

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

130

**CRM-M-8727-2022
Date of decision: 08.04.2022**

GURNAM SINGH

... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Vijay Rana, Advocate for the petitioner.

VINOD S. BHARDWAJ. J.

1. The instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”) for seeking quashing of the impugned judgment dated 26.10.2021 (Annexure P-10) passed by the Additional Sessions Judge, Jalandhar dismissing the revision petition of the petitioner against the order dated 31.08.2020 (Annexure P-2) passed by the Judicial Magistrate First Class, Jalandhar in CRM-2208-2020 instituted on 26.08.2020 under Sections 309, 506, 500, 501 and 120-B of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) and in case titled as “*Gurnam Singh Versus Kuljeet Singh and others*” vide which an application filed by the petitioner under Section 156(3) Cr.P.C. has been dismissed.

2. The facts in brief noticed from the petition are to the effect that respondent No.2 was formerly working as Secretary of Gurudwara Aassa, Puran Dayala Nagar, Jalandhar and is alleged to have failed to disclose the accounts to the Sangat regarding the income and expenditure of the

Gurudwara Sahib despite repeated demands. Instead, a complaint was lodged by respondent No.2 with the Police at Police Station Division No.5 against the Sangat including the petitioner amongst others. It is alleged that an agreement was arrived at to form a committee of four persons to run the day to day affairs and functioning of Gurudwara Sahib and the respondent No.2 agreed to resign from the post of Secretary. However, despite such agreement and with an intention to avoid handing over charge to the newly constituted Committee, the respondent No.2 prepared a suicide note in his own handwriting and got himself admitted in Tagore Hospital, Jalandhar on 16.07.2020. In the said suicide note, he had written about his cause of committing suicide leveling the allegation of abetment against the petitioner herein amongst others even though the petitioner and others had never aided or abetted commission of such any offence.

3. That it is further submitted that the respondent No.2 was legally bound to disclose the income and expenditure of Gurudwara Sahib and that the suicide note was published in the Media as well as on the social networking sites and was defamatory in content and leveled accusations and allegations against the petitioner as well.

4. The photocopy of the suicide note was also pasted in the premises of Gurudwara Sahib and photocopies thereof were also distributed to the public at large at the Press Conference called at the Hospital to mount pressure on the petitioners and others so as to deter them from asking about accounts pertaining to the Gurudwara Sahib. It is claimed that an application was submitted to conduct an investigation against the respondents to the Commissioner of Police, Jalandhar vide diary No. 2381-PTM dated 17.07.2020 and for registration of the FIR against the respondent No.2 and

his co-conspirators for having embezzled/misappropriated the funds of Gurudwara Sahib.

5. The police authorities, however, did not take any action on the said complaint submitted by the petitioner and as a result thereof an application under Section 156(3) Cr.P.C. with a direction to the Police to register FIR into the matter was filed by the petitioner in the Court of Illaqa Magistrate. The said application was dismissed by the Illaqa Magistrate vide order dated 31.08.2020 after recording that no ground was made out for issuing direction to register the FIR. However, report regarding genuineness of the suicide note as well as the involvement of the respondent-accused in the commission of the offence was called for. The said order dated 31.08.2020 was challenged by means of filing a revision petition before the Court of Sessions Judge, Jalandhar which was also dismissed vide judgment dated 26.10.2021 passed by the Additional Sessions Judge, Jalandhar (P-10). Hence, the instant petition.

6. Learned counsel appearing on behalf of the petitioner has contended that the Courts below have committed an error while dismissing the application preferred under Section 156 (3) Cr.P.C. without discussing the case of the petitioner and ignoring the evidence available on file.

7. Reiterating the said arguments, learned counsel has emphasized that it was incumbent upon the Court to record reasons as to why a direction to register a case is not being issued by the Illaqa Magistrate and that the impugned order being non speaking, was liable to be dismissed.

8. That a pointed query was raised to the learned counsel appearing on behalf of the petitioner as to whether an order passed on an application under Section 156(3) Cr.P.C. is an interlocutory order and as to

whether the revisional jurisdiction would be barred in terms of Section 397 (2) Cr.P.C.

