

201(2 cases)

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

(1) **CRM-M-47384-2017 (O&M)**

GURTEJ SINGH @ TEJI AND OTHERS ...Petitioners

Versus

STATE OF PUNJAB AND ANOTHER ...Respondents

(2) **CRM-M-47577-2017 (O&M)**
Date of Decision :16.03.2023

BALWANT SINGH @ BANT SINGH AND OTHERS ...Petitioners

Versus

STATE OF PUNJAB AND ANOTHER ...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Manish Kumar Singla, Advocate
for the petitioner(s) (in both the cases).

Mr. Subhash Godara, Addl. A.G., Punjab.

Mr. Liaqat Ali, Advocate
for respondent No.2 (in both the cases).

HARSH BUNGER, J.

This order shall dispose of two petitions bearing **CRM-M-47384-2017** titled as “*Gurtej Singh @ Teji and Others Versus State of Punjab and Another*” and **CRM-M-47577-2017** titled as “*Balwant Singh @ Bant Singh and Others Versus State of Punjab and Another*” as both the petitions have emanated from a common order dated 21.01.2017 (Annexure P-3) passed by the Court of Judicial Magistrate 1st Class, Sangrur, upon an application under Section 156(3) of Code of Criminal Procedure (in short “Cr.P.C.”) filed by respondent No.2—complainant

(Nazar Singh) against the petitioners in both the cases alongwith other persons, was allowed and police was directed to register FIR under section 156(3) Cr.P.C. under the relevant provision of Indian Penal Code (in short “IPC”).

Shorn of unnecessary details, the brief facts of these cases are that respondent No. 2 – complainant (Nazar Singh) filed an application under section 156(3) Cr.P.C. against one Des Raj and others (including the petitioners in both the cases) before the Court of Judicial Magistrate 1st Class, Sangrur; wherein it was stated that he (Nazar Singh) had purchased land measuring 401 Square yards situated at village Shahpur vide registered Sale deed No. 2191 dated 30.11.1999 and thereafter he constructed his residential house thereon and even an electric connection (bearing account no. S94CN170616W) was installed therein and respondent No.2–complainant (Nazar Singh) was residing in this house alongwith his wife and sons. It was alleged that Des Raj and others (including the petitioners in both the cases) wanted to interfere in the peaceful possession of respondent No. 2–Complainant (Nazar Singh) and on such threats, respondent No.2–complainant (Nazar Singh) filed a Civil Suit (CS/1021/2016) dated 14.09.2016 titled as “*Nazar Singh vs Des Raj and others*” seeking relief of prohibitory injunction and vide order dated 14.09.2016, order of status quo regarding possession till further orders was passed, which was duly communicated to the defendants in the suit. It was further alleged in the application under Section 156(3) Cr.P.C. that some of the respondents therein tried to pressurize respondent No. 2– complainant (Nazar Singh) to withdraw the suit, which was denied and police officials brought respondent No. 2–complainant (Nazar Singh) to PP Kalajhar on 20.09.2016 and kept him in illegal custody from 4:00 pm of 20.09.2016 to 2:00 pm of

21.09.2016. It was further alleged that on 21.09.2016, all the respondents formed an unlawful assembly with common object and intention trespassed in the residential house of respondent No.2–complainant (Nazar Singh) by breaking open the lock of single iron gate of house of Nazar Singh for making passage and dug earth from the house of respondent No.2–complainant (Nazar Singh), constructed wall in the dug out area and demolished old wall. On 23.09.2016, they increased the length of the newly constructed wall, detached single iron gate and took it to their unknown place without the consent of respondent No.2–complainant (Nazar Singh) and some of the respondents used force, assault and confined wife of respondent No.2–complainant (Nazar Singh) in room. Other allegations of assault, wrongful restraint and confinement, theft, destruction of property etc. were also made.

