

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:45169

Court No. - 13

Case :- APPLICATION U/S 482 No. - 5716 of 2024

Applicant :- Bare Lal Pandey

**Opposite Party :- State Of U.P. Thru. Its Addl. Chief Secy.
Home Deptt. Lko. And Others**

Counsel for Applicant :- Surya Prakash Singh

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State as well as perused the records.

2. By means of the present application, the applicant has assailed the order dated 28.02.2023 passed by Chief Judicial Magistrate, Pratapgarh (in short "trial Court") in Criminal Misc. Case No. 349 of 2023 (Bade Lal Pandey Vs. Arpan alias Anil Pandey and Another) whereby the trial Court entertained the application preferred by the applicant under Section 156(3) Cr.P.C. as a complaint case. The order impugned, on reproduction, reads as under:

“पत्रावली वास्ते आदेशार्थ पेश हुई। प्रस्तुत प्रार्थना पत्र अन्तर्गत धारा 156 (3) दं०प्र०सं० प्रार्थी बड़े लाल पाण्डेय द्वारा इस आशय का प्रस्तुत किया गया है कि प्रार्थी एक भूतपूर्व वायुसेना अधिकारी है तथा सेवानिवृत्त होन पर अपने पैतृक ग्राम सहिली थाना मानिकपुर में अपनी पत्नी के साथ रह रहा है। प्रार्थी के सगे भाई, भाई लाल पाण्डेय के घर में अभियुक्तगण द्वारा प्रार्थी व उसकी पत्नी के उपर जानलेवा हमला करने, झूठे मुकदमें में फंसाने तथा घर लूट लेने आदि की योजना बना रहे थे। प्रार्थी के घर में सी०सी०टी०वी० जिसमें आवाज भी रिकार्ड होती है, लगा हुआ है। विपक्षीगण की उक्त षडयन्त्रकारी योजना काफी हद तक प्रार्थी के घर में लगे सी०सी०टी०वी० में रिकार्ड हुई है।

थाने की आख्या के अनुसार प्रकरण के सम्बन्ध में कोई अभियोग थाने पर दर्ज नहीं है। सुना तथा अवलोकन किया।

घटना के समस्त तथ्य प्रार्थी की जानकारी में हैं। विवेचना कराये जाने से कोई नया तथ्य उभरकर प्रकट होने की कोई सम्भावना प्रतीत नहीं होती है। प्रार्थना पत्र में वर्णित तथ्यों एवं माननीय उच्च न्यायालय इलाहाबाद द्वारा प्रतिपादित निर्णयज विधि

सुखवासी बनाम राज्य उ०प्र० 2007(59) एसीसी 739 व अन्जुम बनाम राज्य 2008 (61) ए०सी०सी० 181 के आलोक में प्रार्थी द्वारा प्रस्तुत पत्र धारा 156(3) दं०प्र०सं० परिवाद के रूप में दर्ज किया जाना न्यायसंगत है।

आदेश

प्रार्थना पत्र परिवाद के रूप में दर्ज किया जाये। पत्रावली वास्ते प्रस्तुत करने सूची गवाहान एवं बयान अन्तर्गत धारा 200 दं०प्र०सं० दिनांक 03.04.2023 को पेश हो।”

3. The applicant has also assailed the order dated 06.03.2024 passed by Additional Sessions Judge/Fast Tract Court, Pratapgarh (in short "revisional Court") passed in Criminal Revision No. 180 of 2023 (Bade Lal Pandey Vs. Arpan alias Anil Pandey and Another) whereby the revisional Court dismissed the criminal revision filed by the applicant impeaching the order dated 28.02.2023. The relevant portion of the order, on reproduction, reads as under:

“3. पत्रावली प्रस्तुत हुई। निगरानीकर्ता के विद्वान अधिवक्ता तथा विद्वान ए०डी०जी०सी० फौजदारी अधिवक्ता के तर्कों को सुना और पत्रावली का परिशीलन किया।

