

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Misc. No.M-14021 of 2012
Date of decision : 05.12.2015**

Jasvir Kaur and others

.....Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the digest? Yes

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Jagdish Manchanda, Advocate
for the petitioners.

Mr. K. S. Aulakh, AAG, Punjab.

Mr. Suvineet Sharma, Advocate for
Mr. Gaurav Goel, Advocate
for respondent no.2.

ANITA CHAUDHRY, J.

The petitioners have challenged the order dated 30.04.2012, vide which the police had been directed to register the FIR. The petitioners in this petition filed under Section 482 Cr.P.C. also seek quashing of the FIR registered on 03.05.2012 at Police Station Boha, District Mansa.

A brief narrative of the facts would be appropriate. Manjeet Kaur filed a complaint Annexure P-1/T in August, 2011 claiming herself to be the daughter of Bhola Singh and Gurmail Kaur. It is pleaded that Jasvir Kaur was married to Maninder Singh and

they had two sons namely Amandeep and Ajaideep. It was pleaded that Jasvir Kaur was residing with friend of the complainant's father namely Mann Singh accused no.7. Jasvir Kaur in connivance with accused no.7 and the remaining accused in order to grab the property of the complainant forged a transfer deed and got the ownership changed and the land owned by Bhola was transferred in the name of Amandeep and Ajaideep accused Nos.2 & 3 by preparing a forged and fictitious pedigree table. The complainant had alleged that Jasvir Kaur entered her name instead of mother's name and introduced her sons as sons of Bhola Singh in order to grab the land. Allegations were made that the rest of the accused had connived. It was pleaded that after committing the forgery they had murdered her father, mother and grand-mother and they also tried to kill her son but she escaped from their clutches. The complainant had alleged that she has been visiting the accused regarding her property and accused used to take her signatures on blank papers saying that they would give her the property and they refused, threatened her & her son and a complaint was given to the police.

The trial Magistrate registered the complaint and posted the case for preliminary evidence of the complainant and also simultaneously called for the report of the SHO vide order dated 20.08.2011. The report of the SHO was received and the case was adjourned for evidence of the complainant. Two witnesses were examined on 23.12.2012. Thereafter, the case was transferred to another Magistrate. The complainant closed the preliminary evidence and the case was adjourned for consideration on the point of

summoning. Arguments in part were heard on 21.03.2012 and the case was posted for remaining arguments. The complainant moved an application dated 10.04.2012 purportedly under Section 153(3) Cr.P.C. praying for directions to the police to register the FIR. The Judicial Magistrate vide order dated 30.04.2012 directed the police to register the FIR. The order reads as under:-

“Complainant Manjeet Kaur through her counsel moved an application under Section 156(3) of Cr.P.C. for registration of case against the accused heard. In the application, it has been submitted by the complainant that in the inquiry conducted by police of Police Station Boha, allegations against the accused persons have duly proved. As such the inquiry in this case has been conducted by police and inquiry report dated 16.09.2011 has also been submitted by police of P.S. Boha. Yousuf Vs. Smt. Afaq Jahan and others, 2006(1) RCR (Criminal) 451 has held as under: Complainant before Magistrate-Magistrate without taking cognizance can direct the police to investigation and register FIR. A Criminal Procedure Code, Section 156(3), 154 and 202-Criminal complaint regarding cognizable offence filed before Magistrate-Magistrate without taking cognizance can direct the police under Section 156(3) Cr.P.C. to investigation and register FIR-Even if there is no direction of Magistrate, it is duty of police to register FIR, if complaint disclosed cognizable offence. B. Criminal Procedure Code Section 2 (d)-Meaning of word “complaint” There is no particular format of a complaint – A petition addressed to the Magistrate containing an allegation that an

offence be suitably dealt with as in the instant case, is a complaint. In view of the inquiry report dated 16.09.2011 submitted by the police of P.S. Boha and the law laid down by the Hon'ble Supreme Court of India, SHO of Police Station, Boha is directed to register the Fir against the accused persons after conducting the thorough investigation and assuring that no injustice would be done with innocent person. Application stands disposed of accordingly. File be kept pending and be attached with the challan as and when the challan is presented in the Court. Sd/- Mahesh Kumar Judicial Magistrate Ist Class Budhlada. Pronounced in open court dated 10.04.2012.

