

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M- 40231- 2017

Date of decision : 20.12.2019

Alok Joshi

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM : Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Gursimran Singh Madaan, Advocate for the petitioner.

Mr. Ashok Singh Choudhary, Addl. A.G., Haryana.

Dr. Anmol Rattan Singh Sidhu, Senior Advocate with
Mr. Aditya Sanghi and Ms. Avneet Kaur, Advocates
for Respondent no.2

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Gurvinder Singh Gill, J.

1. The petitioner/accused Alok Joshi (father-in-law of victim) assails order dated 7.10.2017 (Annexure P-8), whereby the learned Sub Divisional Judicial Magistrate, Dabwali, while considering an application under Section 190(1)(b) Cr.P.C., filed on behalf of complainant Dr. Dalip Gupta (father of victim Ankita) has directed the investigating agency to conduct further investigation in the matter.
2. The relevant facts may, briefly, be stated chronologically as follows:

30.1.2015 : Marriage of petitioner's son Astik Joshi was solemnized with Ankita, daughter of complainant/respondent no.2. After marriage they resided in America.

- 3.1.2017 : A petition for divorce was filed in a Court in USA by Astik Joshi (husband).
- 17.2.2017 : FIR No. 37 dated 17.2.2017(Annexure P-2) under Sections 406/498-A/34 IPC was registered at Police Station City Mandi Dabwali, District Sirsa at the instance of respondent No. 2, father of Ankita.
- 28.4.2017 : Cancellation report dated 26.4.2017 was filed by the police upon conclusion of investigation.
- 24.5.2017 : Upon request made by complainant, the case was adjourned to 1.7.2017 to enable complainant to file a protest petition.
- 1.7.2017 : Protest petition in the shape of an application under Section 190(1)(b) Cr.P.C. was filed and the said application was adjourned for arguments as well as for recording preliminary evidence.
- 19.7.2017
to
- 15.9.2017 : The matter was adjourned during this period 4 times for the purpose of arguments on application and for recording preliminary evidence but neither arguments were addressed nor any evidence was recorded.
- 7.10.2017 : Impugned order dated 7.10.2017(Annexure P-8) was passed by the Trial Court directing the investigating agency to conduct further investigation.
3. The petitioner (father-in-law of Ankita), being one of the accused in the FIR assails the impugned order dated 7.10.2017(Annexure P-8) mainly on the ground that once the Trial Court, consequent upon a protest petition having been filed by complainant, had chosen to proceed with the matter as a complaint case and had in fact adjourned the matter several times for

recording preliminary evidence, there was no occasion for the trial Court to revert back and order the investigating agency to further investigate the matter.

4. Shri Gursimran Singh Madaan, counsel for the petitioner, has submitted that a protest petition is essentially treated as a complaint and tried in accordance with the procedure for trying a case instituted by way of complaint, as prescribed under Sections 200 to 201 and Sections 244 to 248 of Cr.P.C. and that it is only with the aid of Section 202 Cr.P.C. that the police could be associated with the matter whereas in the present case, the police after investigating the matter had already submitted its report under Section 173 Cr.P.C. and thus, there was no occasion even for the said step to be taken and consequently it had to be taken that the role of the police had been put to an end when the learned Magistrate chose to fix the matter for recording preliminary evidence. It has, thus, been submitted that the impugned order passed by the Magistrate reverting back to the procedure meant for a case instituted by way of lodging FIR and directing the investigating agency to further investigate the matter is blatantly illegal and liable to be set aside.
5. On the other hand, the learned State counsel as well as counsel for respondent No. 2 have submitted that the impugned order does not suffer from any illegality, having been passed by the trial Court at a very initial stage in exercise of its powers under Section 190 Cr.P.C.
6. The learned senior counsel representing respondent No.2 has further submitted that the trial Court, neither having chosen to accept the cancellation report nor having chosen to issue process against the

accused, was well within its jurisdiction to direct the investigating agency to conduct further investigation. It has, thus, been submitted that the impugned order does not call for any interference.