4. अवर न्यायालय द्वारा पारित आदेश दिनांकित 28.02.2023 की प्रमाणित प्रति निगरानीकर्ता द्वारा पत्रावली पर दाखिल की गयी है जिसके अवलोकन से विदित होता है कि अवर न्यायालय ने पाया कि घटना के समस्त तथ्य प्रार्थी की जानकारी में हैं। विवेचना कराये जाने से कोई नया तथ्य प्रकट होने की संभावना नहीं है। अवर न्यायालय ने प्रार्थना पत्र में वर्णित तथ्यों एवं माननीय उच्च न्यायालय द्वारा प्रतिपादित निर्णयज विधि सुखवासी बनाम राज्य उ.प्र. 2007 (59) ए सी सी 739 व अंजुम बनाम राज्य 2008 (61) ए सी सी 181 के आलोक में प्रार्थी द्वारा प्रस्तुत प्रार्थना पत्र धारा 156 (3) दं.प्र.सं. को परिवाद के रूप में दर्ज किये जाने का आदेश पारित किया गया है। निगरानीकर्ता द्वारा निगरानी में कथन किया गया कि अवर न्यायालय पारित आदेश विधि विरुद्ध है। अवर न्यायालय द्वारा पारित आदेश दिनांकित 28.02.2023 पत्रावली पर उपलब्ध साक्ष्यों के अनुसार पारित किया गया है। जैसा कि माननीय उच्चतम न्यायालय द्वारा *Krishna Kumar Tiwari vs. State of U.P., 2009 (5) ALU 1 (All-LB.)* में अवधारित किया है कि *Where an application u/s. 156(3) CrPC was rejected on the ground that the alleged offence was not of heinous nature and the allegations levelled in the application were not of such a nature which could not be levelled falsely, it has been held that rejection of the application u/s. 156(3) CrPC was not erroneous. Magistrate will not work u/s. 156(3) CrPC like a postman but he has to examine whether from reading of application/complaint filed u/s. 156(3) CrPC prima facie commission of offence is disclosed or not. If the dispute is purely of civil nature, refusal to order registration of FIR is proper.* अतः

उपरोक्त विधि व्यवस्थाओं को दृष्टिगत रखते हुए अधीनस्थ न्यायालय द्वारा पारित आदेश दिनांकित 28.02.2023, जिसमें हस्तक्षेप किये जाने का कोई विधिक आधार नहीं है। निगरानी निरस्त किये जाने योग्य है।

आदेश

निगरानीकर्ता की ओर से प्रस्तुत दाण्डिक निगरानी 180/23 बड़े लाल पाण्डेय बनाम अर्पण उर्फ अनिल निरस्त की जाती है। विद्वान न्यायालय मुख्य न्यायिक मजिस्ट्रेट प्रतापगढ़ द्वारा पारित आदेश दिनांकित 28.02.2023 पुष्ट किया जाता है। निगरानी की पत्रावली आवश्यक कार्यवाही हेतु नियमानुसार दाखिल दफ्तर हो एवं अवर न्यायालय की पत्रावली इस निर्णय की प्रति के साथ वापस भेजी जावे।”

4. Brief facts of the case are to the effect that the applicant preferred an application under Section 156(3) Cr.P.C. levelling allegations of conspiracy against the private opposite party nos. 2 to 6. According to this application, in nutshell, the opposite parties in the premises of the applicant hatched a conspiracy (i) to attack the applicant and his wife, (ii) to implicate the applicant and his family in false criminal cases and (iii) to commit loot in the house of the applicant and this incident was recorded in the Closed Circuit Television (in short "CCTV") situated at the premises of the applicant. The relevant portion of the application, on reproduction, reads as under:

“(3) यह कि प्रस्तुत प्रार्थना-पत्र मुख्य रूप से दिनांक 25.04.2022 को शाम लगभग 7:15 से 8 बजे के मध्य पाण्डेय के घर में अभियुक्तगण द्वारा प्रार्थी व उसकी पत्नी के ऊपर जानलेवा हमला करने, और झूठे मुकदमें में फंसाने तथा घर लूट लेने आदि की योजना बनाने के संबंध में है।

(4) यह कि प्रार्थी व अभियुक्तगण /अभियुक्त 2 का घर प्रार्थी के घर से जुड़ा हुआ है तथा प्रार्थी के घर के सी०सी०टी०वी० जिसमें आवाज भी रेकॉर्ड होती है लगा हुआ है अतः विपक्षीगण की उक्त षड्यंत्रकारी योजना काफी हद तक प्रार्थी के घर में लगे सी०सी०टी०वी० में रेकॉर्ड हुई है- रेकॉर्डिंग में आवाज थोड़ी धीमी है किन्तु बात समझ आ रही है और आवश्यकता पड़ने पर पुलिस जांच के दौरान तकनीकी विभाग द्वारा आवाज को बढ़ा कर स्पष्ट सुना जा सकता है।”

5. It appears that the trial Court, taking note of the facts indicated above which includes the availability of the evidence i.e. CCTV footage with the applicant, observed that investigation in the matter is not required. Accordingly, treated the application under Section 156(3) Cr.P.C. filed by

the applicant as a complaint case vide order dated 28.02.2023, quoted above.