The police registered FIR No.44 dated 03.05.2012 under Sections 420, 467, 468, 471, 120-B IPC at Police Station Boha, District Mansa.

The petitioners are aggrieved and have assailed the order and seek quashing of the FIR on the ground that the Magistrate had already taken the cognizance of the complaint and had passed orders and there was no occasion with the Magistrate to direct the police officials to register the FIR.

Notice of motion was issued and operation of the order was stayed. Respondents filed their reply.

The State in its response had pleaded that on the directions of the Court, FIR had been registered and the case was at the initial stage of the investigation. It was pleaded that the Magistrate had referred to a judgment of the Apex Court which was fully applicable and prima facie an offence was made out under Section 420, 467, 468, 471, 120-B IPC.

Respondent no.2 took the objection that the petition under Section 482 Cr.P.C. was not maintainable and it was settled that investigation was the exclusive domain of the investigating agency and once the final report is prepared by the police, it would be open to scrutiny of the trial Court. It was pleaded that the petitioners were trying to frustrate the prosecution on technical grounds. It was pleaded that the Court was empowered to send the case for investigation and registration of the FIR and the Magistrate had not taken cognizance. It was pleaded that the Court while exercising jurisdiction under Section 482 Cr.P.C. cannot entertain it since only a legal question had been raised. It was pleaded that the marriage of Bhola Singh with Jasvir Kaur was a void marriage and it was admittedly performed during the life time of Gurmail Kaur and this fact is stated in the Will (Annexure P-15) and sister's property in the hands of Bhola Singh could not have been willed away. It was pleaded that a civil suit was pending. It was further pleaded that a report had been called from the police which had been submitted and the report clearly states that the mutation did not refer to the name of Gurmail Kaur, the first and the legitimate wife of Bhola Singh.

The counsel for the petitioners contended that the Magistrate after taking cognizance has sent the case for registration of the FIR and the FIR was registered which he could not have done and it had erred while making the order. It was urged that the law on the issue is clearly laid down by the Apex Court in ***Devarapalli Lakshminarayana Reddy & Ors. Vs. V. Narayana Reddy & Ors. (1976) 3 SCC 252 and Tula Ram & Ors. Vs. Kishore Singh AIR 1977 S.C. 2401.***

It was urged that no prayer had been made in the complaint for sending the matter to the police for investigation or registration of the FIR under Section 156(3) Cr.P.C. and the Magistrate examined the complainant and his witnesses and then postponed the case for arguments as to whether the accused were to be summoned or not and all it could do was to call for a report and the report had already been received as an order to that effect was made on the first hearing then it could not have sent the matter for registration of the FIR. It was urged that an application was given by the complainant and immediately thereafter, the Magistrate ignoring the law and the procedure, directed the police to register the FIR. The counsel had referred to the orders made on various dates which were made part of the petition. He referred to Annexure P-2, the application which was moved on 10.04.2012, under Section 156(3) Cr.P.C. and the impugned order dated 30.04.2012. Reliance was placed upon ***State of Orissa and Anr. Vs. Saroj Kumar Sahoo 2006(1) ACR1(SC), Ashfaq Ahmed Quereshi and Anr. Vs. Namrata Chopra and Ors. 2014 AD (SC) 21, Mohd. Yousuf Vs. Smt. Afaq Jahan and Anr. AIR 2006 SC 705, Shivjee Singh Vs. Nagendra Tiwary and Ors. 2010 AIR SC 2261, Sakiri Vasu Vs. State of U.P. and Ors. 2008 AIR SC 907, Smt. Mona Panwar Vs. The Hon'ble High Court of Judicature at Allahabad through its Registrar and Ors. 2011(1) RCR (Criminal) 856, Bhagat Ram Vs. Surinder Kumar and Ors. 2005(2) ACR 2146 (SC), Dilawar Singh Vs. State of Delhi 2007(4) RCR (Criminal) 115 and Rameshbhai Pandurao Hedau Vs. State of Gujrat 2010(4) SCC 185.*** It was urged that the powers can be exercised under the inherent powers to quash the FIR and the order in the given circumstances.

