

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on : 27-08.2021

Pronounced on : 01-11-.2021

CRMP No. 377 of 2015

1. Narendra Singh Bhatia S/o Late Surjeet Singh Bhatia Aged About 27 Years R/o Kailash Nagar Ward No. 27, Rajnandgaon, Police Station- Rajnandgaon, Civil And Revenue District- Rajnandgaon, Chhattisgarh,
2. Nirmal Singh Bhatia S/o Late Surjeet Singh Bhatia Aged About 42 Years R/o Kailash Nagar Ward No. 27, Rajnandgaon, Police Station- Rajnandgaon, Civil And Revenue District- Rajnandgaon, Chhattisgarh,

---- Petitioners

Versus

1. Nilesh Patel S/o Late Harihar Bhai Patel Aged About 50 Years R/o Sagar Complex Durg, Police Station- Durg, Civil And Revenue District- Durg, Chhattisgarh.
2. State Of Chhattisgarh Acting Through Office-In-Charge Police Station Kotwali Rajnandgaon, Chhattisgarh, District : Rajnandgaon, Chhattisgarh

---- Respondents

For Petitioners	:	Mr. K.A. Ansari, Sr. Advocate wit Mr. Aman Ansari, Advocate.
For Respondent No.1	:	Mr. P.S. Baghel, Advocate.
For respondent/State.	:	Mr. Devendra Pratap Singh, Dy.A.G.

Hon'ble Shri Justice Narendra Kumar Vyas

CAV Order

1. The petitioners have filed this petition under Section 482 of Cr.P.C., assailing the order dated 24-4-2015 passed by the District and Sessions Judge, Rajnandgaon in Criminal Revision No.13 of 2015 whereby the Revisional Court allowed the revision filed by respondent No.1 Nilesh Patel against the order dated 21-1-2015 passed by the Judicial Magistrate First Class, Rajnandgaon whereby the application filed by respondent No.1 under Section 156(3) of Cr.P.C., has been dismissed. The revisional court has allowed the revision and remanded the matter to trial court for

deciding the application filed by respondent No.1 under Section 156(3) of Cr.P.C., in accordance with law.

2. The brief facts as projected by the petitioners are that the petitioners are real brothers. The family of the petitioners are engaged in the business of coal transport since long. The petitioners have purchased a plot situated behind the plot bearing current Khasra No. 4/5 for the storage of coal. The only way to that plot was through Khasra No. 4/5 which belongs to the father of respondent No.1, late Harihar Bhai Patel. The plot bearing present Khasra No. 4/5 has been continued to be in possession and used by the petitioners. The truck and other articles were kept there and to keep a watch over the same a room was built for accommodating the Chowkidar. The land was surrounded with boundary wall with a gate in front to which Harihar Bhai Patel, who is father of respondent No.1, never objected nor he instituted any proceedings against the petitioners.
3. Learned Sr. Advocate for the petitioners would submit that the disputed land bearing Khasra No. 4/5 has been continued to be in possession and used by the petitioners and other articles were kept there and to keep a watch over the same a room was built for accommodating the Chowkidar. Harihar Bhai Patel who is father of respondent No.1 never objected nor did he institute any proceedings against the petitioners for possession of the said plot. He would further submit that the factum of possession of the petitioners over the said plot was admitted by the father of respondent No.1 on 12-10-1984 and he died in September, 2012. The respondent No.1, who claims to have acquired American citizenship, came to India a few days before death of his father, leaving behind his family in USA tried to usurp the possession of the plot forcibly but having failed to do so he submitted a false complaint on 16-10-2012 that the petitioners have trespassed over the land and, therefore, he wanted to restore his possession by ousting the petitioners. The police made inquiries and having found that the complaint is not true, they did not take any action, thereafter, respondent No.1 filed another complaint on 3-3-2013

before the Incharge of Police Station, Rajnandgaon and again using his political influence he made a false complaint to the Chief Minister of the State and got it forwarded to the Superintendent of Police, Rajnandgaon to inquire into the matter vide letter dated 4-3-2013. Under the political pressure by respondent No.1, Incharge, Police Station Kotwali, Rajnandgaon, filed Istegasa under Section 145 of Cr.P.C., arraying the respondent No.1 as party No.1 and the petitioner No.1 as party No.2 on 7-1-2014 before the Sub Divisional Magistrate, Rajnandgaon. The preliminary order was passed and thereafter both parties have filed their respective claims and documents in support of their documents. It has been further contented that the Sub Divisional Magistrate found that no order of restoring of possession of land of respondent No.1 can be passed and proceeding is untenable and, therefore, the proceedings were dropped by the Sub Divisional Magistrate, Rajnandgaon. Thereafter, respondent No.1 has filed a complaint on the basis of which FIR of Crime No. 691 of 2013 was registered on 31-8-2013. Charge sheet against the petitioner No.1 was filed on 28-12-2013 and the case is pending as criminal case No. 186 of 2014. Thereafter, the respondent No.1 filed Writ Petition (Cr) No. 98 of 2013 which is still pending.