6. The order dated 28.02.2023 was challenged by the applicant by preferring revision under Section 397 Cr.P.C., which was registered as Criminal Revision No. 180 of 2023. In the memo of revision, in nutshell, it has been stated that in the present matter, the investigation is required as such, the trial Court erred in entertaining the application under Section 156(3) Cr.P.C. as a complaint case. The revisional Court dismissed the revision vide order dated 06.03.2024, quoted above.

7. Learned counsel for the applicant, while impeaching the orders in issue, stated that the case of the appicant is squarely covered by the judgment passed by the Hon'ble Apex Court in the case of **XYZ Vs. State of M.P. and Ors.** reported in **2023 (1) JIC 538 (SC)** and **Lalita Kumari Vs. State of U.P.** reported in **(2014) 2 SCC 1**. In continuation, he stated that the evidence i.e. CCTV footage can only be retrieved/collected/recovered by the Investigating Officer during the investigation. As such, the orders are liable to be interfered and direction be issued to police to lodge an FIR.

8. Learned counsel for the applicant also submitted that an application was preferred before the trial Court in terms of order dated 26.02.2024 and along with same, the CCTV footage as also the certificate which is required under Section 65B of Indian Evidence Act, 1872 (in short "Act of 1872") were filed and this application was not considered by the revisional Court while passing the order dated 06.03.2024. Para 38 of the instant application referred in this regard reads as under:

"38. That the Ld. Additional Sessions Judge/Fast Track Court, Pratapgarh, on 26.02.2024, directed the Petitioner to file the CCTV footage available with him and the Petitioner along with a

Miscellaneous Application Dated: 04.03.2024 narrating the part of the conversation of Opposite Party No. 2 to 6 filed the CCTV footage in a Pen Drive duly supported by a Certificate under Section 65B of the Indian Evidence Act, 1872. A certified true copy of the Miscellaneous Application narrating the conversation of Opposite Party No. 2 to 6 is being filed and marked as Annexure No. 6 to this affidavit. A certified true copy of the Certificate under Section 65B of the Indian Evidence Act, 1872 is being filed and marked as Annexure No. 7 to this affidavit."

9. At this stage, on being asked as to whether the order dated 26.02.2024 is on record and as to whether in absence of the same, the facts related to the same mentioned in para 38 of the application can be considered.

10. In response, learned counsel for the applicant stated that the copy of the order dated 26.02.2024 has not been brought on record.

11. In view of the aforesaid, after taking note of the settled principle that pleadings are not evidence and that a party who wants to prove anything as made out in his/her pleading has to give evidence to prove his/her assertions, this Court finds that the reliance on averment made in regard to passing of order dated 26.02.2024 cannot be made.

12. Learned A.G.A. opposed the application. He stated that the order(s) passed by the trial Court as also by the revisional Court are just and proper in the facts and circumstances of the case and accordingly, no interference in the matter is required.

13. Learned counsel for the applicant in support of his contentions placed reliance on the following paras of the judgment passed in the case of **XYZ (supra)**:

"15. First, we find it appropriate to reiterate the duty of police to register an FIR whenever a cognizable offence is made out in a complaint. A Constitution Bench of this Court in Lalita Kumari v Government of Uttar Pradesh⁵ has laid out the position of law as summarized in the following extract of the decision:

"119. Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR."

16. We cannot help but note that the police's inaction in this case is most unfortunate. It is every police officer's bounden duty to carry out his or her functions in a public-spirited manner. The police must be cognizant of the fact that they are usually the first point of contact for a victim of a crime or a complainant. They must abide by the law and enable the smooth registration of an FIR. Needless to say, they must treat all members of the public in a fair and impartial manner. This is all the more essential in cases of sexual harassment or violence, where victims (who are usually women) face great societal stigma when they attempt to file a complaint. It is no secret that women's families often do not approve of initiating criminal proceedings in cases of sexual harassment. Various quarters of society attempt to persuade the survivor not to register a complaint or initiate other formal proceedings, and they often succeed. Finally, visiting the police station and interacting with police officers can be an intimidating experience for many. This discomfort is often compounded if the reason for visiting the police station is to complain of a sexual offence.

XXXXX.

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."

