

**\* THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

**+Crl.P.No.1904 of 2015**

**%27.03.2015**

**Between:**

Aknuri Kankaraj and others ....petitioners

AND

State of Telangana rep. by PP and another .... Respondents

**! Counsel for Petitioners : Sri Rajasekhar Tulasi**

**^ Counsel for Respondent No.1 : Public Prosecutor**

**Counsel for Respondent No.2 : Ch.Venkatratnam**

**< Gist:**

**> Head Note:**

**? Cases referred:**

AIR 2008 SC 907

**HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

**CRIMINAL PETITION No.1904 of 2015**

## **ORDER:**

The short but important question that arises for consideration in this Petition filed under Section 482 Cr.P.C. by the petitioners/Accused Nos.1 to 3 challenging the order in CrI.M.P.No.8 of 2015, dated 30.01.2015 in Cr.No.443 of 2014 passed by the learned I Additional Judicial Magistrate of First Class (I AJMFC), Kothagudem, is:

*“Whether a Magistrate, who forwarded the private complaint filed before him to the police for investigation under Section 156(3) Cr.P.C. can interfere in the pending investigation by directing the police to add some more sections of offences in the FIR and investigate? “*

2) The matrix of the case is thus:

The *defacto* complainant filed a private complaint against A1 to A3 before I AJMFC, Kothagudem on the allegations that complainant and accused are employees of Singareni Collieries Company Limited, Kothagudem and they belonged to Telangana Boggu Ghani Karmika Sangham (TBGKS) and accused 1 to 3 are officiating as President, General Secretary and Treasurer of the Union respectively. The Union is empowered to collect monthly subscriptions from the workers and to expend the same for their welfare and the amounts collected should be operated by A1 to A3. In that process, they collected an amount of Rs.91,06.159/-. However, the accused have misappropriated the amounts collected and used for their personal purposes and did not render accounts. With these allegations the complainant filed complaint under Sections 420, 406 r/w 34 and 120B IPC. The Court referred the complaint to I Town PS, Kothagudem under Section 156 (3) Cr.P.C. and the police registered a case in Cr.No.443 of 2014 and investigating the case. While so, the complainant filed CrI.M.P.No.8 of 2015 under Section 156 (3) Cr.P.C. requesting the Court to direct the police to incorporate Sections 409 and 477A IPC in FIR No.443 of 214. The accused opposed the petition on the ground that the Court

cannot interfere with the investigation. However, the learned Magistrate turned down the objection and allowed the petition.

Hence, the instant Criminal Petition.

3) Heard.

4) The contention of learned counsel for petitioners/accused is that when once the Court forwarded the complaint to police under Section 156(3) Cr.P.C. for registration of FIR and investigation, it will be prerogative of police to conduct investigation and either to file charge sheet or refer report and during the course of investigation the judicial intervention is unwarranted and impermissible under law. He submitted that after filing charge sheet or refer report under Section 173 Cr.P.C. the Magistrate will again gets power either to accept the report as it is or for a different section of offence against same accused or including some other accused basing on the charge sheet and other material collected during the investigation by the police. Similarly, if referred report is filed, the Court may either accept the same or refuse to accept and proceed against accused. If Court agrees with the investigation and accepts the referred report, it shall issue notice to the *defacto* complainant and invite his objections in the form of protest petition and then proceed in the matter as per law. All these aforesaid powers, he argued, can be exercised by the Magistrate only after a charge sheet or referred report is filed on due completion of investigation but the Magistrate has no power to meddle with the investigation in any manner. Therefore, he submitted, the Magistrate's order directing the police to incorporate additional Sections of offences in the FIR tantamounts to intruding into the domain of investigation and therefore, the said order is vitiated by abuse of process of law.

5) Per contra, learned Additional Public Prosecutor and learned counsel for *defacto* complainant argued that it is a misnomer to think that when once the Magistrate forwarded a private compliant to police under Section 156(3) Cr.P.C., he has no power to issue any suitable instructions to the police for proper investigation. They

submitted that though Magistrate has no power to direct the police to conduct the investigation in a particular manner, still he can monitor the investigation and at relevant stage, may give instructions to see that investigation is conducted in accordance with law. In the instant case, learned Magistrate only instructed the police to add some more Sections of offences and conduct investigation and submit report as to whether the offences mentioned in the FIR are committed by the accused or not. That does not mean learned Magistrate has intruded into the domain of investigation. The police have every liberty to conduct investigation and file ultimate report as per law. Therefore, learned Magistrate was within his right under Section 156(3) Cr.P.C. to give such a direction. They prayed to dismiss the petition.