4. Respondent No.1 filed a complaint under Sections 193, 197, 207, 218, 420, 464, 471 and 120-B of IPC against the petitioners on 20-1-2015 (Annexure P/18). He also filed an application under Section 156(3) of Cr.P.C., seeking a direction to the Police to investigate that the petitioners have made false documents by forgery and have fraudulently obtained forged certificate that they have purchased the property on the auction which was seized during investigation by examining through handwriting expert. In the complaint respondent No. 1 has mainly contended that accused with intention to take possession, has shown the fabricated documents to Incharge of Police Station. The document is annexed as Schedule-B with the complaint. Respondent No.1 has also submitted the application to the Commercial Tax Department, Rajnandgaon and accordingly Police Station Kotwali has given

information to Commercial Tax Officer, Rajnandgaon, Circle, who has given information on 28-4-2014 whereas it has been stated that “ यह कि परिवादी द्वारा स्वयं वाणिज्य कर अधिकारी राजनांदगांव वृत्त से जानकारी दिनांक 28.04.2014 को प्राप्त किया, जिसमें कि स्पष्ट तौर पर अभिलिखित है, कि “वसूली प्रकरण क्रमा [243/63](#) अवधि 01-04-1954-31-03-1956 श्री प्रकाश चंद्र आत्मज रामदास चतुर्वेदी राजनांदगांव से संबंधित कोई प्रकरण उपलब्ध नहीं है । अतएव प्रकरण उपलब्ध—नहीं होने के कारण जानकारी (प्रमाणित प्रतिलिपि) प्रदाय किया जाना संभव नहीं है” जो अनुसूची ‘द’ है”।

5. Therefore, on the above factual matrix, he would submit that the offence of fabrication of forged documents be registered against the accused and they be arrested accordingly. The complaint was filed on 2-1-2015. Learned Judicial Magistrate First Class has rejected the application filed under Section 156(3) of Cr.P.C and has called the report from Police Station In-charge with regard to the complaint made by respondent No.1. Thereafter, the case was adjourned to 28-3-2014, 21-4-2014, 28-3-2014, 21-4-2014, 8-5-2014 and 23-5-2014. In the meanwhile, respondent No.1 Neelish Patel has filed a revision before the revisional court District and Sessions Judge, Rajnandgaon. The learned revisional court has allowed the revision directing the Judicial Magistrate First Class to decide the application under Section 156(3) of Cr.P.C. afresh vide its order dated 24.04.2015.
6. On the other hand, learned counsel for respondent No.1 has not filed his return but would submit that there is no illegality committed by the courts below as no order has been passed against the petitioners warranting interference. The revisional court has only remitted the matter to learned trial court for passing the order on the application filed under Section 156(3) of Cr.P.C. afresh, as such the petition is not maintainable and deserved to be dismissed. The facts which have been projected by the petitioners are disputed facts and can be adjudicated in the trial and it is not appropriate for this court to adjudicate the point raised in this petition at this stage. The petitioners are mainly aggrieved with remand matter made by the revisional court. The present petition is premature at this stage, therefore, it is not maintainable and same is liable to be dismissed.

7. I have heard learned counsel for the parties and perused the record of the court below.
8. This court vide its order dated 15-5-2015 stayed the proceedings of the trial court directing that till the next date of hearing, the effect and operation of the impugned order passed in revision shall remain stayed. However, this order shall not come in the way of Magistrate in holding enquiry and examining the complainant and/or his witnesses under Section 200 of Cr.P.C.
9. On the above factual matrix of the case, the point is required to be determined by this court whether an application under Section 156(3) of Cr.P.C., directing the Police to investigate into the matter is tenable along with the complaint filed under Section 200 of Cr.P.C., before registration of the complaint. To determine the point raised in this petition, it is necessary for this court to extract the relevant provisions of Cr.P.C.

