

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

Date of Decision: November 10th, 2016

+ **CRL.M.C. 4822/2014**

RAJINDER PRASAD JAIN

..... Petitioner

Through Mr.Shiv Charan Garg and Mr.Imran
Khan, Advocates.

versus

STATE (GNCTD)

..... Respondent

Through Ms.Manjeet Arya, Additional Public
Prosecutor for the State.
Mr.Arun Arora, Ms.Preet, Advocates
for respondent No.2.

**CORAM:
HON'BLE MR. JUSTICE P.S.TEJI**

P.S.TEJI, J.

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure (hereinafter shall be referred as Cr.P.C.) for setting aside the order dated 16.07.2014 passed by the learned Metropolitan Magistrate, Central, Tis Hazari Courts, Delhi whereby the application of the petitioner filed under Section 156(3) Cr.P.C. was dismissed.

2. Facts, in brief, are that an application under Section 156(3) Cr.P.C. was filed by the petitioner before the learned Magistrate. In the application, it was alleged that the respondent no.2 Amit Jain/proposed accused was son of the brother of the petitioner with

whom partnership business was carried out by the petitioner for a long time. A suit for partition was filed by the petitioner wherein the respondent no.2 took the stand that the business was duly partitioned in the year 1988. It was alleged that the respondent no.2 had taken all the files of the said firm from Sh. Inderjeet Ahuja, Advocate who was dealing with the income tax matters of the firm. It was alleged that the respondent no.2 had taken files on the false pretext that he was authorized by the petitioner. It was alleged that such an act of the respondent no.2 amounted to criminal breach of trust and misappropriation. A complaint in this regard was allegedly filed by the petitioner before the SHO, but since no action on the same was taken by the police, he approached the Court by filing the application/complaint.

3. The learned Magistrate has gone through the material placed before him and declined the request of the petitioner to refer the matter to the police for further investigation vide impugned order dated 16.07.2014 while observing that all the facts and circumstances of the case are within the knowledge of the complainant/petitioner-herein and no ground for directing the police to investigate is made out. The learned Magistrate called the petitioner to adduce pre-summoning evidence. Feeling aggrieved of the same, the present petition has been preferred by the petitioner.

4. Arguments advanced by the counsel for the parties were heard.

5. The grounds taken in support of the present petition and the

arguments advanced by the counsel for the petitioner are that all the income tax files pertaining to the petitioner are in unlawful possession of the respondent no.2 and the same cannot be recovered without the investigation by police. It was further submitted that the specimen signature of the accused has not been taken so far and the investigation by police is required to get the same examined from FSL. It was further submitted that the learned Magistrate has not properly considered the case law on the point.

6. In support of the above contentions, judgments in the case of *Acharya Arun Dev v. State* 2005 (2) JCC Delhi 897, *Krishan Lal v. Dharmendra Bafna* 2009 RLR 421 SC, *Cogent Silver Fibre Pte. Ltd. v. State* JCC (207) Vol.2 1363, *Lallan Singh v. State* 2006 RLR NSC 80, *Navdeep Singh v. State* 2005 JCC Vol. 1 463, *Mahavir Singh v. Police Commissioner* 2006 RLR 368 and *Standard Chartered Bank v. Yogesh* 2006 RLR 587 have been relied upon.

7. It is a well settled law that a Magistrate has two options when a complaint case is filed under Section 200 Cr.P.C. before him i.e. either to get the matter investigated through police under Section 156(3) Cr.P.C. or to proceed under Section 200 Cr.P.C. When the Magistrate proceeds under Section 156(3) of the Code, he passes the order without taking cognizance of the offence. If the Magistrate wishes to proceed under Section 200 of the Code then he has to take cognizance of the matter and follow the procedure prescribed under chapter-XV. It is an alternative procedure which

the Magistrate 'may' or 'may not' adopt at the stage when he is examining the complainant under Section 156(3) of the Code. Under Section 200 Cr.P.C., the Magistrate has a duty to record evidence led by the complainant and also to examine his witnesses and if necessary even to call for a police report and then to decide as to whether he has to proceed under chapter-XV or has to dismiss the complaint. The power to refer the cognizable offence and direct the police to investigate the cognizable offence is envisaged in Section 156(3) of the Cr.P.C. It is not necessary to refer every complaint filed under Section 200 to the police for investigation under Section 156(3) Cr.P.C. In *Skipper Beverages Pvt. Ltd. vs. State 2001(92) DCT 217 SC*, while relying upon *Suresh Chand Jain vs. State of Madhya Pradesh and Ors., 2001(1) AD (Cri.) SC 34*, Supreme Court held:

“7. It is true that Section 156(3) of the Code empowers a Magistrate to direct the police to register a case and initiate investigations but this power has to be exercised judiciously on proper grounds and not in a mechanical manner. In those cases where the allegations are not very serious and the complainant himself is in possession of evidence to prove his allegations there should be no need to pass orders under Section 156(3) of the Code. The discretion ought to be exercised after proper application of mind and only in those cases where the Magistrate is of the view that the nature of the allegations is such that the complainant himself may not be in a position to collect and produce evidence

before the Court and interests of justice demand that the police should step in to help the complainant.