9. Learned counsel has fairly conceded that the order passed by the Magistrate refusing to direct registration of a case on an application under Section 156 (3) is an interlocutory order and as such it would not be revisable under Section 397(2) Cr.P.C.. He has argued that as the present petition has been filed under Section 482 Cr.P.C., hence the said issue should be examined by High Court on merits as inherent jurisdiction of the High Court can be exercised to secure ends of justice.

10. Learned counsel appearing on behalf of the petitioner has placed reliance on the judgment of “Anil Kumar versus M.K. Aiyappa” reported as 2013 (10) SCC 705. The relevant paragraph relied upon by learned counsel during the course of arguments is extracted as under:

8. We may first examine whether the Magistrate, while exercising his powers under Section 156(3) Cr.P.C., could act in a mechanical or casual manner and go on with the complaint after getting the report. The scope of the above mentioned provision came up for consideration before this Court in several cases. This Court in Maksud Saiyed case (supra) examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where a jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 Cr.P.C., 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) Cr.P.C., 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.”

11. A further reference is made to the judgment of **“Mohd. Yosuf versus Smt. Afaq Jahan”** reported as **2006 (1) RCR (Criminal) 450**. The paragraph relied upon by learned counsel is as under:

“12. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.”

12. A reference is also made to the following paragraphs of the judgment of the Hon’ble Supreme Court in the matter of **Ramdev Food Products Pvt. Limited versus State of Gujarat** passed in Criminal Appeal

No.600 of 2007 decided on 16.03.2015, as extracted below :-

20. *It has been held, for the same reasons, that direction by the Magistrate for investigation under Section 156(3) cannot be given mechanically. In Anil Kumar vs. M.K. Aiyappa, 2013(4) RCR (Criminal) 586: it was observed :*

"11. The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed case [(2008) 5 SCC 668] 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."

13. While making a reference to the aforesaid judgments and the extracts reproduced above, learned counsel has emphasized that the judgment passed by the trial Court suffers from lack of reason and is hence, unsustainable.

14. I have heard learned counsel on behalf of the petitioner and have gone through the petition as well as the document appended along with

the same as also the judgments relied upon by the learned counsel appearing on behalf of the petitioner.

15. Having considered the said judgment, I am of the opinion that the said judgments do not support the claim of the petitioner. In so far as the judgment of “*Anil Kumar versus M.K. Aiyappa*” (supra) is concerned, the same states that a Magistrate cannot act in a mechanical or casual manner while referring a matter under Section 156(3) Cr.P.C. It relates to exercising of the jurisdiction and directing registration of FIR and does not deal with a case where the Court chooses to take cognizance rather than directing registration of FIR.

16. The facts of the case are at variance in the instant case. Any direction to register a criminal case and investigate the same has numerous consequences on the liberties of an individual. It is for the said reason that rule of caution would require application of mind prior to issuance of a direction to register a case under Section 156(3) Cr.P.C. The said position stands duly explained in the second judgment of “*Mohd. Yousuf versus Smt. Afaq Jahan*” (supra) relied upon by the petitioner. In the said judgment the Supreme Court submits that it is not necessary for the Magistrate to give a reasoned order while dealing with an application under Section 156 (3) Cr.P.C. and issuing such a direction.

17. In order to appreciate the issue, Section 156 Cr. P.C. needs to be referred to and the same is reproduced as under:-

"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.

18. Section 156 Cr.P.C. falls in Chapter XIII of the Cr.P.C. dealing with powers of Police Officer to investigate cognizable offences. The investigation envisaged under Section 202 is contained in Chapter XV of the Cr.P.C. and is different from the investigation contemplated under Section 156 of the Cr.P.C. The said chapter deals with provisions relating to the steps that a Magistrate has to adopt while and after taking cognizance of any offence on a complaint. The provisions of the above two chapters deal with two different phases, although there could be another factor i.e. complaint filed by a person. Chapter XII elaborates various steps to be adopted for investigation which comes to an end with the filing of a report under Section 173 Cr.P.C. even if the investigation is carried out on the order of the Magistrate under Chapter XII, as the said order is passed before taking cognizance of the offence. However, a Magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once the Magistrate is of an opinion and proposes to take cognizance, he has to follow the procedure envisaged in Chapter XV of the Code. A reading of Section 202 Cr.P.C. submits that the investigation referred to therein is of a limited nature and restricted to whether there is sufficient ground for proceeding further. Such an investigation can also be ordered by the Magistrate to be conducted by a person other than a Police Officer, which is

not so under Section 156(3) Cr.P.C.

