

Court No. - 15

Case :- CRIMINAL MISC. WRIT PETITION No. - 5151 of 2022

Petitioner :- Sajid Ali

Respondent :- State Of U.P. Thru. Prin. Secy. Home, Lko. And Another

Counsel for Petitioner :- J.P. Shukla, Shahnaz Fatima

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Shri Anuj Pandey, learned counsel has filed his power/ vakalatnama on behalf of respondent No.2, the same is taken on record.

2. Heard Ms. Shahnaz Fatima, learned counsel for the petitioner/ complainant, learned A.G.A. for the State as well as Shri Anuj Pandey, learned counsel appearing for the respondent No.2 and perused the record.

3. The instant petition under Article 226 of the Constitution of India has been filed by the petitioner/ complainant assailing the orders dated 16.11.2021 and 20.04.2022 passed by the Additional Chief Judicial Magistrate, Court No.18, Sultanpur as well as the Revisional Court, Sultanpur, whereby at first the application moved by the applicant-petitioner under Section 156 (3) Cr.P.C. has been rejected and the Revisional Court has upheld the said order.

4. Learned counsel for the petitioner submits that the Magistrate as well as the Revisional Court has committed illegality in rejecting the prayer of the petitioner while the application moved before the Magistrate under Section 156 (3) Cr.P.C. was disclosing commission of cognizable offences and therefore, it was the duty of the Magistrate to have directed the police to investigate the allegations levelled therein.

5. Learned A.G.A. for the State as well as Shri Anuj Pandey, learned counsel appearing for the respondent No.2 submits that in each and every case where the commission of cognizable offences are emerging in an application, the Magistrate or the trial Court is not

bound to order for investigation and subjective satisfaction is to be drawn by the concerned Court in order to assess whether there is substance in the allegation and whether these allegations are required to be investigated, therefore, no illegality appears to have been committed by the Magistrate or Revisional Court in passing the impugned order.

6. Having heard learned counsel for the parties and having perused the record, it is reflected that the petitioner is aggrieved by the impugned orders, as his application moved under Section 156(3) Cr.P.C. for registration and investigation of the F.I.R. has been rejected by the Magistrate and that order has been upheld by the Revisional Court. The law with regard to the manner, in which an application under Section 156 (3) Cr.P.C. has to be dealt with is now no more res-integra and the same has been set at rest by the Hon'ble Supreme Court as well as by this Court.

7. This Court through its Full Bench Judgment in ***Ram Babu Gupta and others Vs. State of U.P. and Others***, MANU/UP/0681/2001 has held as under:

"17 In view of the aforesaid discussion on the legal provisions and decisions of the Supreme Court as on date, it is hereby held that on receiving a complaint, the Magistrate has to apply his mind to the allegations in the complaint upon which he may not at once proceed to take cognizance and may order it to go to the police station for being registered and investigated. The Magistrate's order must indicate application of mind. If the Magistrate takes cognizance, he proceeds to follow the procedure provided in Chapter XV of Cr.P.C.. This first question stands answered thus.

"Coming to the second question noted above, it is to be at once stated that a provision empowering a Court to Act in a particular manner and a provision creating a right for an aggrieved person to approach a Court or authority, must be understood distinctively and should not be mixed up. While Sections 154, 155 Sub-section (1) and (2) of 156, Cr.P.C confer right on an aggrieved person to reach the police, 156(3) empowers a Magistrate to act in a particular manner in a given situation. Therefore, it is not possible to hold that where a bare application is moved before Court only praying for exercise of powers

under Section 156(3) Cr.P.C, it will remain an application only and would not be in the nature of a complaint. It has been noted above that the Magistrate has to always apply his mind on the allegations in the complaint where he may use his powers under Section 156(3) Cr.P.C. In this connection, it may be immediately added that where in an application, a complainant states facts which constitute cognizable offence but makes a defective prayer, such an application will not cease to be a complaint nor can the Magistrate refuse to treat it as a complaint even though there be no prayer seeking trial of the known or unknown accused. The Magistrate has to deal with such facts as constitute cognizable offence and for all practical purposes even such an application would be a complaint. This Court can do no better than refer to the following observations in *Suresh Chand Jain (Supra)*:

The position is thus clear. Any judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code...could take further steps contemplated in Chapter XII of the Code only thereafter.

8. Hon'ble Supreme Court in ***Priyanka Srivastava Vs. State of U.P.***; MANU/SC/0344/2015 : AIR 2015 SC 1758 has opined as under:

'26 . At this stage it is seemly to state that power Under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.

