

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-2521-2019 (O/M)

Date of decision : 23.1.2019

Ramesh Kumar

..... Petitioner (s)

Versus

Sarabjit Singh and others

..... Respondent (s)

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Amitabh Tewari, Advocate,  
for petitioner.

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KULDIP SINGH, J.

Petitioner Ramesh Kumar, who is stated to be a member of NGO, has approached this Court under Section 482 Cr.P.C. for quashing order dated 14.12.2018 (Annexure-P-1), passed by learned Additional Sessions Judge, Gurugram, vide which revision filed by respondents No. 1 and 2, namely, Sarabjit Singh and Devender Singh respectively, has been allowed and order dated 1.12.2018 (Annexure-P-23), passed by learned Judicial Magistrate 1<sup>st</sup> Class, Gurugram, vide which complaint was sent to police under Section 156 (3) Cr.P.C. for registration of a criminal complaint, was set aside. It is pertinent to mention here that petitioner has earlier also filed a complaint to Incharge, Police Station, Manesar, against officials on 23.4.2016 (Annexure-P-3), with a copy to Deputy Commissioner, Gurugram.

Facts of case are that petitioner Ramesh Kumar, who is stated to be a member of NGO, filed a criminal complaint against twenty eight persons and some other unknown person under Sections 171 (B,E), 406, 409, 415, 465, 466, 467, 468, 471, 474, 120-B IPC in the Court of learned

Illaqa Magistrate, Gurugram. The learned Additional Chief Magistrate, Gurugram, called for action taken report from SHO, Police Station Manesar, and thereafter, complaint was dismissed, vide order dated 26.9.2017 (Annexure-P-11), holding that complainant, who is filing complaints against private builders, Naib Tehsildars, Sub Registrars, Tehsildars, Computer Operators of Tehsil, has already availed remedy by making complaints to State Vigilance Bureau and that case of complainant has been closed by State Vigilance Bureau. It was further mentioned that since State Vigilance Bureau is conducting inquiry, therefore, present complaint is premature and not maintainable. Therefore, the Court held that complainant cannot pursue parallel remedies and that the Court cannot be a second investigating agency where prime investigating agency of State Government is already seized of matter. Therefore, proper remedy for complainant is to pursue his complaint, which has already been forwarded to State Vigilance Bureau, Panchkula.

It comes out that thereafter complainant sought information under Right to Information Act, 2005, vide letter dated 8.11.2017 (Annexure-P-12) and same was supplied by State Public Information Officer-cum-Deputy Commissioner of Police, Panchkula, on 30.11.2017 (Annexure-P-13), in which it was stated that no orders have been received from Chief Secretary, Haryana Government, State Vigilance Bureau, Chandigarh, till date and further action will be taken after receipt of orders from said authorities regarding his complaint. Petitioner having got no response regarding his complaint, filed a fresh present criminal complaint against twenty eight persons and some other unknown persons under same sections, alleging that accused No. 1 to 14 in collusion with each other has hatched a criminal conspiracy to grab revenue of 2% stamp duty, causing

revenue loss to Government of Haryana to the tune of Rs. 5,09,40,088.

The gist of allegations is that according to complainant, some sale deeds were executed in between year 2009 and 2011 wherein area was shown to be outside Municipal Council area, attracting lesser stamp duty. In this way, difference of said stamp duty is 2%. Therefore, accused in collusion with each other caused loss to State Government. Request was also made to send the case to SHO, Police Station Manesar, under Section 156 (3) Cr.P.C. for registration of FIR under said sections. Then, the learned Additional Chief Judicial Magistrate, Gurugram, Prashant Rana passed a detailed order on 8.12.2017 (Annexure-P-15), wherein while noticing the facts of case, the learned Additional Chief Judicial Magistrate, Gurugram, passed the following order :-

