

# **Madhao & Anr vs State Of Maharashtra & Anr on 3 May, 2013**

**Equivalent citations: AIRONLINE 2013 SC 371, AIRONLINE 2013 SC 404**

**Author: P.Sathasivam**

**Bench: P. Sathasivam, Jagdish Singh Khehar**

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

1 CRIMINAL APPEAL NO. 684 OF 2013

(Arising out of S.L.P. (CrI.) No. 7293 of 2009)

Madhao & Anr. .... Appellant(s)

Versus

State of Maharashtra & Anr. .... Respondent(s)

2 WITH

3

4 CRIMINAL APPEAL NO. 685 OF 2013

(Arising out of S.L.P. (CrI.) No. 7324 of 2009)

5 CRIMINAL APPEAL NO. 686 OF 2013

(Arising out of S.L.P. (CrI.) No. 7332 of 2009)

6 CRIMINAL APPEAL NO. 687 OF 2013

(Arising out of S.L.P. (CrI.) No. 7693 of 2009)

J U D G M E N T

P.Sathasivam,J.

1) Leave granted in all the special leave petitions.

8 CRIMINAL APPEAL NO. OF 2013 (Arising out of S.L.P. (Crl.) No. 7293 of 2009)

2) This appeal is directed against the final judgment and order dated 02.09.2009 passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Application No. 3112 of 2006 whereby the High Court dismissed the appeal filed by the appellants herein while confirming the order dated 27.09.2005, passed by the Court of Judicial Magistrate, First Class, Ghatanji in Criminal Complaint Case No. 92 of 2005.

3) Brief facts:

(a) The Government of Maharashtra has published a Government Resolution on 02.06.2004 wherein it was informed to the public at large that the percentage of educated un-employed amongst the Scheduled Caste and neo-

Buddhist are on the higher side and those who are below poverty line are required to work under different schemes and their standard of living is consequently adversely affected. For the said reason, it was resolved that land should be made available to such people to create a source of income for them. For the said purpose, a scheme was framed by name Karamveer Dadasaheb Gaikwad Sabalikaran and Swabhiman Yojana Samiti. As per the Scheme, a Committee was constituted in each district and the Collector of the district was to act as Head of the Committee. The said Scheme was made applicable with effect from 01.04.2004. As per the Scheme, land was to be purchased by the Government and was to be made available to the persons belonging to the Scheduled Caste and neo-Buddhist who were below poverty line.

(b) Madhao Rukhmaji Vaidya-Appellant No.1 herein while working as Special District Welfare Officer and Member Secretary of the Samiti under the Scheme, did several transactions under the supervision of District Collector, Yavatmal. Sau. Sadhana Mahukar Yavalkar-appellant No.2, a Warden at Government Hostel, Ghatanji, District Yavatmal was working as Assistant of appellant No.1 in the said Scheme. She was authorized by appellant No.1 to get the Sale deeds executed in favour of the Government of Maharashtra under the Scheme.

(c) On 04.04.2005, the State Government purchased agricultural land situated at village Koli-Bujruq. The said land was jointly owned by eight persons. The appellants, after perusing the revenue records of the said land purchased it from the Vendors by getting executed a registered sale deed. At the time of execution of sale deed, on 07.05.2005, an affidavit was sworn by the Vendors that they were residents of Mouza Koli-Buzruq, Tahsil Ghatanji, District Yavatmal and were the

owners of Gut No. 43 of the said property.

(d) On 04.06.2005, A newspaper by name “Tarun Bharat” published an article in which it was alleged that the petitioners have purchased agricultural land showing Ramesh as alive while he was dead. It was further alleged that one Ramesh Shikaji Rathod had signed the sale deed as Ramesh Shika Jadhav.

(e) On coming to know about the said publication, appellant No. 1 on 29.06.2005 made an enquiry and recorded the statements of the said eight Executants and on 02.07.2005 lodged a report in Ghatanji P.S. against them for an offence of impersonation and cheating.

(f) On 07.07.2005, the officials of Ghatanji P.S. registered offences punishable under Sections 420, 419, 468 and 34 of the Indian Penal Code, 1860 (for short ‘IPC’) for the acts of fraud, criminal breach of trust and impersonation against the said accused persons vide Crime No. 88 of 2005.

(g) On 09.09.2005, one Rajnikant Deluram Borele, claiming himself to be a Social Worker, filed a Criminal Complaint in the court of the Judicial Magistrate, First Class, Ghatanji, which was registered as Case No. 92 of 2005 against the appellants-herein, Sub-Registrar and few more persons. In the complaint it was alleged that the accused had purchased the land from a dead person, namely, Ramesh Shikaji Jadhav, while the appellants were acting in their official capacity under the said Scheme.

(h) Learned Magistrate, by order dated 27.09.2005, directed the Police to investigate the matter under Section 156(3) of the Code of Criminal Procedure Code, 1973 (in short the “Code”) and to submit a detailed report within one month.

(i) On 15.09.2006, the appellants (Madhao Rukhmaji Vaidya and Sau. Saudhana Mahukar Yavalkar) filed an application under Section 482 of Cr.P.C. being Criminal Application No. 3112 of 2006 before the Bombay High Court seeking quashing of the prosecution of the applicants (appellants herein) in Crime No. 92 of 2005.

(j) On 02.09.2009, after hearing the parties, the High Court dismissed the Criminal Application preferred by the appellants-herein by holding that the procedure adopted and the power exercised by the Magistrate ordering investigation under Section 156(3) of Cr.P.C. is just and proper.