10. Section 156(3) of the Code aims at curtailing and controlling the arbitrariness on the part of the police authorities in the matter of registration of FIRs and taking up investigations, even in those cases where the same are warranted. The Section empowers the Magistrate to issue directions in this regard but this provision should not be permitted to be misused by the complainants to get police cases registered even in those cases which are not very serious in nature and the Magistrate himself can hold enquiry under Chapter XV and proceed against the accused if required. Therefore the Magistrate, must apply his mind before passing an order under Section 156(3) of the Code and must not pass these orders mechanically on the mere asking by the complainant. These powers ought to be exercised primarily in those cases where the allegations are quite serious or evidence is beyond the reach of complainant or custodial interrogation appears to be necessary for some recovery of article or discovery of fact.”

8. Remedy provided in Section 156(3) Cr.P.C. is a discretionary as the provision proceeds with the word 'may'. The Magistrate is required to exercise his mind while doing so and pass orders only if he is satisfied that the information reveals commission of cognizable offence/offences and also about necessity of police investigation for digging out of evidence neither in possession of the complainant nor

can be procured without the assistance of the police. The complainant, as a matter of right, cannot insist that the complaint case filed by him should be directed in every eventuality to the police for investigation. In *Mohd. Salim vs. State (Crl.M.C. 3601/2009 decided on 10.03.2010)*, this Court held:

“11. The use of the expression "may" in Sub-section (3) of Section 156 of the Code leaves no doubt that the power conferred upon the Magistrate is discretionary and he is not bound to direct investigation by the Police even if the allegations made in the complaint disclose commission of a cognizable offence. In the facts and circumstances of a given case, the Magistrate may feel that the matter does not require investigation by the Police and can be proved by the complainant himself, without any assistance from the Police. In that case, he may, instead of directing investigation by the Police, straightaway take cognizance of the alleged offence and proceed under Section 200 of the Code by examining the complainant and his witnesses, if any. In fact, the Magistrate ought to direct investigation by the Police only where the assistance of the Investigating Agency is necessary and the Court feels that the cause of justice is likely to suffer in the absence of investigation by the Police. The Magistrate is not expected to mechanically direct investigation by the Police without first examining whether in the facts and circumstances of the case, investigation by the State machinery is actually required or not. If the allegations made in the complaint are simple, where the Court can straightaway proceed to conduct the trial, the Magistrate is

expected to record evidence and proceed further in the matter, instead of passing the buck to the Police under Section 156(3) of the Code. Of course, if the allegations made in the complaint require complex and complicated investigation of which cannot be undertaken without active assistance and expertise of the State machinery, it would only be appropriate for the Magistrate to direct investigation by the Police. The Magistrate is, therefore, not supposed to act merely as a Post Office and needs to adopt a judicial approach while considering an application seeking investigation by the Police.”

9. In the instant case, for the detailed reasons in the orders, the Magistrate did not deem it fit to order investigation under Section 156(3) Cr.P.C. This Court does not find any illegality or irregularity in the impugned order to interfere with. The dispute between the petitioner/complainant and the respondent no.2/proposed accused is primarily a dispute between the partners of the firm. Earlier both the parties were having a partnership business and prior to the present complaint, there was no other complaint regarding conduct and behavior of the respondent no.2. There are allegations against respondent no.2 that he had taken away income tax files, relating to the partnership business, from the advocate when he was not authorized to do so at all. For all these grievances, investigation by police is not at all required. Therefore, the judgments relied upon by the counsel for the petitioner render no assistance to him.

10. From the above discussion, it reveals that the petitioner is aware about the identity of the accused and the entire incriminating evidence is well within his reach. The petitioner can seek assistance of the Court to examine relevant witnesses and summon the relevant record to prove his contentions before the Trial Court. In my considered view, assistance of the police is not required to collect evidence on this aspect. The discretion has been exercised diligently and right of the petitioner to pursue the case has not been foreclosed. This Court finds no infirmity or impropriety in the order under challenge.

11. Consequently, the present petition is unmerited and is dismissed. Pending application also stands disposed of. It is however made clear that observations in the impugned orders and this order will have no impact upon the merits of the case.

NOVEMBER 10, 2016
dd



(P.S.TEJI)
JUDGE