19. The precedent judgments referred to by counsel for the petitioner too prescribe that a Magistrate should not passed an order under Section 156 (3) Cr.P.C. directing registration of a case in a mechanical or a casual manner, however, the said judgments do not prescribe that a Magistrate is required to record reasons as to why he is not exercising the jurisdiction under Section 156 (3) Cr.P.C. and prefers to take recourse to the procedure contemplated under Chapter XV of the Cr.P.C.. A direction under Section 156 (3) of the Cr.P.C is to be issued only after application of mind by the Magistrate and when the Magistrate, while not taking cognizance of the complaint, does not find it necessary to post-pone issuance of process but finds that a case is made out to proceed forthwith, he may issue a direction under Section 156(3) Cr.P.C.

20. The cases where a Magistrate is yet to determine existence of sufficient grounds to proceed, he may postpone issuance of process. It is however well settled that the exercise of discretion by the Magistrate is guided by interest of justice, from case to case. The right of a complainant is only to seek prosecution of an accused and such a right does not stand defeated when a Magistrate does not exercise his powers under Section 156 (3) Cr.P.C and instead exercises the discretion to examine the controversy himself. A complainant cannot allege prejudice or travesty of justice when a Court of law decides to examine the case judicially rather than directing registration of a criminal case.

21. The Hon'ble Supreme Court had held in the matter of "*Sakhiri Vasu versus State of U.P. and others*" reported as *2008 (2) RCR Criminal*

“The High Court should discourage the practice of filing a writ petition or petitions under Section 482 Cr.P.C. simply because a person has a grievance that his FIR has not been registered by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.”

22. This Court in the matter of **“M/s Sujan Multiports Limited versus State of Haryana and others** reported as **2019 (3) R.C.R. Criminal 372**, had held that when a complaint is moved before the Magistrate, it is for the Magistrate to decide the course of action and whether to proceed further while taking cognizance of the offence or before entering into question of cognizance, to ask the Police to investigate the matter. It was held that a mandate of Section 156 (3) Cr.P.C. does not cast any duty to record reasons. Needless to mention that the said order being an interlocutory order does not finally decide any *lis* or right of the party. Once the stage under Section 156 (3) Cr.P.C. is conceptualized as a pre-cognizance stage, recording of any reasons reflecting application of mind by the Court would *ipso facto* amount to taking cognizance of the matter. The relevant extract of the judgment of **M/s Sujan Multiports Limited** (Supra) is reproduced herein after below:

“15. It is well settled law that requirement of recording reasons is not the same thing as acting by application of mind or acting fairly. Recording of reasons for a particular decision is a function of provision under which the order is required to be passed. The recording of reasons is required only if provisions so requires. The legal proposition has been amply clarified by the judgment of the Hon'ble Supreme Court rendered in case of National institute of Mental Health and

Neuroscience vs. Dr. K.Kalyana; 1992 AIR SC 1806. There are so many provisions in Cr.P.C which require the Magistrate or the Court to record reasons for arriving at a decision. Under some provisions even for passing orders before taking cognizance and even during investigation; the Court is required to record reasons. The examples for this can be found in Section 167 Cr.P.C. However, the provision of Section 156(3) Cr.P.C does not cast any duty upon the Magistrate to record the reasons, and this omission in language of Section 156(3) Cr.P.C is deliberate and for good reasons. The Magistrate can apply his mind to the facts disclosed in the complaint and documents attached therewith for limited purpose to see if cognizable offence is disclosed, and if it is so disclosed; whether an investigation by police is required. But he need not put-out his thinking on order sheet. The Hon'ble Supreme Court in the case of Anil Kumar(supra), has observed that the Magistrate would be required to dilate upon the matter in such a manner which reflects upon the application of mind. However, in considered opinion of this Court, such application of mind can be reflected even by a terse and telling language; giving indication of application of mind, though not directly recording reasons. In such a situation, of course, the Magistrate; while acting under Section 156(3) Cr.P.C; may be required to record a few line; which might reflect upon application of mind, however, he is not required to record the detailed reasons for passing the order; either way.