“Section 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.

Section 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.

Section 200 in The Code Of Criminal Procedure, 1973- Examination of complainant. A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate: Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or- purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192: Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re- examine them”.

10. Chapter XII of the Code of Criminal Procedure deals with information to the Police and their powers to investigate and Section 156 of Cr.P.C. provides police power to investigate cognizable cases. Chapter XIII deals with jurisdiction of the criminal courts in inquiry and trial. Chapter XIV deals with condition required for initiation of proceedings. Chapter XV deals with complaint to Magistrate and Section 200 of Cr.P.C., deals with examination of complaint and Section 202 of Cr.P.C., deals with postponement of issue of process, Section 203 of Cr.P.C.. deals with dismissal of the complaint. Chapter XVI deals with commencement of proceedings before Magistrate.
11. From the above provisions of Cr.P.C., it can be seen that on a complaint being filed before the Magistrate applies his mind for proceeding under the various provisions of Chapter XVI of the Code of Criminal Procedure, he must be held to have taken cognizance of the offences mentioned in the complaint. Thus, the procedure which has been prescribed in Chapter XII of Cr.P.C., is at pre-cognizance stage i.e., to say before taking cognizance under Section 190, 200 and 204 of Cr.P.C., if a Magistrate decides to take cognizance under the provisions of Chapter XIV, he is not entitled to order any investigation under Section 156(3) but in the case in hand the

complaint has not been registered and the Judicial Magistrate has not applied his mind before application of mind and before adopting the procedure prescribed under Chapter XVI in a pre-cognizance stage Magistrate can very well issue direction. When, the Magistrate applies his mind not for such purpose but for purposes of ordering investigation under Section 156(3) or issue a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of any offence. Section 156(3) appears in Chapter XII which deals with information to the Police and the powers of the Police to investigate a crime. This Section is placed in a chapter different from Chapter XIV which deals with initiation of proceedings against an accused person. It is, therefore, clear that Section Sections 190 and 156(3) of Cr.P.C., are mutually exclusive and work in totally different spheres. In other words, the position is that even if a Magistrate receives a complaint under Section 190 of Cr.P.C., he can act under Section 156(3) and he does not take cognizance. Therefore, the Magistrate's power under Section 156(3) of the Code to order for investigation by the Police have not been touched or attached by Section 202 because these powers are exercised even before cognizance is taken. In other words, Section 202 of Cr.P.C., would apply only to cases where the Magistrate has taken cognizance and chooses to inquire into the complaint either himself or through any other agency. But, in the present case, Magistrate has not taken any cognizance on the complaint, but along with complaint the respondent No.1 has submitted an application under Section 156(3) seeking direction to authorities to conduct investigation with regard to veracity of the document which is according to respondent No.1, alleged to have been forged one.

12. Hon'ble Supreme Court in **Gopal Das vs. State of Assam, reported in 1961 SC 986** has held in para 7 which reads as under:

“7. When the complaint was received by Mr. Thomas on August 3, 1957, his order which we have already quoted, clearly indicates that he did not take cognizance of the offences mentioned in the complaint but had sent the complaint under [Section 156\(3\)](#) of the Code to the Officer Incharge of Police Station Gauhati for investigation. [Section 156\(3\)](#) states "Any Magistrate empowered under [Section 190](#) may order such investigation as above-mentioned." Mr. Thomas was certainly a Magistrate empowered to take cognizance under [Section 190](#) and he was empowered to take cognizance of an offence upon receiving a complaint. He, however, decided not to take cognizance but to send the complaint to the police for investigation as [Sections 147, 342 and 448](#) were cognizable offences. It was, however, urged that once a complaint was filed the Magistrate was bound to take cognizance and proceed under Chapter XVI of the Code. It is clear, however, that Chapter XVI would come into play only if the Magistrate had taken cognizance of an offence on the complaint filed before him, because [Section 200](#) states that a Magistrate taking cognizance of an offence on complaint shall at once examine the complainant and the witnesses present, if any, upon oath and the substance of the examination shall be reduced to writing and shall be signed by the complainant and the witnesses and also by the Magistrate. If the Magistrate had not taken cognizance of the offence on the complaint filed before him, he was not obliged 'to examine the complainant on oath and the witnesses present at the time of the filing of the complaint. We cannot read the provisions of [Section 190](#) to mean that once a complaint is filed, a Magistrate is bound to take cognizance if the facts stated in the complaint disclose the commission of any offence. We are unable to construe the word 'may' in [Section 190](#) to mean 'must.' The reason is obvious. A complaint disclosing cognizable offences may well justify a Magistrate in sending the complaint, under [Section 156\(3\)](#) to the police for investigation. There is no reason why the time of the Magistrate should be wasted when primarily the duty to investigate in cases involving cognizable offences is with the police. On the other hand, there may be occasions when the Magistrate may exercise his discretion and take cognizance of a cognizable offence. If he does so then he would have to proceed in the manner [provided by Chapter XVI of the Code, Numerous cases were cited before us in support of the submissions made on behalf of the appellants. Certain submissions were also made as to what is meant by "taking cognizance." It is unnecessary to refer to the cases cited. The following observations of Mr. Justice Das Gupta in the