'4. I have perused the complaint and the documents annexed with the same. Despite the referral to the Police Commissioner, Gurugram, vide letter No. 17836/CC dated 26.7.2016 practically no proceedings have been conducted by the State Machinery part from some official letters. The complaint has been travelling to various offices for the last around 2 years, but to no effect, despite the fact that there are findings of the concerned DCP. The Commissioner of Police, Gurugram and the Office of the Principal Accountant General (Audit), Haryana, to the effect that the stamp duty has been deliberately evaded by some builders and some Government Officers. Vide letter dated 23.1.2017 from the Office of Financial Commissioner, Revenue, the Deputy Commissioner, Gurugram has been directed to get conducted inquiry and submit report within 15 days. Since the inquiry was assigned to the Deputy Commissioner, Gurugram, it is essential that the status report be called before proceeding further. Accordingly, the Deputy Commissioner, Gurugram, is hereby directed to submit the status report in regard to the present complaint, on the next date of hearing i.e. 20.12.2017.

5. A copy of this order be forwarded to the Commissioner

of Police, Gurugram, DGM State Vigilance, Panchkula, and Chief Secretary, Government of Haryana, and Financial Commissioner, Revenue, Gurugram, so that they are made aware of the situation and they take appropriate steps at their level, and expedite the proceedings.

6. A copy of this order be sent to Deputy Commissioner, alongwith copy of the complaint and a copy of the letter dated 23.1.2017, to facilitate the report.

7. Now, to come up on 20.12.2017 for awaiting the report of the Deputy Commissioner, Gurugram.'

In this way, copy of complaint alongwith order of learned Magistrate was sent to four different authorities/agencies i.e. (1) Commissioner of Police, Gurugram, (2) DGM State Vigilance, Panchkula, (3) Chief Secretary, Government of Haryana, (4) Financial Commissioner, Revenue, Gurugram, so that they are made aware of the situation and take appropriate steps at their level and expedite the proceedings. Copy of order alongwith copy of complaint and copy of order dated 23.1.2017 was also sent to Deputy Commissioner to facilitate the report.

It comes out from next order, passed by learned Additional Chief Judicial Magistrate, Gurugram, dated 20.12.2017 (Annexure-P-16) that inquiry was pending before Additional Deputy Commissioner, Gurugram, and case was further adjourned to 11.1.2018. On the next date i.e. 11.1.2018 (Annexure-P-17), it was noticed that report has not been submitted by Additional Deputy Commissioner, Gurguram, and same was ordered to be submitted on next date i.e. 23.1.2018. Same was position on 23.1.2018 (Annexure-P-18) and case was adjourned to 14.2.2018. Ultimately, Additional Deputy Commissioner, Gurugram, submitted his report on 6.3.2018 (Annexure-P-19), wherein he came to conclusion that reason for less recovery of 2% extra stamp duty for 53 sale deeds of Village Sihi, Tehsil Manaser, which were registered during year 2009 to 2012, was

that after constitution of Municipal Corporation, area of Sihi village was not updated in HARIS Software as Municipal Corporation region. Because of which during the registration of sale deeds, option to select urban or rural region was not available in the software. On 21.4.2018, the learned Judicial Magistrate 1<sup>st</sup> Class, Gurugram, adjourned the case for 25.4.2018 for arguments on the point of summoning of accused. Thereafter, on 25.4.2018, case was adjourned to 2.6.2018 on the same point and then on 2.6.2018, case was adjourned to 7.8.2018 by another learned Judicial Magistrate 1<sup>st</sup> Class, namely, Naveen Kumar-I, Gurugram, on same point. The case was further adjourned to 17.9.2018 on same point. On, 1.11.2018, the Court, after considering that complaint was for registration of FIR under Section 156 (3) Cr.P.C. and that matter has been straightaway fixed for arguments on the point of summoning of accused, due to some inadvertence, rectified said mistake and adjourned the case to 14.11.2018 for arguments on the point of sending complaint for registration of FIR under Section 156 (3) Cr.P.C. as well as for consideration on report submitted by concerned Additional Deputy Commissioner, Gurugram. The said Magistrate then again adjourned the case to 1.12.2018. Then, ultimately, learned Magistrate passed a detailed order on 1.12.2018 (Annexure-P-23), vide which while noticing that in place of 7% stamp duty, 5% stamp duty was charged on the execution and registration of around 53 sale deeds, causing loss of 2% less to State and noticing contention of petitioner that 14 builders and 14 employees of Registrar Office, Tehsil Manesar, Gurugram, are involved, discarded report of Additional Deputy Commissioner, Gurugram, regarding glitch in the computer software on the ground that 3 sale deeds in the year 2009, 2010 and 2011 were registered showing the land of village Sihi within MCG area. Therefore,

complaint was sent to SHO, Police Station Manesar, for registration of a case and report was awaited for 19.12.2018.

