

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CRM-M-7902-2017 (O&M)
Date of Decision: 18.12.2018

Sandeep Kumar

.....PETITIONER(s).

VERSUS

State of Haryana and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Sandeep Kumar petitioner in person.
Mr. Brijesh Sharma, AAG, Haryana.
Mr. Jagdish Manchanda, Advocate,
for respondents No.7 and 8.

RAJ SHEKHAR ATTRI, J.

Through this petition filed under Section 482 of Code of Criminal Procedure (in short, "Cr.P.C."), the petitioner sought setting aside of order dated 13.5.2016 passed by learned Sub Divisional Judicial Magistrate, Pehowa, Kurukshetra vide which he declined to register FIR under Section 156 (3) of Criminal Procedure Code rather took cognizance under Section 200 of Cr.P.C. of the complaint and also assailed order dated 21.1.2017 (Annexure P-22) passed by learned revisional court vide which revision filed by the petitioner was dismissed.

Brief facts, as set out in para 7 to 10 of the complaint, are as under : -

"7. That Hem Singh, Gurender Kaur, Navjot Singh and Talvinder singh with due care and caution under the influence of accused no.1 and 2 got executed the power of

attorney outside the territory of India from the state of Pennsylvania USA and delivered the same Special Power of Attorney to accused no.1 but the accused no.1 and 2 again and again induced Hem Singh, Gurender Kaur, Navjot Singh and Talvinder Singh to execute the fresh power of attorney one after another in favour of beneficiary i.e. Accused no.1 and Hem Singh, Gurender Kaur, Navjot Singh and Talvinder Singh again executed the last power of attorney on dated 29.7.2014 impliedly revoking the earlier power of attorney dated 30.5.2014, 18.7.2014 executed in favour of accused no.1 and delivered the same instruments of power of attorney to accused no.1 authorizing the accused no.1 to deal with all of their immovable and moveable property.

8. That power of attorney was duly executed on oath on dated 30.5.2014, 18.7.2014, 29.7.2014 before the notary public of Pennsylvania State under the influence of accused no.1 and 2 with such impression and belief and with complete understanding of law that the amount which would receive after disposal of immovable and moveable property belonging to Hem Singh, Gurender Kaur, Navjot Singh and Talvinder Singh the same would be delivered to Hem Singh, Gurender Kaur, Navjot Singh and Talvinder Singh and before the disposal of any property the transfer or act will be ratified by Hem Singh, Gurender Kaur, Navjot Singh and Talvinder Singh although the same power of attorney was

not presented for registration with any sub registrar of India and in foreign state/Pennsylvania USA.

9. That accused no.1 and 2 induced Hem Singh Gurender Kaur, Navjot Singh and Talvinder Singh to get executed the power of attorney again and again on dated 30.5.2014, 18.7.2014 and last power of attorney was executed at the instance of accused no.1 and Rattan Singh on dated 29.7.2014 but the accused no.1 did all of the sham/fraudulent transfer on dated 18.6.2014 before one and half month of the execution of the last power of attorney dated 29.7.2014 and committed continuous fraud when the fresh power of attorney is made/executed, the previous had no legal effect and was void, ineffective, inoperative and were impliedly revoked. Hence the accused no.1 with his son Rattan Singh and Kulvinder Singh, Noorjot Chahal, Kamaljeet Kaur Chahal, Bimla Devi, Premlata and accused no.9 committed continuous fraud and unlawfully deprived Hem Singh, Gurender Kaur, Navjot Singh and Talvinder Singh from their lawful property. Whereas Hem Singh, Gurender Kaur, Navjot Singh and Talvinder Singh used to think even at the time of execution of power of attorney dated 29.7.2014 that no transfer and disposal of property has been made so far by accused no.1.

10. That after the execution of power of attorney dated 29.7.2014 whenever Hem Singh inquired about the

status of the property and the act of accused No.1 under attorney accused no.1 misrepresented the facts and told Hem Singh, Gurender Kaur, Navjot Singh and Talvinder Singh that accused no.1 is busy and having no ready purchaser of the property belonging to Hem Singh, Gurender Kaur, Navjot Singh and Talvinder Singh and is not acting as attorney to act on behalf of Hem Singh, Gurender Kaur, Navjot Singh and Talvinder Singh and Hem Singh, Gurender Kaur, Navjot Singh and Talvinder Singh took the words of accused no.1 to be true and thought that their property are safe and is not transferred to any one and Hem Singh, Gurender Kaur, Navjot Singh and Talvinder Singh communicated to accused no.1 and 2 in the month of August, 2014 that they have revoked the power of attorney given to accused no.1, being ignorant of the fact that accused no.1 and 2 with other accused have committed fraud and have dishonestly transferred the entire immovable property of Hem Singh, Gurender Kaur, Navjot Singh and Talvinder Singh to the name of accused no.2 to 8 and ors.”

