

Neutral Citation No. - 2023:AHC:209601

A.F.R.

Reserved on 18th October, 2023

Delivered on 2nd November, 2023.

In Chamber

Case :- CRIMINAL REVISION No. - 715 of 2023

Revisionist :- Rajina

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Sanjeev Kumar Shukla, Dinesh Kumar Rai

Counsel for Opposite Party :- G.A.

Hon'ble Shiv Shanker Prasad, J.

1. Heard Sri Sanjeev Kumar Shukla, learned counsel for the revisionist and learned A.G.A. for the State and perused the records.

Challenge to the criminal revision

2. This criminal revision has been filed for setting aside the impugned judgment and order dated 05.11.2022 passed by learned Additional Sessions Judge/ Special Judge (POCSO Act), Bulandshahar in Criminal Misc. Case No. 717 of 2022 (Rajina Vs. Nishar and others), under Section 156(3) Cr.P.C., Police Station Jahangirabad, District Bulandshahar, whereby learned court below has rejected the application filed by the revisionist under Section 156(3) Cr.P.C.

3. The Case of the Revisionist

In respect of an incident dated 15.9.2022 the revisionist filed an application under Section 156(3) Cr.P.C. stating therein that opposite party no.2, namely Nisar used to harass the minor daughter of the revisionist by molesting her and forcing her to make videos and share them with him by taking her away from her house. On 15.09.2022, when the revisionist had gone to market, Nisar entered into her house and started removing her minor daughter's pajamas with the intention of raping her on which she raised an alarm. When the revisionist returned to her house, the victim narrated her entire story. At 8:30 P.M. in the night Nisar alongwith his wife Nafeesha, sister-in-laws Anisha and Shabana and two unknown male

persons, while abusing and threatening to kill her, entered into the victim's house and tried to drag the victim to their house by grabbing her hair and also beaten her brutally by iron rods and sticks. On hearing the scream and alarm of the revisionist and the victim, Jamaluddin and Gajju of the locality came and saved her. The injured victim was admitted to Government Hospital, Jahangirabad in critical condition. Taking advantage of the opportunity at 11:30 P.M. on the same night, Nisar and his nephew Sarukh entered into the house of the revisionist after breaking the door and there they broke the things kept in her house and stole nine thousand rupees, silver anklets and a pair of earrings kept in the box.

4. When the police reached her house after calling of the revisionist on Dial 112, the accused ran away leaving their Bullet Motorcycle on the spot, which was taken into custody by the Police and was parked at the police station. The police took the complaint of the revisionist and was pressurizing her to compromise, on refusal to do so, she was scolded and sent away. Hence the revisionist had no other option but to move an application under Section 156 (3) Cr.P.C., which has been rejected by the court below while passing the impugned order.

5. Under the impugned order, it has been recorded by the court below that the allegation made in the complaint by the revisionist that opposite party no.2 Nisar tried to remove the pajamas of the victim with the intention of raping her and he abused her and threatened to kill her and also the allegation that they assaulted her with iron rods and sticks etc. due to which she sustained injuries are concocted on the ground that in the medical examination report of the victim, which was enclosed along with the complaint, only a scratch injury was mentioned, as such the entire story appears to be suspicious. The victim is minor girl. It has further been recorded that as per the report of the concerned Police Station, there is a dispute between both the parties regarding children and in order to humiliate the family of opposite party no.2, this application under Section 156 (3) Cr.P.C. has been filed. Due to the dispute between both the parties, the Police has also initiated proceedings under Sections 107 and 116 Cr.P.C. against both the parties. On the strength of aforesaid findings, learned Additional Sessions Judge/ Special Judge (POCSO Act),

Bulandshahar rejected the application under Section 156(3) filed by revisionist vide order dated 05.11.2022.

