW/2015 in the Court of Metropolitan Magistrates, 66'h Court at Andheri, Mumbai and an Order under Section 153(3) has been passed by the concerned Court. In pursuance of the said Order, the present Crime No.02/2016 has been registered by the Powai Police Station. The police are seeking custody of the applicants in the said crime, which is registered in pursuance of the Order passed under Section 156(3) of Cr.P.C. as noted earlier. The record indicates that, the complaint filed by first informant was supported with 1 is affidavit elated 06.02.2016 and the mandate of law as contemplated under Section 200 of Cr.P.C. i.e. the said complainant has not been examined on oath by the concerned Magistrate.
>
> 3. The basic tenet of law as contemplated under Section 200 of Cr.P.C. has not been complied with, it raises a serious doubt about the validity of issuance of the said Order passed under Section 156(3) of the Cr.P.C. by the concerned

> Magistrate. Apart from the said fact, as has been held by the Hon'ble Supreme Court in the case of Siddharam Satlingappa Mhetre Vs. *State of Maharashtra & Ors., reported in AIR 2011 Supreme Court 312,* and in particular in paragraph 112(v) of the said decision, this Court is of the view that, the accusations have been made against the applicants only with the object of injuring or humiliating the applicants ·by arresting them."

The complainant is in appeal before this Court.

13 Notice was issued initially on 28 March 2018. In pursuance of the order issuing notice, both the State of Maharashtra and the respondent – accused have entered appearance. We have heard counsel.

14 On behalf of the appellants, it has been urged by Mr Dinesh Tiwari and Ms Jaikriti S Jadeja, learned Counsel that

(i) The High Court while granting anticipatory bail failed to even *prima facie* notice the nature and gravity of the allegations against the accused;

(ii) The Magistrate passed an order under Section 156(3) of the CrPC directing the complaint to be investigated and accordingly FIR No 2 of 2016 was registered by the Powai Police Station on 24 May 2016;

(iii) The order of the High Court proceeds on the basis that the mandate of Section 200 of the CrPC has not be complied with by the Magistrate since the complainant was not examined on oath;

(iv) The High Court has, in taking this view, failed to notice judgments of this Court which have clarified the legal position that the Magistrate is justified

in ordering an investigation under Section 156(3) before taking cognizance of a complaint under Section 200 and the nature of the enquiry by the police which the Magistrate may order under Section 202 is distinct from the power under Section 156(3);

(v) In any event there was no challenge to the order passed by the Magistrate ordering an investigation under Section 156(3) and hence there was no occasion for the High Court to doubt its validity; and

(vi) The High Court has even waived the condition imposed in the interim order to attend the concerned Police Station as a result of which the investigation has been thwarted.

15 On the other hand, Mr R R Deshpande, learned Counsel appearing on behalf of the accused submitted that

(i) The accused were protected from arrest by an interim order dated 16 February 2017 and 24 January 2017 and they were called for investigation on several occasions;

(ii) The accused having co-operated in the investigation, there would be no justification to interfere with the grant of anticipatory bail in pursuance of the orders which have been passed about three and a half years ago; and

(iii) The view which has been taken by the High Court on the interpretation of the provisions of Section 202 is correct, having regard to the proviso to sub-Section (1) of Section 202 under which an enquiry by the police can

be ordered only after the complainant's statement has been recorded on oath under Section 200 of the CrPC.

These submissions have been adopted in the other cases as well.

16 The primary basis on which the High Court has allowed the applications under Section 438 is that the complaint filed by the first informant was supported by an affidavit dated 6 February 2016. However, the High Court held that the mandate of Section 200 of the CrPC of examining the complainant on oath has not been fulfilled by the Magistrate. On this basis, the High Court held that this raises a serious doubt about the validity of the order which has been passed under Section 156(3).

17 There is a serious error in the view of the Single Judge. First and foremost, the Magistrate's order under Section 156(3) was not under challenge before the High Court and has attained finality. The High Court was in error in raising a doubt about the correctness of the order under section 156(3) passed by the Metropolitan Magistrate on 11 May 2016 in the course of considering the complaint filed by the complainant. Secondly, the position in law as set out in the order of the Single Judge does not accord with the principles which have been consistently enunciated in the decisions of this Court specifically in the context of Chapter XV of the CrPC. Sections 200 and 202, which form a part of Chapter XV, are extracted below:

> "200. **Examination of complainant.**—A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate: Provided that, when the complaint

is made in writing, the Magistrate need not examine the complainant and the witnesses— (a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192: Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

202. **Postponement of issue of process**.—(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, 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:

Provided that no such direction for investigation shall be made,— (a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or (b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200. (2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath: Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath. (3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant."

18 These provisions have been interpreted in a judgment of two learned judges of this Court in **Suresh Chand Jain** v. **State of MP**[3]. After adverting to the provision of Section 156(3)[4], Justice KT Thomas speaking for the two judge Bench observed:

> "8. The investigation referred to therein is the same investigation, the various steps to be adopted for it have been elaborated in Chapter XII of the Code. Such investigation would start with making the entry in a book to be kept by the officer in charge of a police station, of the substance of the information relating to the commission of a cognizable offence. The investigation started thereafter can end up only with the report filed by the police as indicated in Section 173 of the Code. **The investigation contemplated in that chapter can be commenced by the police even without the order of a Magistrate. But that does not mean that when a Magistrate orders an investigation under Section 156(3) it would be a different kind of investigation. Such investigation must also end up only with the report contemplated in Section 173 of the Code. But the significant point to be noticed is, when a Magistrate orders investigation under Chapter XII he does so before he takes cognizance of the offence." (emphasis supplied)**

Dealing specifically with the provisions of Chapter XV, this Court observed that once the Magistrate takes cognizance of an offence, the procedure which is enunciated in

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[3] (2001) 2 SCC 628

4 Section 156 of the CrPC is extracted below:

> "156. *Police officer's power to investigate cognizable cases*.— (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
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> (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.
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> (3) Any Magistrate empowered under Section 190 may order such an investigation as above mentioned."