7. The controversy in the present case, as crystallized from the aforesaid rival submissions, may be stated as follows:

(i) Whether a Magistrate, upon receipt of closure report and filing of Protest petition, having fixed the case for recording preliminary evidence without passing any specific order as regards the course to be adopted, would get precluded from directing the investigating agency to conduct further investigation in the matter, even if the matter is still at initial stage ?

8. In order to address the aforesaid controversy, following question would also be required to be addressed:

(ii) Whether the Magistrate, in given circumstances of the case, be said to have taken cognizance of the offence when he, immediately upon receipt of closure report, adjourned the matter for recording preliminary evidence of complainant?

9. Before proceeding further, it is apposite to bear in mind the relevant provisions of Section 173(8) and Section 190 of Cr.P.C., which read as follows:

173. Report of police officer on completion of investigation.-

(1) to (7) xxx xxx xxx

- (8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall,

as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

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.

10. Although, Section 190 Cr.P.C. refers to “cognizance” of offences by Magistrates but the term “cognizance” has nowhere been defined in the Code. However, “cognizance” has assumed humongous importance in criminal jurisprudence particularly in view of provisions of Section 468 Cr.P.C. which prescribes some kind of limitation for action against accused.

11. In Devarapali Lakshminarayana Reddy vs. V. Narayana Reddy, (1976) 3 SCC 252, the Hon’ble Supreme Court, while dealing with the issue observed as under:

“14. What is meant by 'taking cognizance of an offence' by the Magistrate within the contemplation of Section 190 ? This expression has not been defined in the Code. But from the scheme of the Code, the content and marginal heading of Section 190 and the caption of Chapter XIV under which Sections 190 to 199 occur, it is

clear that a case can be said to be instituted in a Court only when the Court takes cognizance of the offence alleged therein. The ways in which such cognizance can be taken are set out in clauses (a), (b) and (c) of Section 190(1). Whether the Magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which the case is sought to be instituted, and the nature of the preliminary action, if any, taken by the Magistrate. Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding under Section 200 and the succeeding sections in Chapter XV of the Code of 1973, he is said to have taken cognizance of the offence within the meaning of Section 190(1)(a). If instead of proceeding under Chapter XV, he, has in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigating, or ordering investigation by the police under Section 156(3), he cannot be said to have taken cognizance of any offence."

12. A five Judge Bench of Hon'ble Supreme Court in A.R. Antulay v. Ramdas Srinivas Naya, (1984) 2 SCC 500 held as under :

"31 When a private complaint is filed, the court has to examine the complainant on oath save in the cases set out in the proviso to Section 200 Criminal Procedure Code, 1973. After examining the complainant on oath and examining the witnesses present, if any, meaning thereby that the witnesses not present need not be examined, it would be open to the court to judicially determine whether a case is made out for issuing process. When it is said that court issued process, it

means the court has taken cognizance of the offence and has decided to initiate the proceedings and a visible manifestation of taking cognizance process is issued which means that the accused is called upon to appear before the court. " "

13. The aforesaid extract from the Constitution Bench judgment clearly indicates that filing of a complaint in Court is not taking cognizance and what exactly constitutes taking cognizance is different from filing of a complaint.
14. Hon'ble Supreme Court, in 2008(2)SCC 492 S.K. Sinha, Chief Enforcement Officer VS. Videocon International Ltd., defined the term "cognizance" in the following words:

"19. The expression "cognizance" has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means - 'become aware of' and when used with reference to a Court or a Judge, it connotes 'to take notice of - judicially'. It indicates the point when a Court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.

20. 'Taking cognizance' does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a *sine qua non* or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an

offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance.”

