

**(128) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-10468-2022
Date of Decision: 11.03.2022

Deepak Gupta

... Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Tanmoy Gupta, Advocate for the petitioner.

JASJIT SINGH BEDI, J.

The present petition has been filed under Section 482 Cr.P.C. for quashing the impugned order dated 11.01.2022 passed by the learned Judicial Magistrate, 1st Class, Faridabad (P-6), vide which the application of the petitioner filed under Section 156(3) Cr.P.C. dated 22.12.2021(P-4) has been dismissed and the Court has directed the complainant to get himself examined thereby treating the case as a complaint case under Chapter 15 Cr.P.C.

2. The brief facts of the case are that the petitioner was the owner in possession of the agricultural land situated in Village Bhupani, Tehsil and District Faridabad, Haryana, measuring 21 kanal 07 marla out of total land measuring 22 kanal 13 marla to the extent of 1/5th share comprising in Khewat No.297 min, 289 min, Khatoni No.359, Retc. No.34, killa No.25/1(2-10), 25/2(1-0), Rect.44, Killa No.5/1(3-3), 5/2(0-10), Rect. 74, killa No.17(8-0), 18(8-0), 23(6-13), Rect No.81, killa No.4/3(0-6), 5/2(3-4), Kitta 9, Area

33 kanal 16 marla, out of which Rect. No.74, Killa No.17(8-0), 18(8-0), 23 (6-13), vide Sale Deed No.102, dated 03.04.2013, office of Sub-Registrar, Tigaon, District Faridabad and in accordance with Jamabandi for the year 2015-2016.

3. The petitioner sold 1 Kanal land in the year 2014 out of his share of 4 kanal 6 marla to Khatushyam Educational Trust through Mool Chand Kaushik, vide sale deed in the year 2014. Thereafter, the remaining land in the share of the petitioner worked out to be 3 kanal 6 marla.

4. The private respondent Nos.6 to 9 are then said to have sold the above-mentioned land to some unknown persons by way of agreements to sell and by executing the sale deeds as well including the remaining share of 3 kanal 6 marla of the petitioner.

5. The petitioner filed a complaint before the CM Window which was marked to the concerned police station. The respondent No.5 after inquiry came to the conclusion that offences under Sections 420, 406, 467, 468, 471, 120-B and 506 IPC are made out and it was further stated in the concerned report that registration of an FIR had already been recommended. Despite this, no FIR came to be registered.

6. Thereafter, a criminal complaint was filed by the petitioner before the learned Illaqa Magistrate, Faridabad under Sections 420, 406, 467, 468, 471, 120-B, 506 IPC along with an application under Section 156(3) Cr.P.C. for registration of FIR under the above-mentioned sections on 22.12.2021.

7. Thereafter, the learned Illaqa Magistrate called for the Action Taken Report (ATR) by the IO concerned and after filing of the Action Taken

Report dated 11.01.2022, declined the application under Sections 156(3) Cr.P.C. for the registration of the FIR and instead asked the complainant to lead his preliminary evidence. It is this order dated 11.01.2022 which is under challenge in this petition.

8. The learned counsel for the petitioner contends that the impugned order is non-speaking as no reason has been given as to why the complaint was being treated like a complaint case after dismissing the application under Section 156(3) Cr.P.C. He states that in the factual scenario as narrated above, the Court ought to have passed the requisite order under Section 156(3) Cr.P.C. He further contended that the earlier Inquiry Report (P-2) was ignored and vehemently argued that the offence in question was made out despite the fact that the Action Taken Report (ATR) was to the contrary.

9. Before proceeding further with the matter, it would be useful to refer to the relevant provisions of law for the proper adjudication of the present case.

Section 156(3) Cr.P.C., 1973, reads 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.”

Section 200 Cr.P.C., 1973 reads as under:-

“200. 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.”

Section 202 Cr.P.C., 1973 reads as under:-

“202. Postponement of issue of process.

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made:-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub- section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub- section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer- in- charge of a police station except the power to arrest without warrant.”

