

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Crl. M.C. No. 3593/2010

+ Date of Decision: 4th February, 2013

SUBHASH MANCHANDA Petitioner
! Through: Ms. Jyoti Singh, Sr. Advocate with
Mr. Ankit Jain, Ms. Saahila Lamba
& Mr. Amardeep Joshi, Advocates

Versus

\$ STATE & ANR. Respondents
Through: Mr. M.N. Dudeja, APP for the State
with SI Jagdish Prasad PS Kamla
Market
Mr. R.K. Kaushik, Adv. for R-2

CORAM:
*** HON'BLE MR. JUSTICE P.K.BHASIN**

ORDER

P.K.BHASIN, J:

By this petition under Section 482 of the Code of Criminal Procedure, 1973(Cr.P.C. in short) the petitioner challenges the correctness and legality of the order dated 24th May, 2010 passed by the learned Metropolitan Magistrate in a complaint case filed by

Respondent no. 2 herein against the petitioner and many others, including some Companies and their Directors, for the commission of offences punishable under Sections 383/415/417/419/420/463/466/467/468 /469/471/503/511/120-B of the Indian Penal Code(IPC in short). By the impugned order the learned Metropolitan Magistrate allowed the application of the respondent no.2-complainant under Section 156(3) Cr. P.C. and directed the police to register an FIR after coming to the conclusion that the complaint of the respondent no.2, *prima facie*, disclosed commission of offence of forgery. In compliance of the said direction of the learned Metropolitan Magistrate FIR No. 57/2010 was registered at Kamla Nagar police station on 24-05-2010 under Sections 420/468/471 IPC.

2. Feeling aggrieved by the afore-said order of the learned Metropolitan Magistrate and registration of the FIR the petitioner herein filed the present petition.

3. The only point urged before this Court by Ms. Jyoti Singh, learned senior counsel for the petitioner, was that the impugned order dated 24-05-2010 passed by the learned Metropolitan Magistrate directing registration of the FIR in exercise of his powers under Section 156(3) Cr.P.C. was in complete violation of various

judgments of this Court laying down as to under what circumstances an order under Section 156(3) Cr.P.C. should be passed when a complaint under Section 200 is filed by someone. In this regard learned senior counsel placed reliance upon a judgment of a Single Judge Bench of this Court in **“Subhkaran Luharuka & Anr. vs. State (Govt. of NCT of Delhi) & Anr.”, 170 (2010) DLT 516.** It was also submitted that the respondent no.2, who is a sales tax and income tax consultant and was handling cases of the petitioner and other clients, who were also sought to be prosecuted, and was aware of all their business activities, had filed the complaint only as a counter blast to various criminal cases registered against him and his father, who is also a taxation consultant, by their ex-clients, including the petitioner herein, for the commission of offences of cheating and forgery of documents etc. It was submitted that the respondent no.2 and his father had been filing forged applications under the Right to Information Act purporting to be on behalf of his clients to gather certain confidential informations and then had been black-mailing them to extort money and similarly the complainant had been black-mailing Government officials also. Learned senior counsel also contended that the respondent no.2 had obtained the direction from the Court below for the registration of FIR by playing fraud upon the

Court by placing on record a copy of complaint dated 8th February,2010 in compliance of the direction of the Magistrate in order to show that before approaching the Court under Section 200 Cr.P.C. with an application under Section 156(3) he had lodged a complaint with the police while no such complaint was lodged and in fact there was not even an averment to that effect either in the complaint or in the application under Section 156(3). It was also submitted that even as per his own showing the complaint was filed on 8th February,2010 and his so-called complaint to the police was also dated 8th February,2010 which showed that the complaint had been filed in Court by the complainant without approaching the police first and in fact the police had claimed before this Court in its status report dated 10.10.2012 that the complaint dated 08.02.2010 was received by the police on 25th February, 2010 i.e. much after the filing of the complaint and application under Section 156(3) in Court.

4. On the other hand, learned counsel for the respondent no.2 complainant simply supported the impugned order of the learned Magistrate and prayed for the dismissal of the present petition.