The said order was challenged before learned Additional Sessions Judge, Gurugram, who vide impugned order dated 14.12.2018 (Annexure-P-1), allowed revision and set aside said order being illegal and erroneous on face of it and being against settled preposition of law.

I have heard learned counsel for petitioner and have also carefully gone through file.

Admittedly, in this case, complainant, who is a member of NGO, had filed a criminal complaint before Court.

Under Section 156 (3) Cr.P.C., any Magistrate empowered under Section 190 Cr.P.C. may order such investigation as mentioned, in Section 156 Cr.P.C., which relates to power of police to investigate any cognizable case, which a Court having jurisdiction over the local area within limits of such station, would have power to inquire into or try under provisions of Chapter XIII. Therefore, the Magistrate under Section 156(3) Cr.P.C. can order investigation by police in cognizable cases.

Under Section 190 Cr.P.C., the Magistrates can take cognizance of any offence under following conditions :-

- (a) upon receiving a complaint of facts which constitute such offences,
- (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.

The provisions of Section 190 Cr.P.C. are contained in Chapter XIV of Code of Criminal Procedure, 1973.

After taking cognizance, further procedure is prescribed in Chapter XV of Code of Criminal Procedure, 1973, regarding complaints

made to Magistrates.

Under Section 200 Cr.P.C., the Magistrate, taking cognizance of an offence on a complaint, shall examine upon oath complainant and the witnesses present, if any, and substance of such examination, shall be reduced into writing and shall be signed by complainant and the witnesses, and also by the Magistrate.

Section 202 Cr.P.C., contained in Chapter XV, lays down as under :-

**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 any inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath ;

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions, he shall call upon the complainant to 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.'

Then, Chapter XVI provides for commencement of proceedings before a Magistrate Under Section 204 Cr.P.C., if in the opinion of a Magistrate, taking cognizance of an offence, there is sufficient ground to proceed, then he/she can proceed to issue process in the manner prescribed in such section and take further proceedings.

In the present case, initially, the learned Additional Chief Judicial Magistrate, Gurugram and later on various Magistrates, Gurugram, adopted an unique procedure. When the complaint was received, the learned Additional Chief Judicial Magistrate, Gurugram, could apply his mind and if he was of the view that cognizance was required to be taken, he could send the complaint to police under Section 156 (3) Cr.P.C. for registration of a case. However, the learned Additional Chief Judicial Magistrate, Gurugram, in the present case, after noticing facts, stated in complaint and prayer and also considering that despite reference to Commissioner of Police, Gurugram, practically no proceedings have been conducted by State Machinery and also that stamp duty has been deliberately evaded by some builders and Government officers and also noticing letter dated 23.1.2017 from the office of Financial Commissioner, Revenue, to Deputy Commissioner, Gurugram, for conducting inquiry, sent copy of order alongwith complaint to four different authorities/agencies, namely, (1) Commissioner of Police, Gurugram, (2) DGM State Vigilance, Panchkula, (3) Chief Secretary, Government of Haryana, (4) Financial Commissioner, Revenue, Gurugram, so that they may be made aware of

situation and they may take appropriate steps at their level. This was unwarranted under law. The learned Magistrate also sent a copy of order alongwith copy of complaint and copy of letter dated 23.1.2017 to Deputy Commissioner, Gurugram, to facilitate report. In this way, the learned Magistrate indirectly asked said four authorities/agencies to look into complaint and also asked Deputy Commissioner, Gurugram, to conduct inquiry and submit inquiry report.