14. He also placed reliance on para 120 of the judgment passed in the case of **Lalita Kumari Vs. State of U.P.**, reported in **(2014) 2 SCC 1**, which reads as under:

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

120.1. The registration of FIR 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 FIR 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 FIR 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 fifteen days generally and in exceptional cases, by giving adequate reasons, six weeks' time is provided. 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 FIR 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."

15. Learned A.G.A. for the State indicated para 20 and 22 of the judgment passed in the case of **Ramdev Food Products Private Limited Vs. State of Gujarat**, reported in **(2015) 6 SCC 439**:

"20. It has been held, for the same reasons, that direction by the Magistrate for investigation under Section 156(3) cannot be given mechanically. In Anil Kumar v. M.K. Aiyappa [(2013) 10 SCC 705 : (2014) 1 SCC (Cri) 35] , it was observed : (SCC p. 711, para 11)

11. “The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in *Maksud Saiyed* case [*Maksud Saiyed v. State of Gujarat*, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.”

The above observations apply to category of cases mentioned in para 120.6 in *Lalita Kumari* [*Lalita Kumari v. State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] .

22. Thus, we answer the first question by holding that:

22.1. The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone the issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued.

22.2. The cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine “existence of sufficient ground to proceed”. Category of cases falling under para 120.6 in *Lalita Kumari* [*Lalita Kumari v. State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] may fall under Section 202.

22.3. Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case.

16. Learned A.G.A. also placed reliance on the judgment passed in the case of **Vishwanath Vs. State of U.P. and 4 Ors**, reported in (2020) ILR

2 All 889, wherein this Court while dealing with similar issue, after considering the relevant provisions of Cr.P.C. and various pronouncements, concluded as under:

55. Thus, in the whole scheme of the Code of Criminal Procedure as clarified in the pronouncements of the Apex Court ranging from 1951 to 2019, it is evident that if a person has a grievance that his F.I.R. has not been registered by the police, his first remedy is to approach the Superintendent of Police under Section 154(3), Cr.P.C. or other police officer referred to in Section 36, Cr.P.C. If his grievances still persist, then he can approach a Magistrate under Section 156(3), Cr.P.C. He has a further remedy of filing a criminal complaint under Section 200, Cr.P.C. On receipt of the complaint, however, several courses are open to the Magistrate:

(i) He may take cognizance of the offence at once and proceed to record statements of the complaints and the witnesses present under Section 200, and proceed under Chapter XV and Chapter XVI, accordingly.

(ii) If, he thinks fit, he may postpone the issue of process and either inquire into the case himself or direct an investigation to be made by the police officer or such other process as he may think fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. He may then issue process if in his opinion there is sufficient ground for proceeding; or dismiss the complaint if there is no sufficient ground for proceeding.

(iii) Yet another course open to the Magistrate is that instead of taking cognizance of the offence and following the procedure laid down under Section 200 or Section 202, he may order investigation to be made by the police under Section 156(3).

(iv) On receiving the police report, the Magistrate may take cognizance of the offence under Section 190(1)(b) and issue process straightway to the accused. The Magistrate may exercise his power in this behalf irrespective of the view expressed by the police in their report whether an offence has been made out or not. This is because the Magistrate is not bound by the opinion of the police officer as to whether an offence has been made out or not.

56. Thus, the above discussion pertaining to the power of the Magistrate under Section 156(3) in Chapter XII read with Section 190 in Chapter XIV of the Code leaves no room for doubt that there is nothing in the Code of Criminal Procedure, which curtails or puts any embargo on the

power of the Magistrate to make an "inquiry" as defined under Section 2(g) of the Code or to order for "investigation" defined under Section 2(h) of the Code, in dealing with the application under Section 156(3), Cr.P.C. i.e., in exercise of the power conferred upon it under Chapter XII or Chapter XIV of the Code to satisfy itself about the veracity of the allegations of commission of a criminal offence made therein.

57. In its discretionary power, it is open for the Magistrate to direct the police to register a criminal case under Section 154, Cr.P.C. and conduct investigation. At the same time, it is open for the Magistrate, where the facts of the case and the ends of justice so demand, to take cognizance of the matter by treating it as a complaint and proceed for the "inquiry" under Sections 200 and 202, Cr.P.C.

58. It cannot be said nor it could be demonstrated that in each case, without application of its independent mind, the Magistrate shall issue simply direction "to register and investigate" i.e., to lodge a first information report on an application filed under Section 156(3), Cr.P.C. The power to conduct a preliminary inquiry into the report of commission of criminal offence(s), conferred on the Magistrate within the scheme of the Code of Criminal Procedure has not been curtailed by any of the observations made by the Apex Court in the case of Lalita Kumari, MANU/SC/1166/2013MANU/SC/1166/2013 : 2014(2) SCC 1.