case of [Superintendent and Remembrancer of Legal Affairs, West Bengal v. Abani Kumar Banerjee](#) 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 190\(1\)\(a\)](#) Criminal Procedure Code, he must not only have applied his mind to the contents of the 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 his 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.

were approved by this Court in [R.R. Chari v. State of Uttar Pradesh](#) . It would be clear from the observations of Mr. Justice Das Gupta that when a Magistrate applies his mind not for the purpose of proceeding under the various sections of Chapter XVI 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 investigation, he cannot be said to have taken cognizance of any offence. The observations of Mr. Justice Das Gupta above referred to were also approved by this Court in the case of [Narayandas Bhagwandas Madhavdas v. State of West Bengal](#), 1960-1 Section . It will be clear, therefore, that in the present case neither the Additional District Magistrate nor Mr. Thomas applied his mind to the complaint filed on August 3, 1957, with a view to taking cognizance of an offence. The Additional District Magistrate passed on the complaint to Mr. Thomas to deal with it. Mr. Thomas seeing that cognizable offences were mentioned in the complaint did not apply his mind to it with a view to taking cognizance of any offence; on the contrary in his opinion it was a matter to be investigated by the police under [Section 156\(3\)](#) of the Code. The action of Mr. Thomas conies within the observations of Mr. Justice Das Gupta. In these circumstances, we do not think that the first contention on behalf of the appellants has any substance”.

13. It is now well settled that if a complaint is being filed before the Magistrate, he applies his mind for proceeding under various

provisions of Chapter 16 of the Code of Criminal Procedure, he must be held to have taken cognizance of the offences mentioned in the complaint. When however, the Magistrate applies his mind not for such purpose but for purposes of ordering investigation under Section 156(3) or issue a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of any offence.

14. Hon'ble the Supreme Court in **Tula Ram and others vs. Kishore Singh, reported in (1977) 4 SCC 459** has held in para 10, 13 and 109 which read as under.

“10. Analysing the scheme of the Code on the subject in question it would appear that section 156(3) which runs thus:

"1 Any Magistrate empowered under [section 190](#) may order such an investigation as above mentioned. appears in Chapter 12 which deals with information to the Police and the powers of the police to investigate a crime. This section, is therefore placed in a Chapter different from Chapter 14 which deals with initiation of proceedings against an accused person. It is, therefore, clear that [sections 190](#) and [156\(3\)](#) are mutually exclusive and work in totally different spheres. In other words, the position is that even if a Magistrate receives a complaint under [section 190](#) he can act under [section 156\(3\)](#) provided that he does not take cognizance. The position, therefore, is that while Chapter 14 deals with post cognizance stage Chapter 12 so far as the Magistrate is concerned deals with pre-cognizance stage, that is to say once a Magistrate starts acting under [section 190](#) and the provisions following he cannot resort to [section 156\(3\)](#). Mr. Mukherjee vehemently contended before us that in view of this essential distinction once the Magistrate chooses to act under [section 156\(3\)](#) of the Code it was not open to him to revive the complaint, take cognizance and issue process against the accused. Counsel argued that the Magistrate in such a case has two alternatives and two alternatives only either he could direct reinvestigation if he was not satisfied with the final report of the police or he could straightaway issue process to the accused under [section 204](#). In the instant case the Magistrate has done neither but has chosen to proceed under [section 190](#) (1) (a) and [section 200](#) of the Code and thereafter issued process against the accused under [section 204](#). Attractive though the argument appears to be we are however unable to accept the same. In the first place, the argument is based on a fallacy that when a Magistrate orders investigation under [section 156\(3\)](#) the complaint disappears and goes out of existence. The provisions of [section 202](#) of the present Code debar a Magistrate from directing investigation on a complaint where the offence charged is triable exclusively by the Court of Sessions. On the allegations of the complainant the offence complained of was clearly triable exclusively by the Court of Sessions (2) and therefore it is obvious that the Magistrate was completely debarred from directing the complaint filed before him to be investigated by the police under [HYPERLINK "https://indiankanoon.org/doc/1149595/"section 202 of the Code](#). But the Magistrate's powers under [section 156\(3\)](#) of the Code to order investigation by the police have not been touched or affected by [section 202](#) because these powers are exercised even

