

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2446 of 2016

Pramod Kumar Samantaray and others ***Petitioners***

-versus-

State of Orissa and another ***Opposite Parties***

CORAM: JUSTICE S.PUJAHARI

ORDER
08.08.2022

Order
No.

04.

- 1.** This matter is taken up through hybrid mode.
- 2.** This application under Section 482 of Cr.P.C. has been filed by the Petitioners with a prayer to quash the order dated 23rd March, 2015 passed by the learned S.D.J.M., Kendrapara in 1.C.C. No.222 of 2015 pursuant to which criminal proceeding was initiated against them vide Kendrapara P.S. Case No.70 of 2015, corresponding to G.R. Case No.477 of 2015, and also the order of cognizance dated 15th February, 2016 passed by the learned S.D.J.M., Kendrapara on the basis of the charge-sheet filed by the police.
- 3.** Heard the learned counsel for the Petitioner and the learned counsel for the State-Opposite Party No.1. None appears on behalf of the Opposite Party No.2.

4. Learned counsel for the Petitioners submits that since the case is triable by the court of sessions, the trial court without making an inquiry under Section 202 Cr.P.C. could not have issued a direction to the Police to register a case under Section 156(3) Cr.P.C.

5. However, learned counsel for the State submits that the aforesaid contention is misconceived and without any substance inasmuch as the trial court in this case directed for registration of the case and investigation under Section 156(3) Cr.P.C. as complaint revealed a cognizable case.

6. The Scheme of the Code of Criminal Procedure is that when a complaint is filed disclosing commission of cognizable offence, and it is brought to the notice of the Magistrate that police has not acted upon the report lodged for the said offence, the Court can very well issue a direction under Section 156(3) Cr.P.C. to police to register a case and furnish Final Form under Section 173 Cr.P.C., inasmuch as the Code mandates that on receipt of information with regard to commission of cognizable offence, the Police is duty bound to register the same as an FIR, if there is no other legal impediment such as locus standi on the information etc., conduct investigation and submit the report under Section 173 Cr.P.C. on

conclusion of the investigation. Otherwise also, even when no FIR was lodged before the Police with regard to commission of cognizable offence, and a complaint is made before the Magistrate seeking for action and if the Court is of the view that the complaint discloses commission of cognizable offence warranting investigation by the Police, the Magistrate can also give a direction under Section 156(3) Cr.P.C to the Police to register the case and conduct investigation to find out the truth and veracity of the allegations. The scheme of the Code does not contemplate that without making an inquiry under Section 202 Cr.P.C., the Magistrate cannot send the complaint to the Police for registration of a case and investigation pursuant to the complaint disclosing commission of a cognizable offence irrespective of the procedure of trial of the offences alleged. However, when the Magistrate on receipt of the complaint disclosing commission of cognizable offence, on recording the statement of the Complainant except the cases as provided under Proviso (a) and (b) of Section 200 Cr.P.C as well as the witnesses so tendered under Section 200 Cr.P.C. decides to proceed with the case, the court can be said to have taken cognizance of the offence complained of or being made out. The Magistrate also when looking into the complaint as well as the statements of the witnesses is prima-facie satisfied

that the accused has committed the offence can be proceeded with, it can issue summons against the accused person but such an action is not permissible in respect of the accused person residing outside the jurisdiction of the court without making any inquiry under Section 202 Cr.P.C. The aforesaid mandate under Section 202 Cr.P.C. for the accused persons, who are residing outside, has been brought to the statute as an amendment with an objective that the accused person residing outside should not be put to harassment by a complaint made frivolously against him. So also, in the cases triable by the Court of sessions for which cognizance has been taken, the Court has to make an inquiry under Section 202 Cr.P.C by recording the statement of the witnesses produced by the Complainant and after conducting such inquiry only, the Magistrate can direct the Police for investigation to assist it, if so required. Thus, direction for police investigation under Section 202 Cr.P.C. is quite distinct and different from the order passed under Section 156(3) Cr.P.C. Hence, it is fallacious to say that in a case triable by the court of sessions, the Magistrate can not direct the police to register a case and investigate, without making an inquiry as contemplated under Section 202 Cr.P.C. Such being a scheme of the Code, the contention advanced in this case challenging the impugned order

passed under Section 156(3) of Cr.P.C. is found to be misconceived and devoid of merit.

7. I am in this regard fortified with the decision of the apex Court in the case of **Devarapalli Lakshminarayana Reddy and others vrs. V. Narayana Reddy and others** reported in (1976) 3 SCC 252 wherein the apex Court have held as follows:-

“13. It is well settled that 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. This is clear from the use of the words “may take cognizance” which in the context in which they occur cannot be equated with “must take cognizance”. The word “may” gives a discretion to the magistrate 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, himself.

14. This raises the incidental question : What is meant by “taking cognizance of an offence” by a 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 purpose 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 investigation, or ordering investigation by the police under Section 156(3), he cannot be said to have taken cognizance of any offence.

15. This position of law has been explained in several cases by this Court, the latest being *Narmaljit Singh Hoon v. State of West Bengal*, (1973) 3 SCC 753.

16. The position under the Code of 1898 with regard to the powers of a magistrate having jurisdiction, to send a complaint disclosing a cognizable offence – whether or not triable exclusively by the court of session – to the police for investigation under Section 156 (3), remains unchanged under the code of 1973. The distinction between a police investigation ordered under Section 156(3) and the one directed under Section 202, has also be maintained under the new Code; but a rider has been clamped by the first proviso to Section 202 (1) that if it appears to the magistrate that an offence triable exclusively

by the court of session has been committed, he shall not make any direction for investigation.

17. Section 156(3) occurs in Chapter XII, under the caption : “Information to the Police and their powers to investigate”; while Section 202 is in Chapter XV which bears the heading : “Of complaints to Magistrate”. The power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by section 202(1). The two operate in distinct spheres at different stages. The first is exerciseable at the pre-cognizable stage, the second at the post-cognizance stage when the magistrate is in seisin of the case. 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). It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge sheet under Section 173. On the other hand, Section 202 comes in at a stage when some evidence, has been collected by the magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the magistrate is empowered under Section 202 to direct, within the limits circumscribed by that section an investigation “for the purpose of deciding whether or not there is sufficient ground for proceeding”. Thus

the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the magistrate in completing proceedings already instituted upon a complaint before him.

18. In the instant case, the magistrate did not apply his mind to the complaint for deciding whether or not there is sufficient ground for proceeding; but only for ordering an investigation under Section 156(3). He did not bring into motion the machinery of Chapter XV. He did not examine the complainant or his witnesses under Section 200, Cr.P.C., which is the first step in the procedure prescribed under that chapter. The question of taking the next step of that procedure envisaged in Section 202 did not arise. Instead of taking cognizance of the offence, he has, in the exercise of his discretion, sent the complaint for investigation by police under Section 156.”

8. Hence, for the aforesaid reasons and the ratio laid down by the apex Court in the case of **Devarapalli Lakshminarayana Reddy** (supra), the prayer made in this petition is devoid of merit and, accordingly, the CRLMC stands dismissed.

(S.Pujahari)
Judge