15. Since the term ‘cognizance’ has not specifically been defined anywhere in Code of Criminal Procedure, therefore, based on the import of some relevant Sections of the Code and conclusions drawn in various pronouncements as noticed above, the term “cognizance”, as existing in Section 190 Cr.P.C. may be understood to mean thus:

- (i) A Magistrate *may* take cognizance either on the basis of a complaint filed before it or a police report. However the Magistrate can also take cognizance ‘*suo-moto*’. (Section 190 Cr.P.C.)
- (ii) Cognizance is taken of an offence and not of an offender.
- (iii) When a Magistrate receives a complaint, he is not bound to take cognizance if the facts alleged in the complaint, do not disclose the commission of an offence.
- (iv) In a case where a private complaint is filed, the Magistrate has jurisdiction to take cognizance of an offence on the complaint after examining the complainant upon oath and the witnesses present. However, when the complaint is made in writing by a public servant in discharge of his official duties, the Magistrate need not examine the complainant and the witnesses and may proceed to take cognizance even without formal examination of complainant. (Section 200 Cr.P.C.)
- (v) After aforesaid examination, it would be open to the court to judicially determine whether a case is made out for issuing process. When it is said that Court issued process, it means the Court has taken cognizance. (Constitution Bench in *A.R. Antulay v. Ramdas Srinivas Naya*, 1984(2) SCC 500)

- (vi) Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding under Section 200 Cr.P.C., he is said to have taken cognizance of the offence within the meaning of Section 190(1)(a) Cr.P.C. If instead of proceeding under Chapter XV, he, has in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigating, or ordering investigation by the police under Section 156(3), he cannot be said to have taken cognizance of any offence. (*Devarapalli Lakshminarayana Reddy and others v. V. Narayana Reddy and others*, (1976) 3 SCC 252.
- (vii) Cognizance simply means - 'to take notice of - judicially' with a view to initiating proceedings in respect of such offence. 'Taking cognizance' does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a *sine qua non* or condition precedent for holding a valid trial. (2008(2)SCC 492 *S.K. Sinha, Chief Enforcement Officer VS. Videocon International Ltd.*)
- (viii) The act of taking cognizance of offences as disclosed in a complaint is a mere mental process which is indicated by the action taken in a particular case and mere omission to record a formal order of taking cognizance can be of no material sequence if from the terms in which order of the Court has been passed, it so be gathered that it has taken cognizance in the case and come to the conclusion that the persons complained against should be put on trial.

16. As regards the courses open to a Magistrate upon filing of report under Section 173 Cr.P.C., where closure of case is recommended by the police, a three Judge Bench of Hon'ble Supreme Court in *Bhagwant Singh v. Commissioner of Police and Anr.* (1985) 2 SCC 357, held that a Magistrate, in dealing with a report from the police under Section 173

Cr.P.C., can adopt one of following three courses –

- (1) he may accept the report and drop the proceedings; or
- (2) he may disagree with the report, take cognizance of the offence and issue process; or
- (3) he may direct further investigation to be made by the police under Section 156(3).

17. In Union Public Service Commission v. S. Papaiah (1997) 7 SCC 614, Hon'ble Supreme Court dealt with a case in which the Central Bureau of Investigation(CBI) had submitted a closure report, wherein while relying upon aforesaid Bhagwant Singh's case (supra), it held that in view of objections having been filed by the complainant, i.e. the Union Public Service Commission(UPSC) against the closure report, the Magistrate could, in exercise of powers under Section 173(8) of Cr.P.C., direct the CBI to further investigate the matter. The relevant extract from UPSC's case (supra) reads as:

“13. The Magistrate could, thus in exercise of the powers under section 173(8) CrPC, 1973 direct the CBI to `further investigate' the case and collect further evidence keeping in view the objections raised by the appellant to the investigation and the `new' report to be submitted by the investigating officer would be governed by subsections (2) to (6) of section 173 CrPC, 1973.”

18. As per the law laid down in Bhagwant Singh's case (supra), the issuance of a notice by the Magistrate to the informant at the time of consideration of the final report is a "must". Although such course is not specifically provided in the Code but it has become a binding precedent. The purpose obviously is to ensure that in case the police upon investigation reaches at

a conclusion that no case is made out for prosecuting the alleged accused and submits final report under Section 173 Cr.P.C in the nature of a closure report, the complainant in such eventuality must be given a chance to put forth his case and to raise objections against closure of the case. Such a course is in tune with the basic principles of natural justice that before any adverse order is passed, the person affected must be heard.