Learned Judicial Magistrate 1st Class, Sangrur, after considering the material available on the record of judicial file and after hearing respondent No.2– complainant (Nazar Singh), passed an order dated 21.01.2017 (Annexure P-3) directing the police to register FIR under Section 156(3) Cr.P.C. under the relevant provision of IPC. The relevant extract of order dated 21.01.2017 (Annexure P-3) reads as under:

“4.A perusal of the record shows that report of the police was called which has submitted that matter was reported to it and it conducted proceedings under Section 107/151 Cr.P.C. Therefore, it is clear that there has been some occurrence as alleged in the application. The contents of the application disclose the commission of cognizable offences. Therefore, police is directed to register FIR under Section 156(3) Cr.P.C. under the relevant provisions of IPC. Accordingly, application is allowed. Copy of the application alongwith copy of this

order be transmitted to the Incharge, P.P. Channo, Police Station Bhawanigarh to register the FIR and transmit the copy thereof within a period of two days i.e. on or before 24.01.2017.”

Petitioners (in both the petitions), being dissatisfied with aforesaid order dated 21.01.2017 (Annexure P-3) passed by the learned Judicial Magistrate 1st Class, Sangrur, directing police investigation under Section 156(3) of the Cr.P.C., thought fit to challenge the same by filing a common ***Criminal Revision No. 1238 of 2017*** before the Court of learned Additional Sessions Judge, Sangrur.

At the time of hearing of the Criminal Revision, an objection was raised on behalf of respondent No. 2—complainant (Nazar Singh) as regards the maintainability of the revision application. It was submitted before the Revisional Court that an order passed by the Magistrate of police investigation under Section 156(3) of the Cr.P.C. is an interlocutory order and the revision would be barred.

The Revisional Court vide its order dated 25.10.2017 (Annexure P-5) dismissed the Criminal Revision being not maintainable.

Being dissatisfied, the petitioners (in both the petitions) have filed their separate petitions under Section 482 of the Cr.P.C..

Learned counsel for the petitioners submitted that the Revisional Court committed a serious error in passing the impugned order dated 25.10.2017 (Annexure P-5) and dismissing the revision petition on the ground of its maintainability. Learned counsel submits that the order passed by the Magistrate directing investigation to be made in the proceeding under Section 156(3) of the Code would be final so far as the Magistrate is concerned and after passing of the said order under Section 156(3) of the Code, the Magistrate has nothing further to do and the

proceeding under Section 156(3) of the Code gets terminated. Nothing remains pending before the Magistrate after such order is passed. It is contended on behalf of the petitioners that despite the termination of the proceeding under Section 156(3) of the Cr.P.C. and in light of the principle "*ubi jus ibi remedium*", the petitioner herein cannot be denied the statutory remedy of revision under Section 401 of the Cr.P.C. read with Section 397 of the Cr.P.C. Accordingly, prayer has been made that the impugned order dated 25.10.2017 passed by Revisional Court be quashed by holding that revision is maintainable against the order of the Magistrate directing registration of case / F.I.R. to investigation under Section 156(3) of the Cr.P.C and the matter be remitted to the Revisional Court for fresh decision.

Learned counsel for the petitioners has further submitted that the petitioners have been falsely implicated in this case and even from the allegations levelled in the FIR (Annexure P-4), no criminal offence is made out against the petitioners and the same amounts to abuse of process of law. Accordingly, it is prayed that the order dated 21.01.2017 (Annexure P-3) passed by learned Judicial Magistrate Ist Class, Sangrur and FIR (Annexure P-4) be quashed.

On the other hand, the submissions made on behalf of the petitioners have been opposed by the learned State Counsel as well as by the counsel for respondent No.2. They have supported the order passed by the Revisional Court in dismissing the criminal revision petition filed by the petitioners on the ground of its maintainability. It is contended that an order passed by the Magistrate, in exercise of power under Section 156(3) of the Code, is not open to challenge by filing a revision petition since it is purely an interlocutory order. It is next contended that in case the remedy of

criminal revision is not available in the eventuality of registration of FIR directly by police, then how such revision would be maintainable when the Magistrate directs the registration of the F.I.R. It is submitted that if the revision petition is held to be maintainable before the Sessions Court against an order passed by the Magistrate under Section 156(3) of the Cr.P.C. directing registration of case and/or to investigate the matter, and if such revision is allowed, it would have the effect of quashing the F.I.R., whereas the Sessions Court has no such power.

Learned counsel for the respondents have further submitted that specific allegations have been levelled in the complaint and learned Judicial Magistrate Ist Class, Sangrur, after finding that the complaint disclosed commission of cognizable offences, directed police to register FIR under Section 156(3) of the Cr.P.C. It is submitted that the allegations in the complaint/FIR shall be proved before the trial Court in accordance with law.

