

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

CRM-M No.3823 of 2021 (O&M)

Date of Reserve: 15.05.2023

Date of Decision: 05.07.2023

Ashok Punia @ Ashok Kumar & othersPetitioners

Vs

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ashok Aggarwal, Senior Advocate with
Mr. Mukul Aggarwal, Advocate and
Mr. Hari Pal, Advocate
for the petitioners.

Mr. Deepak Sabherwal, Addl. A.G., Haryana.

Mr. J.S. Mehndiratta, Advocate
for the respondent No.2/complainant.

RAJ MOHAN SINGH, J.

[1]. The petitioners have preferred this petition under Section 482 Cr.P.C. for quashing of complaint No.486/2020 dated 17.12.2020 (Annexure P-20) titled '*Neeraj Chaudhry vs. M/s Sai Aaina Farms Private Limited & others*', order dated 07.01.2021 (Annexure P-25) passed by the Chief Judicial Magistrate, Gurugram directing registration of FIR against the petitioners and consequential FIR bearing No.11 dated 14.01.2021 under Sections 120-B, 406, 420, 467, 468, 471 IPC Police Station Sushant Lok, Gurugram (Annexure P-26) along

with all consequential proceedings arising out from there being illegal and without jurisdiction. The petitioners have also prayed for stay of further proceedings in the aforesaid FIR.

[2]. The order dated 07.01.2021 passed by the Chief Judicial Magistrate, Gurugram is reproduced hereasunder:-

“Neeraj Chaudhary vs. M/s Sai Aaina Farms Pvt. Ltd. & ors.

Present:-Complainant in person being represented by Sh. N.K.Jain, and Ms. Jyotsna Bhuchar, Advocate ASI Bablu Singh, Economic Crime Branch, Gurugram in person.

Action taken report has been filed by the Police. The same is not found conclusive on any count. However, on bare perusal of the complaint and the documents annexed with it, this Court is of the considered view that there are serious allegations of forgery, which otherwise also appears to be made out. Hence, the matter requires investigation by a professional agency. The complainant would not be in a capacity to collect evidence or to investigate the matter on its own. Hence, specialist agency i.e. Police would be in a position to investigate the matter. Hence, this Court is of the considered view that it is a fit case for registration of FIR in compliance of Section 156(3) Cr.P.C under relevant Sections of Indian Penal Code, 1860 against the accused persons. However, simply because certain persons have been arrayed by the complainant in the present complaint as accused shall not disentitle the Police to add more accused or delete some accused from the list of accused persons. SHO, P.S. Sushant Lok,

Gurugram is directed to register the FIR in the present complaint and submit his compliance report in this Court on 15.01.2021. File complete in all respect be sent to the concerned Police Station. Photocopy of the same be retained on record. Ahlmad is directed to put up photocopy of the file on the date fixed.

*Announced in open Court.
Dated of order: 07.01.2021*

*(Anil Kaushik)
Chief Judicial Magistrate
Gurugram (UID No.HR0283)”*

[3]. The respondent No.2 filed a complaint before the Commissioner of Police, Gurugram vide diary No.3247 dated 07.01.2020 for registration of FIR against nine persons in reference of forged and dead/non-existing bank guarantees of the IDBI Bank. In the aforesaid complaint, the petitioners No.3 and 5 were not arrayed as accused persons. Thereafter the respondent No.2 filed a criminal complaint under Section 200 Cr.P.C. read with Section 156(3) Cr.P.C. before the *Ilalaqa* Magistrate/Duty Magistrate against 15 accused persons on 17.12.2020 for registration of FIR for the offences under Sections 406, 420, 467, 468, 471, 120-B IPC. The subject matter of the complaint was with regard to forged, fake and non-existing two bank guarantees of IDBI Bank for obtaining a licence for developing an affordable housing project under the Affordable Housing Policy, 2013 by the authorized signatory of accused No.1-Company. As many as 15 accused were named

in the complaint. The serial No.16 was left for any other accused (subject to investigation). The petitioners herein are listed as accused at Sr.Nos.4, 5, 6, 11 and 12 in the aforesaid complaint.