19. Consequently, whenever the investigating agency files a closure report the Magistrate would be obliged to issue notice to the complainant who may choose to file his objections against the same. Such objections are normally referred to as a “protest petition”, a term which again is nowhere defined or referred to in the Cr.P.C but has come to be accepted to mean some kind of objections filed on behalf of complainant against Closure/Cancellation Report filed under Section 173 Cr.P.C., requesting the Court to exercise its powers in terms of Section 190 Cr.P.C. The application dated 1.7.2017, filed by the complainant in the present case with a prayer that cognizance be taken in terms of provisions of Section 190(1)(b) Cr.P.C. or to order further investigation is to be treated as a protest petition.
20. Once such an application/protest petition is preferred by the complainant, the Magistrate is obliged to consider the objections as raised in the protest petition. Needless to mention, the Magistrate may disagree with such objections and proceed ahead to accept the cancellation report. However, in case he is dissatisfied with certain aspects pertaining to investigation of the case, he may direct further investigation of the case or proceed with the matter as a complaint case in which case the complainant would be

required to lead evidence in support of his case.

21. Hon'ble Supreme Court, in a recent judgement rendered in Vishnu Kumar Tiwari vs. State of Uttar Pradesh 2019(8) SCC 27, expounded the courses open to the Magistrate when protest petition is filed, in the following words:

“27. It is undoubtedly true that before a Magistrate proceeds to accept a final report under Section 173 and exonerate the accused, it is incumbent upon the Magistrate to apply his mind to the contents of the protest petition and arrive at a conclusion thereafter. While the Investigating Officer may rest content by producing the final report, which, according to him, is the culmination of his efforts, the duty of the Magistrate is not one limited to readily accepting the final report. It is incumbent upon him to go through the materials, and after hearing the complainant and considering the contents of the protest petition, finally decide the future course of action to be, whether to continue with the matter or to bring the curtains down.” (emphasis supplied)

22. As discussed above, the act of taking cognizance of offence is a mere mental process which is indicated by the action taken in a particular case. Although no formal order is normally required for taking cognizance but in the present case when an application under Section 190 Cr.P.C. had been filed it was incumbent upon the Magistrate to have dealt with the same before adopting any of the particular courses explicated above, as may be open to him. In a given set of circumstances, even the course adopted by Magistrate *ipso-facto* could be indicative as to whether cognizance has been taken or not.

23. In the present case, the zimini orders recorded by the Magistrate indicate that while the matter was being adjourned for addressing arguments on application under Section 190 Cr.P.C. filed by complainant but somehow, simultaneously, the Magistrate even chose to order for recording preliminary evidence even before taking a final call on the application under Section 190 Cr.P.C.
24. Before referring to the said zimini orders, it is apposite to bear in mind the heading and the prayer made therein in the application dated 1.7.2017, filed by complainant which reads as follows:

Heading of Application dated 1.7.2017 :

“ Application u/s 190(1)(b) Cr.P.C. for taking cognizance of the offence and issuance of process against the accused persons, there being sufficient material against the accused (collected and found out during investigation) which prima-facie proves guilt of the accused for commission of offences u/s 498-A, 406/34 IPC or for re-investigation/further investigation of the case and any other appropriate order for justice with victim at the hands of the accused.”

Prayer clause of Application dated 1.7.2017 :

“ In the light of above submissions, Your Lordship is requested for taking the cognizance of offence u/s 498-A, 406/34 IPC and issuance of process against the accused u/s 190(1)(b) Cr.P.C. in the interest of justice or to re-investigate/ further investigate may kindly be ordered in the interest of justice”

25. The zimini orders (Annexures P-5 to P-7) recorded immediately after presentation of Closure report on 27.4.2017 read as follows:

- 24.5.2017 : On the request of learned counsel for the complainant, case adjourned to 01.07.2017 for filing protest petition.
- 1.7.2017 : Today complainant Dr. Dalip Gupta has moved an application under section 190(1)(b) Cr.P.C. Now to come up on 19.7.2017 for arguments on aforesaid application as well as preliminary evidence.
- 19.7.2017 : Arguments on application under section 190(1)(b) Cr.P.C. not advanced. Adjournment sought. Now to come up on 16.8.2017 for arguments on aforesaid application as well as preliminary evidence.
- 16.8.2017 : Arguments on application under section 190(1)(b) Cr.P.C. not advanced. Adjournment sought. Now to come up on 22.8.2017 for arguments on aforesaid application as well as preliminary evidence.
- 22.8.2017 : Arguments on application under section 190(1)(b) Cr.P.C. not advanced. Adjournment sought. Now to come up on 30.8.2017 for arguments on aforesaid application as well as preliminary evidence.
- 30.8.2017 : Arguments on application under section 190(1)(b) Cr.P.C. not advanced. Adjournment sought. Now to come up on 15.9.2017 for arguments on aforesaid application as well as preliminary evidence.
- 15.9.2017 : Arguments on application under section 190(1)(b) Cr.P.C. not advanced. Adjournment sought. Now to come up on 7.10.2017 for arguments on aforesaid application as well as preliminary evidence.
- 7.10.2017 : Impugned order(Annexure P-8) was passed.

26. A perusal of the above reproduced heading and prayer clause would show that a very specific prayer for either taking cognizance as a police case or for ordering further investigation was made therein in terms of Section 190(1)(b) Cr.P.C. Though, there is certainly no dispute that in case Magistrate is not inclined to issue process on the basis of report filed under Section 173 Cr.P.C., he is competent to proceed with the matter as a

complaint case on the basis of protest petition filed by complainant but in case a specific prayer in terms of provisions of Section 190(1)(b) Cr.P.C. is made in application/protest petition, it is expected of the Magistrate to pass some formal order as regards the course to be chosen by the Magistrate. However, in the present case, the orders passed by Magistrate posting the matter for arguments on the application and also for recording preliminary evidence simultaneously shows that the said orders have rather been passed in a very mechanical manner. As such, it can not be said that with the orders passed between the dates 1.7.2017 to 15.9.2017, the specific prayer of complainant in terms of provisions of Section 190(1)(b) Cr.P.C. stood disposed off. Since the orders do not show that the Magistrate had applied his mind to the facts of the case, it can not be said that cognizance had been taken. Consequently, it is held that the matter was still at pre-cognizance stage when impugned order dated 7.10.2017 was passed. Question no (ii) as framed above stands answered accordingly.

27. Having held that no cognizance had been taken when the impugned order was passed, the next question posed is as to whether the Magistrate was competent to order further investigation. Section 173(8) empowers the Magistrate to order further investigation. The earlier view as per 2017(4)SCC177 Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel & Ors. was that it is up to the stage before the Magistrate takes cognizance that further investigation could be ordered by Magistrate and that once cognizance is taken, then it is under limited circumstances and that too only at the instance of investigating agency that such a

direction could be issued. The relevant extract from the judgment reads as follows:

“49. On an overall survey of the pronouncements of this Court on the scope and purport of Section 173(8) of the Code and the consistent trend of explication thereof, we are thus disposed to hold that though the investigating agency concerned has been invested with the power to undertake further investigation desirably after informing the Court thereof, before which it had submitted its report and obtaining its approval, no such power is available therefor to the learned Magistrate after cognizance has been taken on the basis of the earlier report, process has been issued and accused has entered appearance in response thereto. At that stage, neither the learned Magistrate suo motu nor on an application filed by the complainant/informant can direct further investigation. Such a course would be open only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial, the life purpose of the adjudication in hand.”

28. However, recently a three Judges Bench of Hon’ble Supreme Court in a judgement reported as AIR 2019 SC 5233 Vinubhai Haribhai Malaviya Vs. State of Gujarat, has widened the scope of further investigation inasmuch as it has been held that such power can well be exercised up to commencement of trial which, in cases instituted on a police report, commence with framing of charges. The specific question drawn up before Supreme Court in para 9 of the aforesaid judgement reads as :

“9. The question of law that therefore arises in this case is

whether, after a charge-sheet is filed by the police, the Magistrate has the power to order further investigation, and if so, up to what stage of a criminal proceeding.”

