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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 15th January, 2016

+ **CRL.M.C. No.3564/2013**

RAVINDER JAIN & ANR.

..... Petitioners

Represented by: Mr.Anil Sapra, Sr Advocate
with Mr.Rajesh Baweja &
Mr.Siddarth Handa, Advs.

versus

STATE & ORS.

..... Respondents

Represented by: Mr.G.M.Farooqui, APP for
the State/R1 with SI Sunil
Daggar – DIU, SD, Delhi.
Mr.V.K.Sharma, Mr.Anup
Gupta & Mr.Pawan Verma,
Advs for R2 and R3.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide present petition under Section 482 of the Cr P C, the petitioners have assailed the order dated 16.08.2013 whereby learned Trial Court directed the SHO concerned to register the FIR against them.
2. Learned senior counsel has argued that learned Trial Court had taken the cognizance on 06.05.2013 and once the cognizance is taken, thereafter learned Magistrate has no power to direct the police to register the FIR under Section 156 (3) of the Cr P C.
3. To buttress the line of arguments, learned senior counsel has relied

upon the decision of the Supreme Court in **Rameshbhai Pandurao Hedau v. State of Gujarat : AIR 2010 SC 1877** wherein the Supreme Court observed as under:-

*“13. The settled legal position has been enunciated by this Court in several decisions to which we shall refer presently. The Courts are ad idem on the question that the powers under Section 156(3) can be invoked by a learned Magistrate at a pre-cognizance stage, whereas powers under Section 202 of the Code are to be invoked after cognizance is taken on a complaint but before issuance of process. Such a view has been expressed in **Suresh Chand Jain’s case (AIR 2001 SC 571)** as well as in **Dharmeshbhai Vasudevbbhai’s case (AIR 2009 SC (Supp) 1446)** and the case of **Devarapalli Lakshminarayana Reddy’s case (AIR 1975 SC 1672)**.*

*14. The three aforesaid cases have been cited on behalf of the parties. We may also refer to the decision of this Court 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 this Court also appears to have taken 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. Reference has been made to the decision of this Court in **Suresh Chand Jain’s case (supra)**. In other words, as indicated in the decisions referred to hereinabove, once a Magistrate takes cognizance of the offence, he is, thereafter, precluded from ordering an investigation under Section 156(3) of the Code.”*

4. Learned counsel appearing on behalf of respondent Nos.2 & 3

without prejudice to the rights and contentions of respective parties on the merits of the case submits that he does not press the order dated 16.08.2013 passed by learned Trial Court and submits that let the respondents to lead evidence as directed by order dated 06.05.2013.

5. Learned senior counsel appearing on behalf of petitioners, upon the said statement of learned counsel for respondent Nos.2 & 3 under instructions, wishes to withdraw the instant petition. Permission is granted, as prayed for.

6. Keeping in view the statements made by both the sides in the facts of the case, I hereby quash the impugned order dated 06.08.2013 passed by learned Trial Court.

7. Consequently, the FIR No.259/2013 registered at police station Fateh Pur Beri, Delhi against the petitioners and proceedings arising out therefrom are also quashed.

8. In view of above terms, instant petition stands disposed of.

Crl.M.A.Nos.4291 and 19118 of 2014

Dismissed as infructuous.

**SURESH KAIT
(JUDGE)**

JANUARY 15, 2016
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