The learned counsel for petitioner contends that said order does not amount to taking cognizance of complaint. For this purpose, he has relied upon observations of Apex Court in **R.R. Chari Versus State of Uttar Pradesh**, 1951 SCR 312. The relevant extracts of same are reproduced as under :-

'10. After referring to the observations in **Emperor Versus Sourindra Mohan Chuckerbutty**, it was stated by Das Gupta, J. in **Superintendent and Remembrancer of Legal Affairs, West Bengal Versus Abani Kumar Banerjee** as follows :-

'What is taking cognizance has not been defined in the Criminal Procedure Code and I have no desire to attempt to define it. It seems to me clear however that before it can be said that any Magistrate has taken cognizance of any offence under Section 191 (1) (a) of the Criminal Procedure Code, he must not only have applied his mind to the contents of petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter – proceeding under Section 200 and thereafter sending it for inquiry and report under Section 202. When the Magistrate applies mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind e.g. ordering investigation under Section 156 (3), or issuing a search warrant for the purpose of the investigation, he

cannot be said to have taken cognizance of the offence.

In our opinion that is the correct approach to the question before the Court.'

Further reliance has also been placed on authority of Apex Court in **Tula Ram and others Versus Kishore Singh**, (1977) 4 Supreme Court Cases 459.

The learned counsel for petitioner further contends that directions under Section 156 (3) Cr.P.C. are to be issued only after application of mind by the Magistrate when the Magistrate does not take cognizance and does not find it necessary to postpone instance of process.

The relevant extracts of observations made by Apex Court in **Ramdev Food Products Private Limited Versus State of Gujarat**, (Criminal Appeal No. 600 of 2007, decided on 16.3.2015) are reproduced as under :-

'22. Thus, we answer the first question by holding that the direction under Section 156 (3) is to be issued only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone instance 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. Cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine 'existence of sufficient ground to proceed'. Category of cases falling under Para 120.6 in **Lalita Kumari (supra)** may fall under Section 202. Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case.

23. We now proceed to deal with the second question of

power of police to arrest in the course of investigation under Section 202 with a view to give its report to the Magistrate to enable him to decide whether a case to proceed further existed. Careful examination of scheme of the Code reveals that in such situation power of arrest is not available with the police. Contention based on language of Section 202 (3) cannot be accepted.'

I am of view that though cognizance is not defined anywhere, but as discussed above by Apex Court in the observations reproduced above, it refers to application of mind by learned Magistrate and then he is to decide what course of action is to be adopted.

In present case, in my considered opinion, the learned Additional Chief Judicial Magistrate, Gurugram, Shri Prashant Rana, while passing detailed order dated 8.12.2017 (Annexure-P-15), applied his mind to facts of case and did not send complaint to police for registration of a case and investigation under Section 156 (3) Cr.P.C. Rather, he sent copies of same to four different authorities/agencies along with order, which he could not do, and also called for report of Deputy Commissioner, Gurugram.

Under Section 200 Cr.P.C., when a complaint is presented, the learned Magistrate can examine complainant and his witnesses, if any.

Under Section 202 Cr.P.C., the learned Magistrate on receipt of a complaint of an offence, of which he is authorised to take cognizance, can postpone the issue of process, if he thinks fit and **shall, in a case where accused is residing at a place beyond 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.**

In present case, the learned Additional Chief Judicial

Magistrate, Gurugram, did not order the inquiry by police but ordered the inquiry by Additional Deputy Commissioner, Gurugram, which could be deemed to be taking cognizance of complaint and an order passed under Section 202 Cr.P.C. Therefore, the learned Magistrate, after applying his mind, exercised power under Section 202 Cr.P.C. to order inquiry by Deputy Commissioner, Gurugram. Thereafter, if the learned Magistrate found that there is sufficient ground to proceed, he could issue process under Section 204 Cr.P.C. or if there are no sufficient grounds to proceed, he could dismiss complaint.

