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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRM-M-29399-2024 (O&M)
Reserved on : 31.07.2024
Pronounced on : 25.10.2024

Kundan Refinery Pvt. Ltd. ...Petitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. P. S. Ahluwalia, Advocate and
Ms. Bhavi Kapur, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. P. S. Sullar, Advocate
for respondent No. 2.

MANISHA BATRA, J.

1. The instant petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure (*for short 'Code'*) seeking quashing of order dated 21.05.2024 (Annexure P-9), passed by the Court of learned Additional Chief Judicial Magistrate, Rohtak in Criminal Complaint No. 53/2024, titled as **Kushal Bawa vs. Kundan**, whereby an application filed by respondent No. 2/complainant under Section 156(3) of the Code had been allowed and the complaint was ordered to be sent to the concerned SHO for registering an FIR and conducting investigation.
2. Brief facts of the case as alleged in the complaint filed by the complainant are that the complainant was engaged in the business of sale of gold

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ornaments. In August, 2021, Deepak Aggarwal (named as respondent No. 2 in the complaint), who was Marketing Executive of Kundan Refinery, approached him and on his asking, the complainant started business of purchasing gold ornaments from Kundan Refinery. An amount of Rs. 1.91 crore was transferred by the complainant to Kundan Refinery but neither gold ornaments were given to him nor his money was returned. By alleging that he had been cheated by Kundan Refinery and its employees, he prayed for taking action against them.

3. After presentation of the complaint in the Court, the learned Magistrate called for a status report from the police, as per which, the complainant had transferred an amount of Rs. 4.5 crores in the account of accused Kundan Refinery during the period from August, 2021 to August, 2022 but no gold articles were supplied to him. By observing that it could not be considered to be a simple case of breach of contract and keeping in view the nature of the allegations, detailed investigation was needed, learned Magistrate gave direction to concerned SHO to register FIR under Section 156(3) of the Code, vide impugned order dated 21.05.2024. Feeling aggrieved from the impugned order, the instant petition has been filed.

4. It is argued by learned counsel for the petitioner that it is a well established manufacturer of gold ornaments as well as of other precious metals and is a pioneer in the industry for the past more than two decades. It is one of the largest gold refinery of India. Respondent No. 2/complainant was one of its several distributors of gold. The petitioner used to deliver gold items for further sale to the concerned retailers. As per the allegations, the petitioner had delivered gold ornaments only worth Rs. 2.20 crores against payment of

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Rs.4.10 crores made by respondent No. 2 in various transactions during the period from August, 2021 to August, 2022. Previously also, a complaint had been submitted by respondent No. 2 to Rohtak Police on 31.11.2022 making allegations that the present petitioner had failed to deliver the entire quantity of the gold that had been paid for. The petitioner had filed reply to the said complaint. A detailed and thorough inquiry was conducted and closure report (Annexure P-3) was filed by the police authority on 18.01.2023. The complainant had submitted another complaint dated 10.05.2023 to the police. The petitioner again filed reply and second closure report had been prepared in the matter and thereafter, the complainant had filed aforesaid application under Section 156(3) of the Code before the concerned Magistrate. It is submitted that the impugned order, as passed by the learned Magistrate, is liable to be set aside as the same is not sustainable in the eyes of law. While passing the same, learned Magistrate did not comply with the mandatory requirements of law. The mandatory steps, which were required to be taken before invoking jurisdiction under Section 156(3) of the Code, were not taken into consideration. Learned Magistrate ignored the fact the allegations as levelled in the application were levelled in the aforesaid two complaints previously filed by the complainant before Rohtak Police and after conducting detailed inquiry, closure reports had been filed. Learned Magistrate did not apply his judicious mind. The contents of the action taken report, as submitted by the SHO, were also not considered at all. No reasoning had been given as to why it was necessary to refer the matter to the police for investigation.

5. It was further alleged by learned counsel for the petitioner that the allegations levelled in the complaint, even if accepted to be true on the face of

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the record, showed that it was a case of commercial dispute between the parties and not of criminal nature. The impugned order had been passed in a very casual manner. Even as per the allegations, it was a case of under-delivery of goods and the ingredients for commission of offence of cheating and forgery by criminal misappropriation had not been made out at all. Respondent No. 2/complainant had abused the process of law by filing the application. With these broad submissions, it is urged that the impugned order along with the consequential proceedings be set aside.

6. Respondent No.1-State has filed status report submitting therein that in pursuance of order passed by the Illaqua Magistrate, investigation proceedings have been initiated. Statements of Deepak Aggarwal, Marketing Executive of Kundan Refinery and Legal Representative of the company have been recorded. Documents have been collected. It is submitted that the dispute between the parties is related to business transactions and is of civil nature, thereby not making out any cognizable offence.