59. However, it is pertinent to note that while exercising its discretionary power under Section 156(3), Cr.P.C., the Magistrate like any other court of discretionary jurisdiction is to act fairly and consciously and ensure that the discretion conferred upon it is exercised within the limits of judicial discretion. The entire emphasis is to act in an unbiased and just manner, strictly in accordance with law, to find but the truth of the case which shall come before it.

60. It is a Magistrate who is the competent authority to take cognizance of an offence and it is his duty to decide whether on the basis of the record and documents produced, an offence is made out or not and if made out, what course of law should be adopted. Emphasis is laid to the statement in Vinubhai (supra), wherein it is stated that "it is the judicial conscience of the Magistrate which has to be satisfied with reference to the record and the documents placed before him by the investigating agency, in coming to an appropriate conclusion in consonance with the principles of law." It would not be out of place to note para '17' of the report in Vinubhai, at this stage:

"17. It is clear that a fair trial must kick off only after an investigation is itself fair and just. The ultimate aim of all investigation and inquiry, whether by the police or by the Magistrate, is to ensure that those who

have actually committed a crime are correctly booked, and those who have not/are not arraigned to stand trial That this is the minimal procedural requirement that is the fundamental requirement of Article 21 of the Constitution of India cannot be doubted. It is the hovering omnipresence of Article 21 over the Cr.P.C. that must needs inform the interpretation of all the provisions of the Cr.P.C., so as to ensure that Article 21 is followed both in letter and in spirit."

(Emphasis added)

61. Applying the above legal principles, in the facts of the present case, this Court finds that the application under Section 156(3), Cr.P.C. was filed after a period of two months of the alleged incident and it was noted by the court concerned that nothing could be traced in favour of the prosecution by medical examination etc. In the circumstances before it, the court deemed it fair, just and proper to search the evidence(s) which is/are well known to the applicant and in his possession so as to find out the truth of the allegations in the application.

62. Having perused the contents of the application and the order of the court below, it cannot be said that the court concerned has committed illegally in exercise of its discretionary jurisdiction under Section 156(3), Cr.P.C. or it has exceeded in its jurisdiction in any manner or has exercised jurisdiction not vested in it in law. It cannot be said also that any material injustice has been caused to the applicant on account of the decision of the court below to treat the application under Section 156(3), Cr.P.C. as a complaint for the purpose of deciding whether or not there is sufficient ground for proceeding, rather than directing the police to register an F.I.R. and investigate under Section 154 of the Code."

17. Considered the aforesaid submissions and perused the records.

18. Law related to dealing with an application under Section 156(3) Cr.P.C. has already been settled in various pronouncements including the following judgments:

(i) Sukhwasi Vs. State of U.P., reported in 2007 (59) ACC 739 (All);

(ii) Lalita Kumari Vs. State of U.P., reported in (2014) 2 SCC 1;

(iii) **Priyanka Srivastava Vs. State of U.P.**, reported in **(2015) 6 SCC 287**;

(iv) **Ramdev Food Products Private Limited (supra)**;

(v) **Vishwanath Vs. State of U.P. and 4 Ors**, reported in **(2020) ILR 2 All 889**;

(vi) **Kailash Vijayvargiya vs Rajlakshmi Chaudhuri**, reported in **(2023) SCC OnLine SC 569**

19. As per settled view, the Magistrate/Court of competent of jurisdiction, after verifying the truth and veracity of the allegations made in the application under Section 156(3) Cr.P.C., can (i) pass an order contemplated by Section 156(3) Cr.P.C., (ii) direct examination of complaint and witnesses and proceed further in the manner provided by Section 202 Cr.P.C. and (iii) can also direct the preliminary inquiry by police in terms of law laid down in the judgment passed in the case of **Lalita Kumari (supra)**. The Magistrate/Court of competent of jurisdiction is also empowered to reject the application under Section 156(3) Cr.P.C..

20. In other words, the Magistrate/Court of competent of jurisdiction while dealing with an application under Section 156(3) Cr.P.C. is empowered to pass an order for registration of FIR and investigate into he matter or to treat such application as a 'complaint case' and he is fully empowered to reject the application under Section 156(3) Cr.P.C.

