HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application No.2297 of 2019

Ratan Singh Bisht .....Petitioner

Versus

State of Uttarakhand and another ….Respondents

Mr. R.V.S. Khokher, Advocate for the petitioner.
Mr. V.K. Jemini, Deputy Advocate General for the State.
None is present for respondent nos. 2.

JUDGMENT

Hon'ble Ravindra Maithani, J.(Oral)

Instant petition under Section 482 of the Code of Criminal Procedure, 1973 (for short "the Code") has been preferred against the following:-

1. Order dated 17.11.2018, passed in Criminal Case No. 225 of 2018, Ratan Singh Bisht Vs. Vinod Dashila and others, by the court of learned Additional Chief Judicial Magistrate, Khatima, District Udham Singh Nagar (for short "the case"). By it, an application filed under Section 156 (3) of the Code has been registered as a complaint.
2. Judgment and order dated 25.05.2019, passed in Criminal Revision No. 18 of 2019, Ratan Singh Bisht Vs. State of Uttarakhand by the court of learned 3rd Additional Sessions Judge, Rudrapur, District Udham Singh Nagar, by which, impugned order dated 17.11.2018, passed in the case has been confirmed.

2. The facts are in a very short compass. The revisionist filed an application under Section 156 (3) of the Code with the averments therein that in the intervening night of 25/26.10.2018, when he was in

hut guarding his fisheries pond some police personnel reached there, threatened them, abused them and beat them with *lathi and danda*, due to which, he sustained injuries. It appears that a report was called in the case, on this application under Section 156 (3) of the Code filed by the petitioner. The concerned police reported that on the date of incident, when police party was patrolling, they spotted certain persons, who were playing cards. When question, those persons abused and assaulted the police personnel, of which, a report was lodged by Constable Vinod Dashila under Section 332, 353, 186, 504 and 506 IPC. Having considered the report, the learned court on 17.11.2018 observed that every fact related to the alleged offence was within the knowledge of the petitioner, hence the matter may be proceeded as a complaint and accordingly, the application under Section 156 (3) of the Code has been treated as a complaint and it was registered. This order dated 17.11.2018, passed in the case was challenged by the petitioner in the revision. The learned revisional court also observed that no irregularity or illegality has been committed by treating the application under Section 156 (3) of the Code of the petitioner as a complaint and accordingly, dismissed the revision. Aggrieved, the instant petition has been preferred.

3. A very short question is raised in this petition i.e. whether the Magistrate has any discretion in the matter of the directing investigation under Section 156 (3) of the Code?

4. Heard learned counsel for the petitioner and learned counsel for the State and perused the record.

5. Learned counsel for the petitioner would argue that whenever a cognizable case is disclosed in an application under Section 156 (3) of the Code, the Magistrate has no option, but to pass an order for investigation. It is argued that in this case, the money and other articles were looted from the petitioner by the police personnel and it is

required to be recovered. Therefore, the only course open should have been investigation and not lodging of the complaint. Therefore, according to learned counsel, both the courts below committed an error and both the impugned orders deserve to be set aside and petition allowed.

6. In support of his contention, learned counsel placed reliance upon the principles of law, as laid down in the case of Lalita Kumari Vs. Government of Uttar Pradesh and others, (2014) 2 SCC 1. Especially, reference has been made to para 100, in which the judgment in Madhubala Vs. Suresh Kumar, (1997) 8 SCC 476 has been quoted. Particular reference is made to the following:-

> "100. In Madhu Bala[1] , this Court held: (SCC pp. 478 & 480, paras 6 & 9-10) ....
> .....
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> 10. From the foregoing discussion it is evident that whenever a Magistrate directs an investigation on a 'complaint' the police has to register a cognizable case on that complaint treating the same as the FIR and comply with the requirements of the above Rules. It, therefore, passes our comprehension as to how the direction of a Magistrate asking the police to 'register a case' makes an order of investigation under Section 156(3) legally unsustainable. Indeed, even if a Magistrate does not pass a direction to register a case, still in view of the provisions of Section 156(1) of the Code which empowers the police to investigate into a cognizable 'case' and the Rules framed under the Police Act, 1861 it (the police) is duty-bound to formally register a case and then investigate into the same. The provisions of the Code, therefore, do not in any way stand in the way of a Magistrate to direct the police to register a case at the police station and then investigate into the same. In our opinion when an order for investigation under Section 156(3) of the Code is to be made the proper direction to the police would be 'to register a case at the police station treating the complaint as the first information report and investigate into the same'."