before cognizance is taken. In other words, [section 202](#) would apply only to cases where the Magistrate has taken cognizance and chooses to enquire into the complaint either himself or through any other agency. But there may be circumstances as in the present case where the Magistrate before taking cognizance of the case himself chooses to order a pure and simple investigation under [section 156\(3\)](#) of the Code. The question is, having done so is he debarred from proceeding with the complaint according to the provisions of [sections 190, 200 and 204](#) of the Code after receipt of the final report by the police? We see absolutely no bar to such a course being adopted by the Magistrate. In the instant case, there is nothing to show that the Magistrate had taken cognizance of the complaint. Even though the complaint was filed by the Magistrate, he did not pass any order indicating that he had applied his judicial mind to the facts of the case for the purpose of proceeding with the complaint. What he had done was to keep the complaint aside and order investigation even before deciding to take cognizance on the basis of the complaint. After the final report was received the Magistrate decided to take cognizance of the case on the basis of the complaint and accordingly issued notice to the Complainant. Thus, it was on 2nd April, 1975 that the Magistrate decided for the first time to take cognizance of the complaint and directed the complainant to appear. Once cognizance was taken by the Magistrate under [section 190](#) of the Code it was open to him to choose any of the following alternatives :

(1) Postpone the issue of process and enquire into the case himself; or (2) direct an investigation to be made by the Police Officer; or (3) any other person.

In the instant case as the allegations made against the accused made out a case exclusively triable by the Court of Sessions the Magistrate was clearly debarred from ordering any investigation, but he was not debarred from making any enquiry himself into the truth of the complaint. This is what exactly the Magistrate purported to have done in the instant case. The Magistrate issued notice to the complainant to appear before him, recorded the statement of the complainant and his witnesses and after perusing the same he acted under [section 204](#) of the Code by issuing process to the accused appellants as he was satisfied that there were sufficient grounds for proceeding against the accused.

13. To the same effect is the decision of this Court in [Jamuna Singh & Ors.v. Bhadai Sah](#)(3).

"It is well settled now that when on a petition of complaint being filed before him a Magistrate applies his mind for proceeding under the various provisions of Chapter XVI of the Code of Criminal Procedure, he must be held to have taken cognizance of the offence mentioned in the complaint.

When however he applies his mind not for such purpose but for purposes of ordering investigation under [section 156\(3\)](#) or issues a search warrant for the purpose of investigation he cannot be said to have taken cognizance of any offence."

14. In these circumstances the inescapable conclusion is that in the present case the Magistrate had not taken cognizance of the case and ordered investigation by the police under [section 156\(3\)](#) before applying his mind to the complaint. This being the position it was always open to the Magistrate to take cognizance of the complaint and dispose it of according to law, that is to say according to the provisions of [sections 190, 200](#) and [202](#). In view of the facts in the present case he was prohibited from directing any investigation but he could take other steps. Even in the case of [Abhinandan Jha & Ors. v. Dinesh Mishra](#) (supra) this Court while holding that the Magistrate has supervisory power over the police and it was not open to him direct the police to file a charge-sheet observes that the Court was not powerless to dispose of the complaint according to law. In this connection, this Court observed as follows :

"We are not inclined to agree with the further view that from these considerations alone it can be said that when the police submit a report that no case has been made out for, sending up an accused for trial, it is open to the Magistrate to direct the police to file a charge-sheet. But, we may make it clear that this is not to say that the Magistrate is absolutely powerless, because, as will be indicated later, it is open to him to take cognizance of an offence and proceed, according to law."