6. Submission on behalf of the learned counsel for the revisionist

(i) The revisionist is a poor lady and after the incident she called the Police through Dial 112 after which the police came and admitted the victim in Government Hospital and when the revisionist was busy in the treatment of the victim, opposite party no.2 along with co-accused entered into her house forcefully and stole cash and other precious items kept in her house of which the revisionist made written complaint to the concerned Police Station on the next day of the incident but the Police in collusion of opposite party no.2, made pressure upon her to compromise. Resultantly, the revisionist moved an application under Section 154 Cr.P.C. before the Senior Superintendent of Police on 28.9.2022, which is still not considered. Hence she moved the application under Section 156 (3) Cr.P.C.

(ii) The victim is aged about 16 years and the offence committed upon her comes within the definition of the provisions of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the "POCSO Act") and when the revisionist tried to make complaint against the opposite party no.2 and other co-accused, the concerned Station House Officer, Jhangirabad instead of lodging F.I.R. against the accused persons, misbehaved with the revisionist.

(iii) The victim sustained grievous injuries caused by the opposite party no.2 and other co-accused and the medical examination of the victim was also conducted in the Government Hospital. Opposite party no.2 has no fear of law and he is also making mockery of law. He is also threatening the revisionist to face dire consequences. He is moving freely and used to threatened the revisionist for compromise.

(iv) The revisionist filed an application under Section 156 (3) Cr.P.C. before Additional Sessions Judge/ Special Judge (POCSO Act), Bulandshahar, which was rejected without considering the facts and circumstances of the case.

(v) The application made by the revisionist under section 156(3) Cr.P.C. discloses a cognizable offence, which has been committed by the accused

persons including opposite party no.2 but the concerned Judge has committed manifest error of jurisdiction apparent on the face of record by rejecting the same under the order impugned.

(vi) The duty of police is to register First Information Report in cognizable offence and other aspects such as to whether information is falsely given, whether information is genuine and whether information is credible etc. are irrelevant. At the stage of registration of First Information Report the aspects to be considered is merely whether information given ex-facie discloses commissioning of cognizable offence. It is after investigation information is found to be false and for that there is always an option to prosecute complainant for filing false first information report.

(vii) As per the provisions of 156(3) Cr.P.C. it is now well settled that if any application comes before a Magistrate in which it appears that the cognizable offence has been committed then under the scope of 156(3) Cr.P.C. it is obligatory upon the Magistrate to direct the concerned police to register the First Information Report of the revisionist and investigate into the matter and even though heinous offence has been committed upon the victim as per the allegations made in the complaint under Section 156 (3), the court below rejected has the same, which is per se illegal.

(viii) Section 156(3) of the Code of Criminal Procedure, 1973 provides that any Magistrate may treat the application under Section 156(3) as a complaint case. It is the duty of the Magistrate to see that police follows the mandate of law. It is a reminder to police to perform his duty. First Information Report of all cognizable offences must be registered.

7. Learned counsel for revisionist then contends that the issue regarding scope of jurisdiction of Magistrate while dealing with an application under Section 156 (3) Cr.P.C. has now been settled by a Constitution Bench of Supreme Court in **Lalita Kumari Vs. Government of Uttar Pradesh**, reported in *2014 (2) SCC 1*. He has relied upon paragraphs-120 to 120.8 of aforesaid judgement which read as under:-

"120. In view of the aforesaid discussion, we hold:

120.1. The registration of F.I.R. is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the F.I.R. must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the F.I.R. if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/ Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of F.I.R. or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

8. In continuation of his challenge to the impugned order, learned counsel for the revisionist also contends that observations made by Apex Court in **Priyanka Srivastava Vs. State of U.P.** reported in 2015 (6) SCC 287 do not dilute the ratio laid down in Constitution Bench judgement of the Apex Court in the case of *Lalita Kumari (Supra)*. Observations made in aforesaid judgement are only guidelines to ensure that no rightful person is dragged in criminal prosecution. For better appreciation, it shall be prudent to reproduce paragraphs- 26, 27 and 28 of aforesaid judgement which are relevant for the controversy in issue. Same are reproduced herein under:-

"26. At this stage, we may usefully refer to what the Constitution Bench has to say in Lalita Kumari v. Govt. of U.P. in this regard. The larger Bench had posed the following two questions:-

"(i) Whether the immediate non-registration of FIR leads to scope for manipulation by the police which affects the right of the victim/complainant to have a complaint immediately investigated upon allegations being made; and

(ii) Whether in cases where the complaint/information does not clearly disclose the commission of a cognizable offence but the FIR is compulsorily registered then does it infringe the rights of an accused."