16. *Otherwise also, recording of reasons at the stage of exercise of powers under Section 156(3) Cr.P.C can lead to further undesirable and absurd consequences and complications, and can; sometimes; lead to direct confrontation with other provisions contained in Cr.P.C. If the Magistrate is required to record the reasons to justify his order in such terms, by recording all the reasons, that the order can be analysed in revision and appeal, then it would, definitely, be dilating upon the merits of the case. Once the Magistrate enters into the merit*

of the case at the state of Section 156(3) Cr.P.C that would tantamount to taking the case in the realm of Section 200 Cr.P.C and may tantamount to taking cognizance. If while deciding the issue of sending case to police under Section 156(3) Cr.P.C the Magistrate records detailed or explicit reasons, than this would also adversely affect the consideration of case by the Magistrate either in case of possible protest petition against cancellation report or in case of consideration under Section 203 Cr.P.C or under Section 204 Cr.P.C or even at the stage of framing of charge. By any means, since it has to be pre-cognizance stage, as held by the Hon'ble Supreme Court, application of mind for the purpose of recording any finding of any kind; is not even germane and jurisprudentially sustainable.

17. *Bare language of Section 156 Cr.P.C would also make it clear that no reasons are required to be recorded by Magistrate for ordering investigation. After an FIR has been recorded by the police, under Section 156 Cr.P.C the Police Officer can investigate a case; regarding which a local Court has jurisdiction to take cognizance. He need not record any reason for either registering an FIR or for entering into investigation. Still further Section 156(2) Cr.P.C further provides that such an investigation shall not be called in question before any Court for the reason that such police officer was not empowered to investigate the case. Since the power of the police to investigate is flowing only from competence of court to take cognizance of a matter, therefore, Section 156(3) Cr.P.C; as a clarifactory provision of general supervisory powers of Magistrate to control and monitor the investigation; provides that a Magistrate may also order investigation of a case where he has the competence to take cognizance of that offence. This power of the Magistrate also; like power of police to investigate, is without any statutory 'ifs' and 'buts'. The only regulatory factor for this power is the competence of Magistrate to take cognizance of such offence. Needless to say that, as has*

*been held by the Hon'ble Supreme Court in case of **Madhu Bala vs. Suresh Kumar**; 1997 3) RCR (Criminal)679, Mohd. Yousuf vs. Smt. Afaq Jahan; 2006 (1) RCR (Criminal) 450, and in case of **T.C. Thangaraj vs. V. Engammal and others**; 2011(3) RCR (Criminal)751, the Magistrate can not only order investigation in a case, but he can also order registration of FIR and even monitor the investigation in such a case. Hence, it is clear that power of police to investigate the offence suo moto, on registration of FIR, and power of the Magistrate to order investigation by registering the FIR; both are regulated by the same controlling factor, i.e., the competence of the local Court to take cognizance of the offence. In such a statutory situation, if no reasons are required to be recorded by the police for registration of FIR and for investigating the same, then there is no question of the Magistrate being required to record reasons for the same. By any means, and under no provision of Cr.P.C, the power of the Magistrate can be put at a pedestal lower than the one enjoyed by the police whom the Magistrate is empowered to monitor and supervise. On the contrary, the Magistrate, statutorily, is the controlling authority over the power of the police in the matter of investigation of a case.*

