

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM No. M-16042 of 2012 (O&M)

Date of decision : 06.02.2015

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Luxmi Co-operative Group Housing Society Ltd.

.....Petitione

Versus

State of Haryana

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Gurdial Singh Jaswal, Advocate for the petitioner.

Mr. C.S Bakshi, Addl. A.G., Haryana.

Mr. Vineet Soni, Advocate for respondent no.2.

Mr. Pardeep Solath, Advocate for respondent no.3.

Mr. Sandeep Kotla, Advocate for respondent no.4.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

This petition has been filed for quashing of the order dated 30.11.2011 (Annexure P-2) passed by the Judicial Magistrate Ist Class, whereby the request for sending the complaint under Section 156(3) for registration of offence against the accused has been declined in complaint case No. 364/25.11.2011 titled as "The Luxmi Cooperative Group Housing Society Limited vs. Mr. M.R Gupta and others'.

Petitioner filed a complaint under Sections 420/120-B/467/468/471 IPC against the respondents No. 2 to 4 who, allegedly, in connivance with each other have committed an embezzlement to the tune of Rs. 6.00 Crores (Rupees Six Crores) in respect of the funds of the society i.e The Luxmi Co-operative Group Housing Society Limited, Plot No. GH-4, Sector 10-A, Gurgaon (hereinafter referred to as 'the Society'). As per the allegations, the accused mentioned in the complaint after embezzling the funds of the Society illegally forged and fabricated all the records pertaining to the funds of society like cash receipts, cash expenditure register, general payment register, general finance receipt ledger and also siphoned the society funds in the hands of their relatives and favourite ones. When, this fact came to the knowledge of the members of the Society, they immediately made the complaint with the Registrar Cooperative Societies, police authorities and other authorities. Assistant Registrar, Cooperative Societies vide letter dated 26.7.2010 forwarded the complaint to the Commissioner of Police, Gurgaon for registration of FIR against the accused persons. But no action was taken on the abovesaid complaints and thereafter the Society filed a criminal complaint under Section 156(3) Cr.P.C against Mr. M.R Gupta, Mr. Devender Beniwal and Mr. Bharat Singh. Vide order dated 30.11.2011 (Annexure P-2) declined to send the complaint for investigation to police under Section 156(3) Cr.P.C and adjourned the matter for recording preliminary evidence of the complainant. A revision petition against his order was dismissed as

withdrawn as the petitioner-Society wanted to challenge the said order by way of filing revision petition before this Court.

Upon notice, separate written statements have been filed by respondents no. 2, 3 and 4. As per the preliminary objections, the impugned order dated 30.11.2011 is an interlocutory order and no revision petition is maintainable against the said order as held by the Hon'ble Allahabad High Court, Full Bench in the matter of ***Father Thomas vs. State of U.P and another, 2011 (3) RCR(Crl.) 160.*** Second objection taken is that in view of judgment of Hon'ble Supreme Court in the case of ***Sakiri Vasu vs. State of U.P (2008) 2 SCC 409***, no directions can be given by the High Court under Section 482 Cr.P.C. to the concerned Magistrate for registration of FIR.

On merits, the case of respondent no.2 is that he was the President of Managing Committee of the petitioner-Society from the year 2004 till January 2007 and he along with other members of the Managing Committee of the petitioner-Society carried out construction of the flats of the Society with due care and to the best of their abilities. The next President of the Managing Committee of the Society and other office bearers joined as members of the Society at the time when almost 95% construction of the building of the Society was complete and they all joined the Society as members only after thorough inspection of the quality of the building and other facilities. Completion certificate of the Society Building was obtained by the respondent when he was the president of the Managing

Committee. Total amount collected by the Society in question was to the tune of Rs. 4.00 Crores and a very big and substantial part of the said amount has admittedly been spent on construction of 25 flats. On the basis of the documents provided by respondent no.2, the current President of the Managing Committee executed deed of Declaration dated 22.11.2007 under Section 11(2) of Haryana Apartment Ownership Act, 1983. The present President is a compulsive litigant and has filed various false, frivolous and vague complaints against the respondents with various competent authorities of Cooperative Department and the Police. The dispute is completely civil in nature. A civil suit has been filed against the respondents for declaration, permanent and mandatory injunctions and for rendition of accounts and the same is pending adjudication before Civil Judge (Junior Division), Gurgaon. Hence, the complaint filed before the Judicial Magistrate, Gurgaon under Section 156(3) Cr.P.C is absolutely unwarranted and uncalled for. A copy of civil suit is annexed as Annexure R-2/1.

On merits, respondent no.3 has reiterated his stand that the dispute was completely civil in nature and the petitioner-Society has already filed civil suit against respondent no.2. Respondents no. 3 & 4 have taken the same stand as respondent no.2.