Answering the questions posed, the larger Bench opined thus:

"49. Consequently, the condition that is sine qua non for recording an FIR under Section 154 of the Code is that there must be information and that information must disclose a cognizable offence. If any information disclosing a cognizable offence is led before an officer in charge of the police station satisfying the requirement of Section 154(1), the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. The provision of Section 154 of the Code is mandatory and the officer concerned is duty-bound to register the case on the basis of information disclosing a cognizable offence. Thus, the plain words of Section 154(1) of the Code have to be given their literal meaning.

72. It is thus unequivocally clear that registration of FIR is mandatory and also that it is to be recorded in the FIR book by giving a unique annual number to each FIR to enable strict tracking of each and every registered FIR by the superior police officers as well as by the competent court to which copies of each FIR are required to be sent.

111. The Code gives power to the police to close a matter both before and after investigation. A police officer can foreclose an FIR

before an investigation under Section 157 of the Code, if it appears to him that there is no sufficient ground to investigate the same. The section itself states that a police officer can start investigation when he has "reason to suspect the commission of an offence". Therefore, the requirements of launching an investigation under Section 157 of the Code are higher than the requirement under Section 154 of the Code. The police officer can also, in a given case, investigate the matter and then file a final report under Section 173 of the Code seeking closure of the matter. Therefore, the police is not liable to launch an investigation in every FIR which is mandatorily registered on receiving information relating to commission of a cognizable offence.

115. Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint."

After so stating the constitution Bench proceeded to state that where a preliminary enquiry is necessary, it is not for the purpose for verification or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence. After laying down so, the larger Bench proceeded to state:-

"120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry."

We have referred to the aforesaid pronouncement for the purpose that on certain circumstances the police is also required to hold a

preliminary enquiry whether any cognizable offence is made out or not.

27. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the bank. We are absolutely conscious that the position does not matter, for nobody is above law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156(3) Cr.P.C. and also there is a separate procedure under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.

28. Issuing a direction stating "as per the application" to lodge an FIR creates a very unhealthy situation in the society and also reflects the erroneous approach of the learned Magistrate. It also encourages the unscrupulous and unprincipled litigants, like the respondent no.3, namely, Prakash Kumar Bajaj, to take adventurous steps with courts to bring the financial institutions on their knees. As the factual exposition would reveal, he had prosecuted the earlier authorities and after the matter is dealt with by the High Court in a writ petition recording a settlement, he does not withdraw the criminal case and waits for some kind of situation where he can take vengeance as if he is the emperor of all he surveys. It is interesting to note that during the tenure of the appellant No.1, who is presently occupying the position of Vice-President, neither the loan was taken, nor the default was made, nor any action under the SARFAESI Act was taken. However, the action under the SARFAESI Act was taken on the second time at the instance of the present appellant No.1. We are only stating about the devilish design of the respondent No.3 to harass the appellants with the sole intent to avoid the payment of loan. When a citizen avails a loan from a financial institution, it is his obligation to pay back and not play truant or for that matter play possum. As we have noticed, he has been able to do such adventurous acts as he has the embedded conviction that he will not be taken to task because an application under Section 156(3) Cr.P.C. is a simple application to the court for issue of a direction to the investigating agency. We have been apprised that a carbon copy of a document is filed to show the compliance of Section 154(3), indicating it has been sent to the Superintendent of police concerned."