6) The Code of Criminal Procedure lays down that a Magistrate can refer the complaint filed before him for investigation under two different stages. One is under Section 156(3) Cr.P.C. which is at a pre-cognizance stage and another is under Section 202 Cr.P.C. at the post-cognizance stage when the Magistrate is seised of the case. We are now concerned with referring the report at the pre-cognizance stage under Section 156(3) Cr.P.C. Section 156 reads thus:

### **Section 156 in The Code Of Criminal Procedure, 1973**

#### ***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."*

a) Section 156 (3) Cr.P.C. lays down that a Magistrate who is empowered under Section 190 Cr.P.C. to take cognizance of an offence, may refer the complaint to police under Section 156(3)

Cr.P.C. for investigation without taking cognizance. This reference is thus a “*pre-cognizance reference*”. In such an instance, the concerned police have to register the FIR basing on such reference and shall conduct investigation and file a final report/charge sheet under Section 173(2) Cr.P.C. or file a referred report. Now, the question is whether during the pendency of investigation whether a Magistrate can interfere with the registration and give directions.

The word ‘*investigation*’ is defined under Section 2(h) Cr.P.C. as follows:

**Section 2(h)** *" investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;*

So, the investigation is an exercise conducted by the police or by the person authorised by magistrate to collect the evidence relating to a particular offence. It is the prerogative of the law enforcing authority of the Executive of the State and therefore, generally the judiciary will not interfere with the domain of investigation. It will not direct the police as to method and manner in which they have to conduct investigation. However, by that count it cannot be said that the investigation is totally opaque for the judiciary. The Apex Court laid down that Magistrate under Section 156(3) Cr.P.C. has power to monitor investigation to ensure that it is properly done, if the investigation is not done properly. The Apex Court in a decision reported in ***Sakiri Vasu vs. State of U.P.*** referring its earlier judgments, has elaborately discussed about the power of Magistrate under Section 156(3) Cr.P.C. The Apex Court in earlier decision reported in ***Dilawar Singh v. State of Delhi (2007 Cr.L.J.4709)*** at para-17 held thus:

*“13. 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) Cr.P.C., and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order or orders as he thinks necessary for ensuring a proper investigation.*

*All these powers a Magistrate enjoys under Section 156(3) Cr.P.C.”*

The Apex Court further observed thus:

*17. In our opinion Section 156(3) Cr.P.C. 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 F.I.R. 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) Cr.P.C., 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.*

*18. It is well-settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution.*

*19. The reason for the rule (doctrine of implied power) is quite apparent. Many matters of minor details are omitted from legislation. As Crawford observes in his 'Statutory Construction' (3rd edn. page 267):*

*If these details could not be inserted by implication, the drafting of legislation would be an indeterminable process and the legislative intent would likely be defeated by a most insignificant omission.*

*x x x x x*

*24. In view of the abovementioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) Cr.P.C. to order registration of a criminal offence and/or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) Cr.P.C., we are of the opinion that they are implied in the above provision.”*

So, a perusal of the above decision would show that for ensuring proper investigation the Magistrate has power to monitor the investigation under Section 156(3) Cr.P.C. However, such a power has to be exercised cautiously and with judicious discretion.

7 ) Now, coming to the instant case, the Magistrate under the

impugned order directed the police to add Sections 409 and 477A IPC to the FIR and investigate and file the report. In my considered view, by this order, he has not committed any judicious overreaches and made an impermissible penetration into the domain of investigation. The prerogative of police to investigation has been kept in tact, but they were only asked to investigate whether the accused have in fact committed the offences under the newly added sections including the ones which are already referred. So, the act of Magistrate cannot be found fault with.

8) Accordingly, this Criminal Petition is dismissed as being devoid of merits.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

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**U. DURGA PRASAD RAO, J**

Date: 27.03.2015

**Note:** L.R. copy to be marked Yes /No

Murthy