

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

**CRM-M No. 21561 of 2022 (O&M)
Date of decision : September 07 , 2022**

Jaswinder Singh and others

..... Petitioners

Versus

Sukhwinder Singh Bhatia and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. R.S.Randhawa, Advocate
Mr. Ayush Goyal, Advocate
Mr. Karan Singla, Advocate
for the petitioners.

Mr. Kuldeep Sood, Advocate
for respondent No.1.

Mr. Samina Dhir, Advocate
for respondent No.3.

Mr. Inderpal Singh Parmar, Advocate
for respondent No.5 & 13.

Mr. Ramninsh Puri, Advocate
for respondent No.7.

Mr. Aayush Gupta, Advocate
for respondent No.12.

PANKAJ JAIN, J.

This is a petition filed under Section 482 Cr.P.C seeking quashing of the order dated 02.05.2022 passed by the revisional court whereby order passed by the learned Additional Chief Judicial Magistrate,

Ludhiana under Section 156 (3) Cr.P.C. has been set aside.

The present *lis* was initiated by respondent No.1-complainant by filing a complaint against the petitioners with a prayer under Section 156 (3) seeking directions to the police authorities to register FIR as per the dictum of law laid down by the Hon'ble Supreme Court in **Lalita Kumar Vs. State of UP and others 2014 (2) SCC 1**. The learned Magistrate dismissed the prayer made under Section 156 (3) Cr.P.C vide order dated 24.02.2022. The operative part thereof reads as under:-

“7. It is a well settled law that whenever a Magistrate is called upon to pass order under Section 156 Cr.P.C., he should ensure that before coming to the court, the complaint did approach the police officer in charge of the Police Station having jurisdiction over the area for recording the information available with him/her disclosing the commission of cognizable offence by the persons arrayed as accused in the complaint. It is also equally well settled law that power under Section 156(3) Cr.P.C. has to be exercised judiciously on proper ground and not in a mechanical manner. In those cases, where the allegations are not very serious and complainant herself in possession of evidence to prove her allegations, there should be no need to pass order under Section 156 (3) Cr.P.C. This discretion ought to be exercised after proper application of mind and only in those cases where the Magistrate is of the view that nature of allegation is such that the complainant himself may not be in a position to collect and produce evidence before the court and interest of justice warrants that police should step in to assist help to assist the complainant. The Hon'ble Supreme Court of India in **Priyanka Srivastava & Anr. Vs. State of UP & Ors (2015) 6 SCC 287** has enjoined that the Ld. Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. It has been further held that there has to be prior applications under Section 154(1) and 154(3) Cr.P.C. while filing of petition under Section 156(3) Cr.P.C. Both the aspects should be clearly Spelt out in the application and necessary documents to that effect shall be filed.

8. *Keeping in view of above yardstick if we evaluate the present application supported by the documents produced by the applicant, this court is of the considered view that exercise of this extra ordinary power under Section 156(3) Cr.P.C. is not made out.*

9. *Much emphasis has been laid by the Ld. counsel for the applicant on the Constitutional Bench judgment of Hon'ble Supreme Court titled as **Lalita Kumar Vs. Govt of UP & Ors. 2013(4) RCR(CrL) 979**, asserting that Hon'ble Supreme Court has held in the above said case that registration of FIR is mandatory under Section 154 Cr.P.C., if the information discloses commission of cognizable offence. However, it is relevant to note that Hon'ble Supreme Court in para No.106 of said judgment has carved out exception and laid down that there may be instances where preliminary inquiry may be required owing to the change of genesis and novelty of crime with passage of time. Therefore, in appropriate cases, the police may conduct preliminary inquiry. As such, it can not be said, that in all the cases registration of FIR is compulsory, in case information discloses commission of cognizable offence.*

10. *Further more, it may be noted that only in those cases where the Magistrate is of the opinion that nature of allegations are such that complainant himself/herself may not be in a position to collect and produce evidence before the court, discretion ought to be exercised. Adverting to the case in hand, perusal of the file evinces that present case is of such nature that complainant/applicant can produce necessary evidence before the court in proof of allegations made by her. Moreover, the allegations leveled by him can be proved independently without the assistance of police machinery. So, no directions are required to be passed to police for helping the complainant in collecting the evidence.*

11. *Accordingly, in view of aforesaid deliberation, it transpires that the application filed by applicant is sans merit and bereft of any substance and therefore, the same is hereby dismissed. File be consigned to record room within the time prescribed as per rules."*

The said order was impugned by the complainant before the revisional court. The revisional court vide impugned order dated 02.05.2022 has set aside the order passed by the ACJM, Ludhiana (ibid) and has remanded the complaint back to the learned trial Court with a direction to hear the revision petitioner and to decide the matter afresh as per law.