Section 203 Cr.P.C., 1973 reads as under:-

“203. Dismissal of complaint. If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.”

Section 204 Cr.P.C., 1973 reads as under:-

“204. Issue of process.

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-

(a) a summons- case, he shall issue his summons for the attendance of the accused, or

(b) a warrant- case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub- section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing every summons or warrant issued under sub- section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process- fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87.”

10. I have heard the learned counsel for the petitioner at length.

11. As per the settled legal position, the concerned Magistrate has the discretion to decline the prayer of the complainant to refer the case to the Police under Section 156(3) for the registration of the FIR and can treat the case like a private complaint as envisaged under Chapter 15 Cr.P.C. and proceed to examine the complaint.

The Hon’ble Supreme Court in ‘Gopal Das Sindhi Vs. State of Assam & another, 1961 AIR (Supreme Court) held 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 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 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, AIR 1950 Calcutta 437.** ”*

[emphasize supplied]

In ‘**Sukhwasi Vs. State of U.P., 2008(1) RCR (Criminal) 520**’,

a Division Bench of the Hon’ble Allahabad High Court held as under:-

“22. Applications under Section 156(3) Criminal Procedure Code are now coming in torrents. Provisions under Section 156(3) Criminal Procedure Code should be used sparingly. They should not be used unless there is something unusual and extra ordinary like miscarriage of justice, which warrants a direction to the Police to register a case. Such applications should not be allowed because the law provides them with an alternative remedy of filing a complaint, therefore, recourse should not normally be permitted for availing the provisions of Section 156(3) Criminal Procedure Code.

23. The reference is, therefore, answered in the manner that it is not incumbent upon a Magistrate to allow an application under Section 156(3) Criminal Procedure Code and there is no such legal mandate. He may or may not allow the application in his discretion. The second leg of the reference is also answered in the manner that the Magistrate

has a discretion to treat an application under Section 156(3) Criminal Procedure Code as a complaint.”

[emphasize supplied]

The Hon’ble Kerala High Court in **‘P. Kannappan Vs. State of Kerala, 2006(1) RCR (Criminal)’** held as under:-

“13. When a complaint is filed before the Magistrate, he has got two options. The Magistrate may without taking cognizance forward the complaint to the Police under Section 156(3) of the Code of Criminal Procedure with a direction to the S.H.O. to investigate and file a report. He may take cognizance and proceed under Section 202 of the Code of Criminal Procedure. The power to order police investigation under Section 156(3) of the Code is different from the power to direct investigation during the course of enquiry under Section 202(1) of the Code. The two operate in two distance spheres. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage. If the Magistrate takes cognizance, he can adopt any of the following methods: (i) He may peruse the complaint and if satisfied that there are sufficient grounds, he can straightaway issue process to the accused. (ii) He can postpone the issue of process and direct an enquiry by himself. (iii) He can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.

14. The fact that the Magistrate has got a discretion to forward a complaint under Section 156(3) does not mean that the complainant has a right or privilege to make a demand to refer the case to the police. The option to refer the complaint to the police for investigation under Section 156(3) before cognizance or under Section 202(1) after cognizance, is to be exercised by the Magistrate. But that

discretion has to be exercised in a judicious manner and not mechanically.

16. In **V.K. Sreenivasan v. D.G. Nair & Others, 2005(3) RCR (Criminal) 8 (Kerala): (2005(1) KLJ 788)**, this Court had considered the right of a complainant to ask the Magistrate to refer the matter to police under Section 156(3) of the Code of Criminal Procedure. This Court relying on a decision reported in *Morarji Jivraj v. Emperor, (AIR 1935 Bombay 76)* held that the complainant has no right or privilege to require the court to refer the case to the police. The Magistrate shall not act mechanically; merely because a complainant makes a request to refer the case to the police. In this case the learned Magistrate had not applied his mind before forwarding the complaint to the police and mechanically and mechanically passed an order forwarding the same to the Sub Inspector of Police.”