The submission on the other hand on behalf of the complainant was that the trial Court had not taken cognizance against the petitioners and the petitioners could not complain that the Magistrate had acted illegally in ordering the FIR. The counsel had referred to para no.7 of the reply filed by them and to the authority referred therein. It was urged that taking cognizance has not been defined in the Criminal Procedure Code and the Magistrate applies his mind not for the purpose of proceedings in the subsequent action but for taking action of some other kind like ordering investigation under Section 156(3) Cr.P.C. or issuing search warrants etc., he cannot said to have taken cognizance of the offence and the Magistrate was yet to apply its mind. It was urged that there is no failure of justice and the petition under Section 482 Cr.P.C. was not maintainable. Reliance was placed upon a decision of this Court in ***Onkar Singh and another Vs. State of Punjab and another in CRM-M-19478, 2013, decided on 19.08.2015.***

The submissions made on behalf of the respective parties have been considered and the record has been perused and it is clear that a complaint Annexure P1/T was filed by the complainant where no prayer for sending the matter to the police under Section 156(3) Cr.P.C. had been made. The first order made in the complaint is reproduced in Para No.8 of the petition which simply states that the complaint be registered and the case was adjourned to 21.09.2011 for preliminary evidence of the complainant and for report of the SHO. The Magistrate while adjourning the matter for preliminary evidence of the complainant had simultaneously sought the report of

the SHO under Section 202 Cr.P.C. When the matter came up for hearing on 21.09.2011, the report of the SHO had been received and finds reference in the order made on the adjourned hearing. The Magistrate adjourned the matter for evidence of the complainant. On the adjourned hearings, evidence was recorded and on 23.02.2012, the preliminary evidence was closed and the case was ordered to be put up on 12.03.2012 for consideration on the point of summoning.

The order dated 12.03.2012 reads as under:-

“Present:- Complainant with counsel.

***Arguments on the point of summoning
the accused partly heard for summoning arguments
To come up on 10/04/2012.***

JMIC/21/3/12”

The complainant thereafter moved an application Annexure P-2 and the Magistrate after hearing arguments ordered the police to register the FIR. It is this order which is under challenge. The FIR which was subsequently registered which is Annexure P.4.

The point that is under consideration is whether the Magistrate could order the registration of the FIR, after it had recorded the evidence led by the complainant and arguments had started. Before proceeding to examine the nature of the order made on 30.04.2012, it is appropriate to examine the statutory provisions and the judicial precedents.

Section 156 of the Cr.P.C. reads as under:-

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.

Section 202 of the Cr.P.C. reads as under:-

Section 202 in The Code Of Criminal Procedure, 1973

202. Postponement of issue of process.

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself 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: Provided that no such direction for investigation shall be made,--

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub- section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath: Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub- section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer- in- charge of a police station except the power to arrest without warrant.

It will thus be seen that the power of the police authorities

to investigate a cognizable offence is not dependent on an order of the Magistrate. At the same time, such power may be exercised by the officer concerned on an order being passed by any Magistrate empowered under Section 190 of the Code for making such an investigation. Chapter XII deals with the conduct of investigation of both cognizable and non- cognizable offences and the steps to be taken in that regard culminating in the filing of the report of the investigation on completion thereof under Section 173(2) of the Code. At this stage it may also be indicated that under Sub-section (8) of Section 173 the police is empowered to conduct further investigation in respect of an offence even after a report under Sub-section (2) is forwarded to the Magistrate.

However, all these steps are to be taken by the learned Magistrate prior to taking cognizance of the offence. On the other hand, Chapter XV deals with complaints filed before the Magistrate for taking cognizance of an offence.

The settled legal position which had been enunciated in number of decisions are *ad idem* on the question that powers under Section 156(3) Cr.P.C. can be invoked by a Magistrate at a pre-cognizance stage whereas powers under Section 202 Cr.P.C. are to be invoked if cognizance is taken before a complaint but before issuance of process. Once a Magistrate proceeds to take cognizance and passes an order under Section 202(1) of the Criminal Procedure Code, he cannot thereafter, refer to a procedure prescribed under Section 156(3) Cr.P.C. This legal position as noticed above finds support from judgments of the Hon'ble Supreme Court namely

Devarapalli's case and ***Tula Ram's*** Case (supra).

