

2. Officer in charge of a police station is statutorily obliged under section 154 to register a case on the ground of the information disclosing commission of a cognizable offence and then proceed with the investigation if he has reasonable suspicion of commission of the offence. The provisions of this section are not qualified by terms such as 'credible information'. Thus, the credibility, reliability and genuineness of the information are to be verified after registration of the FIR and not before. Section 154(3) of the Code provides that if the SHO of a police station fails to record FIR upon receiving information relating to commission of a cognizable offence, which is a statutory obligation on his part, the person aggrieved can send the substance of such information to the Superintendent of Police concerned. If he is satisfied the information received by him discloses commission of a cognizable offence, he either investigates the case himself or directs investigation by a subordinate police officer. This merely ensures that a statutory obligation is complied with.

However, the purpose of vesting power in the Magistrate under Section 156(3) is to bring judicial and a well-judged approach to the matter. Section 156(3) of the Code reads:-

156. Police officer's power to investigate cognizable case.—(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.

(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.

(3) Any Magistrate empowered under Section 190 may order such an investigation as above mentioned.

3. A Single Judge of this Court has recently held, in ***Mohd. Salim versus State*** (Crl.M.C. No. 3601/2009) that a Magistrate is not expected to mechanically direct registration of an FIR under section 156(3) by the police

without first examining whether on the facts and circumstances of the case, investigation is actually required to be carried out by the State machinery or not. The use of the word “may” in Section 156(3) of the Code is an indicator about the intention of the Legislature. The Magistrate is required to consider the desirability and propriety of investigation of the police before he passes an order directing registration of an FIR under Section 156(3) of the Code. The use of the word “may” instead of ‘shall’ gives a clear indication that the Magistrate has discretion in the matter and in an appropriate case can refuse registration of FIR. It has been held:-

“10. Since the Magistrate can direct investigation only in respect of a cognizable case, it would be necessary for him before he passes any such order, to examine the allegations made in the application made to him and form a prima facie view that commission of a cognizable offence is disclosed from those allegations. If the Magistrate is of the opinion that the allegations made in the complaint do not disclose commission of a cognizable offence, he cannot direct investigation, in exercise of the powers conferred upon him under Section 156(3) of the Code. In that case, he will have no option but to dismiss the application seeking a direction to the Police to investigate the matter. Obviously, in that case he will have to pass a speaking order giving reasons for rejecting the application, which necessarily would require application of judicial mind on the part of the Magistrate.

11. The use of the expression „may“ in sub-section (3) of Section 156 of the Code leaves no doubt that the power conferred upon the Magistrate is discretionary and he is not bound to direct investigation by the Police even if the allegations made in the complaint disclose commission of a cognizable offence. In the facts and circumstances of a given case, the Magistrate may feel that the matter does not require investigation by the Police and can be proved by the complainant himself, without any assistance from the Police. In that case, he may, instead of directing investigation by the Police, straightaway take cognizance of the alleged offence and proceed under Section 200 of the Code by examining the complainant and his witnesses, if any. In fact, the Magistrate ought to direct investigation by the Police only where the assistance of the Investigating Agency is necessary and the Court

feels that the cause of justice is likely to suffer in the absence of investigation by the Police. The Magistrate is not expected to mechanically direct investigation by the Police without first examining whether in the facts and circumstances of the case, investigation by the State machinery is actually required or not. If the allegations made in the complaint are simple, where the Court can straightaway proceed to conduct the trial, the Magistrate is expected to record evidence and proceed further in the matter, instead of passing the buck to the Police under Section 156(3) of the Code. Of course, if the allegations made in the complaint require complex and complicated investigation of which cannot be undertaken without active assistance and expertise of the State machinery, it would only be appropriate for the Magistrate to direct investigation by the Police. The Magistrate is, therefore, not supposed to act merely as a Post Office and needs to adopt a judicial approach while considering an application seeking investigation by the Police.”

(emphasis supplied)

4. Reference can be made to another judgment of the Delhi High Court in ***V.P.Sharma versus State (NCT of Delhi)*** 164 (2009) DLT 500 wherein it has been held that the Magistrate has to apply his mind and then pass appropriate order while deciding the application under Section 156(3) of the Code. Although such power vested with the magistrate enables the investigating agency to collect the evidence which may not possibly be led by the accused, however, care must be taken so that the complainant may not be able to misuse the provisions by registration of FIR, which has not been registered earlier. Thus the decisions of the Supreme Court in ***Ramesh Kumari*** (supra) and ***Lallan Choudhary*** (supra), relating to Section 154 of the Code are distinguishable.

5. The second question is whether the facts justify and warrant registration of an FIR or not under section 156(3) of the Code.