5. Before proceeding further it would be appropriate to note as to what was the complaint of the respondent no.2 herein. His grievance

was that his former clients, who were arrayed as the proposed accused in his complaint before the Court, had not paid his professional charges and in order to avoid payment of his dues the petitioner herein and other persons had joined hands in order to tarnish his image and that of his father and had been lodging all sorts of baseless complaints against them. The reason for filing the present complaint by him arose when he received a letter from the Value Added Tax Officer(RTI) on 06.02.2010 regarding an application dated 27.01.2010 purporting to have been filed by him seeking some information from the Department of Trade & Taxes. That application, as per the complaint, was never given by him and the proposed accused persons had forged his signatures and when he approached them he was threatened by them with dire consequences. Thus, according to the complainant, all the persons arrayed in the complaint as proposed accused had committed offences of extortion, cheating, forgery and criminal intimidation. It was also his grievance that the accused persons had been moving applications under the Right to Information Act in his name by forging his signatures and that even the police officials, who had failed to take any action, were in collusion with the persons arrayed as accused in his complaint.

6. The respondent no.2 had filed an application under Section 156(3) Cr.P.C. alongwith his complaint. The learned Magistrate at the outset had called upon the complaint to place on record the copy of the complaint made to the police before filing the complaint in Court. In compliance of that direction the respondent no.2-complainant placed on record a copy of his complaint to the police which was also dated 8th February,2010. The Magistrate then directed the SHO of Kamla Nagar police station to file the action taken report in respect of the complaint of the complainant. Undisputedly, the SHO submitted his report, copy of which was filed before this Court by the police, informing the Magistrate that the enquiry officer was on medical leave. But at the same time the SHO also stated in her report that the complaint dated of the complainant, in any case, had no substance and that the office of the Trade & Taxes did not fall within the jurisdiction of Kamla Nagar police station and the office of the complainant in Kamla Nagar remained almost closed.

7. On receipt of the said action taken report of the SHO the learned Magistrate passed the impugned order on the application under Section 156(3) Cr.P.C. for the registration of FIR since, *prima facie*, the complaint disclosed the commission of offence of forgery.

8. The police, however, registered the FIR under Section 420 IPC also.

9. In the decision of this Court in Subhkaran Luharuka's case(supra), cited by the learned senior counsel for the petitioner, this Court took notice of various decisions on the scope of Section 156(3) Cr.P.C. and finally laid down certain guidelines to be followed by the Courts of Magistrates while dealing with applications under Section 156(3) Cr.P.C. The relevant portions from the aforesaid judgment relied upon by the learned senior counsel of this Court are re-produced below:

“22. The questions which arise for consideration are :-

(i) How and when powers under Section 156(3) of the Code are to be exercised by the Metropolitan Magistrate?

(ii)

39. A Division Bench of the Karnataka High Court in Guruduth Prabhu and Ors. Vs. M.S. Krishna Bhat and Ors., 1999 CrL.L.J. 3909 has also discussed the issue in detail both in the context of Chapter XII and XV of the Code. The relevant paragraphs read as under:-

“10. Let us first consider whether the learned Magistrate had jurisdiction to refer the matter for Police investigation under Section 156(3), Cr. P.C. Sub-section (1) of Section 156 confers on the police unrestricted power to investigate a cognizable offence without the order of a Magistrate or without a formal first information report. The police are

entitled to investigate cognizable offence either on information under Section 154 or on their own motion, on their own knowledge or from other reliable information. This statutory right to investigate cognizable offence cannot be interfered with or controlled by the Courts including the High Court. It is open to the Court to take or not to take action when the police prefer a chargesheet after investigation. But the Court's function does not begin until the chargesheet is filed. Under Sub-section (2) police can investigate any offence taking the matter to be a cognizable offence although ultimately charges are filed for a non- cognizable offence since while investigating a cognizable offence, the police are not debarred from investigating any non-cognizable offence arising out of the same facts and including it in the report to be filed by them under Section 173, Cr. P.C., Sub-section (3) empowers the Magistrate to refer and direct the police to investigate a cognizable offence. But there is a restriction on the Magistrate before directing the police to investigate under Sub-section (3), the Magistrate should form an opinion that the complaint filed by the complainant before him disclose a cognizable offence.....