Accordingly, it is prayed that the instant petitions lack merit and the same may be dismissed.

I have heard learned counsel of the respective parties and have perused the paper book as well as the impugned order with their able assistance.

Having heard the learned counsel appearing for the parties and having considered the materials on record, the question(s) that fall for consideration by this Court are:

- 1. Whether the order made by the Magistrate under Section 156(3) of the Code of Criminal Procedure, 1973, directing police to make investigation would be an interlocutory order? If no, whether remedy of***

revision under Section 397 or Section 401 of the Code of Criminal Procedure, 1973, would lie?

2. Whether the FIR (Annexure P-4) in pursuance to order dated 21.10.2017 (Annexure P-3) passed by learned Judicial Magistrate Ist Class, Sangrur, do not constitute any offence against the petitioners?

Question No.1 :

Before answering the above posed question No.1, it would be apposite to refer to some judicial pronouncement(s).

In *Father Thomas v. State of U.P., 2011(3) RCR (Criminal) 160*, Hon'ble Full Bench of the Allahabad High Court formulated the following questions:

A. Whether the order of the Magistrate made in exercise of powers under Section 156(3) Criminal Procedure Code directing the police to register and investigate is open to revision at the instance of a person against whom neither cognizance has been taken nor any process issued?

B. Whether an order made under Section 156(3) Criminal Procedure Code is an interlocutory order and remedy of revision against such order is barred under sub-section (2) of Section 397 of the Code of Criminal Procedure, 1973?

*C. Whether the view expressed by a Division Bench of this Court in the case of **Ajay Malviya v. State of U.P and others reported in 2000(41) ACC 435** that as an order made under Section [156](#)(3) of the Code of Criminal Procedure is amenable to revision, no writ petition for quashing an F.I.R registered on the basis of the order will be maintainable, is correct ?*

Hon'ble Full Bench of the Allahabad High Court in the case of *Father Thomas (supra)* answered the above extracted three questions as

under:

“65. A. The order of the Magistrate made in exercise of powers under Section 156(3) Criminal Procedure Code directing the police to register and investigate is not open to revision at the instance of a person against whom neither cognizance has been taken nor any process issued.

B. An order made under Section 156(3) Criminal Procedure Code is an interlocutory order and remedy of revision against such order is barred under Sub-section (2) of Section 397 of the Code of Criminal Procedure, 1973.

*C. The view expressed by a Division Bench of this Court in the case of **Ajay Malviya v. State of U.P and others reported in 2000(41) ACC 435** that as an order made under Section [156\(3\)](#) of the Code of Criminal Procedure is amenable to revision, and no writ petition for quashing an F.I.R registered on the basis of the order will be maintainable, is not correct...”*

Another Hon'ble Full Bench of the Allahabad High Court in the case of **Premwati v. State of U.P., 2015(1) RCR (Criminal) 201**, upheld the view taken in the case of **Father Thomas (supra)**, by observing as under:

“1. In a referring order dated 13 December 2013, the learned Single Judge has referred the following question for decision by the Full Bench:

“”Whether an order made under Section 156 (3) Cr.P.C. is an interlocutory order and remedy of revision against such an order is barred under sub section (2) of Section 397 Cr.P.C.”

*2. In the judgment of a Full Bench of this Court in **Father Thomas v. State of U.P. &Anr., 2011(3) RCR (Criminal) 160 (FB) : (2011) 1 UPLBEC 1**, one of the three questions which were formulated for consideration*

was as follows :

""(B) Whether an order made under Section 156 (3) Cr.P.C. is an interlocutory order and remedy of revision against such an order is barred under sub section (2) of Section 397 Cr.P.C., 1973?"
This question has been answered by the Full Bench as follows: "B. An order made under Section 156 (3) Cr.P.C. is an interlocutory order and remedy of revision against such order is barred under sub-section (2) of Section 397 of the Code of Criminal Procedure, 1973."

3. The issue is, thus, squarely covered by the judgment of the Full Bench. With respect, the learned Single Judge was not justified in making a reference on a matter which is covered by a direct decision of the Full Bench which, in turn, is based on law laid down by the Supreme Court.

