

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. - 813 of 2018****IN THE MATTER OF****Dulal Chandra Nath****Vs.****The State of West Bengal & Ors.**

**For the petitioner : Mr. Kamalesh Chandra Saha, Adv.,
Ms. Payel Mitra, Adv.,**

**For the State : Mr. Saswata Gopal Mukherjee, P.P.,
Mr. Saryati Datta, Adv.**

For the Opposite Party : Mr. Amitabha Ghosh, Adv.

Judgment on : 18.11.2022

Subhendu Samanta, J.

One petition of complaint was filed before Learned Magistrate U/s 156 Sub-clause (3) of Cr.P.C. with a prayer for forwarding the same to the O.C. of concerned Police Station with a direction to conduct investigation treating the complaint as FIR. The prayer was turned down by the Magistrate which resulted the filing of instant criminal revision.

Learned Advocate appearing on behalf of the petitioner submitted before this court that the impugned order passed by the Learned Court below suffers illegality and impropriety. He further submitted that the views taken by the Learned Court below is completely erroneous and cannot be sustained in the eye of law. He again argued that instead of rejecting the application of the petitioner Learned Court below may have proceed according to the provision enumerated U/s 200 of the Code of Criminal Procedure.

In support of his contention he cited some decisions reported in **2006 SCC On Line All 1466, 2017(2) AICLR 723, (DEL) 2017(2),2018(2)AICLR 539(CAL).**

Learned Advocate appearing on behalf of the State submitted before this court that the impugned order passed by the Learned Court below suffers no illegality. The principal enumerated in the impugned order is quite clear. He further argued that it was the discretion of the Learned Magistrate to proceed with the matter according to the provisions of law and Learned Magistrate has correctly adopted to reject the application filed by the petitioner.

Perused the citations. The Allahabad High Court in **2006SCC Online** as enumerated that when the petition of complaint makes out a cognizable offence and police did not register an FIR U/s 154 Cr.P.C. Learned Magistrate must not refuse to direct the police to register an FIR under the provision of Section-156 Sub-clause (3) Cr.P.C.

Delhi High Court in **2017(2) AICLR 723** has held that an order dismissing or allowing an application U/s 156 Sub-clause 3 Cr.P.C is not an interlocutory order and revision petition against the same is maintainable.

This Hon'ble Court in **2018(2)AICLR539** has held that filing complaint with a superior police officer U/s 154(3) of the Code is not a condition precedent before approaching Magistrate U/s 156(3) of the Code. Any aggrieved person may approach the jurisdictional Magistrate directly

U/s 156 Sub-clause 3 of the Code if the O.C. refuses to register FIR of the information of commission of a cognizable offence. Lodging complains to Superintendent of Police U/s 154(3) is an alternate option.

I have gone through the above mentioned authorities it appears to me that the instant revisional application is quite maintainable against the impugned order. I am also in consonance with the view of the Hon'ble authorities as referred by the Learned Advocate for the petitioner.

I have carefully perused the impugned Order passed by the Learned Magistrate. In passing the impugned order, Learned Magistrate has referred a decision of Hon'ble Apex Court in **Priyanka Srivastava's**; Case in the cited case the Hon'ble Apex Court has formulated the modalities so that vexatious or frivolous complaint cannot be filed before the Magistrate and the judicial power of the Magistrate enumerated U/s 156 Sub-clause (3) may not be exercised in all cases.

Learned Magistrate also referred a decision of this court passed in **Manindra Kumar Jalal and others vs The State of West Bengal & Anrs.**, wherein it has been held that before approaching Magistrate U/s 156 Sub-clause (3) of the Code, the informant has to move before the local Police Station to lodge information U/s 164 (4)(1) of the Code.

On careful perusal of the petition of complaint, it appears that the complaint discloses a fact of cheating and criminal breach of trust allegedly committed by the accused persons in violation of the terms of the agreement entered into between the complainant and the accused persons. It has also been alleged in the petition of complaint that the accused persons are allegedly proceed to misappropriate the property by disbursing the same in the name of strangers. It is also stated there, before approaching to the Magistrate the complainant has approached to the police authority to register an FIR, which was turned down.

The provision of law enumerated under the Code of Criminal Procedure is very clear. Chapter XII of the Code enumerated information to

the police and their powers to investigate a criminal case starting from Section 154. In the same Chapter 156(3) is the provision wherein any Magistrate empowered u/s 190 may order of investigation to be conducted by the police Chapter XIV of the Code indicates the conditions requisite for initiation of proceeding before the Magistrate. Chapter 15 starting from Section 200 of the Code enumerated complaints to the Magistrate.

So, when one petition of complaint was filed before a Magistrate for necessary direction upon the O.C. of concerned Police Station to conduct investigation treating the complaint as FIR, and the Magistrate is of opinion that he is not satisfied with the fact of commission of offence, there are options open to the Magistrate on receipt of such complaint. When the complaint was presented before the Magistrate the Magistrate has mainly two options available to him; 1st - to pass an order as enumerated U/s 156 Sub-clause (3) of the Code. 2nd - Magistrate may use his discretion judiciously and may opine that in the circumstances of the case it will be proper to treat the application as a complaint case then he may proceed according to the procedure provided under Chapter XV of the Code.

So, after rejecting the application U/s 156 Sub-clause (3) Magistrate may take cognizance U/s 190 of the Code and thereafter proceed U/s 200, or in alternative the Magistrate without taking cognizance may proceed U/s 202. But in this case the Learned magistrate on straight way rejected the application of the petitioner. It appears that the Magistrate was dissatisfied with the facts enumerated in petition of complaint; at this juncture the Magistrate have to take the recourse as discussed earlier. The right to approach of a person to the judicial authority cannot be straight way thrown out when there are opportunities in the Code itself to entertain the same.

In considering the circumstances this Court is of the view that the impugned order passed by the Learned Magistrate suffers illegality and which need to be set aside.

In result thereof the instant criminal revision is allowed. The impugned order passed by the Learned Magistrate is hereby set aside.

Learned Magistrate is directed to allow the petitioner to proceed in accordance with the Chapter XV of the Code of Criminal procedure as discussed earlier.

Let a copy of this order be forwarded to the Learned Magistrate for his information and necessary action. Accordingly, the instant criminal revision along with connected CRAN if any is disposed of.

(Subhendu Samanta, J.)