7. In fact, the above legal proposition only suggest that as and when a Magistrate directs for investigation the police is bound to first register and thereafter proceed for investigation. It does not specify the discretion or non discretion of the Magistrate in the matters pertaining to Section 156 (3) of the Code.

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1. Madhu Bala v. Suresh Kumar, (1997) 8 SCC 476 : 1998 SCC (Cri) 111

8. On the other hand, learned State counsel would submit that each and every fact is within the knowledge of the petitioner, there is nothing which requires to be investigated. The law is settled that in such cases, the application under Section 156 (3) of the Code may be treated as a complaint. There is no irregularity or illegality in the impugned orders and petition deserves to be dismissed.

9. Section 156 (3) of the Code empowers a Magistrate to direct for an investigation. It is as hereunder:-

> "(3) Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned."

10. In the case of Lalita Kumari *(supra)*, the question before Hon'ble Supreme Court was with regard to discretion of the Police in the matters of lodging of an FIR. It was mainly related to Section 154 of the Code and the law has been laid down by the Hon'ble Supreme Court in para 120.1 as hereunder:-

> "120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation."

11. There are other directions as well from para 120.2 to 120.8 in the case of Lalita Kumari *(supra)*.

12. The scope of Section 156 (3) of the Code has been interpreted by the Hon'ble Supreme Court in the case of Priyanka Srivastava and another Vs. State of UP and others, (2015) 6 SCC 287. The Hon'ble Supreme Court observed as hereunder:-

"22. In Anil Kumar v. M.K. Aiyappa[2], the two-Judge Bench had to say this: (SCC p.711, para 11)

11. The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in *Maksud Saiyed*[3] 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 CrPC, 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) CrPC, 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.

24. *In CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd.*[4], the Court while dealing with the power of the Magistrate taking cognizance of the offences, has opined that having considered the complaint, the Magistrate may consider it appropriate to send the complaint to the police for investigation Under Section 156(3) of the Code of Criminal Procedure. And again: (Madhao v. State of Maharashtra[5], SCC pp. 620-21, para 18)

"18. When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The Magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence itself. As said earlier, in the case of a complaint regarding the commission of 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). However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156(3)."

25. Recently, in *Ramdev Food Products Private Limited v. State of Gujarat*[5], while dealing with the exercise of power under Section 156(3) CrPC by the learned Magistrate, a three-Judge Bench has held that: (SCC p. 456, Para 22)

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2. (2013) 10 SCC 705 : (2014) 1 SCC (Cri) 35
3. Maksud Saiyad v. State of Gujarat, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692
4. (2005) 7 SCC 467 : 2005 SCC (Cri) 1697
5. Madhao v. State of Maharashtra, (2013) 5 SCC 615 : (2013) 4 SCC (Cri) 141

> "22.1. 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.
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> 22.2. The 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'."

13. In the case of Priyanka Srivastava *(supra),* Hon'ble Supreme Court cautioned the Magistrates to remain vigilant with regard to allegations made and the nature of allegations and not to issue directions without proper application of mind. In para 27 of it, the Hon'ble Court observed as hereunder:-

> "27. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the Bank. We are absolutely conscious that the position does not matter, for nobody is above the law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156 (3) CrPC and also there is a separate procedure under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to."

14. In view of the settled law, it is clear that in each case, the Magistrate is not bound to order for investigation under Section 156 (3) of the Code, even if, it discloses commission of cognizable offence. Discretion lies with the Magistrate. The Hon'ble Supreme Court cautioned that in a routine, the order for investigation has not to be passed. In the instant case, in the impugned order dated 17.11.2018, the learned court has discussed all the aspects of the matter to observe that in this case, investigation should not be ordered and the matter may proceed as a complaint. This view of the Court cannot be said to be illegal, improper or wrong. The discretion vested in the Magistrate has

been exercised in accordance with law. In the revision, the learned court also discussed the law in the right perspective and dismissed the revision.

15. This Court is of the view that both the impugned orders are in accordance with law and they do not warrant any interference. Hence, the petition deserves to be dismissed.

16. The petition is dismissed.

(Ravindra Maithani, J.)
21.12.2020

Jitendra