29. In the aforesaid case, pursuant to a charge-sheet having been filed by police against accused *Vinubhai*, cognizance was taken by the Magistrate and accused *Vinubhai* was summoned. Upon appearance, *Vinubhai* moved an application under Section 173(8) Cr.P.C. seeking further investigation in the matter but the same was dismissed by Magistrate. The accused challenged the said order by way of filing revision petition before Sessions Judge which was accepted and further investigation was ordered. However, when the matter came to be examined by High Court, the order of Sessions Judge directing further investigation was set aside on the premises that post-cognizance, further investigation could not be ordered by Magistrate. Hon’ble Supreme Court set aside the judgement of High Court insofar as the same stated that post-cognizance, the Magistrate is denuded of power to order further investigation.
30. Hon’ble Supreme Court in *Vinubhai’s case*(supra) disagreed with the earlier view taken in decision rendered by a three Judge Bench in *Devarapalli Lakshminarayana Reddy & Ors. v. V. Narayana Reddy & Ors. (1976) 3 SCC 252*, wherein it had been held as follows:

"17. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in

Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3).
.....”

31. The Supreme Court, in Vinubhai's case (supra), while disapproving the view taken in Devarapalli's case (supra), proceeded to hold as under:

- “25. Whereas it is true that Section 156(3) remains unchanged even after the 1973 Code has been brought into force, yet the 1973 Code has one very important addition, namely, Section 173(8), which did not exist under the 1898 Code. As we have noticed earlier in this judgment, Section 2(h) of the 1973 Criminal Procedure Code defines "investigation" in the same terms as the earlier definition contained in Section 2(l) of the 1898 Criminal Procedure Code with this difference - that "investigation" after the 1973 Code has come into force will now include all the proceedings under the CrPC for collection of evidence conducted by a police officer. "All" would clearly include proceedings under Section 173(8) as well. Thus, when Section 156(3) states that a Magistrate empowered under Section 190 may order "such an investigation", such Magistrate may also order further investigation under Section 173(8), regard being had to the definition of "investigation" contained in Section 2(h).
26. Section 2(h) is not noticed by the aforesaid judgment at all, resulting in the erroneous finding in law that the power under Section 156(3) can only be exercised at the pre-cognizance stage. The "investigation" spoken of in Section 156(3) would embrace the entire process, which begins with the collection of evidence and continues until charges are framed by the Court, at which stage the trial can be said to have begun. For these reasons, the statement of the

law contained in paragraph 17 in Devarapalli Lakshminarayana Reddy (supra) cannot be relied upon.

32. As per the ratio of Vinubhai's case(supra), not only the scope of ordering further investigation i.e the stage up to which it may be ordered stands widened and extended but even the fetters earlier imposed that it is on an application moved by the investigating agency only and not at the instance of complainant or the Court *suo-moto*, that further investigation could be ordered have apparently been done away with since the case examined by the Supreme Court was a case where the accused himself had moved such an application. Consequently, the present case being a case where an application under Section 190 Cr.P.C. had been moved by the complainant and that too at a stage where the Magistrate cannot be said to have taken cognizance, no fault can be found with the impugned order dated 7.10.2017 and the same is upheld. Question no. (i), as framed at the outset, stands answered accordingly.
33. The petition, as such, is found to be sans merit and is dismissed.
34. Before parting with the judgment, it is made clear that whatever view has been expressed above is limited only to the extent of the legal issues involved therein is not to be construed as any kind of expression of opinion as regards veracity of allegations levelled in FIR and the investigating agency and the trial Court shall be at liberty to take any view possible on the basis of evidence collected during investigation. Since the operation of impugned order had been stayed and matter pertains to a case registered in February 2017, it is ordered that the investigating agency shall ensure that the matter is investigated

expeditiously so that a fresh final report is filed thereafter at the earliest,
preferably within a period of 3 months from today.

20.12.2019

(GURVINDER SINGH GILL)
JUDGE

Kamal

Whether reasoned / speaking?
Whether reportable?

Yes / No
Yes / No