Learned counsel for the petitioners while attacking the

impugned order submits that the revision was not maintainable as the order dated 24.02.2022 is an interlocutory order. In support of his contention he has relied upon the judgment passed by the Hon'ble Apex Court in **Girish Kumar Suneja Vs. C.B.I. 2017 (3) RCR 665**. While referring to the impugned order he submits that the service of the petitioners was dispensed with and infact the orders have been passed without hearing them. It has been submitted that no order can be passed by the revisional court without hearing the accused. Heavy reliance has been placed upon the judgment passed by the Hon'ble Supreme Court in **Priyanka Srivastava Vs. State of U.P and others 2015 (6) SCC 287**.

Learned counsel for the petitioners further submits that the complaint itself was not maintainable having not being filed in a proper format. He refers to an affidavit filed in support of the complaint to impress upon his argument that infact the complaint was not even accompanied by proper affidavit, therefore the trial court rightly dismissed the complaint.

Per contra, learned counsel for the respondents submits that the argument with respect to the order dated 24.02.2022 being an interlocutory order is misconceived. By the impugned order dated 24.02.2022 the learned trial court has infact rejected prayer under Section 156 (3) Cr.P.C. therefore, it cannot be said to be an interlocutory order. He further submits that the revisional court was right in dispensing with the service on the petitioners as it is not a case wherein the complaint has been dismissed under Section 203 Cr.P.C. He further submits that hearing is required to be afforded to the accused only when the order is passed under Section 203 Cr.P.C.

I have heard learned counsel for the parties and have gone through the record of the case.

The question as to what is the interlocutory order has been answered by the Apex Court in **Amarnath and others Vs. State of Haryana and others AIR 1977 (SC) 215** wherein it has been held that:-

“6. The main question which falls for determination in this appeal is as to, the what is the connotation of the term "interlocutory order" as appearing in sub-section (2) of Section 397 which bars any revision of such an order by the High Court. The term "interlocutory order" is a term of well-known legal significance and does not present any serious diffident. It has been used in various statutes including the Code of Civil Procedure, Letters Patent of the High Courts and other like statutes. In Webster's New World Dictionary "interlocutory" has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide 'the rights and liabilities of the parties concerning a particular aspect. It seems to, us thatthe term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense.It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights, or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court.”

(emphasis supplied)

The specific question as to whether the dismissal of a complaint by the Magistrate under Section 156 (3) Cr.P.C amounts to an interlocutory order or not cropped up before the Delhi High Court in the case of **Nishu Wadhwa Vs. Siddharth Wadhwa and another W.P. (CRL.) M.A.No.6591/2016**. The Delhi High Court held that:

10. In Raghu Raj Singh Rosh v. Shivam Sundram Promotors Pvt. Ltd. & Anr. 2009(1) RCR (Criminal) 531 : 2009(1) Recent Apex Judgments (R.A.J.) 191 : (2009) 2 SCC 363 while dealing with the right of an accused to be heard in a criminal revision petition, it was observed that indisputably if the learned Magistrate had taken cognizance of the offence and merely issuance of summons upon the accused had been postponed, the accused was entitled to be heard before the High Court in a criminal revision petition filed on behalf of the complainant. It was further held that since the Magistrate refused to exercise his jurisdiction under Section 156(3) Cr.P.C. and came to the conclusion that the dispute was a private dispute in relation to an immovable property, Police investigation was not necessary and directed examination of the complainant, having taken cognizance of the offence even though the accused had not been summoned, he had a right to be heard in the revision petition. Thus the Supreme Court recognised the right of an accused to be heard in a revision petition once cognizance of the offence was taken even though the accused had not been summoned.