On the cumulative strength of the aforesaid, learned counsel for the revisionist submits that the impugned order has been passed by the concerned Judge in a routine and mechanical manner. Thus the concerned Judge may be directed by this Court to exercise his discretionary power and decide the application under Section 156(3) moved by the revisionist afresh.

9. The learned A.G.A. for the State has fairly conceded that interest of substantial justice has not been served in passing of the impugned order, as the Special Judge has rejected the application of the revisionist in a routine and mechanical manner. He further submits that the Special Court in an appropriate case before taking cognizance can pass an order under Section 156 (3) Cr.P.C. for registration of an F.I.R. and its investigation and may also take cognizance on the complaint and may enter into the procedure provided under Chapter-XV of the Code of Criminal Procedure and in this regard the discretion is always of the Special Court or Magistrate to adopt an appropriate course, thus, illegality has been committed by the Special Court in passing the impugned order.

On the cumulative strength of the aforesaid, learned A.G.A. submits that in a case wherein conviction of proposed accused is possible, it is completely failure on the part of the Special Court/Magistrate in not allowing the application under Section 156 (3) Cr.P.C. by directing the registration of F.I.R. As such the order impugned is liable to be set aside.

10. This Court has considered the submissions made by the learned counsel for the parties and gone through the records of the present criminal revision specifically the order impugned.

11. It is important for this Court to refer the provisions of Section 156 (3) Cr.P.C., under which the revisionist has filed her complaint against the opposite party no.2 and other accused persons, which is extracted herein-below:

"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."

12. It is evident that the law with regard to the manner in which the application moved under Section 156 (3) Cr.P.C are to be treated is now no more res integra and the same has been settled by various pronouncement of the Hon'ble Supreme Court as well as by Division Benches of this Court.

13. At this juncture, it would be apposite to mention that the word "may" occurring in Section 156(3) CrPC is of utmost significance. It gives the Magistrate a discretionary power to order or not for an investigation into the cognizable offence disclosed in the application. This discretionary power has been given to Magistrate to enable them to deal adequately with both types of the applications (i) the genuine application containing truthful allegations about the commission of cognizable offence, and (ii) the applications having baseless or false allegation, It is the duty of the Magistrate to make it a point that no applicant of later category may succeed in his wicked game. His application need to be dismissed with firmness and boldness. At the same time it is the poise duty of the Magistrate to ensure that no case of the former category may go uninvestigated. The Magistrates are thus saddled with a greater responsibility to keep such balance.

14. While dealing with a similar issue wherein application under Section 156 (3) Cr.P.C. with the allegation of sexual harassment of a victim, has been rejected by a Magistrate, the Apex Court in the case of **XYZ Vs. State of Madhya Pradesh & Ors.** reported in *2022 SCC OnLine SC 1002* has opined that the Magistrate has discretion in directing the police to investigate or proceeding with the case as a complaint case. But this discretion cannot be exercised arbitrarily and must be guided by judicial reasoning. The Apex Court has further opined that where not only does the Magistrate find the commission of a cognizable offence alleged on a prima facie reading of the complaint but also such facts are brought to the

Magistrate's notice which clearly indicate the need for police investigation, the discretion granted in Section 156(3) Cr.P.C. can only be read as it being the Magistrate's duty to order the police to investigate. In cases wherein, there is alleged to be documentary or other evidence in the physical possession of the accused or other individuals which the police would be best placed to investigate and retrieve using its powers under the Cr.P.C., the matter ought to be sent to the police for investigation. The Apex Court has also opined that in cases alleging sexual harassment, sexual assault or any similar criminal allegation wherein the victim has possibly already been traumatized, the Courts should not further burden the complainant and should press upon the police to investigate. Due regard had to the fact that it is not possible for the complainant to retrieve important evidence regarding her complaint. The relevant paragraphs of the judgment of the Apex Court in the case of **XYZ (Supra)** read as follows:

"20. A division bench of this Court in Sakiri Vasu v. State of U.P.⁶ expounded upon the Magistrate's powers under Section 156(3) of the CrPC. In this decision, the Court noted:

11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 CrPC, then he can approach the Superintendent of Police under Section 154(3) CrPC by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) CrPC before the learned Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

...