[4]. After filing of the complaint, the Court asked for action taken report and the same was called for 23.12.2020. Thereafter on 23.12.2020, the case was adjourned to 04.01.2021 at the request of Police Officer of the Economic Crime Branch for filing action taken report. Thereafter the case was further adjourned to 07.01.2021 for the same purpose. The action taken report was filed on 07.01.2021 i.e. the day on which the impugned order as reproduced hereinabove was passed.

[5]. Learned Senior counsel for the petitioners submitted that the impugned order is wholly illegal and does not satisfy the mandatory requirement of Section 156(3) Cr.P.C. with reference to **Shri Subhkaran Lubharka and Anr. vs. State (Govt. of NCT of Delhi) and Anr., 2010(7) R.C.R 595 (Delhi SB); Priyanka Srivastava and Another vs. State of Uttar Pradesh and others, (2015) 6 Supreme Court Cases 287; Babu Venkatesh and others vs. State of Karnataka and another, (2022) 5 Supreme Court Cases 639; Amit Joshi vs. State of Chhattisgarh through Superintendent of Police and others,**

2021 SCC Online CHH 235; Anil Kumar and others vs. M.K. Aiyappa and another (2013) 10 Supreme Court Cases 705; Ramdev Food Products Private Limited vs. State of Gujarat, (2015) 6 Supreme Court Cases 439; Maksud Saiyed vs. State of Gujarat and others, (2008) 5 Supreme Court Cases 668; Guruduth Prabhu and others vs. M.S. Krishna Bhat and others, 1999 CrLJ 3909 and Kheta Ram vs. State of Haryana, 2007(3) R.C.R.(Criminal) 649.

[6]. Learned Senior counsel for the petitioners further submitted that before issuing any direction under Section 156(3) Cr.P.C., the Magistrate has to apply his mind and the said application of mind must reflect in the order. Mere observation by the Magistrate that he has gone through the complaints, documents and heard the complainant will not be sufficient and will not serve the mandatory requirement of Section 156(3) Cr.P.C. The Magistrate must reflect in clear terms in the order as to what weighed with him factually or legally to order investigation under Section 156(3) Cr.P.C. The application of mind means that the person required to apply his mind has to come to grasp the facts and to bring into focus the law on the subject and apply the facts to the law arriving at a conclusion by a process of reasoning that all the relevant facts have been taken note of and properly analyzed in the light of law applicable

to the facts of the case. The Magistrate has to ensure before passing any order under Section 156(3) Cr.P.C. at the very outset that before coming to the Court, the complainant did approach the Police Officer-in-charge of the Police Station in terms of section 154(1) Cr.P.C. and the Court must examine as to what action was taken by the Incharge, Police Station or even by senior officer of the Police when approached by the complainant in terms of Section 156(3). There has to be proper applications under Section 154(1) and 154(3) Cr.P.C. before the Incharge, Police Station and Commissioner of Police/ Superintendent of Police respectively. Both these aspects are legally required to be clearly spelt out in the complaint along with the necessary documents.

[7]. Learned Senior counsel for the petitioners further submitted that the complaint under Section 156(3) Cr.P.C. has to be supported by an affidavit of the complainant thereby disclosing ingredients of the offence alleged. In this regard reference becomes necessary to Chapter XII of the Code of Criminal Procedure which starts from Section 154 Cr.P.C. i.e. information to the Police and their power to investigate. Section 154 Cr.P.C. enables every person, who wishes to disclose information relating to commission of cognizable offence to approach the Station House Officer of the concerned Police