21. Regarding expression 'investigation', it would be appropriate to refer the paras 53 to 55 of the judgment passed in the case of **Kailash Vijayvargiya (supra)**, which reads as under:

"Relevant legal provisions of Chapter XII of the Criminal Procedure Code, 1973.

53. The Code vide Chapter XII, ranging from Section 154 to Section 176, deals with information to the Police and their power to investigate. Section 154 deals with the information relating to the commission of a cognizable offence and fiats the procedure to be adopted when prima facie commission of a cognizable offence is made out. Section 156 authorises a police officer in-charge of a Police station to investigate any cognizable offence without the order of a Magistrate. Sub-section (3) of Section 156 provides for any Magistrate empowered under Section 190 to order an investigation as mentioned in Section 156(1). In cases where a cognizable offence is suspected to have been committed, the officer in-charge of the Police station, after sending a report to the Magistrate empowered to take cognizance of such offence, is entitled under Section 157 to investigate the facts and circumstances of the case and also to take steps for discovery and arrest of the offender. Clauses (a) and (b) of the proviso to sub-section (1) to Section 157 give discretion to the officer in-charge not to investigate a case, when information of such offence is given against any person by name and the case is not of serious nature; or when it appears to the officer in-charge of the Police station that there is no sufficient ground for entering the investigation. In each of the cases mentioned in clauses (a) and (b) to the proviso to sub-section (1) to Section 157, the officer in-charge of the Police station has to file a report giving reasons for not complying with the requirements of sub-section (1) and in a case covered by clause (b) to the proviso, also notify the informant that he will not investigate the case or cause it to be investigated. Section 159 gives power to a Magistrate, on receiving such report of the officer in-charge, to either direct an investigation or if he thinks fit, proceed to hold a preliminary inquiry himself or through a Magistrate subordinate to him, or otherwise dispose of the case in the manner provided by the Code.

54. Sections 160 to 164 deal with the power of the Police to require attendance of witnesses, examination of witnesses, use of such statements in evidence, inducement for recording statement and recording of statements. Section 165 deals with the power of a Police officer to conduct search during investigation in the circumstances mentioned therein.

55. The power under the Code to investigate generally consists of following steps : (a) proceeding to the spot; (b) ascertainment of facts and circumstances of the case; (c) discovery and arrest of the suspected offender; (d) collection of evidence relating to commission of offence, which may consist of examination of various persons, including the person accused, and reduction of the statement into writing if the officer thinks fit; (e) the search of places of seizure of things considered necessary for investigation and to be produced for trial; and (f) formation of opinion as to whether on the material collected there is a

case to place the accused before the Magistrate for trial and if so, taking the necessary steps by filing a chargesheet under Section 173."

22. Even in the judgment passed in the case of **XYZ (supra)** referred by learned counsel for the applicant, the Hon'ble Apex Court in para 23 has observed as under:

"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."

23. In view of aforesaid, this Court is of the view that if investigation in the matter is not required then in that eventuality, the Magistrate/Court of competent of jurisdiction can treat the application under Section 156(3) Cr.P.C. as a 'complaint case'.

24. The undisputed facts of the case are to the effect that :

(i) The alleged incident took place in the premises of the applicant;

(ii) The CCTV is situated in the premises of the applicant;

(iii) The CCTV footage and the recording, as indicated in the application under Section 156(3) Cr.P.C. as also in para 38 of the instant application, quoted in para 8 of this judgment, was/is available with the applicant;

(iv) The applicant himself produced the evidence i.e. CCTV footage and the certificate, which is apparent from record available before this Court, which includes the application filed before the revisional Court.

25. In the aforesaid facts of the case, this Court is of the view that the judgment passed by the Hon'ble Apex Court in the case of **XYZ (supra)**

would not help the applicant. For the reason that the CCTV footage in the case of **XYZ (supra)** was not in possession of the informant/complainant and the same was required as such the Hon'ble Apex took note of the said fact and thereafter observed that in the matter the investigation is required.

26. In the present case, the certificate, as required under Section 65B of the Act of 1872, and evidence i.e. CCTV footage is available with the applicant, as observed above.

27. Having considered the aforesaid, this Court finds that the trial Court as also the revisional Court have not committed any illegality in passing the orders under challenge and the trial Court has rightly treated the application under Section 156(3) Cr.P.C. filed by the applicant as a 'complaint case'. Accordingly, no interference in the matter is required and being so the instant applicant having no force is hereby **rejected**.

Order Date :- 3.7.2024

Mohit Singh/-