4. In the circumstances, it is not necessary for this Bench to answer the reference, since the position in law has been settled by the judgment of the Full Bench in Father Thomas' case (supra)... ”

Further, in ***Jagannath Verma v. State of U.P., 2015(1) RCR (Criminal) 414***, Hon'ble Full Bench of the Allahabad High Court considered the following questions:

“...The reference to the Full Bench has been occasioned upon two orders passed by learned Single Judges of this Court. By the first of those orders, the following question was referred for consideration :

""Whether an order made under section 156 (3) of the Code of Criminal Procedure, 1973 is an interlocutory order and the remedy of a revision against such an order is barred under sub-section (2) of Section 397."

2. Subsequently, a learned Single Judge of this Court, while noticing the above reference, referred two

additional questions for consideration by a larger Bench :

""(1) Whether an order made under Section 156 (3) of the Code rejecting an application for a direction to the police to register and investigate, is revisable under Section 397; and
(2) If the answer to Question (1) is in the affirmative, then, whether in a revision filed against an order rejecting an application under Section 156 (3), the prospective accused is also a necessary party and is required to be heard before a final order is passed."

Hon'ble Full Bench of the Allahabad High Court in the case of ***Jagannath Verma (supra)*** answered the above extracted questions as under:

"58. In view of the discussion above and for the reasons which we have furnished, we have come to the following conclusion:

(i) Before the Full Bench of this Court in Father Thomas, the controversy was whether a direction to the police to register a First Information Report in regard to a case involving a cognizable offence and for investigation is open to revision at the instance of a person suspected of having committed a crime against whom neither cognizance has been taken nor any process issued. Such an order was held to be interlocutory in nature and, therefore, to attract the bar under sub-section (2) of Section 397. The decision in Father Thomas does not decide the issue as to whether the rejection of an application under Section 156 (3) would be amenable to a revision under Section 397 by the complainant or the informant whose application has been rejected;

(ii) *An order of the magistrate rejecting an application under Section 156 (3) of the Code for the registration of a case by the police and for investigation is not an interlocutory order. Such an order is amenable to the remedy of a criminal revision under Section 397; and*

(iii) *In proceedings in revision under Section 397, the prospective accused or, as the case may be, the person who is suspected of having committed the crime is entitled to an opportunity of being heard before a decision is taken in the criminal revision.*

59. The reference to the Full Bench is, accordingly, disposed of...”

Here it would be apposite to refer to few judgments rendered by Hon'ble Supreme Court. In the case of ***Devarapalli Lakshminarayana v. V.Narayana Reddy & others, 1976 AIR 1672***, it was observed that an order made under sub-Section (3) of Section 156, is in the nature of a preemptory reminder or intimation to the police to exercise their powers of investigation under Section 156(1) Cr.P.C, 1973.

In ***HDFC Securities Ltd and others v. State of Maharashtra and another, 2017(1) RCR (Criminal) 207***, the Hon'ble Supreme Court has observed that an order under Section 156(3) Cr.P.C, 1973 regarding investigation by the police, cannot be said to cause an injury of irreparable nature as the stage of cognizance would arise only after the investigation report is filed before the Magistrate. On this ground, the Court termed 'the challenge' to an order under Section 156(3) Cr.P.C as nothing, but premature. Hon'ble Supreme Court observed as under:

“24. It appears to us that the appellants approached the High Court even before the stage of issuance of process. In particular, the appellants challenged the order dated

04.01.2011 passed by the learned Magistrate under Section 156(3) of Cr.P.C. The learned counsel appearing on behalf of the appellants after summarising their arguments in the matter have emphasised also in the context of the fundamental rights of the appellants under the Constitution, that the order impugned has caused grave inequities to the appellants. In the circumstances, it was submitted that the order is illegal and is an abuse of the process of law. However, it appears to us that this order under Section 156(3) of Cr.P.C. requiring investigation by the police, cannot be said to have caused an injury of irreparable nature which, at this stage, requires quashing of the investigation. We must keep in our mind that the stage of cognizance would arise only after the investigation report is filed before the Magistrate. Therefore, in our opinion, at this stage the High Court has correctly assessed the facts and the law in this situation and held that filing of the petitions under Article 227 of the Constitution of India or under Section 482 of Cr.P.C., at this stage are nothing but premature. Further, in our opinion, the High Court correctly came to the conclusion that the inherent powers of the Court under Section 482 of Cr.P.C. should be sparingly used. In these circumstances, we do not find that there is any flaw in the impugned order or any illegality has been committed by the High Court in dismissing the petitions filed by the appellants before the High Court. Accordingly, we affirm the order so passed by the High Court dismissing the writ petitions. The appeal is dismissed... ”