Station who then is required to reduce such information into writing and to register an FIR, if that information discloses commission of cognizable offence as provided under Section 154(1) Cr.P.C. If the concerned officer is reluctant or refuse to register an FIR based on the information, then the complainant may approach the senior police officer under Section 154(3) Cr.P.C. Once the FIR is registered, then the criminal law procedure shall come into play i.e. the investigation under Section 156 Cr.P.C. till filing of challan under Section 173 Cr.P.C. The procedure for investigation has been prescribed under Section 157 of the Code which enables the Investigating Officer to proceed to investigate the facts and circumstances and if necessary to take measures for discovery and even arrest of the offender even without warrant. After investigation of the case, a report has to be filed in the Court by the concerned Investigating Officer. The report can either be for prosecution or for closure of the case. If the complainant is aggrieved of inaction on the part of the police, then he can file a complaint under Section 200 of the Code of Criminal Procedure for redressal of his grievance. The complainant can do so when he is not satisfied with the police action under Chapter XII by approaching the senior police officer under Section 154(3) Cr.P.C. On filing of the complaint under Section 200 Cr.P.C., the

Magistrate has an onerous duty to record evidence led by the complainant and also examine his witnesses and if necessary even to call for a police report. Thereafter the Magistrate has to decide as to whether he has to proceed under Chapter XV or has to dismiss the complaint. The question arises whether the complainant without approaching the senior police officer can approach the Magistrate directly with a complaint under Section 200 Cr.P.C. The issue is whether the Magistrate can still exercise powers under Section 156(3) Cr.P.C. instead of proceeding under Chapter XV.

[8]. Learned Senior counsel for the petitioners further submitted that under Section 156(3) Cr.P.C., the Magistrate is empowered to order investigation. Under Section 157(1) Cr.P.C. the officer Incharge of the Police Station having reasons to suspect commission of offence is empowered under Section 156 Cr.P.C. to investigate the offence under Section 157(1)(a) Cr.P.C. If the case is not of a serious nature and it appears that there is no sufficient ground for entering into an investigation, the Investigating Officer shall not investigate the case and he should inform the complainant in a prescribed manner. Even the police officer, who is empowered to investigate on the information received by him of the commission of cognizable offence can decide whether there is no sufficient ground for

entering into an investigation and in the event of finding no sufficient ground he should not investigate the case. But once the Magistrate orders an investigation under Section 156(3) Cr.P.C., the police officer is bound to investigate the matter. In the light of aforesaid position it becomes very much important that the Magistrate should apply his mind in order to find out whether the allegations made in the complaint filed under Section 200 Cr.P.C. discloses an offence or not. If every complaint filed under Section 200 Cr.P.C. is referred to the police under Section 156(3) Cr.P.C. without application of mind in respect of disclosure of an offence, then there is every likelihood of unscrupulous complaints being filed in order to harass the accused named therein. Therefore, it is mandatory for the Magistrate to apply his mind to the allegations made in the complaint and should pass the order only when it is found that the complaint discloses an offence whether the Magistrate gets jurisdiction to order an investigation by the police, if he does not take cognizance of the same. The Magistrate must exercise discretion after proper application of mind and only in the cases where the Magistrate is of the opinion that the nature of accusation/allegation is such that the

complainant himself may not be in a position to collect and produce evidence before the Court and the interest of justice demands that the Police should step in to help the complainant then the police assistance can be taken by the Magistrate.

[9]. Learned Senior counsel for the petitioners further submitted that under Section 202(1) Cr.P.C. even after taking cognizance and proceedings with the complaint under Chapter XV Cr.P.C., there are pre-requisites to be followed by the complainant before approaching the Magistrate under Section 156(3) Cr.P.C. which has discretionary remedy as the provision proceeds with the word 'may' which means that the person required to apply his mind has to come to grasp with the facts and has to bring into focus of law on the subject and applying the facts to the law in order to arrive at a conclusion by processing of reasoning that all relevant facts have been taken note of and properly analyzed in the light of law applicable. The truncated and gibberish reproduction of facts excluding the relevant facts from the focus of the mind would result in a decision being taken which can be classified as a decision without application of mind. The Magistrate is not expected to mechanically direct the investigation by the police without first examining whether in the facts and circumstances of the case investigation by the State machineries is required or not. If the

allegations made in the complaint are simple where the Court can straightaway proceed to conduct the trial, the Magistrate is expected to record the evidence and proceed further in the matter instead of passing the buck to the police station under Section 156(3) Cr.P.C. If the allegations are such which require complex and complicated investigation, it would be appropriate for the Magistrate to direct investigation by the Police. Therefore, the Magistrate is not supposed to act merely as a post office and needs to adopt a judicial approach while considering the application/complaint under Section 156(3) Cr.P.C. In **Shri Subhakaran Lubharka and Anr.'s** case (supra) the Delhi High Court has formulated the guidelines for the subordinate Courts to be followed while dealing with the application/complaint under Section 156(3) Cr.P.C. For ready reference, in para no.52A of the aforesaid judgment, the following guidelines have been formulated:-