27. In our considered opinion, a stage has come in this country where Section 156(3) Code of Criminal Procedure applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or Under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

We have already indicated that there has to be prior applications Under Section 154(1) and 154(3) while filing a petition Under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application Under Section 156(3) be supported by an affidavit so that the person making the application

should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate Under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in *Lalita Kumari* are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.'

9. Hon'ble Supreme Court in ***Aleque Padamsee & others Vs. Union of India (UOI)*** (2007) 6 SCC 171 : MANU/SC/2975/2007 has also opined as under:

'5. When the information is laid with the police, but no action in that behalf is taken, the complainant can under Section 190 read with Section 200 of the Code lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate, after recording evidence, finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and could issue process to the accused. These aspects have been highlighted by this Court in *All India Institute of Medical Sciences Employees' Union (Reg) through its President v. Union of India and Ors.* MANU/SC/1769/1996 : (1996)11SCC582 . It was specifically observed that a writ petition in such cases is not to be entertained.

6. The above position was again highlighted in *Gangadhar Janardan Mhatre v. State of Maharashtra* MANU/SC/0830/2004 : 2004CriLJ4623 , *Minu Kumari and Anr. v. State of Bihar and Ors.* MANU/SC/8098/2006 : 2006CriLJ2468 and *Hari Singh v. State of U.P.* MANU/SC/8203/2006 : 2006CriLJ3283.

7. Whenever any information is received by the police about the alleged commission of offence which is a cognizable one there is a duty to register the FIR. There can be no dispute on that score. The only question is whether a writ can be issued to the police authorities to register the same. The basic question is as to what course is to be adopted if the police does not do it. As was held in *All India Institute of Medical Sciences's case* (supra) and re-iterated in *Gangadhar's case* (supra) the remedy available is as set out above by filing a complaint before the Magistrate. Though it was faintly suggested that there was conflict in the views in *All India Institute of Medical Sciences's case* (supra), *Gangadhar's case* (supra), *Hari Singh's case* (supra), *Minu Kumari's case* (supra) and *Ramesh Kumari's case*

(supra), we find that the view expressed in Ramesh Kumari's case (supra) related to the action required to be taken by the police when any cognizable offence is brought to its notice. In Ramesh Kumari's case (supra) the basic issue did not relate to the methodology to be adopted which was expressly dealt with in All India Institute of Medical Sciences's case (supra), Gangadhar's case (supra), Minu Kumari's case (supra) and Hari Singh's case (supra). The view expressed in Ramesh Kumari's case (supra) was re- iterated in Lallan Chaudhary and Ors. v. State of Bihar MANU/SC/4524/2006 : AIR2006SC3376 . The course available, when the police does not carry out the statutory requirements under Section 154 was directly in issue in All India Institute of Medical Sciences's case (supra), Gangadhar's case (supra), Hari Singh's case (supra) and Minu Kumari's case (supra). The correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to its notice show that cognizable offence has been made out. In case the police officials fail to do so, the modalities to be adopted are as set out in Sections 190 read with Section 200 of the Code. It appears that in the present case initially the case was tagged by order dated 24.2.2003 with WP(C) 530/2002 and WP(C) 221/2002. Subsequently, these writ petitions were de-linked from the aforesaid writ petitions.'

10. In **Mohd. Yousuf Vs. Afaq Jahan (Smt.) and another;** MANU/SC/8888/2006 : (2006) 1 SCC 627, the question before the the Supreme Court was against with regard to the treating an application moved under Section 156(3) Cr.P.C. as complaint by the magistrate and the Hon'ble Supreme Court was of the following view:

'4. In order to appreciate rival submissions Section 156 of the Code needs to be quoted; the same reads as follows:

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.

(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.

5 . Section 156 falling within Chapter XII, deals with powers of police officers to investigate cognizable offences. Investigation envisaged in Section 202 contained in Chapter XV is different from the investigation contemplated under Section 156 of the Code.

6. Chapter XII of the Code contains provisions relating to "information to the police and their powers to investigate", whereas Chapter XV, which contains Section 202 deals with provisions relating to the steps which a Magistrate has to adopt while and after taking cognizance of any offence on a complaint Provisions of the above two chapters deal with two different facets altogether i.e., complaint filed

by a person. Section 156, falling within Chapter XII deals with powers of the police officers to investigate cognizable offences. True, Section 202, which falls under Chapter XV, also refers to the power of a Magistrate to "direct an investigation by a police officer". But the investigation envisaged in Section 202 is different from the investigation contemplated Section 156 of the Code.

7. The various steps to be adopted for investigation under Section 156 of the Code 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;

8. 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 makes the position clear 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

9. 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.

10. The clear position therefore is 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 complaint 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 involved 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.'