Now, the orders reproduced above shows that inquiry was conducted, which was deemed to be under Section 202 Cr.P.C. and case was infact adjourned several times for arguments on the point of summoning of accused. Infact, after considering the report, the learned Magistrate could give the option to complainant, if he wanted to lead any evidence and examine witnesses, if any, and could further postpone the issue of process or he could straightaway pass summoning order. However, the learned Magistrate in the order dated 1.11.2018 (Annexure-P-23) stated that case was inadvertently fixed for summoning of accused and mistake appears to be unintentional and same stands rectified. It is observed that it was infact not a mistake. If the learned Magistrate wanted to go back to previous stage of taking cognizance, he could not exercise inherent power under Section 482 Cr.P.C. to rectify said order. Therefore, impugned order of learned Magistrate, ordering registration of case, without considering other aspects of matter and after taking cognizance of offence and following procedure under Section 202 Cr.P.C. is patently illegal and was rightly set aside by learned Additional Sessions Judge, Gurugram.

Further perusal of order of learned Additional Sessions Judge,

Gurugram, shows that the learned Magistrate has not critically examined all aspects of case. Magistrate also did not take into consideration the provisions of Section 197 Cr.P.C. which bars the Court from taking cognizance of such offences committed by public servants, except with previous sanction of competent authority. Here, some of public servants are named as accused. They had done their job in the performance of their official duties and, therefore, cognizance could not be taken by learned Magistrate against said public servants without resorting to sanction of authority under Section 197 Cr.P.C.

It comes out from copy of complaint (Annexure-P-14) that accused mentioned at Serial No. 15 to 20 are Sub Registrars/Joint Registrars and accused mentioned at Serial No. 21 to 28 are officials of said Sub Registrars/Joint Registrars.

The learned counsel for petitioner has relied upon authority of Apex Court in **Matajog Dobey Versus H.C. Bhari**, (Criminal Appeal Nos. 67 and 68 of 1954, decided on 31.10.1955) and has referred to following observations made by it :-

'The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of prosecution evidence at the trial, may establish the necessity for sanction. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case.'

I am of the view that in the case in hand, it is stated in the complaint itself that Sub Registrars/Joint Registrars and their officials wrongly charged stamp duty at the rate of 5% instead of 7% by showing area of 53 sale deeds to be falling outside municipal limit. Therefore, they

had performed said act in discharge of their official duty. As such, to prosecute them, sanction of competent authority was required under Section 197 Cr.P.C.

The learned Additional Sessions Judge, Gurugram, has also taken into consideration provisions of Indian Stamp Act, especially Sections 17, 33, 43, 47, 70 of Indian Stamp Act to consider that filing a criminal complaint regarding evasion of stamp duty by a private person is barred.

Section 43 of Indian Stamp Act is reproduced as under :-

**'43. Prosecution for offence against Stamp law-** The taking of proceedings or the payment of a penalty under this Chapter in respect of any instrument shall not bar the prosecution of any person who appears to have committed an offence against the Stamp Law in respect of such instrument.

Provided that no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty.'

Said section shows that no prosecution regarding taking proceedings or payment of a penalty under said Chapter in respect of any instrument shall be instituted unless it appears to the Collector that offence has been committed with intention of evading payment of proper duty. Therefore, it was for the Collector to decide. The Deputy Commissioner also exercises powers of Collector. The Collector in this case had got conducted inquiry through Additional Deputy Commissioner, Gurugram, who had submitted a detailed report that error is due to non updating of software and officials are not at fault. Therefore, sending such complaint to police under Section 156 (3) Cr.P.C. is nothing, but misuse of process of Court.

The learned counsel for petitioner contends that order passed by learned Magistrate under Section 156 (3) Cr.P.C. has been set aside and that he can still pursue his complaint.

I am of the view that in this case, detailed inquiry was got conducted from Deputy Commissioner, Gurugram, through Additional Deputy Commissioner, Gurugram, who made a detailed report. It is for the Collector to recover deficiency of stamp duty, if any, and filing of complaint by a private person, claiming to be a member of NGO, is nothing, but misuse of process of Court. Therefore, complaint is liable to be quashed by this Court while exercising powers under Section 482 Cr.P.C.

With the abovenoted observations, this Court does not find any merit in present petition and same is dismissed. The complaint is also quashed exercising power under Section 482 Cr.P.C.

(KULDIP SINGH)  
JUDGE

23.1.2019

sjks

Whether speaking order : Yes / No

Whether reportable : Yes / No