“(i) Whenever a Magistrate is called upon to pass orders under Section 156(3) of the Code, at the outset, the Magistrate should ensure that before coming to the Court, the Complainant did approach the police officer in charge of the Police Station having jurisdiction over the area for recording the information available with him disclosing the commission of a cognizable offence by the person/persons arrayed as an accused in the Complaint. It should also be examined what action was taken by the SHO, or even by

the senior officer of the Police, when approached by the Complainant under Section 154(3) of the Code.

(ii) The Magistrate should then form his own opinion whether the facts mentioned in the complaint disclose commission of cognizable offences by the accused persons arrayed in the Complaint which can be tried in his jurisdiction. He should also satisfy himself about the need for investigation by the Police in the matter. A preliminary enquiry as this is permissible even by an SHO and if no such enquiry has been done by the SHO, then it is all the more necessary for the Magistrate to consider all these factors. For that purpose, the Magistrate must apply his mind and such application of mind should be reflected in the Order passed by him. Upon a preliminary satisfaction, unless there are exceptional circumstances to be recorded in writing, a status report by the police is to be called for before passing final orders.

(iii) The Magistrate, when approached with a Complaint under Section 200 of the Code, should invariably proceed under Chapter XV by taking cognizance of the Complaint, recording evidence and then deciding the question of issuance of process to the accused. In that case also, the Magistrate is fully entitled to postpone the process if it is felt that there is a necessity to call for a police report under Section 202 of the Code.

(iv) Of course, it is open to the Magistrate to proceed under Chapter XII of the Code when an application under Section 156(3) of the Code is also filed along with a Complaint under Section 200 of the Code if the Magistrate decides not to take cognizance of the Complaint. However,

in that case, the Magistrate, before passing any order to proceed under Chapter XII, should not only satisfy himself about the pre-requisites as aforesaid, but, additionally, he should also be satisfied that it is necessary to direct Police investigation in the matter for collection of evidence which is neither in the possession of the complainant nor can be produced by the witnesses on being summoned by the Court at the instance of complainant, and the matter is such which calls for investigation by a State agency. The Magistrate must pass an order giving cogent reasons as to why he intends to proceed under Chapter XII instead of Chapter XV of the Code.”

[10]. Learned Senior counsel for the petitioners further relied upon para nos.29, 30 and 31 of the **Priyanka Srivastava and Another's** case (supra) in order to strengthen his arguments on the aforesaid issue. For ready reference, the aforesaid paragraphs are reproduced hereinbelow:-

“29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same.

30. In our considered opinion, a stage has come in

this country where Section 156(3) CrPC 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 the 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.

31. *We have already indicated that there has to be prior applications under Sections 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 application under Section 156(3) be supported by an affidavit is 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 [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

[11]. Learned Senior counsel for the petitioners further submitted that the condition precedent for commencing investigation under Section 157 Cr.P.C. is that the FIR must disclose that the cognizable offence is committed. The Police has no unfettered discretion to commence the investigation under Section 157 Cr.P.C. when there is no commission of cognizable offence. The right of enquiry is a condition by the existence of reason to suspect the commission of a cognizable offence and they cannot be reasonably have reasons so to suspect unless the FIR *prima facie* discloses the cognizable offence. It was the duty of the trial Court to establish the involvement of each of the accused persons individually for each offence for which they have been charged. Learned Senior counsel referred to **Somasundaram alias Somu vs. State represented by the Deputy Commissioner of Police, (2020) 7 SCC 722.**

