

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on: 02.09.2022
Pronounced on: 17.10.2022

1. CRM-M-24352-2020 (O&M)

Mandeep Singh and another

..... Petitioners

versus

State of Punjab and another

..... Respondents

2. CRM-M-25987-2020 (O&M)

Labh Kaur

..... Petitioner

versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Sanjiv Gupta, Advocate
for the petitioners in CRM-M-24353-2020.

None for the petitioner in CRM-M-25987-2020.

Mr. Madhur Sharma, AAG, Punjab.

Mr. Abhinav Gupta, Advocate
for respondent No.2.

PANKAJ JAIN, J.

By way of present petition, I intend to dispose of aforesaid two petitions filed under Section 482 of Criminal Procedure Code (hereinafter referred to 'Code') seeking quashing of the complaint No. CRM-125-2020 titled as '***Pritam Kaur vs. Mandeep Singh and another***' alongwith impugned order dated 23.07.2020 passed by JMIC, Dera Bassi (Annexure P-2).

2. CRM-M-25987-2020 has been preferred at the behest of Labh Kaur (Accused No.4). The other three accused(s) have preferred CRM-M-24352-2020. Since both the petitions are arising out of same complaint and are directed against the same order dated 23.07.2020, they are being decided together.

3. There is no major dispute w.r.t. the facts leading to the present lis. Respondent-complainant Pritam Kaur preferred application under Section 156(3) of the Code before SDJM claiming that she is Khewatdar in a land admeasuring 10 Bighas, 10 Biswas and 15 Biswasies. She inherited the said land from his late husband Sardar Balbir Singh who was co-sharer. It is claimed that she alongwith her sons are in possession as owner of front portion of the land and are settled out of India. In order to avoid litigation, they preferred partition application before the Revenue Authorities which was finally decided on 28.01.2015 and sanad taqsim was issued and she alongwith her sons were put in possession of their exclusive Khata. She claims that after respondents tried to change the nature of land during the pendency of the partition proceedings, she filed injunction suit titled as '**Pritam Kaur and others vs. Labh Singh**'. The same was decreed in her favour vide judgment and decree dated 25.08.2015. She claims that on her visit to India in January 2020, she found that a person named Gurjant Singh @ Janta was threatening her possession claiming to have purchased the property in question from one Labh Kaur w/o Harnek Singh i.e. accused No.3. It has been further asserted that Gurjant Singh @ Janta is in possession of one Will dated 15.06.1988 alleged to have been executed by Gurdit Singh. It is claimed by the complainant that the said Will is a forged and fabricated document. Death certificate of Gurdit Singh is also forged. Labh Kaur who is being projected as sister of Gurdit Singh

who executed sale deed dated 31.10.2019 in favour of accused, had in fact no relationship with said Gurdit Singh. The gravamen of the complaint filed by the complainant is that the accused have created a forged and fabricated Will of Gurdit Singh in favour of Labh Kaur and on the basis thereof, they are wrongly asserting their title over the property in question.

4. On receiving the petition under Section 156(3) of the Code, Magistrate passed the following order on 16.06.2020:-

“Pritam Kaur vs. Mandeep Singh

Present: Sh. Mukesh Gandhi Advocate for
complainant.

Complaint presented today. It be registered by the concerned Ahlmad. Let report of SHO, Police Station Dera Bassi be called for 24.06.2020.”

5. The report pursuant to aforesaid order was received on 15.07.2020, when the following order was passed:-

“Present: Sh. Mukesh Gandhi Advocate for
complainant.

File put up before me being Duty Magistrate. Status report from the SHO received. Now to come up on 22.07.2020 for consideration. File be sent to the concerned court.”

6. On 22.07.2020, the matter was adjourned to 23.07.2020 on request. On 23.07.2020, trial Court ordered registration of FIR against accused No.1 to 4 for offences punishable under Sections 417, 465, 467, 468 and 471 of the Indian Penal Code (hereinafter referred to 'IPC'). It is this order which is subject matter of challenge in the present petitions.

7. While issuing notice of motion in CRM-M-24352-2020, this Court observed as under on 26.08.2020:-

“CRM-20882-2020:

Allowed as prayed for, subject to all just exceptions.