11. Sub-section (3) of Section 156 Cr. P.C, empowers Magistrate to order an investigation..... If every complaint filed under Section 200, Cr.P.C, is referred to the police under Section 156(3) without application of mind about the disclosure of an offence, there is every likelihood of unscrupulous complainants in order to harass the alleged accused named by them in their complaints making bald allegations just to see that the alleged accused are harassed by the police who have no other go except to investigate as ordered by the Magistrate..... ”

41. In another judgment delivered by this Court in the case of Skipper Beverages Pvt. Ltd. Vs. State (supra) also relied upon by the petitioner a similar view has been taken by this Court also. In that case the judgment of the Apex Court in Suresh Chand Jain Vs. State of Madhya Pradesh(Supra) relied upon by

the complainant has also been referred to. The relevant paragraphs of that judgment are also reproduced for the sake of reference:

“7. It is true that Section 156(3) of the Code empowers a Magistrate to direct the police to register a case and initiate investigations but this power has to be exercised judiciously on proper grounds and not in a mechanical manner. In those cases where the allegations are not very serious and the complainant himself is in possession of evidence to prove his allegations there should be no need to pass orders under Section 156(3) of the Code. The discretion ought to be exercised after proper application of mind and only in those cases where the Magistrate is of the view that the nature of the allegations is such that the complainant himself may not be in a position to collect and produce evidence before the Court and interests of justice demand that the police should step in to help the complainant. The police assistance can be taken by a Magistrate even Under Section 202(1) of the Code after taking cognizance and proceeding with the complaint under Chapter XV of the Code as held by Apex Court in 2001 (1) Supreme Page 129 titled "Suresh Chand Jain Vs. State of Madhya Pradesh & Ors."

10..... The Section empower the Magistrate to issue directions in this regard but this provision should not be permitted to be misused by the complainants to get police cases registered even in those cases which are not very serious in nature and the Magistrate himself can hold enquiry under Chapter XV and proceed against the accused if required. Therefore the Magistrate must apply his mind before passing an order under Section 156(3) of the Code and must not pass these orders mechanically on the mere asking by the complainant. These powers ought to be exercised primarily in those cases where the allegations are quite serious or evidence is beyond the reach of complainant or custodial interrogation appears to be necessary for some recovery of article or discovery of fact.”

42. Thus, there are pre-requisites to be followed by the complainant before approaching the Magistrate under Section 156(3) of the Code which is a discretionary remedy as the provision proceeds with the word „May“. The magistrate is required to exercise his mind while doing so. He should pass orders only if he is satisfied that the information reveals commission of cognizable offences and also about necessity of police investigation for digging out of evidence neither in possession of the complainant nor can be procured without the assistance of the police. It is thus not necessary that in every case where a complaint has been filed under Section 200 of the Code the Magistrate should direct the Police to investigate the crime merely because an application has also been filed under Section 156(3) if the Code even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, may be with the assistance of the court or otherwise.....

46. A learned Judge of this Court in the case of *State Vs. Mohd. Iqbal Ghazi and Ors.*, 154 (2008) DLT 481 has explained as to how application of mind can be made by the Magistrate in such matters. The relevant observation is reproduced hereunder:-

“31. But, for the guidance of the learned Metropolitan Magistrate, the facts of the instant case require something more to be stated. I have noted hereinabove the language of Section 154(1) of the Code of Criminal Procedure 1973. A bare look at the language of said provision reveals that the pre- requisite of registration of a FIR is that the information disclosed must relate to the commission of a cognizable offence. Thus, even a Magistrate cannot proceed to issue any direction under Section 156(3) of the Code unless he is prima facie satisfied that the information before him relates to the commission of a cognizable offence for the reason an order directing the police to investigate any cognizable offence would require the registration of a FIR inasmuch as relating to the commission of a cognizable offence no investigation can proceed without the registration of a FIR inasmuch as relating to the commission of a cognizable offence no investigation can proceed without the registration of a FIR....

33. It means that the person required to apply his mind has to come to grips with the facts before him and has to bring into focus the law on the subject and applying the facts to the law, to arrive at a conclusion by a process of reasoning, evidencing that all relevant facts have been taken note of and properly analyzed in the light of the law applicable. A truncated and an gibberish reproduction of facts, excluding relevant facts from the focus of the mind, would result in a decision being taken which can be classified as a decision without the application of mind. Informed reasoning is the heart of the matter.”