[12]. Learned Senior counsel for the petitioners further submitted that the allegations are found to be *mala fide* or otherwise an abuse of process of the Court, the criminal proceedings should not be encouraged rather the superior courts while exercising the power should also strive to serve the ends of justice. Learned Senior counsel referred to **All Cargo Movers (India) Private Limited and others vs. Dhanesh Badarmal Jain and another, (2007) 14 SCC 776.** Learned Senior counsel with reference to **Criminal Appeal Nos.1047-1048/2021** titled '**Ravindranatha Bajpe vs. Mangalore Special Economic Zone Ltd. & other etc.** decided on 27.09.2021 by the Hon'ble Apex Court further submitted that in the absence of specific allegations and the specific role attributed to the accused, the Magistrate is not justified in issuing the process. Merely because the accused are Chairman/Directors etc. they cannot be arrayed as accused in the absence of any specific role attributed to them and the role played by them in their capacity.

[13]. With reference to the aforesaid facts, learned Senior counsel for the petitioners further submitted that there is a total non-compliance of mandatory provisions inasmuch as that no application was submitted in terms of Section 154 Cr.P.C. nor the same was annexed with the complaint. No affidavit of the

complainant was filed along with the complaint, therefore, the complaint as such could not have been entertained by the Magistrate. The Magistrate must pass a speaking order giving cogent reasons as to why he intends to proceed under Chapter XII instead of Chapter XV of the Code. The complainant had filed an excessive complaint along with 50 Annexures covering by conceivable aspects of the complaint. The impugned order is silent inasmuch as that no satisfaction has been recorded by the Magistrate as to what material has not been placed on record by the complainant requiring investigation by the Police or why the investigation by the Police is necessitated. Without considering whether there is any material for the proceedings against the petitioners, the Magistrate has directed registration of FIR against all the accused. Learned Senior counsel has also emphasized that the petitioners remain Directors of the accused No.1-Company for a particular period. In this regard information is relevant to be highlighted as under:-

Petitioner Name	Date of appointment	Date of resignation from the Company
Petitioner No.1 - Ashok Kumar	29.08.2016	12.04.2017
	01.06.2017	18.08.2017
Petitioner No.2 - Alakh Niranjana	19.09.2018	10.01.2019
	25.03.2019	22.02.2020

Petitioner No.3 – Aditya Beri	22.02.2020	11.09.2020
Petitioner No.4 – Satish	18.01.2018 26.09.2020	22.02.2020 Still continuing as such
Petitioner No.5 – Prince Kumar	On 19.02.2020 appointed as Additional Director	

[14]. Learned Senior counsel for the petitioners with reference to the aforesaid information further submitted that neither at the time of issuance of LOI on 27.10.2017 nor at the time of submission of bank guarantees on 22.12.2017 any of the petitioners was Director. It has also not been alleged in the complaint that any of the petitioners was the authorized signatory, who submitted the bank guarantees on behalf of the accused No.1/Company.

[15]. Learned Senior counsel for the petitioner further submitted that the Director of a Company cannot be held vicariously liable for any act/offence committed by the Company itself. The penal code does not provide for any vicarious liability on the part of the Managing Director or Directors of the Company when the Company itself is the accused. It is always obligatory on the part of the complainant to make specific allegations which would attract culpability on behalf of the Managing Director/Directors that too with reference to a specific

provision existing in the statute. The ingredients in terms of the Section 420 IPC are missing altogether. In order to attract culpability in terms of Section 420 IPC it is essential to have *mens rea*/guilty intention from the very beginning i.e. the accused has dishonest or fraudulent intention from the very inception i.e. at the time when the complainant parted with the money otherwise it would not attract any such offence under Section 420 IPC. No act on the part of the accused disclosing any intention to adduce delivery of any property of the accused is made out. There is nothing in the complaint to show that the accused dishonestly induced the respondents to deliver any property to them.