[emphasize supplied]

12. A perusal of the aforementioned provisions of the Criminal Procedure Code as also the settled proposition of law, clearly reveals that the Magistrate has a discretion to either refer the case to the Investigating Agency under Section 156(3) for the registration of the FIR, which would be at the pre-cognizance stage. On the other hand, he can choose to take cognizance and treat the complaint as one under Chapter XV Cr.P.C., record the statement of the complainant and proceed thereafter in accordance with law.

13. In view of the above, no fault can be found with the Magistrate having exercised one of the two options available to him.

14. On the facts of the case, it may be relevant to mention here that a perusal of the Action Taken Report (P-5) would show that the Police came to

a categoric conclusion in a detailed inquiry that it was a civil dispute, where even the complainant/petitioner had sold land but did not provide the necessary sale deeds. It is also stated that it was a joint Khewat (not partitioned). In the petition itself, the petitioner has stated that a civil suit for declaration and partition has been filed. The relevant extract of the Action Taken Report (P-5) is as under:-

“36. During investigation, complainant Deepak Gupta and accused Ram Avtar, Smt. Madhu Gupta and Smt. Manju Gupta were joined in the investigation and their statements were recorded.

37. Recording relating to the dispute was received from the complainant and accused side.

38. The complainant Deepak Gupta and accused Ram Avtar, Smt. Madhu Gupta and Smt. Manju Gupta and Sh. Vinod S/o Mohan Lal, R/o Bharat Colony, Faridabad had together purchased 12 kanal 13 marla land in Bhopani vide sale deed No.102 dated 03.04.2013.

39. The above mentioned land measuring 22 kanal was a joint Khewat and partitioned of the same was not done.

40. That due to non-availability of sale deeds executed by the complainant and the accused persons, correct record cannot be traced, because both sides are engaged in the business of property dealing.

Findings:-

Sir,

In relation to the ATR ordered by you, the investigation was carried out by SI Mahesh Kumar, P.S. Bhopani. It has been transpired from investigation and received record that the complainant and the accused persons together had purchased 22 kanal 13 marla land

vide sale deed dated 03.04.2013 bearing Vasika No.102, in an un-partitioned Khewat. In relation to the allegations leveled in the complaint, the complainant has not been able to produce any document proving that the accused persons have sold more land than their share and some vacant land is also lying on the spot and on some land DPC is filled up and path is also defined. Hence, no cognizable offence is found to be made out and matter is found to be of civil nature.

Report is submitted.

*Sd/-
Police Station Bhopani, Faridabad
Dated 11.01.2022.*

*Forwarded
Sd/-
SHO PS Bhupani, Faridabad
Dt. 11.01.2022.”*

15. The argument that the impugned order was a non-speaking one is also fallacious. A perusal of the order would show that the learned Judicial Magistrate, 1st Class, Faridabad has taken on record the Action Taken Report (ATR) and has perused the same. It is thereafter that she has come to the conclusion that it was not a case for registration of an FIR under Section 156 (3). Even otherwise the complainant/petitioner assumes that merely because an order under Section 156(3) Cr.P.C. has not been passed, it is a declaration of the innocence of the private respondents. On the contrary, what the learned Magistrate has done is only chosen to proceed under Chapter XV Cr.P.C. and asked the complainant to get his statement recorded, which could possibly lead to a summoning order under Section 204 Cr.P.C. (Chapter XVI), if the Magistrate finds that the offence is made out.

16. I may also hasten to add that the complainant in the present case is in possession of all the necessary documents, which he can produce before the Magistrate at the time of his preliminary evidence. The Magistrate, may in addition, also order another inquiry under Section 202 Cr.P.C. if he thinks fit to satisfy himself as to the allegations leveled. Thus, the complainant has multiple opportunities to bring forth all the necessary material before the Court and as such no irreparable loss has been caused to him by virtue of the order under challenge, moreso, when the entire case of the petitioner is based primarily on documentary evidence, which is available with him.

17. In view of the aforesaid discussion, I find no merit in the present petition and the same is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

11.03.2022
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No