Along with the complaint, an application under Section 156 (3) of the Code was filed for the purpose of registration of the case but the said request was declined by learned Magistrate by passing the following order : -

“Complaint presented today arguments heard. Learned counsel for the complainant has submitted that in the present

case is required further investigation and the complainant in his individual capacity, can't investigate the matter deeply and hence investigation is required by the police concerned. Learned counsel for the complainant has also made the submission that the present complaint may kindly be sent to the concerned police station under section 156(3) Cr.P.C. for registration of FIR. In the complaint, complainant has given the full details of the accused, and in the said scenario, it can't be said that accused is not known to the complainant and it can't be said that the full details of the accused can be determined only as a result of investigation. The contents elaborated in the complaint indicate the point out that the matter is not such which needs and require investigation on the part of the police. Keeping in view the entire facts and circumstances mention in the complaint, this case is not a fit case for registration of case under section 156(3) Cr.P.C. Hence request for referring the present complaint under section 156(3) Cr.P.C. is hereby declined complaint be checked and registered. Now case is adjourned to 13.07.2016 for preliminary evidence of the complainant at own responsibility.”

Learned Magistrate opted to take cognizance of the complaint and directed the petitioner to get record his statement under the provisions of Section 200 Cr.P.C. but inspite of giving his statement, the petitioner sought adjournment and preferred a criminal revision before the learned Sessions Judge which was dismissed vide order 13.5.2016 (Annexure P-22).

I have heard the counsel for the parties and gone through the record.

This Court has carefully considered the submission made on

behalf of the parties and find no reason to interfere with the impugned order.

Under Chapter XIV of the Cr. P.C., the conditions requisite for invoking of proceedings has been elaborately provided. Section 190 of the Cr.P.C. provides a stage to take cognizance of an offence by the Magistrate. It reads as under : -

“190. Cognizance of offences by Magistrates.

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub- section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.”

A bare perusal of the above said provisions transpires that the Magistrate can take cognizance in three conditions as stipulated in Section 190 Cr.P.C.

Now this Court would like to discuss the moot question as to whether the magistrate ought to have proceeded under Section 156 (3) of the Cr.P.C. or was justified in proceedings under Section 202(1) of Cr.P.C.

Heading of Chapter XII is "Information to the Police and their Powers to Investigate" and that of Chapter XV is "Complaints to Magistrate". Heading of Chapter XIV is "Conditions Requisite for Initiation of Proceedings". The two provisions i.e. Sections 156 and 202 are in Chapters XII and XV respectively. Sections 156 and 200 of the Cr.P.C. read as under :

"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.

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, [and shall in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction] 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 Sessions; 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."

From the bare perusal of the above said provisions of Sections 156 and 202 of Cr.P.C., it is conspicuously clear that the power of the Magistrate under Section 156 (3) does not limit the scope for registration of the FIR, equally, he is empowered to enquire into the matter at his own level by treating it as a complaint. Indeed, a magistrate has been bestowed huge powers under the Cr.P.C. If he is satisfied that he

can himself enquire into the matter, then it is not mandatory for him to order for registration of the FIR.

Chapter XII, dealing with the information to the police and their powers to investigate, provides for entering information relating to a 'cognizable offence' in a book to be kept by the officer incharge of a police station (Section 154) and such entry is called "FIR". If from the information, the officer incharge of the police station has reason to suspect commission of an offence which he is empowered to investigate subject to compliance of other requirements, he shall proceed, to the spot, to investigate the facts and circumstances and, if necessary, to take measure, for the discovery and arrest of the offender (Section 157(1)).

Hon'ble Supreme Court had discussed the real scope of Section 156 (3) of the Cr.P.C. in **Anil Kumar and others v. M.K.Aiyappa and another**; 2013 (4) RCR (Criminal) 586 wherein it has been observed as under : -

"11. The scope of Section 156(3) Cr.P.C. came up for consideration before this Court in several cases. This Court in Maksud Saiyed case [(2008) 5 SCC 668] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 Cr.P.C., the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the

complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) Cr.P.C., should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation."

In the opinion of this Court, the prosecution under Section 156 (3) of the Cr.P.C. is to be initiated only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued.

The Magistrate can also assess on receipt of the complaint as to whether, he, while conducting an inquiry, at the pre-summoning stage will be able to collect material available on record especially in cases which are based on documentary evidence such as cheating, forgery etc.

Under the Cr.P.C., the Magistrate has been given vast powers which are much more than a police officer. He has power to arrest a person and can order search of any place and impound the articles or material which are required for investigation.

In these circumstances, it shall not be in the interest of justice to order registration of FIR under Section 156 (3) of the Cr.P.C. rather it

shall be in the interest of justice that the complaint should be tried before the Magistrate. Circumstances of the case reveal that the case of the complainant will not hamper if Magistrate proceeds further with the complaint under the provisions of Section 200 Cr.P.C.

The Magistrate was fully within his power and jurisdiction when he refused to accede to demand of the petitioner to send the application under Section 156 of the Code to police station and took cognizance himself. The Magistrate is having absolute discretion under this provision of law either to send the application to the police under Section 156 of the Code or himself take cognizance after taking into facts and circumstances of the case into account.

On an independent appraisal of the material available on record, this Court is of the view that the impugned orders dated 13.5.2016 (Annexure P-22) and 21.1.2017 (Annexure P-23) do not suffer from any irregularity, infirmity and illegality and they do not warrant any interference by this Court. No other point is argued before me as such this petition is dismissed being devoid of merits.

Nothing expressed above shall affect the merits of the case.

(RAJ SHEKHAR ATTRI)
JUDGE

December 18, 2018
Paritosh Kumar

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>