[16]. With reference to the allegations, learned Senior counsel for the petitioner further submitted that even if all the allegations in the complaint are taken to be true at the face value still the basic ingredients of cheating are missing altogether. There is a fundamental inconsistency between the offence and criminal breach of cheating. Learned Senior counsel relied upon **Shilpa Ajwani and others vs UT Chandigarh and ors., 2020(1) R.C.R. 934** and submitted that on the same set of facts both the ingredients cannot stand being ante thesis to each other. The criminal prosecution cannot be used as an instrument of harassment in order to settle private

vendetta with ulterior motive to pressurize the accused. The High Court has inherent powers *ex debito justitia* to do real justice between the parties to prevent abuse of process of law and also to achieve ends of justice.

[17]. Learned Senior counsel for the petitioners further submitted that filing of the complaint by the respondent No.2 is the result of abuse of process of law. The application for grant of licence before the Director General, Town and Country Planning, Haryana for developing an affordable housing was made on 07.05.2016. LOI was issued in favour of the Company vide letter dated 22.10.2017. The respondent No.2 filed a complaint before the Director General, Town and Country Planning, Haryana for cancellation of licence alleging that LOI could not have been granted. Owing to inaction on the complaint, the complainant filed CWP No.13933 of 2018 in the High Court which was disposed of vide order dated 29.05.2018, directing the Director General, Town and Country Planning, Haryana to look into the grievance of the complainant. The Court also pleased to decline the interference in the writ petition as the grievance of the respondent No.2 has originated from business dispute with the Developer. Thereafter, the respondent No.2 filed another representation on 29.06.2018 again levelling allegations including the allegations that the collaboration

agreement submitted by the accused No.1/Company was fake and the Bank Guarantee was not genuine. He submitted yet another representation before the Director General, Town & Country Planning, Haryana on 27.05.2019 seeking cancellation of the licence granted to the accused No.1/Company.

[18]. Learned Senior counsel further submitted that despite pendency of the aforesaid representation, the complainant filed a complaint before the Commissioner of Police, Gurugram on 07.02.2020/08.02.2020 for getting the issue investigated. The Director General, Town and Country Planning, Haryana disposed of the representation of the respondent No.2 on 19.03.2020 finding no merit in the allegations of forgery however the accused Company was restrained from undertaking further development of the project as the land allegedly purchased by the State was still in the names of the co-sharers and partition had not been done. The ownership of the Developer was not established till then. After passing of order dated 19.03.2020, final partition of the land has already been taken place. The respondent No.2 has also filed an appeal against the order dated 19.03.2020 before the Financial Commissioner which is pending. In the meanwhile, Economic Offence Wing, Gurugram after investigation of the complaint dated 08.02.2020 and noticing the matter in controversy pursuant to the direction

dated 29.05.2018 passed in CWP No.13933 of 2018 pending before the Director General, Town and Country Planning, Haryana, forwarded the complaint to the Director General, Town and Country Planning, Haryana. Despite the grievance of the petitioner having been adjudicated by the Director General, Town and Country Planning, Haryana, the appeal against the said order pending before the Principal Secretary, the complainant chose to file the complaint under Section 200 Cr.P.C. before the Chief Judicial Magistrate, Gurugram.

In view of aforesaid facts, learned Senior counsel for the petitioner seeks to quash the impugned complaint, order dated 07.01.2021 and consequent FIR in pursuance thereof along with all subsequent proceedings undertaken thereto.

[19]. Per contra, learned counsel for the respondent No.2 submitted that the present petition is not maintainable as the cognizable offence is made out. The complaint was addressed to the Commissioner of Police with specific endorsement for "Economic Offence Wing". The complaint was entered into the diary kept for that purpose. In compliance of Section 141 IPC read with Section 49 of the Haryana Police Act, the complaint was marked by the Commissioner of Police performing the functions of Superintendent of Police under Section 83 of the

Haryana Police Act to DCP equivalent to Superintendent of Police. Marking of the complaint in itself is sufficient to show that the competent authority has applied its mind in order to ascertain whether the cognizable offence is made out or not. The action taken report was considered by the Chief Judicial Magistrate. In another action taken report, there is a report of the Police obtaining record from the Banks and Sub-Registrar in respect of forgery committed by the accused. The report is also signed by the Incharge, Economic Offence Wing.