11. The Division Bench of Bombay High Court in the decision reported as 2015 SCC OnLine Bom 5197 : 2016 ALLMR (Cri) 985 Avinash and Ors. v. The State of Maharashtra and Ors. held that the order passed directing police to investigate under Section 156(3) of the Code is not an interlocutory order, but in the nature of a final order terminating the proceedings under Section 156 (3) of the Code

which would be revisable under the revisional powers of the Sessions Court or the High Court.

12. *It is trite law that once directions are passed by the learned Magistrate under Section 156(3) Cr.P.C. directing registration of FIR he becomes functus-officio. [See (2016) SCC online Del 5490 M/s. **Gabrani Infrastructure Pvt. Ltd. v. M/s. Unitech Hi-Tech Developers Limited & Ors. and 2008(4) GLR 3253 (Guj.) Randhirsinh Dipsinh Parmar v. State of Gujarat & Ors.**]. Thus, disposing of an application under Section 156(3) Cr.P.C. amounts to adjudication of a valuable right whether in favour of accused or the complainant.*

13. *The issue that since the accused has not been summoned as an accused and has no right to file a revision petition is alien, while deciding an application under Section 156(3) Cr.P.C. The said issue crops up when the Magistrate entertains the complaint and on taking cognizance proceeds as a complaint case. In case directions are issued for registration of FIR immediately, on registration of FIR, the person against whom allegations are made in the FIR attains the status of an accused. His rights in so far as the Police can summon him for investigation, arrest him without warrants for allegations of cognisable offences are duly affected. In a situation where the fundamental right of freedom and liberty of a person is affected, it cannot be held that he has no right to be heard at that stage. Thus to hold that since directions only have been issued under Section 156(3) Cr.P.C. and no cognizance has been taken thus no revision would lie would be an erroneous reading of the decisions of the Supreme Court. Therefore, an order dismissing or allowing an application under Section 156(3) Cr.P.C. is not an interlocutory order and a revision petition against the same is maintainable.*

Even in the judgment relied upon by the petitioners in **Girish Kumar Sunjeja's case (supra)** the Hon'ble Apex Court held that, in

deciding whether an order challenged is an interlocutory or not as per Section 397 (2) Cr.P.C. the sole test is not whether such order was passed during interim stage but the test is as to whether it amounts to adjudicating upon the rights of the parties finally.

Since in the present case, the Magistrate has dismissed the application filed by the petitioners under Section 156 (3). Thus, it cannot be said that it is an interlocutory order and thus the revision petition will be barred under Section 397 (2) Cr.P.C.

Coming on to the second limb of the argument raised by the learned counsel for the petitioners, it was a revision petition filed under Section 397 Cr.P.C. The revisional court was exercising powers under Section 399 Cr.P.C. Sub Section (2) of Section 399 Cr.P.C mandates that the provisions of sub Section (2), (3), (4) and (5) of Section 401 Cr.P.C shall apply to the proceedings commenced before the Sessions Judge by way of revision under Section 399 (1) Cr.P.C. Section 401 (2) Cr.P.C provides for that:

“No order under this section shall be made to the prejudice of the accused or other person unless he had an opportunity of being heard either personally or by pleader in his own defence.”

The precise issue as to whether the revisional court while exercising the revisional jurisdiction over the orders passed under Section 156 Cr.P.C. is required to hear the accused or not arose before the Apex Court in the case of ***Priyanka Srivastava's case (supra)*** wherein it was held

that:

“4. Being grieved by the aforesaid order, the respondent No.3 preferred a Revision Petition No.460 of 2008, which was eventually heard by the learned Additional Sessions Judge, Varanasi, U.P. The learned Additional Sessions Judge after adumbrating the facts and taking note of the submissions of the revisionist, set aside the order dated 4th October, 2008 and remanded the matter to the trial Court with the direction that he shall hear the complaint again and pass a cognizance order according to law on the basis of merits according to the directions given in the said order. Be it noted, the learned Additional Sessions Judge heard the counsel for the respondent No.3 and the learned counsel for the State but no notice was issued to the accused persons therein. Ordinarily, we would not have adverted to the same because that is the subject matter in the appeal, but it has become imperative to do only to highlight how these kind of litigations are being dealt with and also to show the respondents had the unwarranted enthusiasm to move the courts. The order passed against the said accused persons at that time was an adverse order inasmuch as the matter was remitted. It was incumbent to hear the respondents though they had not become accused persons. A three-Judge Bench in **Manharibhai Muljibhai Kakadia and Anr. v. Shaileshbhai Mohanbhai Patel and others, 2012(4) RCR (Criminal) 689 : 2012(5) Recent Apex Judgments (R.A.J.) 162 : (2012) 10 SCC 517** has opined that in a case arising out of a complaint petition, when travels to the superior Court and an adverse order is passed, an opportunity of hearing has to be given. The relevant passages are reproduced hereunder:

46.If the Magistrate finds that there is no sufficient ground for proceeding with the complaint and dismisses the complaint under Section 203 of the Code, the question is whether a person accused of crime in the complaint can claim right of hearing in a revision application preferred by the complainant against the order of the dismissal of the complaint. Parliament being alive to the legal position that the accused/suspects are not entitled to be heard at any stage of the proceedings until issuance of process under Section 204, yet in Section 401(2) of the Code provided that no order in exercise of the power of the revision shall be made by the Sessions Judge or the High Court, as the case may be, to the prejudice of the accused or the other person unless he had an opportunity of being heard either personally or by pleader in his own defence.

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48. In a case where the complaint has been dismissed by the Magistrate under Section 203 of the Code either at the stage of Section 200 itself or

on completion of inquiry by the Magistrate under Section 202 or on receipt of the report from the police or from any person to whom the direction was issued by the Magistrate to investigate into the allegations in the complaint, the effect of such dismissal is termination of complaint proceedings. On a plain reading of sub section (2) of Section 401, it cannot be said that the person against whom the allegations of having committed the offence have been made in the complaint and the complaint has been dismissed by the Magistrate under Section 203, has no right to be heard because no process has been issued. The dismissal of complaint by the Magistrate under Section 203 although it is at preliminary stage- nevertheless results in termination of proceedings in a complaint against the persons who are alleged to have committed the crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or the Sessions Judge, by virtue of Section 401(2) of the Code, the suspects get the right of hearing before the Revisional Court although such order was passed without their participation. The right given to "accused" or "the other person" under Section 401(2) of being heard before the Revisional Court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Sections 200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of the complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of the express provision contained in Section 401(2) of the Code. The stage is not important whether it is pre-process stage or post process stage.

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53. We are in complete agreement with the view expressed by this Court in *P. Sundarrajan, Raghu Raj Singh Rousha and A.N. Santhanam*. We hold, as it must be, that in a revision petition preferred by the complainant before the High Court or the Sessions Judge challenging an order of the Magistrate dismissing the complaint under Section 203 of the Code at the stage under Section 200 or after following the process contemplated under Section 202 of the Code, the accused or a person who is suspected to have committed the crime is entitled to hearing by the Revisional Court. In other words, where the complaint has been dismissed by the Magistrate under Section 203 of the Code, upon challenge to the legality of the said order being laid by the complainant in a revision

petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition. This is a plain requirement of Section 401(2) of the Code. If the Revisional Court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in the complaint to have committed the crime have, however, no right to participate in the proceedings nor are they entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process.”

Though the present controversy is different, we have dealt with the said facet as we intend to emphasise how the Courts have dealt with and addressed to such a matter so that a borrower with vengeance could ultimately exhibit his high-handedness.”

(emphasis supplied)

In view of the law laid down by the Supreme Court in ***Priyanka Srivastava's case (supra)*** even though the revisional court was hearing revision against the order passed under Section 156(3) it cannot be denied that it was exercising power under Section 399 Cr.P.C. Dehors the stage of the complaint, the revisional court was bound to hear the petitioners in view of the mandate of Section 401 Cr.P.C. read with Section 399 Cr.P.C.

Thus, finding the impugned order passed by the revisional court to be bad for having been passed without hearing the petitioners and in violation of requirement as contemplated under Section 401(2) Cr.P.C., the present petition is allowed. The impugned order dated 02.05.2022 is hereby quashed.

The matter is sent back to the revisional court to decide the same afresh in accordance with law.

Ordered accordingly.

(PANKAJ JAIN)
JUDGE

September 07 , 2022

archana	Whether speaking/reasoned	Yes
	Whether Reportable :	Yes