6. Petitioner states that he had filed a private complaint after the police refused to register an FIR on the basis of the complaint dated 6th August, 2005. The said

complaint dated 6th August, 2005 relates to cheque no. 702203 dated 5th May, 1996 for ₹ 2 lacs debited from the current account no.1769 of the petitioner. The allegation of the petitioner is that this created a debit balance of ₹ 1,98,256.74 and resulted in deposit/credit of ₹ 2 lacs in the current account of M/s. Virtue Financial Services Pvt. Ltd. which belongs to and was controlled by Mr.S.R.Batra-ex-officer of Canara Bank who has left service in 1992-93 after a long leave in mid-1992. It is further alleged in the complaint that in June 1999, Mr.S.R.Batra along with Mr. A.K. Kharbanda-Manager, Canara Bank had met him and asked him to write a request letter for waiver of penal and other interest in respect of Current A/c. No. 1769. It is alleged in the complaint that the petitioner was granted over-draft for a short period in connivance between Mr.S.R. Batra and Mr. S.B. Shinoy, then Manager of Canara Bank who is also a close friend of Mr.S.R. Batra. In the complaint it is also stated that Mr.S.R. Batra had tried to square up the account by depositing cheque of ₹ 2 lacs in the account of the petitioner on 29th August, 1996 and accordingly the current account of the petitioner credited with ₹ 1,99,651/- after deducting discounting charges, but on 4th October, 1996 amount of ₹ 2,04,016/- was debited.

7. As noticed above, the alleged complaint pertains to acts and debit of current account of the petitioner and grant of over-draft facility in the year 1996. The complaint was made for the first time on 6th August, 2005. There is no explanation for this delay and if “overdraft” was granted contrary to the wishes and desire of the petitioner why he did not immediately protest and write to the bank that the cheque issued by him should have been dishonoured and not encashed. These facts have to be answered and explained by the petitioner and not investigated by the police.

8. In **P. Swaroopa Rani** (supra) it has been observed that initiation of criminal proceedings on the basis of observations made by the Trial Court in a civil matter is not barred. If the civil court gives the finding that a particular document is forged, the said finding can be relied to file a criminal case/FIR. The said judgment deals with the question whether civil and criminal proceedings can continue simultaneously and in which circumstances civil or criminal proceedings should be stayed. In the present case the civil court judgment dated

12th July, 2005 has been placed on record. The suit filed by the bank has been decreed. The court has not given any finding that the bank or its officials had forged and fabricated any document. The defence of the petitioner has been rejected. It has been observed that the Petitioner herein had made allegations but had not filed any complaint or civil suit against Mr. S.R. Batra or Mr. S.P. Shinoy. In the said judgment it is recorded that the petitioner herein had stated that the petitioner was a customer of said Mr. S. R. Batra and dabbling in the share market. These observations do not furnish a new right or a 'cause of action' to file a criminal case.

9. After the complaint was filed before the learned Magistrate, status report was called for, from the police. The police has filed a detailed status report dated 14th January, 2009. The said status report records that on several occasions temporary over-draft facilities were/are granted to old and good customers known to the bank. It is also recorded that the petitioner has not denied his signatures on the cheque of ₹ 2 lacs which was signed/cleared by the Bank by grant of temporary over-draft facility. Certain observations have also been made that the petitioner was working with M/s. Virtue Financial Services and his telephone number was installed at the premises of the said company. He was also making substantial payment towards money transactions from his current account till the year 1996. On the question of alleged disputed signature of the petitioner, the police report has made reference to the findings of the civil court in the judgment dated 12th July, 2005.

10. The petitioner has relied upon the judgment of the Delhi High Court in **State Bank of India** (supra) where the bank had committed criminal breach of trust. In the said case the account of the complainant in one branch of the bank was illegally debited to recover/ adjust disputed dues in another branch of the same bank. This judgment is not relevant for deciding the question whether the Metropolitan Magistrate should have directed registration of an FIR under section 156(3) of the Code. The petitioner will have to also meet and answer the findings recorded by the civil court in the judgment dated 12th July, 2005. The question to what extent this judgment can be relied upon before the criminal court has to be decided by

the trial court. No police investigation is required for this purpose.

11. In the impugned Order dated 28th October, 2009, it is stated that the facts of the case as is clear from the evidence are within the knowledge of the complaint and the matter relates to the year 1996. In these circumstances, learned Magistrate after examining the status report dated 14th January, 2009 filed by the police has not directed registration of FIR. I do not see any reason to interfere with the impugned order in exercise of discretionary jurisdiction under Section 482 of the Code r/w Articles 226 and 227 of the Constitution of India. The observations made above are for the purpose of disposal of the present Petition and will not be construed as observations on merit binding on the Trial Court. Learned Trial Court will independently apply its mind.

Petition is accordingly disposed of.

SANJIV KHANNA, J.

SEPTEMBER 13, 2010
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