11. A Division Bench of this Court **Sukhwasi Vs. State of U.P. & others**; MANU/UP/1115/2007: ACC 2007 (59) 739 has opined as under:

'20. The Full Bench decision of Ram Babu Gupta's case 'Supra' also lays down that the Magistrate can treat an application under Section 156(3) Cr.P.C. as a complaint. This ill appear from the following observations:

Coming to the second question noted above, it is to be at once stated that a provision empowering a Court to Act in a particular manner and a provision creating a right for an aggrieved person to approach a Court or authority, must be understood distinctively and should not be mixed up. While Sections 154, 155 Sub-section (1) and (2) of 156, Cr.P.C confer right on an aggrieved person to reach the police, 156(3) empowers a Magistrate to act in a particular manner in a given situation. Therefore, it is not possible to hold that where a bare application is moved before Court only praying for exercise of powers under Section 156(3) Cr.P.C, it will remain an application only and would not be in the nature of a complaint. It has been noted above that the Magistrate has to always apply his mind on the allegations in the complaint where he may use his powers under Section 156(3) Cr.P.C. In this connection, it may be immediately added that where in an application, a complainant states facts which constitute cognizable offence but makes a defective prayer, such an application will not cease to be a complaint nor can the Magistrate refuse to treat it as a complaint even though there be no prayer seeking trial of the known or unknown accused. The Magistrate has to deal with such facts as constitute cognizable offence and for all practical purposes even such an application would be a complaint. This Court can do no better than refer to the following observations in Suresh Chand Jain (Supra):

The position is thus clear. Any judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code...could take further steps contemplated in Chapter XII of the Code only thereafter.

21. Hon'ble Mr. Justice Amar Saran in Criminal Misc. Application No. 7484 of 2004 Mohan Shukla and Ors. v. State of U.P., Hon'ble Mr. Justice Alok Singh in Criminal Misc. Application No. 671 of 2007 Ram Sabad v. Sessions Judge, Bahraich and Ors. have also held that the Magistrate is empowered under Section 156(3) Cr.P.C. to treat an application as a 'Complaint'.

22. Applications under Section 156(3) Cr. P.C. are now coming in torrents. Provisions under Section 156(3) Cr.P.C. should be used sparingly. They should not be used unless there is something unusual and extra ordinary like miscarriage of justice, which warrants a direction to the Police to register a case. Such applications should not be allowed because the law provides them with an alternative remedy of filing a complaint, therefore, recourse should not normally be permitted for availing the provisions of Section 156(3) Cr.P.C.

23. The reference is, therefore, answered in the manner that it is not incumbent upon a Magistrate to allow an application under Section 156(3) Cr.P.C. and there is no such legal mandate. He may or may not allow the application in his discretion. The second leg of the reference is also answered in the manner that the Magistrate has a discretion to treat an application under Section 156(3) Cr.P.C. as a complaint.'

12. Thus having regard to the law placed herein-before, it would be evident that whenever an application under Section 156(3) Cr.p.C. is placed before the magistrate, he is having an option either to order for investigation of the same and may take cognizance of the offences mentioned therein and may proceed under Chapter XV of the Cr.P.C.

13. It is also to be recalled that whenever an application is moved before the Magistrate or Special Court under Section 156(3) Cr.P.C., a question is always required to be posed by the magistrate/trial court to himself as to whether the investigation pertaining to the allegations levelled in the application moved under Section 156(3) is required at all and if the answer of this query is in affirmative then the duty of the magistrate is to direct the police to register an F.I.R. However, even if the application moved under Section 156(3) Cr.P.C. is disclosing commission of cognizable offences, the Magistrate is not bound to order for registration of an F.I.R. and its investigation. No straight jacket formula could be formulated in this regard and discretion of the Magistrate/Special Court shall be subject to factual scenario of each and every case. Thus having regard to all the facts and circumstances of the case, no illegality or to say any irregularity appears to have committed by the court below.

14. Having perused the record and the allegations which have been levelled by the petitioner/ complainant in his application moved under Section 156 (3) Cr.P.C., I do not find any illegality in both the impugned orders and therefore, I do not find any substance in the petition sufficient enough to interfere in the impugned judgments, moreso, when the prayer of only with regard to investigation of the allegations contained in the application has been rejected while the petitioner/ complainant is having an option to file a complaint, if the same is legally maintainable in the background of the limitation provided in the Code of 1973.

15. Thus, for the reasons mentioned hereinbefore, the instant writ petition filed by the petitioner/ complainant is hereby **dismissed**.

(Mohd. Faiz Alam Khan,J.)

Order Date :- 26.9.2024/ Gurpreet Singh