In a case before Hon'ble Apex Court titled as ***Raghu Raj***

Singh Rousha v. Shivam Sundaram Promoters Private Limited, 2009(1)

RCR (Criminal) 531, Metropolitan Magistrate passed an order dismissing

an application under Section 156(3) of Code of Criminal Procedure filed by

the complainant there, however the complainant filed a criminal revision before the High Court of Delhi. While considering the said criminal revision petition, Delhi High Court without affording any opportunity of hearing to the accused therein, straight away directed the police authorities to hold a preliminary inquiry on the basis of complaint and further directed the police to submit a report to the learned Magistrate within three weeks. The accused challenged the order passed by Delhi High Court before the Hon'ble Supreme Court and after considering the matter, Hon'ble Supreme Court held as under:-

“12. Submission of Mr. Jaspal Singh that by reason of the impugned order the appellant was not prejudiced and in any event at the pre-summoning stage, he was not an accused, cannot be accepted.

Sub-section (2) of Section 401 of the Code refers not only to an accused but also to any person and if he is prejudiced, he is required to be heard.

*An order was passed partially in his favour. The learned Metropolitan Magistrate has refused to exercise its jurisdiction under Section 156(3) of the Code. **Had an opportunity of hearing been given to the appellant, he could have shown that no revision application was maintainable and/or even otherwise, no case has been made out for interference with the impugned judgment...**”*

Accordingly, Hon'ble Supreme Court set aside the order passed by Delhi High Court and further directed that the High Court shall implead the appellant (accused) as a party in the criminal revision application, hear the matter afresh and pass an appropriate order.

Further, while considering a similar issue, Hon'ble Single Bench of Gujarat High Court in ***Parmar Rameshchandra Ganpatray v.***

held as under:

“38. It is difficult for me to accept the view taken by the Bombay High Court. In my view, a stamp of finality, proceeding or termination of the proceeding may be quite a relevant and important consideration, however, is not a sole criterion of the test in that behalf. What is important to consider is whether the order decides or adjudicates any important rights or liabilities or substantially affects the rights of the person named in the complaint as an accused. The argument of Mr. Bhatt is that no sooner the Magistrate passes an order of police investigation under Section 156(3) of the Cr.P.C., the police would register the First Information Report as an M. case and would start with the investigation. In the course of the investigation, the accused might be even arrested by the police and that would substantially affect the rights of the accused so far as his personal liberty is concerned. If this argument of Mr. Bhatt is accepted, then even an order of police remand passed by the Magistrate could be termed as a "final order" and not an "interlocutory order". The reason I am saying so is that even in the case of police remand, the personal liberty of the accused to a certain extent is definitely affected, but the same could be said to be in accordance with law. The Supreme Court in the case of State v. N.M.T. Joy Immaculate, AIR 2004 Supreme Court 2282 has taken the view that an order of police remand is not a "final order" or an "intermediate order", but the same is an "interlocutory order" and no revision would lie against such an order. At the same time, if the Magistrate refuses to grant police remand, then such order could be termed as "final order" and a revision is maintainable.

39. *An order of police investigation under Section 156(3) of the Cr.P.C. is not an order of matter of moment, which affects or adjudicates the rights of the accused or a particular aspect of the trial.*

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43. *In view of the above pronouncements of the Supreme Court, the law appears to be well-settled that at the stage of investigation by the police either under Section 156(1) of the Code when the jurisdictional Station House Officer proceeds to investigate the matter of his own or under Section 156(3) of the Code when he does so under the order of jurisdictional Magistrate, the prospective accused has no right of hearing.*