Chapter XV has to be followed. The investigation which the Magistrate can direct under Section 202(1) either by a Police officer or by any other person is for a limited purpose of enabling the Magistrate to decide whether or not there is sufficient ground to proceed further. The Court held:

> "9. But a Magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the Code. A reading of Section 202(1) of the Code would convince that the investigation referred to therein is of a limited nature. The Magistrate can direct such an investigation to be made either by a police officer or by any other person. Such investigation is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further. This can be discerned from the culminating words in Section 202(1) i.e. "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".
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> This is because he has already taken cognizance of the offence disclosed in the complaint, and the domain of the case would thereafter vest with him."

The legal position has been summarized in thus:

> "10. The position is thus clear. Any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer

> could take further steps contemplated in Chapter XII of the Code only thereafter."

19 The principle enunciated in the above decision has been followed in several decisions of this Court. In **Dilawar Singh** v. **State of Delhi**[4], the decision in **Suresh Chand Jain (supra)** was cited with approval. In **Tilak Nagar Industries Limited** v. **State of Andhra Pradesh**[5], a two judge Bench of this Court held that:

> "12…power under Section 156(3) can be exercised by the Magistrate even before he takes cognizance provided the complaint discloses the commission of cognizable offence."

20 In **Anju Chaudhary** v. **State of Uttar Pradesh**[6], Justice Swatanter Kumar for the Bench noted that Section 156 primarily deals with the powers of the police officer to investigate cognizable cases. While passing an order under Section 156(3), the Magistrate does not take cognizance. The order of the Magistrate is in the nature of "a pre-emptory reminder or intimation to the police" to exercise their primary duty and power of investigation. The court held that the power of the Magistrate under Section 156(3) is not affected by the provisions of Section 202 and observed:

> "40. Still another situation that can possibly arise is that the Magistrate is competent to treat even a complaint termed as an application and pass orders under Section 156(3), but where it takes cognizance, there it would have to be treated as a regular complaint to be tried in accordance with the provisions of Section 200 onwards falling under Chapter XV of the Code. There also the Magistrate is vested with the power to direct investigation to be made by a police officer or by such other person as he thinks fit for the purposes of deciding whether or not there is sufficient ground for proceeding. This power is restricted and is not as wide as the power vested under Section 156(3) of the Code. The power of

[4] (2007) 12 SCC 641
[5] (2011) 15 SCC 571
[6] (2013) 6 SCC 384

> the Magistrate under Section 156(3) of the Code to order investigation by the police have not been touched or affected by Section 202 because these powers are exercised even before the cognizance is taken. In other words, Section 202 would apply only to cases where Magistrate has taken cognizance and chooses to enquire into the complaint either himself or through any other agency. But there may be circumstances where the Magistrate, before taking cognizance of the case himself, chooses to order a pure and simple investigation under Section 156(3) of the Code. These cases would fall in different class. This view was also taken by a Bench of this Court in *Rameshbhai Pandurao Hedau* v. *State of Gujarat* [(2010) 4 SCC 185 : (2010) 2 SCC (Cri) 801] . The distinction between these two powers had also been finally stated in the judgment of this Court in *Srinivas Gundluri* v. *SEPCO Electric Power Construction Corpn.* [(2010) 8 SCC 206 : (2010) 3 SCC (Cri) 652] wherein the Court stated that : (SCC p. 218, para 23)
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> "*23.* … to proceed under Section 156(3) of the Code, what is required is a bare reading of the complaint and if it discloses a cognizable offence, then the Magistrate instead of applying his mind to the complaint for deciding whether or not there is sufficient ground for proceeding, may direct the police for investigation."
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> But where it takes cognizance and decides as to whether or not there exists a ground for proceeding any further, then it is a case squarely falling under Chapter XV of the Code."

21 The High Court has evidently not been apprised of the above judgments for, if it was, it would not have proceeded to formulate a principle which is contrary to the line of precedent of this Court.

22 The High Court, in granting anticipatory bail under Section 438 in the first two appeals and following that order in disposing of the challenge to the order of the Sessions Judge in the companion appeals, has evidently lost sight of the nature and gravity of the alleged offence. This Court in **Sushila Aggarwal** v. **State (NCT of**

Delhi)[7] has enunciated the considerations that must govern the grant of anticipatory bail in the following terms:

> "92.3…While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc.
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> 92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court."

An appellate court or a superior court can set aside the order granting bail if the court granting bail did not consider relevant factors. In **Myakala Dharmarajam** v. **The State of Telangana**[8] this Court has held :

> "9. It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the Accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the Accused, the High Court or the Sessions Court would be justified in cancelling the bail."

23 There are serious allegations against the respondent – accused of a fraudulent misappropriation of amounts intended to be paid by the company to the famers affected by the work of road widening being undertaken by the complainant. The FIR sets out details of the alleged acts of fraud and misappropriation of funds, as explained earlier. Having regard to the seriousness of the allegations no case for

[7] (2020) 5 SCC 1
[8] (2020) 2 SCC 743

anticipatory bail was made out. The High Court has erred both in law and in its evaluation of the facts.

24 We accordingly allow these appeals and set aside the orders of the High Court. The orders granting anticipatory bail under Section 438 to the respondent-accused shall accordingly stand set aside. The appeals are disposed of in the above terms.

25 Pending application(s), if any, stand disposed of.

…….....J.
[Dr Dhananjaya Y Chandrachud]

…….....J.
[M R Shah]

New Delhi;
July 26, 2021