13. The same view was taken by this Court in Dilawar Singh v. State of Delhi³ (JT vide para 17). We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under Section 156(3) CrPC, and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order(s) as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) CrPC.

...

15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII CrPC. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he

can issue a direction to the police to do the investigation properly, and can monitor the same.

...

17. In our opinion Section 156(3) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

...

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) CrPC or other police officer referred to in Section 36 CrPC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 CrPC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?"

(emphasis supplied)

21. It is clear from the above extract that the Magistrate has wide powers under Section 156(3) which ought to be exercised towards meeting the ends of justice. A two-judge Bench of this Court in Srinivas Gundluri v. SEPCO Electric Power Construction Corpn.,⁷ further clarified the powers of a Magistrate and held that whenever a cognizable offence is made out on the bare reading of complaint, the Magistrate may direct police to investigate:

"23. To make it clear and in respect of doubt raised by Mr. Singhvi 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. In the case on hand, the learned Single Judge and the Division Bench of the High Court rightly pointed out that the Magistrate did not apply his mind to the complaint for deciding whether or not there is sufficient ground for proceeding and, therefore, we are of the view that the Magistrate has not committed any illegality in directing the police for investigation. In the facts and circumstances, it cannot be said that while directing the police to register FIR, the Magistrate has committed any illegality. As a matter of fact, even after receipt of such report, the Magistrate under Section 190(1) (b) may or may not take cognizance of offence. In other words, he is not bound to take cognizance upon submission of the police report by the investigating officer, hence, by directing the police to file charge-sheet or final report and to hold investigation with a particular result cannot be construed that the Magistrate has

exceeded his power as provided in sub-section (3) of Section 156.

22. In the present case, the narration of facts makes it clear that upon the invocation of the jurisdiction of the Magistrate under Section 156(3) of CrPC, the JMFC came to the conclusion that serious allegations had been levelled against the accused by the appellant and, that, from a perusal of the documents in this regard, the statements of the complainant were satisfactory. After taking note of the fact that the police had at an earlier stage reported that the occurrence of an incident or offence was not found, the JMFC opined that, from the facts which were set out by the complainant in the complaint, prima facie, the occurrence of an offence was shown.

23. It is true that the use of the word “may” implies that the Magistrate has discretion in directing the police to investigate or proceeding with the case as a complaint case. But this discretion cannot be exercised arbitrarily and must be guided by judicial reasoning. An important fact to take note of, which ought to have been, but has not been considered by either the Trial Court or the High Court, is that the appellant had sought the production of DVRs containing the audio-video recording of the CCTV footage of the then Vice-Chancellor's (i.e., the second respondent) chamber. As a matter of fact, the Institute itself had addressed communications to the second respondent directing the production of the recordings, noting that these recordings had been handed over on his oral direction by the then Registrar of the Institute as he was the Vice-Chancellor. Due to the lack of response despite multiple attempts, the Institute had even filed a complaint with PS Gole Ka Mandir on 29 October 2021 for registering an FIR against the second respondent for theft of the DVRs.

24. Therefore, in such cases, where not only does the Magistrate find the commission of a cognizable offence alleged on a prima facie reading of the complaint but also such facts are brought to the Magistrate's notice which clearly indicate the need for police investigation, the discretion granted in Section 156(3) can only be read as it being the Magistrate's duty to order the police to investigate. In cases such as the present, wherein, there is alleged to be documentary or other evidence in the physical possession of the accused or other individuals which the police would be best placed to investigate and retrieve using its powers under the CrPC, the matter ought to be sent to the police for investigation.

25. Especially in cases alleging sexual harassment, sexual assault or any similar criminal allegation wherein the victim has possibly already been traumatized, the Courts should not further burden the complainant and should press upon the police to investigate. Due regard must be had to the fact that it is not possible for the complainant to retrieve important evidence regarding her complaint. It may not be possible to arrive at the truth of the matter in the absence of such evidence. The complainant would then be required to prove her case without

being able to bring relevant evidence (which is potentially of great probative value) on record, which would be unjust.