15. Again, Hon'ble Supreme Court in **H.S. Bains, Director, Small Saving-cum-Dy. Secretary, Finance vs. State (Union Territory of Chandigarh)**, reported in (1980) 4 SCC 631 has held in paras 6 and 8 which read as under:

“6. It is seen from the provisions to which we have referred in the preceding paragraphs that on receipt of a complaint a Magistrate has several courses open to him. He may take cognizance of the offence and proceed to record the statements of the complainant and the witnesses present under Sec. 200. Thereafter, if in his opinion there is no sufficient ground for proceeding he may dismiss the complaint under Sec. 203. If in his opinion there is sufficient ground for proceeding he may issue process under Sec. 204. However, if he thinks fit, he may postpone the issue of process and either enquire into the case himself or direct an investigation to be made by a Police Officer or such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. He may then issue process if in his opinion there is sufficient ground for proceeding or dismiss the complaint if there is no sufficient ground for proceeding. On the other hand, in the first instance, on receipt of a complaint, the Magistrate may, instead of taking cognizance of the offence, order an investigation under Sec. 156(3). The police will then investigate and submit a report under Sec. 173(1). On receiving the police report the Magistrate may take cognizance of the offence under Sec. 190(1) (b) and straightaway issue process. This he may do irrespective of the view expressed by the police in their report whether an offence has been made out or not. The Police report under Sec. 173 will contain the facts discovered or unearthed by the police and the conclusion drawn by the police therefrom. The Magistrate is not bound by the conclusions drawn by the Police and he may decide to issue process even if the Police recommend that there is no sufficient ground for proceeding further. The Magistrate after receiving the Police report, may, without issuing process or dropping the proceeding decide to take cognizance of the offence on the basis of the complaint originally submitted to him and proceed to record the statements upon oath of the complainant and the witnesses present under Sec. 200 [Criminal Procedure Code](#) and thereafter decide whether to dismiss the complaint or issue process. The mere fact that he had earlier ordered an investigation under Sec. 156(3) and received a report under Sec. 173 will not have the effect of total effacement of the complaint and therefore the Magistrate will not be barred from proceeding under [Sections 200](#), [203](#) and [204](#). Thus, a Magistrate who on receipt of a complaint,

orders an investigation under Sec. 156(3) and receives a police report under Sec. 173(1), may, thereafter, do one of three things: (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence under Sec. 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report; (3) he may take cognizance of the offence under Sec. 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Sec. 200. If he adopts the third alternative, he may hold or direct an inquiry under Sec. 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be.

8. In **Tula Ram vs. Kishore Singh** (supra) the Magistrate, on receiving a complaint, ordered an investigation under Sec. 156(3). The Police submitted a report indicating that no case had been made out against the accused. The Court, however, recorded the statements of the complainant and the witnesses and issued process against the accused. It was contended that the Magistrate acted without jurisdiction in taking cognizance of the case as if upon a complaint when the police had submitted a report that no case had been made out against the accused. This Court held that the Magistrate acted within his powers and observed that the complaint did not get exhausted as soon as the Magistrate ordered an investigation under Sec. 156(3). We are, therefore, unable to agree with the submission of Shri Sibal that the Magistrate acted without jurisdiction in taking cognizance of the offence and issuing process to the accused notwithstanding the fact that the police report was to the effect that no case had been made out”.

16. Thus, from the above legal position, it is quite clear that a Magistrate can order investigation under Section 156(3) of Cr.P.C., only at the pre-cognizance stage, that is to say, before taking cognizance under Sections 190, 200 and 204 of Cr.P.C.
17. Now, reverting back to the present case in hand, respondent No.1 has filed an application under Section 156(3) of Cr.P.C., for investigation with regard to the authenticity of the documents by sending it to the handwriting expert, therefore, he has filed the application for issuance of direction to investigate the authenticity of

the documents by Police Station, Kotwali, which is mechanically rejected by the Magistrate without considering the provisions of law.. Thereafter, respondent No.1 has referred the revision petition before the learned Revisional Court which by the impugned order dated 24-4-2015 has allowed the revision and quashed the order by directing the Judicial Magistrate First Class to decide the application filed under Section 156(3) of Cr.P.C., in accordance with law. The order dated 24-4-2015 is inconformity with law by law laid down as above, therefore, the Revisional Court has not committed any material illegality or irregularity in passing the impugned order warranting any interference by this court. Therefore, the present Cr.M.P. is liable to be dismissed.

18. This court vide its order dated 15-5-2015 has stayed the impugned order passed in revision petition. The same stands vacated and it is directed that the Judicial Magistrate First Class shall proceed further in the matter, in accordance with law.
19. In the result, the petition fails and is hereby dismissed.

Sd/-

(Narendra Kumar Vyas)
Judge

Raju