18. *There is another reason to highlight as to why the Magistrate is under no obligation to record reasons for ordering investigation under Section 153(3) Cr.P.C. The Hon'ble Supreme Court has repeatedly held that even after taking cognizance when the Magistrate passes a summoning order, he is not required to record any explicit or detailed reasons. In case of **Nupur Talwar vs. CBI**; 2012(3)RCR(Cr.) 595, the Hon'ble Supreme Court has held that despite the police, submitting a report otherwise, it is the satisfaction of the Magistrate, whether to issue any process in the case or not, and for issuing such process the Magistrate need not record any reasons. Non-recording of reasons does not vitiate the order of the Magistrate. Even if he records any reasons, the higher court is not required to appreciate 'sufficiency' of material or*

reasons for such order, rather it has to restrict itself to see the 'existence' of material or reasons. By holding this, in fact, the Hon'ble Supreme Court has only applied the criterion which is applied for 'judicial review' of any administrative order/executive exercise, like the proclamation issued by the President of India under Article 356 of the Constitution of India. Therefore, such an order of Magistrate has been taken at par with supervisory administrative or executive order; instead of taking it as part of a strictly judicial process.

19. *Another aspect which has come up for consideration collaterally is certain judgments from various High Courts in which it has been observed that the jurisdiction under Section 156(3) Cr.P.C should not be invoked merely on asking of a complainant and that before passing an order under Section 156(3) Cr.P.C the Magistrate should take affidavit and document from the complainant and then try to find out the veracity of the documents and truth of allegation in the complaint and only then he should order investigation by the police. Stated to be to the same effect is another judgment from the Hon'ble Supreme Court in case of **Mrs. Priyanka Srivastava and another vs. State of U.P. and others; 2015 AIR (SC) 1758**. However, a careful reading of this judgment shows that this judgment does not lay down taking of affidavits and finding truth in allegations by the Magistrates, as a pre-condition for exercising power under Section 156(3) Cr.P.C or for ordering investigation. Rather in that case, faced with a piquant situation of repeated misuse of provision of Section 156(3) Cr.P.C by an unscrupulous defaulter borrower; against secured creditors and statutory authorities, and even that by concealing the entire sequence and events/results of earlier litigations, the Hon'ble Supreme Court has observed that the Magistrate would be well advised to take affidavit from such persons and can even verify the veracity of allegation to come to a conclusion if any cognizable case is even remotely revealed in the complaint. These observations had emerged from the fact*

that the complainant in that case had not come to the Court with clean hands and there was a specific bar created by Section 32 of SARFESI ACT against taking cognizance of any suit, prosecution or any other proceedings against secured creditor or any other officer or manager working in that regard. Despite such statutory bar, the Magistrate had entertained repeated applications under Section 156(3) Cr.P.C. against statutory authorities and had ordered registration of FIRs without full knowledge of series of litigations in which the complainant had already failed on similar grounds. Therefore, the Hon'ble Supreme Court had observed that; in case a complaint is filed against statutory authorities for passing statutory orders; than the Magistrate has to take extra precaution in exercising powers under Section 156(3) Cr.P.C; lest this provision should be turned into a routine tool of harassment by the unscrupulous defaulters against the high and responsible officers of the statutory authorities. However, in this judgment itself, the Hon'ble Supreme Court has held that it was conscious of the fact that there cannot be separate set of law for high-up; because nobody is above the law. Therefore, the Hon'ble Supreme Court has clarified that a principled and really grieved citizen; with clean hands; must have free access to invoke the power of the Magistrate under Section 156(3) Cr.P.C. While it protects the ordinary citizen, but when pervert litigation takes the route of Section 156(3) Cr.P.C, efforts should be made to scuttle an curb the same. Hence, this judgment of the Hon'ble Supreme Court does not lay down, as a precedent, that taking of affidavits and finding the veracity and truth of allegations by a Magistrate is a 'sine qua non' for passing order under Section 156(3) Cr.P.C. This has been left to the discretion of the Magistrate, if considered appropriate in a particular case; but only as an advisory. That discretion is always there otherwise also. Still further insisting upon affidavits at the stage of Section 156(3) Cr.P.C may not be otherwise desirable; because an affidavit is a sworn statement,

which if submitted before the Magistrate, may not be possible for him to ignore at that time; even if it turns out to be false later on.