26. In this backdrop, we are clearly of the view that the JMFC ought to have exercised jurisdiction under Section 156(3) of CrPC to direct the police to investigate.

27. At this stage, the Court is not called upon to decide upon the veracity of the allegations in the complaint, save and except to underscore the importance of an investigation by the police in a matter where the CCTV footage (or other evidence) is not under the possession or control of the appellant, but to be inquired into in the course of an investigation by the police. The discretion which has been conferred upon the Magistrate by Section 156(3) CrPC, must be exercised in a judicious manner.

28. In the facts of the present case and bearing in mind the position of law which has been laid down by this Court, recourse to the jurisdiction under Section 156(3) CrPC was warranted.

29. For the above reasons, we are inclined to set aside the impugned judgment of the High Court and to direct that the JMFC Gwalior shall, in terms of the observations contained above, order an investigation by the police under Section 156(3) CrPC. Having regard to all the facts and circumstances, including the need for a fair investigation, we direct that the investigation shall be supervised by a woman officer not below the rank of Superintendent of Police to be nominated by the DIG of the zone concerned. The judgment of the High Court dated 6 January 2022 shall accordingly stand set aside. The directions which have been issued by the JMFC to the effect that the complaint could be treated as a complaint case shall accordingly, to that extent, stand set aside and be substituted in terms of the directions which have been issued above.

*30. Finally, we wish to once again reiterate the importance of courts dealing with complainants of sexual harassment and sexual assault in a sensitive manner. It is important for all courts to remain cognizant of the fact that the legal process tends to be even more onerous for complainants who are potentially dealing with trauma and societal shame due to the unwarranted stigma attached to victims of sexual harassment and assault. At this juncture, especially in cases where the police fails to address the grievance of such complainants, the Courts have an important responsibility. As the Delhi High Court held in *Virender v. State of NCT of Delhi*,⁸ courts have to remain alive to both treating the victim sensitively while also discharging the onerous task of ensuring that the complete truth is brought on record so as to facilitate adjudication and answering the basic question regarding the complicity of the accused in the commission of the offence. In that case, the High Court held that:*

22. It is to be noted that the embarrassment, and reservations of those concerned with the proceedings including the prosecutrix, witnesses, counsel may result in a camouflage of the trauma of the victim's experience. The judge has to be conscious of these factors and rise above any such reservations to ensure that they

do not cloud the real facts and the actions which are attributable to the accused persons. The trial courts must be alive to the onerous responsibility which rests on their shoulders and be sensitive in cases involving sexual abuse.

(emphasis supplied)

31. While the Delhi High Court made these observations while dealing with a case of rape, courts must remain alive to their duty to treat victims sensitively in cases alleging all forms of sexual harassment and sexual assault. The Courts must try to ensure that the process of attempting to bring alleged perpetrators to justice is not onerous for the victims. Aggrieved persons should not have to run from pillar to post for the mere registration of a complaint and initiation of investigation especially when a cognizable offence is prima facie made out in their complaint.

*32. In *Aparna Bhat v. State of Madhya Pradesh*,⁹ a two-judge Bench of this Court took note of the “entrenched paternalistic and misogynistic attitudes that are regrettably reflected at times in judicial orders and judgments.” In that case, Justice S. Ravindra Bhat observed and we reiterate:*

31. The role of all courts is to make sure that the survivor can rely on their impartiality and neutrality, at every stage in a criminal proceeding, where she is the survivor and an aggrieved party. Even an indirect undermining of this responsibility cast upon the court, by permitting discursive formations on behalf of the accused, that seek to diminish his agency, or underplay his role as an active participant (or perpetrator) of the crime, could in many cases, shake the confidence of the rape survivor (or accuser of the crime) in the impartiality of the court. The current attitude regarding crimes against women typically is that “grave” offences like rape are not tolerable and offenders must be punished. This, however, only takes into consideration rape and other serious forms of gender-based physical violence. The challenges Indian women face are formidable : they include a misogynistic society with entrenched cultural values and beliefs, bias (often sub-conscious) about the stereotypical role of women, social and political structures that are heavily male-centric, most often legal enforcement structures that either cannot cope with, or are unwilling to take strict and timely measures. Therefore, reinforcement of this stereotype, in court utterances or orders, through considerations which are extraneous to the case, would impact fairness.