52. The facts as they are before me goes to show that on the same day when Utility claims to have lodged a report with the police, they also prepared a complaint under Section 200 of the Code along with the application under Section 156(3) of the Code, which is dated 27.5.200(as exactly is also the situation in the present case . This shows that the modus operandi of the complainant was to approach the Magistrate under Section 156(3) of the Code immediately without waiting for police investigation and without approaching higher authorities even if the SHO refused to register an FIR.....

52A. For the guidance of subordinate courts, the procedure to be followed while dealing with an application under Section 156(3) of the Code is summarized as under:-

“(i) Whenever a Magistrate is called upon to pass orders under Section 156(3) of the Code, at the outset, the Magistrate should ensure that before coming to the Court, the Complainant did approach the police officer in charge of the Police Station having jurisdiction over the area for recording the information available with him disclosing the commission of a cognizable offence by the person/persons arrayed as an accused in the Complainant. It should also be examined what action was taken by the SHO, or even by the senior officer of the Police, when approached by the Complainant under Section 154(3) of the Code.

(ii) The Magistrate should then form his own opinion whether the facts mentioned in the complaint disclose commission of cognizable offences by the accused persons arrayed in the Complaint which can be tried in his jurisdiction. He should also satisfy himself about the need for investigation by the Police in the matter. A preliminary enquiry as this is permissible even by an SHO and if no such enquiry has been done by the SHO, then it is all the more necessary for the Magistrate to consider all these factors. For that purpose, the Magistrate must apply his mind and such application of mind should be reflected in the Order passed by him.

Upon a preliminary satisfaction, unless there are exceptional circumstances to be recorded in writing, a status report by the police is to be called for before passing final orders.

(iii) The Magistrate, when approached with a Complaint under Section 200 of the Code, should invariably proceed under Chapter XV by taking cognizance of the Complaint, recording evidence and then deciding the question of issuance of process to the accused. In that case also, the Magistrate is fully entitled to postpone the process if it is felt that there is a necessity to call for a police report under Section 202 of the Code.

(iv) Of course, it is open to the Magistrate to proceed under Chapter XII of the Code when an application under Section 156(3) of the Code is also filed along with a Complaint under Section 200 of the Code if the Magistrate decides not to take cognizance of the Complaint. However, in that case, the Magistrate, before passing any order to proceed under Chapter XII, should not only satisfy himself about the pre-requisites as aforesaid, but, additionally, he should also be satisfied that it is necessary to direct Police investigation in the matter for collection of evidence which is neither in the possession of the complainant nor can be produced by the witnesses on being summoned by the Court at the instance of complainant, and the matter is such which calls for investigation by a State agency. The Magistrate must pass an order giving cogent reasons as to why he intends to proceed under Chapter XII instead of Chapter XV of the Code.”

10. A perusal of the impugned order shows that the learned Magistrate had not kept in mind these guidelines while passing the impugned order. No reason whatsoever had been given by the learned Magistrate as to why the direction given by him for the registration of FIR and investigation by the police in exercise of the powers under Section 156(3) Cr.P.C. was considered to be essential. Therefore, that order cannot be sustained and is liable to be set aside and the matter needs to be sent back to the Magistrate for a fresh decision on the application under Section 156(3) Cr.P.C. in accordance with the law laid down in the above referred decision of this Court as also other earlier judgments on the point noted therein.

11. In the result, this petition is allowed and the order dated 24th May, 2010 passed by the learned Metropolitan Magistrate directing registration of FIR in respect of the complaint of the respondent no.2 herein is set aside and the FIR No.57/2010 registered at Kamla Nagar police station in compliance of that order stands quashed. The matter is remanded back to the Court of Metropolitan Magistrate for passing fresh orders on the application under Section 156(3) Cr.P.C. For that purpose the matter shall be taken up by the learned Magistrate on 28th

February,2013 at 2 p.m. It is needless to say that the complainant shall be at liberty to put forth his case once again.

P.K.BHASIN,J

February 4, 2013