(k) Being aggrieved, appellants herein filed SLP No. 7293 of 2009.

9 CRIMINAL APPEAL NO. OF 2013 (Arising out of S.L.P. (Crl.) No. 7324 of 2009)

4) On 27.09.2006, one of the accused, namely, Akash Dattatraya Marawar (A-1), business man, also filed Criminal Application No. 3242 of 2006 before the High Court seeking quashing of the prosecution in Crime No. 92 of 2005. The High Court, by order dated 02.09.2009, dismissed the application. Being aggrieved, he filed special leave petition No. 7324 of 2009.

10 CRIMINAL APPEAL NO. OF 2013 (Arising out of S.L.P. (Crl.) No. 7332 of 2009)

5) On 24.10.2006, another accused, namely, Omprakash Hiralal Jaiswal, Sub-Registrar, also filed Criminal Application No. 3526 of 2006 before the High Court seeking quashing of the prosecution in Crime No. 92 of 2005. The High Court, by order dated 02.09.2009, dismissed the application. Being aggrieved, he filed special leave petition No. 7332 of 2009.

11 CRIMINAL APPEAL NO. OF 2013 (Arising out of S.L.P. (Crl.) No. 7693 of 2009)

6) On 29.10.2006, one of the accused, namely, Aslam Shakil Julphikar Khan, employee of Akash Dattatraya Marawar (A-1), business man, also filed Criminal Application No. 3240 of 2006 before the High Court seeking quashing of the prosecution in Crime No. 92 of 2005. The High Court, by order dated 02.09.2009, dismissed the application. Being aggrieved, he filed special leave petition No 7693 of 2009.

7) Heard Mr. Uday U. Lalit, learned senior counsel for the appellant and Mr. Shankar Chillarge, learned Additional Advocate General for the respondent-State of Maharashtra.

8) The only point for consideration in all these appeals is whether the learned Magistrate is justified in directing the Police to investigate and submit a detailed report within one month under Section 156(3) of the Code.

9) The order of the learned Magistrate shows that before passing the direction for investigation under Section 156(3), heard the counsel for the complainant, perused the allegations made against the accused in the complaint and documents annexed therewith. It also shows that taking note of the fact that some of the accused are public officers and after observing that it needs proper investigation prior to the issue of process against the accused under Section 156(3) of the Code directed the P.S.O. Ghatanji to investigate the matter and submit a detailed report within one month.

10) Chapter XIV of the Code speaks about conditions requisite for initiation of proceedings. Section 190 deals with cognizance of offences by Magistrates. In terms of sub-section (1) subject to the provisions of the said Chapter, any Magistrate of first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence – (a) upon receiving a complaint of facts which constitute such offence; (b) upon a police report of such facts; (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

11) Sub-section (3) of Section 156 of the Code enables any Magistrate empowered under Section 190 may order such an investigation in terms of sub- section (1) of that section.

12) In CREF Finance Ltd. vs. Shree Shanthi Homes (P) Ltd. and Another, (2005) 7 SCC 467, while considering the power of a Magistrate taking cognizance of the offence, this Court held:

“10. .... Cognizance is taken at the initial stage when the Magistrate peruses the complaint with a view to ascertain whether the commission of any offence is disclosed. The issuance of process is at a later stage when after considering the material placed before it, the court decides to proceed against the offenders against whom a prima facie case is made out. It is possible that a complaint may be filed against several persons, but the Magistrate may choose to issue process only against some of the accused. It may also be that after taking cognizance and examining the complainant on oath, the court may come to the conclusion that no case is made out for issuance of process and it may reject the complaint. It may also be that having considered the complaint, the court may consider it appropriate to send the complaint to the police for investigation under Section 156(3) of the Code of Criminal Procedure....” It is clear that 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.

13) 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).

14) Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives:

(a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightaway issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.

(b) The Magistrate can postpone the issue of process and direct an enquiry by himself.

(c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.

15) In case the Magistrate after considering the statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceeding he can dismiss the complaint.

16) Where a Magistrate orders investigation by the police before taking cognizance under Section 156(3) of the Code and receives the report thereupon he can act on the report and discharge the accused or straightaway issue process against the accused or apply his mind to the complaint filed before him and take action under Section 190 of the Code.

17) The above principles have been reiterated in Devarapalli Lakshminarayana Reddy and Others vs. V. Narayana Reddy and Others, (1976) 3 SCC 252 and Tula Ram and Others vs. Kishore Singh, (1977) 4 SCC 459

18) Keeping the above principles, if we test the same with the direction issued by the magistrate for investigation under Section 156(3) of the Code and facts of these cases, we are satisfied that the magistrate has not exceeded his power nor violated any of the provisions contained in the Code. As observed earlier, the magistrate need not order any investigation if he pre-supposes to take cognizance of the offence and once he takes cognizance of the offence, he has to follow the procedure provided in Chapter XV of the Code. It is also settled position that any judicial magistrate before taking cognizance of the offence can order investigation under Section 156(3) of the Code.

19) As rightly observed by the High Court, the magistrate before taking cognizance of the offence can order investigation under Section 156(3) of the Code, we are of the view that the procedure adopted and the power exercised by the magistrate in this case is acceptable and in accordance with the scheme of the Code. We are also satisfied that the High Court rightly refused to exercise its power under Section 482 of the Code.

20) In the light of the above discussion and conclusion, we find no merit in all these appeals, consequently, the same are dismissed.

.....J. (P. SATHASIVAM) .....J. (JAGDISH SINGH  
KHEHAR) NEW DELHI;

MAY 03, 2013.

-----