44. *In Lalita Kumari v. Government of Uttar Pradesh and Others, (2014) 2 SCC 1, the Supreme Court, while dealing with the power of incharge of a police station with respect to registration of FIR when he receives an information disclosing a cognisable offence, has held that the registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognisable offence and no preliminary enquiry is permissible in such a situation. Such preliminary enquiry may be conducted only when the information does not disclose a cognisable offence but indicates the necessity for an enquiry and when after such enquiry commission of such cognisable offence is disclosed the FIR must be registered. Nothing has been laid down by the Supreme Court that at the stage of registration of FIR or an enquiry to assert commission of cognisable offence, the prospective accused would have a right of hearing or would have locus standi to challenge the registration of FIR.*

45. *The question, therefore, would arise as to when law does not recognize any such right in favour of a prospective accused at the time of registration of F.I.R.*

or investigation, the Sessions Court would have power to entertain a revision application against an order passed by the Magistrate under Section 156 (3) of the Code. Under this provision the Magistrate only directs the jurisdictional Station House Officer to do what he is obliged in law under Sections 154 or 156 (1) of the Code.

46. The moot question is if a revision application against mere registration of F.I.R. by the police is not maintainable whether such revision would be held maintainable when the Magistrate only directs registration of FIR. In the opinion of this Court, the answer is an emphatic No. Exercise of revisory power conferred by the Court under Section 397 read with Section 401 of the Code would occasion when there is an order passed by the competent court, which is not interlocutory in nature, however, the said power cannot be exercised to quash the FIR or investigation because such power can be exercised only by the High Court under section 482 of the Code or under Article 226/227 of the Constitution of India. If the revision application is considered to be maintainable before the Sessions Court against an order passed by the Magistrate under Section 156 (3) and if such revision is allowed it would have effect of quashing the FIR, therefore, if the Sessions Court has no such powers otherwise, it cannot do so by entertaining a revision against an order passed by the Magistrate under Section 156 (3) of the Code. [See: Amar Nath v. State of Haryana, AIR 1977 Supreme Court 2185 (supra)]

47. Referring to its earlier decisions in Devarapalli Lakshminarayana Reddy and Others v. V. Narayana Reddy and Others, (1976) 3 SCC 252 and Tula Ram and Others v. Kishore Singh, (1977) 4 SCC 459, the Supreme Court in Srinivas Gundluri and Others v. Sepco Electric Power Construction Corporation and

Others, (2010) 8 SCC 206 has held that when a Magistrate orders investigation under Section 156 (3) of the Code without examining the merits of the claim, the Magistrate does not bring into motion the machinery of Chapter XV of the Code, therefore, the Magistrate has not taken cognizance of the matter, and, as such, when such direction for investigation is made, the Magistrate does not commit any illegality. Even after receipt of such report, the Magistrate under Section 190 of the Code may or may not take cognizance of the offence. Thus, at the stage of directing investigation the Magistrate having not applied its mind as it has not taken cognizance of the matter, there is no order of the Magistrate which can be revised under Section 397 read with Section 401 of the Code. What is revisable under Section 397 of the Code is the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceeding of such inferior court against whose order the revision application has been preferred. When there is no finding, sentence or order against the accused, the same is not revisable under Section 397 of the Code.

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51. In view of the aforesaid discussion, I hold that the order under section [156\(3\)](#) of the Code of Criminal Procedure, 1973 is an "interlocutory order" and the revision under Section 397 read with Section [401](#) of the Cr.P.C. would not lie. At the same time, an order of the Magistrate rejecting an application under Section 156(3) of the Code for the registration of a case by the police and for investigation is not an "interlocutory order". Such an order is amenable to the remedy of a criminal revision under Sections 397 read with 401 of

the Cr.P.C... ”

Keeping in view the afore-stated legal position and agreeing with the reasoning rendered in ***Parmar Rameshchandra Ganpatray***'s case supra, this Court is of the considered view that the order made by Magistrate under Section 156(3) of the Code of Criminal Procedure, 1973 directing police to make investigation, is an "interlocutory order" and the revision under Section 397 read with Section 401 of the Cr.P.C. would not lie.