CRM-M-24352-2020:

Ld. Counsel for the petitioners submits, *inter alia*, that the Ld. JMIC, Dera Bassi, had initially called for the Report of the SHO of Police Station Dera Bassi, on the complaint filed on behalf of the private respondents on 16.06.2020. However, after the Report was received, the Ld. JMIC, Dera Bassi, vide his impugned order passed on 23.07.2020, directed registration of an FIR against the accused persons/petitioners, which according to Ld. Counsel for the petitioners is not in accordance with law in view of the decision of the Supreme Court in “Tula Ram and others Vs. Kishore Singh, AIR 1977 S.C. 2401”, which has also been followed by this Court in CRM-M-14021-2012, and in which it has been held that once cognizance is taken by the Ld. Magistrate, he cannot revert to the procedure prescribed under Section 156(3) of the Cr.P.C. for registration of an FIR.

2. Notice of motion.

3. Mr. J.P. Ratra, DAG, Punjab, to accept notice on behalf of the State. Copy of the Paperbook be supplied to him.

4. Ld. State Counsel submits that by now the FIR has already been registered by the Police Authorities on 10.08.2020, which was before filing of the present petition .

5. To come up on 30.10.2020.

6. Let regular reply be filed on behalf of the State on or before the next date of hearing.

7. In the meantime, no coercive steps shall be taken against the petitioners.

8. Registry is directed to notify respondent No.2 of the

next date fixed.”

8. Thus, the contention of the counsel for the petitioners is that by calling report vide order dated 16.06.2020, the trial Court has in fact taken cognizance and thus cannot now revert back in view of law laid down by Apex Court in the case of **'Devarpalli Lakshminarayana Reddy and others vs. V. Narayana Reddy and others'** reported as **1976(3) SCC 252** which has been further relied upon by Apex Court in **'Tula Ram and others vs. Kishore Singh'** reported as **1977(4) SCC 459**. The contention being raised is that once the Magistrate has applied his mind to the complaint as the Magistrate can order investigation under Section 156(3) of the Code only at a pre-cognizance stage i.e. to say before taking cognizance under Sections 190, 200 and 204 of the Code.

9. Mr. Sanjiv Gupta emphatically submits that in the present case(s), the Magistrate having decided to take cognizance by calling for report was not entitled in law to order any investigation under Section 156(3). Further reliance is being placed upon **'Md. Ibrahim and others vs. State of Bihar and another'**, reported as **2009 (8) SCC 751** to submit that the complaint even if assume to be true does not make out offences punishable under Sections 190, 200 and 204 of the Code.

10. Per contra, Mr. Abhinav Gupta appearing on behalf of respondent No.2-complainant submits that even as per law laid down by Apex Court in Devarpalli's case (supra), there is no bar from ordering investigation under Section 156(3) till the Court takes cognizance. He thus submits that order dated 16.06.2020 does not amount to taking cognizance. Rather, it is now imperative upon the Courts to verify the veracity of the allegations by holding a preliminary inquiry. Heavy reliance is being placed upon observations made by Apex Court in the case of **'Mrs. Priyanka Srivastava & Another vs. State of U.P. and others'** reported as

2015(6) SCC 287. Counsel further contends that the law has rather evolved wherein a preliminary inquiry has been held to be not only lawful but also mandatory in certain class of cases. Reliance is being placed upon judgment passed by Delhi High Court in '**Subhkaran Luharuka and another vs. State (Govt. of NCT of Delhi) and another**' reported as **2010(7) RCR (Criminal) 595**, wherein the Court has gone to an extent of prescribing procedure to be followed on receiving petition under Section 156(3) of the Code. He further submits that likewise High Court of Madhya Pradesh in the case of '**Smt. Jyoti Hardia & another vs. Anant Haritwar & Another**' has laid down certain conditions which need to be satisfied before passing final order under Section 156(3) directing investigation. He further relies upon a judgment passed by Division Bench of High Court of Madras in the case of '**G. Prabakaran vs. The Superintendent of Police (Madras)**' reported as **2018(4) MLJ (Criminal) 513** to hammer forth his submission that a preliminary inquiry before passing final order of investigation under Section 156(3) of the Code is not only lawful but desired as well. Last but not the least, heavy reliance is being placed upon judgment passed by Apex Court in the case of '**Vinubhai Haribhai Malaviya vs. State of Gujarat**' reported as **2019 (17) SCC 1**, wherein the Apex Court while considering the question w.r.t. the correctness of an order passed by Magistrate under Section 173(8) extensively dealt with powers of the Magistrate under Cr.P.C. and effect of 156(3) apart from reiterating as to what 'taking cognizance connotes'. He thus submits that no irregularity/illegality can be found with the procedure adopted by the Magistrate and the order impugned in the present petitions.