20. *Still further, all such judgments as mentioned above have not emanated from the interpretation of language of Section 156(3) Cr.P.C. Rather, as mentioned above, this category of judgments has emanated from an inherent fear of a scare of Indian system of administration of criminal justice, called the 'FIR'. These judgments are pitched against possible misuse of provision by getting the 'FIR' registered. However, possible misuse of a provision is nowhere recognised as a criterion or a valid tool for interpretation of statutes. Therefore, all such judgments, though deserve all the respect as a decision on a lis in those particular cases, yet cannot be raised to the status of precedent qua exercise of power by a Magistrate under Section 156(3) Cr.P.C. Such judgments can, at the best, serve as a advisory to the Magistrate to be careful while dealing with a matter under Section 156(3) Cr.P.C, and nothing more. In fact, actuated by possible misuse of this provision, incorporating more conditions in language of Section 156(3) Cr.P.C by judicial interpretation is not even the remedy for the fear of the demon called 'FIR'. The remedy lies in extending the scope of other rights of citizen/persons; against whom FIR has been registered. Remedy lies in purposive and liberal interpretation of the provisions regarding anticipatory bail, bail, discharge and acquittal. Remedy lies in shedding off the tendency to follow a person till his grave once an FIR is registered against him. Remedy lies in removing the legal and judicial disqualifications and disadvantage; which are stuck to such a person; despite the fact that such person might have been found innocent during investigation, might have been discharged by the Court or even might have been acquitted by a Court. Remedy lies in giving restrictive interpretation to the police powers vis-a-vis rights of individual and the remedy lies in training the Courts not to write in their judgments of*

acquittal that the accused is acquitted 'by giving benefit of doubt'. Further, the remedy lies in treating the scare called 'FIR' with the contempt it deserves and not to exalt it as the only or even the main controller of the social aberrations and the social behaviour. It has to be treated nothing more than an information of an alleged offence. The system of administration of criminal justice deserve to mature itself to that degree."

23. From a perusal of the judgments, it is evident that the judgments cited by the petitioner may at best be applicable to a situation where the jurisdiction under Section 156(3) Cr.P.C. is exercised by the Court and a direction is issued to register the case. The situation is converse to the situation in the present petition. The judgment would thus not be applicable to the facts of the instant case. Furthermore, the petitioner has not been able to point out any severe prejudice which is likely to occasion failure of justice or leads to travesty of justice solely by the Magistrate proceeding to examine the case himself, instead of issuing a direction to the Investigating Officer to register the case.

24. A complainant cannot plead violation of any right or denial of any remedy to him in an event where the Magistrate decides to proceed as per Chapter XV Cr.P.C. It is a matter of fine judicial discretion to be exercised by the judicial authority while preferring to invoke jurisdiction under Section 156 (3) Cr.P.C. or to take cognizance by himself. There are various factors that are usually to be kept in mind while issuing such a direction including the nature and gravity of offence; the manner of execution of crime; the proximity of time gap from commission of alleged offence and in approaching the Court; the quality of evidence; whether case is based on circumstantial evidence or documentary evidence; the ability of the complainant to collect evidence & prove charge; the need of custodial

interrogation for recovery and for collection of evidence; the social impact of the crime, or even when offence seems to be part of an organized crime. In such cases, the complainant may not be in a position to collect the evidence due to limitations and there is strong evidence to establish a cognizable offence.

25. The above circumstances are merely illustrative and not exhaustive. However, it is essential for the petitioner to establish as to how taking of cognizance by the Magistrate will defeat ends of justice and as to why the ends of justice can be secured only through directing registration of FIR.

26. The nature of allegations leveled are based solely on document or evidence that are within the public domain and it cannot be said that the complainant cannot lay his hands on the relevant material and documents required to be collected through the Investigating Agency without which he cannot establish the offence.

27. I find that there is no illegality or perversity of any nature whatsoever in the order passed by the Magistrate deciding to proceed with the matter and take cognizance thereof instead of issuing directions under Section 156 (3) Cr.P.C.

The instant petition is accordingly dismissed.

(VINOD S. BHARDWAJ)
JUDGE

APRIL 08, 2022
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No