...

43. The instances spelt out in the present judgment are only illustrations; the idea is that the greatest extent of sensitivity is to be displayed in the judicial approach, language and reasoning adopted by the judge. Even a solitary instance of such order or utterance in court, reflects adversely on the entire judicial system of the country, undermining the guarantee to fair justice to all, and especially to victims of sexual violence (of any kind from the most aggravated to the so-called minor offences).

33. The legislature has, at places, moulded criminal procedure to enable victims of sexual crimes to seek justice. This has been

done in recognition of the gravity of sexual crimes and the need to handle such cases in an appropriately sensitive manner. For instance, Section 327 CrPC provides for in camera trials to be conducted with respect to offences punishable under Sections 376, 376A, 376B, 376C or 376D of the Penal Code, 1860.

34. This Court, too, has had its role to play in ensuring that justice does not remain inaccessible. In State of Maharashtra v. Bandu @ Daulat,¹⁰ this Court directed that special centres be set up in each state in order to facilitate depositions by vulnerable witnesses, including victims of sexual offences. In Smruti Tukaram Badade v. State of Maharashtra,¹¹ a two judge bench of this Court (of which one of us, Dr. DY Chandrachud, J. was a part) supplemented the directions issued in Bandu @ Daulat (supra) with respect to setting up such special centres.

35. It is the duty and responsibility of trial courts to deal with the aggrieved persons before them in an appropriate manner, by:

a. Allowing proceedings to be conducted in camera, where appropriate, either under Section 327 CrPC or when the case otherwise involves the aggrieved person (or other witness) testifying as to their experience of sexual harassment/violence;

b. Allowing the installation of a screen to ensure that the aggrieved woman does not have to see the accused while testifying or in the alternative, directing the accused to leave the room while the aggrieved woman's testimony is being recorded;

c. Ensuring that the counsel for the accused conducts the cross-examination of the aggrieved woman in a respectful fashion and without asking inappropriate questions, especially regarding the sexual history of the aggrieved woman. Cross-examination may also be conducted such that the counsel for the accused submits her questions to the court, who then poses them to the aggrieved woman;

d. Completing cross-examination in one sitting, as far as possible.

36. Before closing, it is necessary to clarify that this Court has not expressed any opinion on the allegations which have been levelled in the complaint. It is for the investigating officer to investigate those allegations in accordance with law.”

15. Considering the facts of this case and nature of allegations levelled by the applicant, this Court finds substance in the submissions made by the learned counsel for the revisionist and the case laws referred by him therefore, this Court is of the view that proper investigation is needed in the case in hand, therefore impugned order is not sustainable.

16. In view of discussion made above, present criminal revision succeeds and is liable to be allowed.

17. It is accordingly allowed.

18. The impugned judgment and order dated 05.11.2022 passed by learned Additional Sessions Judge/ Special Judge (POCSO Act), Bulandshahar in Criminal Misc. Case No. 717 of 2022 (Rajina Vs. Nishar and others), under Section 156(3) Cr.P.C., Police Station Jahangirabad, District Bulandshahar is hereby quashed. The matter is remanded to concerned Judge to decide application under Section 156(3) afresh in the light of observations made herein above within a period of two months from the date of production of a certified copy/computer generated copy of this order which shall be filed by the revisionist before court below by means of an affidavit.

(Shiv Shanker Prasad, J.)

Order Date :- 02.11.2023

Abhishek Singh/Sushil