11. I have heard counsel for the parties and have gone through the records of the case.

12. In the considered opinion of this Court, the following two questions arises for the consideration of this Court:-

- (A) Whether order dated 16.06.2020 amounts to taking cognizance of the complaint filed by the complainant;
- (B) Whether the procedure adopted by the Magistrate can be said to be in violation of law laid down by Apex Court in Tula Ram's case (supra).

13. The question w.r.t. cognizance is no more *res integra* and stands answered by Apex Court in '**Common Cause A registered Society Through its Director vs. Union of India and others'**, reported as 1996 (6) SCC 775, wherein it was held as under:-

“I. The time limit mentioned regarding the pendency of criminal cases in paragraphs from 2(a) to 2(f) of our judgment shall not apply to cases wherein such pendency of the criminal proceedings is wholly or partly attributable to the dilatory tactics adopted by the concerned accused or on account of any other action of the accused which results in prolonging the trial. In other words it should be shown that the criminal proceedings have remained pending for the requisite period mentioned in the aforesaid clause of paragraph 2 despite full co-operation by the concern accused to get these proceedings disposed of and the delay in the disposal of these cases is not at all attributable to the concerned accused, nor such delay is caused on account of such accused getting stay of criminal proceedings from higher Courts. Accused concerned are not entitled to earn any discharge or acquittal as per paragraphs 2(a) to 2(f) of our judgment if it is demonstrated that the accused concerned

seek to take advantage to their own wrong or any other action of their own resulting in protraction of trials against them .”

14. The aforesaid view was further referred to and approved by Constitution Bench of Apex Court in '**Hardeep Singh vs. State of Punjab**' reported as 2014 (3) SCC 392, wherein it was held as under:-

“38. In view of the above, the law can be summarised to the effect that as ‘trial’ means determination of issues adjudging the guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the court informs him of the same, the ‘trial’ commences only on charges being framed. Thus, we do not approve the view taken by the courts that in a criminal case, trial commences on cognizance being taken.

39. Section 2(g) Cr.P.C. and the case laws referred to above, therefore, clearly envisage inquiry before the actual commencement of the trial, and is an act conducted under Cr.P.C. by the Magistrate or the court. The word ‘inquiry’ is, therefore, not any inquiry relating to the investigation of the case by the investigating agency but is an inquiry after the case is brought to the notice of the court on the filing of the charge-sheet. The court can thereafter proceed to make inquiries and it is for this reason that an inquiry has been given to mean something other than the actual trial.

15. Thus, in view of settled proposition of law *ibid* the contention raised by Mr. Sanjiv Gupta, that once the Court registers the complaint by passing the formal order, it amounts to applying mind on the same and therefore will amount to taking cognizance of the complaint is misplaced and cannot be accepted and deserves rejection.

16. Coming on to the second question, strong reliance is being placed by Mr. Gupta on Devarpalli' case (supra) and further observations made by Apex Court in Tula Ram's case (supra). In Devarpalli's case, para No.1 of the judgment reads as under:-

“Whether in view of Clause (a) of the first Proviso to section 202(1) of the Code of Criminal Procedure, 1973, a Magistrate who receives a complaint, disclosing an offence exclusively triable by the Court of Session, is debarred from sending the same to the police for investigation under section 156(3) of the Code, is the short question that falls to be determined in this appeal by special leave. The question arises in these circumstances.”

17. While answering the aforesaid question, Apex Court held that:-

“xx xx xx

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 Magistrates". 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 exercisable at the pre cognizance 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 chargesheet 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 complaint 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](#)."

18. The aforesaid dictum of law was followed by Apex Court in Tula Ram's case (*supra*) to hold that:-

“XX XX XX

Thus on a careful consideration of the facts and circumstances of the case the following legal propositions emerge :

1. That a Magistrate can order investigation under [section 156\(3\)](#) only at the pre-cognizance stage, that is to say, before taking cognizance under [sections 190, 200 and 204](#) and where a Magistrate decides to take cognizance under the provisions of Chapter 14 he is not entitled in law to order any investigation under [section 156\(3\)](#) though in cases not falling within the proviso to [section 202](#) he can order an investigation by the police which would be in the nature of an enquiry as contemplated by [section 202](#) of the Code.

2. Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives :

(a) He can pursue that complaint and if satisfied that there are sufficient grounds for proceeding he can straightaway issue process to the accused but before he does so he must comply with the requirements of [section 200](#) and record the evidence of the complainant or his witnesses.

(b) The Magistrate can postpone the issue of process and direct an enquiry by himself.

(c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.

3. In case the Magistrate after considering the statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceeding he can dismiss the complaint.