I may also refer to the decision in [Dilawar Singh vs. State of Delhi](#) [(2007) 12 SCC 641], where the difference in the investigative procedure in Chapters XII and XV of the Code has been recognized and in that case the Apex Court also took the view that any Judicial Magistrate, before taking cognizance of an offence, can order investigation under Section 156(3) of the Code and in doing so, he is not required to examine the complainant since he was not taking cognizance of any offence therein for the purpose of enabling the police to start investigation.

It is now well-settled that in ordering an investigation under Section 156(3) of the Code, the Magistrate is not empowered to take cognizance of the offence and such cognizance is taken only on the basis of the complaint of the facts received by him which includes a police report of such facts or information received from any person, other than a police officer, under Section 190 of the Code. Section 200 which falls in Chapter XV, indicates the manner in which the cognizance has to be taken and that the Magistrate may also inquire into the case himself or direct an investigation to be made by a police officer before issuing process.

In ***Rameshbhai Pandurao Hedau Vs. State of Gujrat*** **2010(4) SCC 185**, the Apex Court while considering the controversy as to the powers of the Magistrate under Section 156(3) and Section 202 Cr.P.C. held as follows:-

17. *The law is well-settled that an investigation ordered by the Magistrate under Chapter XII is at the pre-cognizance stage and the inquiry and/or investigation ordered under [Section 202](#) is at*

the post-cognizance stage. What we have to consider is whether the Magistrate committed any error in refusing the appellant's prayer for an investigation by the police under [Section 156\(3\)](#) of the Code and resorting to [Section 202](#) of the Code instead, since both the two courses were available to him.

18. The power to direct an investigation to the police authorities is available to the Magistrate both under [Section 156\(3\)](#) Cr.P.C. and under [Section 202](#) Cr.P.C. The only difference is the stage at which the said powers may be invoked. As indicated 17 hereinbefore, the power under [Section 156\(3\)](#) Cr.P.C. to direct an investigation by the police authorities is at the pre-cognizance stage while the power to direct a similar investigation under [Section 202](#) is at the post-cognizance stage. The learned Magistrate has chosen to adopt the latter course and has treated the protest petition filed by the Appellant as a complaint under [Section 200](#) of the Code and has thereafter proceeded under [Section 202](#) Cr.P.C. and kept the matter with himself for an inquiry in the facts of the case. There is nothing irregular in the manner in which the learned Magistrate has proceeded and if at the stage of Sub-section (2) of [Section 202](#) the learned Magistrate deems it fit, he may either dismiss the complaint under [Section 203](#) or proceed in terms of [Section 193](#) and commit the case to the Court of Sessions.

Yet again, the matter came up for examination in ***Madhao and Anr. Vs. State of Maharashtra and Anr. (2013)5 SCC 615*** and the Hon'ble Supreme Court held as under:-

13) When a magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The

magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence itself. As said earlier, in the case of a complaint regarding the commission of cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the precognizance stage and avail of Section 156(3).

14) *Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives:*

(a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightaway issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.

(b) The Magistrate can postpone the issue of process and direct an enquiry by himself.

(c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.

15) *In case the Magistrate after considering the statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that*

there are sufficient grounds for proceeding he can dismiss the complaint.

16) Where a Magistrate orders investigation by the police before taking cognizance under Section 156(3) of the Code and receives the report thereupon he can act on the report and discharge the accused or straightaway issue process against the accused or apply his mind to the complaint filed before him and take action under Section 190 of the Code.

Keeping in view the above, if the present case is tested on the law, it is held that the Magistrate had violated the provisions of the Code and could not have ordered registration of the FIR. He had taken cognizance of the offence and he was bound to follow the procedure laid down there. A resort to powers under Section 200 and 202 of the Code does not permit a Magistrate to revert to the procedure prescribed under Section 156(3) Cr.P.C. and the Magistrate could not have ordered the police to register the FIR. Therefore, it is a fit case to exercise the powers under Section 482 Cr.P.C. and the impugned order dated 30.04.2012 (Annexure P-3) made by the Magistrate and the subsequent FIR (Annexure P-4) are quashed. The present petition is accepted. The Magistrate is directed to proceed in accordance with law from the stage at which it was on 21.03.2012.

05.12.2015
sunil

(ANITA CHAUDHRY)
JUDGE