Turning to the facts of these cases, respondent No.2—complainant (Nazar Singh) filed an application under Section 156(3) Cr.P.C. before the Court of Judicial Magistrate 1st Class, Sangrur; against one Des Raj and others (including the petitioners in both the cases) for their act of commission and omission. Vide order dated 21.01.2017 (Annexure P-3 in both petitions), Judicial Magistrate 1st Class, Sangrur, observed that the complaint disclosed cognizable offences and accordingly allowed the application under Section 156(3) Cr.P.C. submitted by respondent No.2—Complainant (Nazar Singh) by directing the police to register FIR under the relevant provision of Indian Penal Code. The petitioners herein, challenged the order dated 21.01.2017 (Annexure P-3) passed by Judicial Magistrate 1st Class, Sangrur, by filing a common criminal revision, which was dismissed being not maintainable, vide order dated 25.10.2017 (Annexure P-5) passed by learned Additional Sessions Judge, Sangrur.

Now, considering the facts of this case in the light of legal position indicated above, it is held that order dated 21.01.2017 (Annexure P-3 in both petitions) directing the police to register FIR under Section 156(3) Cr.P.C. under the relevant provision of Indian Penal Code, being an interlocutory order is not amenable to revisional jurisdiction and

consequently, no fault can be found with order dated 25.10.2017 (Annexure P-5 in both petitions) passed by the Revisional Court below, dismissing the Criminal Revision(s) filed by petitioners, being not maintainable.

Question No.2:

Learned counsel for the petitioners has submitted that the petitioners have been falsely implicated in this case and even from the allegations levelled in the FIR (Annexure P-4), no criminal offence is made out against them and the same amounts to abuse of process of law. Accordingly, it is prayed that order dated 21.01.2017 (Annexure P-3) and FIR (Annexure P-4) may be quashed.

On the other hand, learned counsel for the respondents has referred to the order dated 21.01.2017 (Annexure P-3) and FIR (Annexure P-4) to contend that specific allegations have been levelled in the complaint and learned Judicial Magistrate Ist Class, Sangrur after finding that the complaint disclosed commission of cognizable offences, directed police to register FIR under Section 156(3) of the Code of Criminal Procedure. Accordingly, learned counsel for the respondents submitted that the allegations in the complaint/FIR shall be proved before the trial Court in accordance with law and except bald assertions, nothing has been brought on record of this case to show that no offence is made out against the petitioners.

Before considering the rival contentions of the parties, it is apposite to state here that while considering a prayer for quashing of FIR/complaint, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial.

In ***Dineshbhai Chandubhai Patel v. State of Gujarat 2018(3)***

SCC 104, Hon'ble Apex Court held that in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the Investigating agency nor can exercise the powers like an Appellate Court.

In ***Dhruvaram Murlidhar Sonar vs State of Maharashtra 2019(18) SCC 191***, Hon'ble Apex Court held that exercise of powers under Section 482 of the Code of Criminal Procedure, 1973 to quash the proceedings is an exception and not a rule.

In the peculiar facts and circumstances of this case, learned Judicial Magistrate Ist Class, Sangrur, vide order dated 21.01.2017, observed as under :-

“4. A perusal of the record shows that report of the police was called which has submitted that matter was reported to it and it conducted proceedings under Section 107/151 Cr.P.C. Therefore, it is clear that there has been some occurrence as alleged in the application. The contents of the application disclose the commission of cognizable offences. Therefore, police is directed to register FIR under Section 156(3) Cr.P.C. under the relevant provisions of IPC. Accordingly, application is allowed. Copy of the application along with copy of this order be transmitted to the Incharge, P.P. Channo, Police Station Bhawanigarh to register the FIR and transmit the copy thereof within a period of two days i.e. on or before 24.01.2017.”

Further, when the allegations made in the complaint are considered in the light of the settled legal position, it would suffice to observe that there are serious triable issues/allegations which are required to be gone into and considered at the time of trial. Therefore, at this stage to opine that no case is made out from the allegations made in the complaint,

would be premature and the aforesaid aspect is to be considered during trial. Thus, this Court does not find any merit in the submission of the counsel for the petitioners that even if the allegations are taken at their face value and accepted in their entirety, they do not make out any case against the petitioners.

In view of the above discussion, both the petition(s) bearing *CRM-M-47384-2017* titled as “*Gurtej Singh @ Teji and Others Versus State of Punjab and Another*” and *CRM-M-47577-2017* titled as “*Balwant Singh @ Bant Singh and Others Versus State of Punjab and Another*” are dismissed.

No other point has been urged.

All pending application/s, if any, shall stand closed.

A photocopy of this order be placed on the file of another connected case.

March 16, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No