4. Where a Magistrate orders investigation by the police, before taking cognizance under [section 156\(3\)](#) of the Code and receives the report thereupon he can act on the report and discharge the accused or straightaway issue process against the

accused or apply his mind to the complaint filed before him and take action under [section 190](#) as described above.”

19. Before adverting further to the aforesaid observations made by Apex Court in Devarpalli's case and that in Tula Ram's case, it will be apt to notice herein that the three judge bench in 'Vinubhai Haribhai' case (supra), observed that:-

“xx xx xx

27. Whereas it is true that [Section 156\(3\)](#) remains unchanged even after the 1973 Code has been brought into force, yet the 1973 Code has one very important addition, namely, [Section 173\(8\)](#), which did not exist under the 1898 Code. As we have noticed earlier in this judgment, [Section 2\(h\)](#) of the 1973 [Criminal Procedure Code](#) defines “investigation” in the same terms as the earlier definition contained in [Section 2\(l\)](#) of the 1898 [Criminal Procedure Code](#) with this difference – that “investigation” after the 1973 Code has come into force will now include all the proceedings under the [CrPC](#) for collection of evidence conducted by a police officer. “All” would clearly include proceedings under [Section 173\(8\)](#) as well. Thus, when [Section 156\(3\)](#) states that a Magistrate empowered under [Section 190](#) may order “such an investigation”, such Magistrate may also order further investigation under [Section 173\(8\)](#), regard being had to the definition of “investigation” contained in [Section 2\(h\)](#).

28. [Section 2\(h\)](#) is not noticed by the aforesaid judgment at all, resulting in the erroneous finding in law that the power under [Section 156\(3\)](#) can only be exercised at the pre-cognizance stage. The “investigation” spoken of in [Section 156\(3\)](#) would embrace the entire process, which begins with the collection of evidence and continues until charges are framed by the Court,

at which stage the trial can be said to have begun. For these reasons, the statement of the law contained in paragraph 17 in Devarapalli Lakshminarayana Reddy (supra) cannot be relied upon.”

20. Be that as it may, bare reading of Devarapalli's case (supra) makes it abundantly clear that even as per the same, the trial Court cannot be said to have taken cognizance of the offence within the meaning of Section 190(1)(a) till it applies his mind for the purposes of proceedings under Section 200 and the succeeding sections in Chapter XV of the Code. By reading of order dated 16.06.2020, it is evident that the Magistrate did not apply his mind to the complaint for deciding whether or not there is sufficient ground for proceeding. Thus, the question of taking next step of proceeding as envisaged in Section 202 did not arise. Thus, it is a case where the Magistrate never applied its mind to take cognizance under the provisions of Chapter XIV. Bare reading of order dated 16.06.2020 would reveal that merely report was called from SHO Police Station. The same was well in consonance with the dictum of law laid down by Apex Court in Mrs. Priyanka Srivastava's case (supra), wherein Apex Court while spelling out word of caution held as under:-

“27. In our considered opinion, a stage has come in this country where [Section 156\(3\)](#) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking

any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under [Article 226](#) of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores. We have already indicated that there has to be prior applications under [Section 154\(1\)](#) and [154\(3\)](#) while filing a petition under [Section 156\(3\)](#). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under [Section 156\(3\)](#) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under [Section 156\(3\)](#). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

21. Mere presentation of a complaint cannot be held to mean that the Magistrate has taken the cognizance. (Vide: *Narsingh Das Tapadia v. Goverdhan Das Partani & Anr.*, (2004) RCR (Criminal) 39).

22. Consequently, in the considered opinion of this Court, it can be safely inferred that order dated 16.06.2020 did not amount to taking cognizance in view of settled proposition of law. Likewise, the fact that the Magistrate ordered for report from the Station House Officer does not amount to proceeding under Chapter XV of the Code. Provision contained in Section 200 of the Code is explicit. A Magistrate cannot be said to have applied his mind on the complaint prior to examining the complainant and the witnesses present on oath.

23. So far as the merits of the present cases are concerned, these are not the cases wherein jurisdiction under Section 482 of the Code can be exercised at this nascent stage. From the bare reading of the complaint, it cannot be said that the same does not disclose cognizable offence.

24. In view of the said fact, these are not the cases which would warrant quashing of FIR as per parameters laid down in '*State of Haryana vs. Bhajan Lal and others*' reported as *1992 SCC (Cri) 426*.

25. Finding no merit in both the cases, the same are ordered to be dismissed.

26. Since the main petitions have been decided, the pending criminal miscellaneous application, if any, also stands disposed off.

(PANKAJ JAIN)
JUDGE

17.10.2022
Dinesh

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No