This question has been considered by Hon'ble the Supreme Court in a case of **Devarpalli Lakshminarayana Reddy and others vs. V. Narayan Reddy and others** , 1976(3) SCC 252 wherein in para 17, it has been held as under:-

17. Section 156

(3) occurs in Chapter XII, under the caption “information to the police and their powers to investigate while Section 202 is the Chapter XV which bears the heading “Of complaints to Magistrate”. The power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by Section 202(1). The two operate in distinct sphere at different stages. The first is exerciseable at the pre-cognizance, the second at the post-cognizable stage when the magistrate is in seisin of the casae. That is to say in the case of a complaint regarding the commission of a 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). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3). It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of peremptory reminder or intimation to the police to exercise their plenary powers of

investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173. On the other hand, Section 202 comes in at a stage when some evidence has been collected by the Magistrate in a proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under Section 202 to direct, within the limits circumscribed by that Section, an investigation “for the purpose of deciding whether or not there is sufficient ground for proceeding.” Thus, the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate in complete proceedings already instituted upon a complaint before him.”

Reference can be made to judgment of Hon'ble the Supreme Court in a case of ***Mona Panwar vs. High Court of Judicature of Allahabad through its Registrar and others, 2011 (3) SCC 496*** wherein the scope of sending the matter for investigation to the police under Section 156(3) Cr.P.C and summoning the complainant for recording of evidence in a complaint

under Section 200 Cr.P.C has been deeply examined and it has been held that if on reading the complaint, the Magistrate finds that allegations therein disclose cognizable offence and forwarding of complaint to police for investigation under Section 156(3) Cr.P.C will not be conducive to justice, the Magistrate will be justified in adopting the course suggested in Section 200 Cr.P.C. In this case on a complaint made by a victim that she had been raped by her father-in-law, the Judicial Magistrate after recording the preliminary evidence proceeded to treat it as a complaint and fix the case for recording the statement of the victim under Section 200. The High Court while exercising power under Section 482 directed appellant to decide application of respondent no.3 (rape victim) within ambit of her power under Section 156(3) and also directed her to pass an order for registration of FIR against erring police officers, who had refused to register FIR earlier. In paragraphs, 18, 19, 22 and 23, it has been observed as under:

18. When the complaint was presented before the appellant, the appellant had mainly two options available to her. One was to pass an order as contemplated by Section 156(3) of the Code and second one was to direct examination of the complainant upon oath and the witnesses present, if any, as mentioned in Section 200 and proceed further with the matter as provided by

Section 202 of the Code. An order made under sub-section (3) of Section 156 of the Code is in the nature of a peremptory reminder or intimation to the police to exercise its plenary power of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with the final report either under Section 169 or submission of charge sheet under Section 173 of the Code. A Magistrate can under Section 190 of the Code before taking cognizance ask for investigation by the police under Section 156(3) of the Code. The Magistrate can also issue warrant for production, before taking cognizance. If after cognizance has been taken and the Magistrate wants any investigation, it will be under Section 202 of the Code.

19. The phrase “taking cognizance of” means cognizance of offence and not of the offender. Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a

Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint or on a police report or upon information of a person other than a police officer. Before the Magistrate can be said to have taken cognizance of an offence under Section 190(1)(b) of the Code, he must have not only applied his mind to the contents of the complaint presented before him, but must have done so for the purpose of proceeding under Section 200 and the provisions following that Section. However, when the Magistrate had applied his mind only for ordering an investigation under Section 156(3) of the Code or issued a warrant for the purposes of investigation, he cannot be said to have taken cognizance of an offence.

22. The judicial discretion exercised by the appellant was in consonance with the scheme postulated by the Code. There is

no material on the record to indicate that the judicial discretion exercised by the appellant was either arbitrary or perverse. There was no occasion for the learned Single Judge of the High Court to substitute the judicial discretion exercised by the appellant merely because another view is possible. The appellant was the responsible judicial officer on the spot and after assessing the material placed before him he had exercised the judicial discretion. In such circumstances this Court is of the opinion that the High Court had no occasion to interfere with the discretion exercised judiciously in terms of the provisions of Code.

23. Normally, an order under Section 200 of the Code for examination of the complainant and his witnesses would not be passed because it consumes the valuable time of the Magistrate being vested in inquiring into the matter which primarily is the duty of the police to investigate. However, the practice which has developed over the years is that examination of the

complainant and his witnesses under Section 200 of the Code would be directed by the Magistrate only when a case is found to be serious one and not as a matter of routine course. If on a reading of a complaint the Magistrate finds that the allegations therein disclose a cognizable offence and forwarding of the complaint to the police for investigation under Section 156(3) of the Code will not be conducive to justice, he will be justified in adopting the course suggested in Section 200 of the Code.

In the facts of the present case, the Magistrate has exercised his discretion in not sending the complaint to the police for investigation under Section 156(3). A direction cannot be given to the Magistrate to pass a fresh order on the complaint under Section 156(3) of the Cr.P.C.

In view of all that has been discussed above, revision petition is dismissed.

06.02.2015
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(RITU BAHRI)
JUDGE