[20]. Learned counsel for the respondent No.2 further submitted that for the offences of the present type, a specialized wing of the Police in the name of Economic Offence Wing has been constituted. No cognizance of an offence capable of being taken under Economic Offence Wing would be entertained without recommendation of Commissioner of Police. Such offences could be inquired/investigated only by the Economic Offence Wing. The cases involving less than Rs.50 lakhs is to be considered at the level of Police Station and the cases of Economic Offence Wing cannot be entertained or transferred from the Economic Offence Wing to other police station except with the direction of the Commissioner of Police. The Economic Offence Wing has been constituted in compliance of the direction of the Hon'ble Apex Court.

[21]. Learned counsel for the respondent No.2 further submitted that in Gurugram there is Commissionerate and there is no police post of Superintendent of Police or Senior Superintendent of Police. The DSP is equivalent to the SP/SSP. With reference to the aforesaid nomenclature, learned counsel for the respondent No.2 submitted that the powers and functions of the Superintendent of Police are to be exercised by the Commissioner of Police in terms of Section 83 of the Haryana Police Act. Therefore, where a complaint was submitted to an officer higher in rank to the Superintendent of Police, there was no scope of submitting any representation to the junior officer. Marking of complaint by the Commissioner of Police in itself is sufficient material to show that he had applied his mind in respect of existence of cognizable offence.

[22]. Learned counsel for the respondent No.2 further submitted that in view of the fact that the complaint is in respect of economic offence and, therefore, in view of provisions of Section 95 of the Haryana Police Act, 2007, the provisions of Cr.P.C was applied in so far as they are not inconsistent with the provisions of this Act. Thus when a special Wing has been constituted while exercising statutory powers under the Haryana Police Act 2007 and rules framed thereunder, the powers are being exercised by the officers higher in rank to the officers

specified under Section 156 Cr.P.C. The provisions of Section 156 Cr.P.C. have to be read in conjunction with the Sections 95 and 48 of the Haryana Police Act, 2007 and also in terms of the Scheme of the economic offences. Learned counsel also highlighted the Haryana Police Act 2007 with reference to its provisions. The Gurugram Police Commissionerate was formed vide notification dated 26.08.2009.

[23]. Learned counsel for the respondent No.2 further submitted that in terms of order dated 27.01.2021 passed by this Court, the contention of the petitioner in itself is sufficient to demolish his plea regarding non-compliance of Sections 154(1) Cr.P.C. The affidavit was filed along with the complaint under Section 156(3) Cr.P.C. and the same is so mentioned in index also. All the requisite particulars given in the complaint were duly supported by the affidavit and there was sufficient material available before the Chief Judicial Magistrate to take cognizance of the allegations. Taking of cognizance by the Chief Judicial Magistrate was fully in consonance with the parameters as laid down in **Lalita Kumari vs. Govt. of U.P. & Ors. 2014(1) SCC (Cri) 524.**

[24]. With reference to the **Devrapalli Laxmi Narayana Reddy and others vs. Narayana Reddy and others (1976) 3**

SCC 252, learned counsel for the respondent No.2 further submitted that when the Magistrate receives the complaint, he is not bound to take cognizance, if the facts alleged in the complaint disclose the commission of an offence. This is clear from the use of words 'may take cognizance' which in the context in which the occur cannot be equated with 'must take cognizance'. The word 'may' gives discretion to the Magistrate in the matter. If on reading of a complaint, he finds that the allegations therein disclose a cognizable offence and forwarding of the complaint to the Police for investigation under Section 156(3) Cr.P.C. will be conducive to justice and save the valuable time of the Magistrate in enquiring into the matter which was primarily the duty of the Police to investigate, he will be justified in adopting that course as an alternative for taking cognizance of the offence himself. When on receiving the complaint the Magistrate applies its mind for the purposes of proceedings under Section 200 Cr.P.C. and the succeeding Sections in Chapter XV, he is said to have taken cognizance of the offence within the meaning of Section 290(1)(a) Cr.P.C. If, instead of proceeding under Chapter XV, in the judicial exercise of his discretion, he has taken action of some other kind, such as issuing search warrant for the purpose of investigation, or ordering investigation by the Police under Section 156(3)

Cr.P.C., he cannot be said to have taken cognizance of any offence. In broad spectrum, there is no dispute with regard to the legal position involved in the present case.

