

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P.No.360 of 2017**

Dr.Manjeet Kaur Bal, aged 39 years D/o Dr. Darshan Singh Bal, R/o Flat No.F-3 C/Block-22/301, Sector-27, Post-Rakhi, New Raipur, District Raipur (CG)

---Petitioner

Versus

1. Bhawani Shankar Tiwari, aged about 63 years, S/o Shri Devkinandan Tiwari, Retired Deputy Director, Panchayat Department, Chhattisgarh Government, R/o B-506 Avenue, in front of Medicine Hospital, New Rajendra Nagar, Tah : & Dist:- Raipur (CG)
2. Ajay Chandrakar S/o Late Shri Kaliram Chandrakar, aged about 53 years, Minister, Panchyat & Rural Development & Health Department , Raipur (CG), R/o 1-C-3, Civil Lines, Raipur, Tahsil & District Raipur (CG), 2-M-4/1-5 Mahanadi Bhawan, Mantralaya, New Raipur, Dist:-Raipur (CG)

---Respondents

For Petitioner : Mr.Devershi Thakur, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

04/04/2017

1. The petitioner herein calls in question the legality, validity and correctness of the order dated 16.12.2016 passed by the 1st Additional Sessions Judge, Raipur in Criminal Revision No. 373/2016 by which the 1st Additional Sessions Judge has dismissed the revision petition summarily filed by her affirming the order dated 15.7.2016 passed by the Judicial Magistrate First Class, Raipur by which learned Magistrate

has declined to take cognizance of the complaint filed by the petitioner herein and dismissed the same filed under Section 156(3) of the CrPC.

2. Mr. Devershi Thakur, learned counsel appearing for the petitioner/complainant, would submit that the petitioner filed complaint under Section 156(3) of the CrPC for registering the case under Sections 182, 332, 333, 500/34 and 120B of the IP, but learned Magistrate treated the case under Section 200 of the CrPC and examined the complainant herself as CW-1 and her witnesses Chandraprakash Patre (CW-2), Nisha Netam (CW-3), Mahesh Patel (CW-4), Anand Raghuwanshi (CW-5), Siddheshwar (CW-6) and Jagat Pathak (CW-7) and proceeded to try the application filed under Section 156(3) of the CrPC as complaint under Section 200 of the CrPC and directed the Station House officer, Police Station Rakhi to submit the report and on the basis of report, ignoring the statements of the complainant and her witnesses, dismissed the complaint, which has been affirmed in the revision also by the impugned order. He would further submit that application under Section 156(3) of the CrPC filed by the complainant to the Magistrate for direction to the police to investigate the case cannot be treated as complaint by the Magistrate. It can be treated only where the complainant so desires. Learned Magistrate has no jurisdiction to convert the application under Section 156(3) of the CrPC into complaint case against wishes of the victim

and therefore, the impugned order as affirmed by the revisional Court deserves to be set aside.

3. I have heard learned counsel appearing for the petitioner and considered his submissions made herein and also gone through the order impugned with utmost circumspection.
4. The only question raised in this petition is whether the application filed under Section 156(3) of the CrPC can be treated as complaint and it can be proceeded with under Section 200 of the CrPC.
5. The question so raised herein is no longer res-integra and stands authoritatively decided by the Supreme Court in the matter of **Tula Ram and others vs. Kishore Singh**¹ wherein the Supreme Court has held as under:-

“15. In these circumstances we are satisfied that the action taken by the Magistrate was fully supportable in law and he did not commit any error in recording the statement of the complainant and the witnesses and thereafter issuing process against the appellants. The High Court has discussed the points involved thread-bare and has also cited number of decisions and we entirely agree with the view taken by the High Court. Thus on a careful consideration of the facts and circumstances of the case the following legal propositions emerge :

1. That a Magistrate can order investigation under section 156(3) only at the pre-cognizance stage, that is to say, before taking cognizance under sections 190, 200 and 204 and where a Magistrate decides to take cognizance under the provisions of Chapter 14 he is not entitled in law to order any investigation under section 156(3) though in cases not falling within the proviso to section

1 (1977) 4 SCC 459

202 he can order an investigation by the police which would be in the nature of an enquiry as contemplated by section 202 of the Code.

2. Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives :

(a) He can pursue that 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.

3. 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.

4. 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 as described above."

6. The above stated principle of law propounded in **Tula Ram** (supra) has been considered and followed with approval by the Supreme Court in the matter of **Suresh Chand Jain Vs. State of M.P. and another**², wherein the Supreme Court has held as under:-

"7. In our opinion, the aforesaid direction given by

² (2001) 2 SCC 628

the learned Single Judge of the Punjab and Haryana High Court in *Suresh Kumar vs. State of Haryana*³ is contrary to law and cannot be approved. Chapter XII of the Code contains provisions relating to information to the police and their powers to investigate, whereas Chapter XV, which contains Section 202, deals with provisions relating to the steps which a magistrate has to adopt while and after taking cognizance of any offence on a complaint. Provisions of the above two chapters deal with two different facets altogether though there could be a common factor i.e. complaint filed by a person. Section 156, falling within Chapter XII, deals with powers of the police officers to investigate cognizable offences. True, Section 202 which falls under Chapter XV, also refers to the power of a Magistrate to direct an investigation by a police officer. But the investigation envisaged in Section 202 is different from the investigation contemplated in Section 156 of the Code. Section 156 of the Code reads thus:

“156. Police officers power to investigate cognizable cases.- (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.

8. The investigation referred to therein is the same investigation the various steps to be adopted for it have been elaborated in Chapter XII of the Code. Such investigation would start with making the entry in a book to be kept by the officer-in-charge of a police station, of the substance of the information relating to the commission of a cognizable offence. The investigation started thereafter can end up only with the report filed by the police as indicated in Section 173 of the Code. The investigation contemplated in that Chapter can

3 (1996) 3 Rec Cri R 137

be commenced by the police even without the order of a magistrate. But that does not mean that when a magistrate orders an investigation under Section 156(3) it would be a different kind of investigation. Such investigation must also end up only with the report contemplated in Section 173 of the Code. But the significant point to be noticed is, when a magistrate orders investigation under Chapter XII he does so before he takes cognizance of the offence.

9. But a magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the Code. A reading of Section 202(1) of the Code would convince that the investigation referred to therein is of a limited nature. The magistrate can direct such an investigation to be made either by a police officer or by any other person. Such investigation is only for helping the magistrate to decide whether or not there is sufficient ground for him to proceed further. This can be discerned from the culminating words in Section 202(1) i.e.

“or direct an investigation to be made by a police officer or by such other persons as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding.”

This is because he has already taken cognizance of the offence disclosed in the complaint, and the domain of the case would thereafter vest with him.”

7. Applying the principle of law laid by the Supreme Court in the above-stated judgments to the facts of the present case, it is quite vivid that learned Magistrate has treated the complaint under Section 200 of the CrPC and recorded the statements of the complainant and her witnesses and thereafter considered the matter and held that the complaint does not prima-facie disclose sufficient ground for proceeding with and accordingly dismissed the complaint. Learned Magistrate has

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adopted the correct procedure while reaching the said conclusion, in which I do not find any jurisdictional error and it has rightly been affirmed by the revisional Court.

8. Accordingly, the petition being without substance is liable to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-