

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

CRM-M-36833-2022

Date of decision : 22.08.2022

Davinder Kumar Gupta

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. N.S. Sodhi, Advocate
for the petitioner.

PANKAJ JAIN, J. (ORAL)

By way of present petition under Section 482 Cr.P.C., the petitioner seeks quashing of order dated 10th of May, 2022 passed by the Chief Judicial Magistrate, Jalandhar whereby application filed by the petitioner under Section 156(3) Cr.P.C. has been ordered to be treated as complaint.

2. Ld. Counsel for the petitioner contends that in fact the petitioner earlier approached the police authorities vide Annexure P-2, dated 1st of July, 2019. The inquiry was conducted and it was concluded that :-

“It is submitted that the inquiry of application No. was got conducted through ASI Harinder Singh No. 688/jal Economic crime branch commissionrate Jalandhar. During investigation of the complaint. It came out that the matter pertain to receiving amount by respondent party Atul s/o kiranjit and kiranjit s/o kishan Lal both residents of Sudesh Niwas H.No. 388 jatpura Mohala Jalandhar from applicant Davinder

kumar Gupta for their business need on credit basis and in regard with issuance of check conspiring with each other putting signature by both father and son knowing that this account is of Atul only. So act of fraud and forgery has come out from their activities by issuing receipt putting signature by both father and son in regard with issuance of cheque. But even then after taking legal opinion from the D.A.Legal, legal action deserves to be taken against the respondent party.”

3. He further contends that vide Communication dated 27th of September, 2019, Assistant Commissioner of Police recorded petitioner's concurrence with the inquiry. However, it was on the legal opinion that the case was not registered. It was thereafter that the petitioner preferred petition under Section 156(3) Cr.P.C. before Illaqa Magistrate, Jalandhar which has been placed on record as Annexure P-4. The precise contention raised is that the Court while dealing with petition under Section 156(3) Cr.P.C. ought to have considered the inquiry report i.e. Annexure P-3. Without considering the said report, order dated 10th of May, 2022 (Annexure P-1) has been passed which has resulted in injustice as the petitioner has been relegated to pursue his remedy before the Magistrate.

4. I have heard Ld. Counsel for the petitioner and have carefully gone through the records of the case.

5. As per the contents of petition filed by the petitioner under Section 156(3), it has been alleged that petitioner on the asking of the accused advanced friendly loan of Rs.3,40,000/-. Accused on the same day

issued a cheque in favour of the petitioner to the tune of Rs.3,40,000/-. The cheque was signed by both the accused however, when presented, the cheque was dishonoured with the remarks “kindly contact drawer/drawee bank please present”. On the accused being confronted by the petitioner he came to know that the cheque does not pertain to joint account of both the accused rather the same account maintained and solely operated by one of the accused. Thus, the petitioner claimed fraud, forgery and cheating at the hands of the accused.

6. Question in the present petition that arises for the adjudication is whether on a petition filed under Section 156(3) Cr.P.C., Magistrate is necessarily required to order investigation or he has a discretion to order that the petition be treated as complaint under Chapter XV.

7. It will be apt to refer certain bare provisions for adjudication of the aforesaid question :-

“Section 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. 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.”

8. Section 156 Cr.P.C. has been repeatedly interpreted by the Apex Court. In the case of **Mohd. Yousuf vs. Smt. Afaq Jahan and others, (2006) 1 SCC 627**, it has been held that :-

“9. The various steps to be adopted for investigation under Section 156 of the Code have been elaborated in Chapter XII of the Code. Such investigation would start with making the entry in a book to be kept by the officer in charge of a police station, of the substance of the information relating to the commission of a cognizable offence. The investigation started thereafter can end up only with the report filed by the police

as indicated in Section 173 of the Code. The investigation contemplated in that chapter can be commenced by the police even without the order of a Magistrate. But that does not mean that when a Magistrate orders an investigation under Section 156(3) it would be a different kind of investigation. Such investigation must also end up only with the report contemplated in Section 173 of the Code. But the significant point to be noticed is, when a Magistrate orders investigation under Chapter XII he does so before he takes cognizance of the offence.

10. But a Magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the Code...

(emphasis supplied)

9. Similarly, Apex Court in case of **Gangadhar Janardan Mhatre vs. State of Maharashtra and others, (2004) 7 SCC 768** held that -

“13. When the information is laid with the Police, but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered

to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by this Court in All India Institute of Medical Sciences Employees' Union (Regd.) v. Union of India and Others, (1996) 11 SCC 582. It was specifically observed that a writ petition in such cases is not to be entertained.”

10. Similar question arose before **Kerala High Court in case of P. Kannappan vs. State of Kerala, 2006 (1) RCR (Crl.) 165** and was answered as :

“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 precognizance 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.”*

15. *A person who is able to exert influence on the police may file a complaint falsely implicating innocent persons with a solitary prayer to forward the same to the police. In such cases the only intention of the complainant will be to harass the opponent using police. It is the duty of the Court to punish a person who is guilty of a criminal offence. So, the prayer in the complaint must be to try the accused and to punish him in case he is found guilty of any offence. So when the sole prayer in the complaint is to refer the same to police, the Magistrate shall approach the matter with care and caution and insist for materials to show a prima facie case. There is also a possibility that a person who is involved in a criminal case may misuse the opportunity to fabricate evidence to be used as defence evidence in the case in which he is an accused. The Magistrate shall not allow an unscrupulous criminal to use the court as a tool for harassing innocent persons or for fabricating false evidence.”*

11. The same question stands answered by a Co-ordinate Bench of this Court in **CRM-M No.10468 of 2022** titled as **Deepak Gupta vs. State of Haryana and others**, holding that -

“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.”

12. Thus, no fault can be found with the order passed by the Magistrate whereby he has ordered the petition filed by the petitioner to be treated as complaint under Chapter XV. Needless to observe that the case of the petitioner is based on documentary evidence and, thus, he can well produce the evidence before the Court to drive-home guilt of the accused.

13. As a sequel of the discussion held herein above, this Court is of the considered opinion that no error can be found with the order passed by the Magistrate impugned in the present petition.

14. Consequently, the present petition is dismissed.

15. Needless to say that anything observed herein shall not be construed to be an expression of an opinion on the merits of the case.

August 22, 2022
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No