[25]. Learned counsel for the respondent No.2 has made strenuous effort to satisfy this Court that functioning and supervision of Economic Offence Wing would negate the theory of the petitioner. Policy Provisional/Provincial Order No.1/17 was issued by the office of Commissioner of Police, Gurugram on the subject of functioning and supervision of Economic Offence Wing. In view of the increasing number of complaints relating to the economic offences and cases and work in balance in Commissionerate of Gurugram, it has been decided that Economic Offence Wing of three Districts are merged in the office of Commissionerate of Gurugram. This provisional/provincial order has been prepared with respect of functioning of the same in future working under the Economic Offence Wing and its supervision shall be in accordance with the provisional/provincial order. The main objective of the Economic Offence Wing is to conduct impartial and speedy resolution of the matters pertaining to embezzlement, fraud or forgery of document and record. All the non-gazetted officers presently posted shall work as Investigating Officer of this Wing and all the pending inquiries/investigation shall be completed by these

Investigating Officers as per procedure.

[26]. With reference to the aforesaid policy provisional/provincial order, learned counsel for the respondent No.2 made reference to classification of the matters for investigation/inquiry, supervisory officers and matters for investigation-cum-inquiry which are the matters involving property more than Rs.50 lakhs that can only be assigned to Economic Offence Wing for inquiry and investigation. The Commissioner of Police shall have a special right to assign any matter to the Wing for inquiry or investigation. The concerned Deputy Commissioner of Police shall assign the matter to the Wing for inquiry/investigation falling within his area of jurisdiction only. The matters involving property of less than Rs.50 lakhs shall be got inquired/investigated by the Deputy Commissioner of Police at the police station level. Neither any matter could be marked to Economic Offence Wing nor can any matter be sent back from the Economic Offence Wing to the Police Station without permission of the Commissioner of Police, Gurugram. A specific procedure is assigned in the inquiry into the complaints.

[27]. On the basis of aforesaid procedure, learned counsel for the respondent No.2 further submitted that there is compliance of mandatory provisions of law. The complaint was

duly routed through the Commissioner of Police to Incharge, Police Station.

[28]. After hearing learned counsel for the parties, this Court finds that the impugned order dated 07.01.2021 passed by the Chief Judicial Magistrate, Gurugram needs to be revisited by the Court itself as the same is non-speaking with reference to the legal requirements arising from the parameters as laid down in **Shri Subhakaran Lubharka and Anr.; Priyanka Srivastava; Babu Venkatesh and others** and **Amit Joshi's** cases (supra).

This Court does not wish to comment anything on merits of the case and all issues are left open at this stage except to remand this case to the Court of Chief Judicial Magistrate with a direction to pass fresh order in view of mandatory requirement of law and also to consider the stand taken by the respondent No.2 with reference to any policy provincial/provisional order No.1/2017 issued by the office of Commissioner of Police, Gururam in respect of functioning and supervision of the Economic Offence Wing.

[29]. The Chief Judicial Magistrate shall independently consider the submissions of the petitioners as well as that of the respondent No.2 in accordance with law without being influenced by any statement of fact recorded in this order.

Needless to say that the order of the Chief Judicial Magistrate must exhibit the application of mind as required under Section 156(3) Cr.P.C. in the light of the judgments discussed in the preceding part of the order.

[30]. At this stage, this Court does not wish to opine anything on merits of the case, lest it may prejudice the case of the parties. The impugned order dated 07.01.2021 passed by the Chief Judicial Magistrate, Gurugram appears to be non-speaking in the light of legal requirement for that the Chief Judicial Magistrate shall be under legal obligation to reconsider the issue afresh strictly in accordance with law and thereafter pass speaking order exhibiting due application of mind after grasping the facts of the case and law on the subject with reasoned order. All other grounds are still left open.

[31]. In view of aforesaid, this petition is disposed of. All other civil misc. applications, if pending are also disposed of accordingly.

July 05, 2023

Atik

Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No