7. Respondent No. 2/complainant has filed a separate reply submitting therein that the petition is not maintainable. Impugner order has been passed after considering the material produced before the learned Magistrate. The petition is premature and hence not maintainable. The concerned Magistrate, in exercise of his powers and after considering the allegations made in the complaint filed by respondent No. 2 to be correct, had passed the impugned order. The impugned order is passed at pre-cognizance stage and, therefore, no right has been accrued in favour of the petitioner to file this petition. This Court is not supposed to go into the merit and de-merit of the allegations at this stage. The powers under Section 482 of the Code are to

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be exercised sparingly in extraordinary circumstances, which are not made out in this case. With these broad submissions, it is urged that the petition is devoid of any merit and is liable to be dismissed.

8. The only question that arises for consideration in this petition is as to whether the order dated 21.05.2024 as passed by learned Magistrate whereby while allowing an application filed by the complainant, he had sent the complaint to concerned SHO under Section 156(3) of the Code is liable to be quashed?

9. At the outset, it will be proper to refer to the relevant provision i.e. the provisions of Section 156 of the Code to answer that question. The provision reads as under:-

“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 cognisable 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 proceedings 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.”

10. It is well established that when a complaint is presented before a Magistrate, he has the option either to order an investigation as provided under Section 156(1) of Code or to proceed under Section 200 of Code, examine the complainant and his witnesses and then proceed further under the provision of Section 202 of Code. An order under Section 156(3) of Code which is the second option, is in fact in the nature of reminder to the police to perform its

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duty and reinvestigate into the alleged cognizable offence under Section 156(1) of Code. At the stage of ordering investigation under Section 156(3) of Code, it cannot be said that Magistrate have taken cognizance of an offence as the Magistrate can be said to have taken cognizance only when judicial mind is applied by him to the contents of the complaint for proceedings under Section 200 of Code or other provision subsequent thereto. Reference in this regard can be made to the authority cited as ***Devara Palli Lakshminarayana vs. V. Narayana Reddy and Others : AIR 1976 SC 1672***, wherein it was observed by Hon'ble Supreme Court that an order made under Section 156(3) of Code was in the nature of an pre-emptory reminder or intimation to the police to exercise its powers of investigation under Section 156(1) of the Code.

11. It is also sell settled that while disposing of an application moved under Section 156(3) of the Code, the Magistrate is required to apply his mind to the bare contents of the application regarding disclosure of cognizable offence and not to proceed to decide whether or not there are sufficient grounds for proceeding further to satisfy himself regarding commission of cognizable offence. No-doubt the Magistrate is not bound to dispose of an application under Section 156(3) of Code or order of registration of first information report and investigation thereof by the police. He may treat such application as complaint within the meaning of Section 2(d) of the Code and proceed onwards in accordance with the procedure laid down therein for complaint cases i.e. in accordance with the procedure provided under Sections 200/204 of Code. However, he is also competent to order for investigation by the police under Section 156(3) of Code, if the allegations made in the complaint disclose a cognizable offence. Reference can be had to the

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observations made by the Hon'ble Supreme Court in ***Srinivas Gundluri and others vs. Sepco Electric Power Construction Corporation and Others : (2010) 8 SCC 206***, wherein it was held that when a Magistrate orders investigation under Section 156(3) of Code without examining the merits of the claim, he does not bring into motion the machinery of Chapter XV of the Code, therefore, he has not taken cognizance of the matter, and, as such, when direction for investigation is made, the Magistrate does not commit any illegality. Reference can also be made to the authority cited as ***Dharmesh Bhai Vasudev bhai vs. State of Gujarat : (2009) 3 SCC (Crl.) 76***, wherein it was observed that any person may set the criminal law in motion ofcourse subject to some statutory interdicts. When an offence is committed, a first information report can be lodged under Section 154 of the Code. However, if for some reason or the other reason, the first information report is not recorded in terms of Section 156(1) of the code, then the Magistrate is empowered under Section 156(3) of the Code to order an investigation into the allegations as contained in the complaint. The Magistrate on filing of such complaint, can either dismiss the same in case, no cognizable offence is made out, can pass an order after going through the contents of the complaint and on analyzing the preliminary evidence appended with the complaint and record a finding that a prima facie cognizable offence appeared to have been committed and may direct lodging of the first information report and conducting an investigation. Similar observations were made in ***Vinu Bhai Hari Bhai Malviya vs. State of Gujarat and Anr. : 2019 (17) SCC (1)***, it was held that under Section 156(3) of Code, the power of Magistrate is very wide, though it is judicial authority that must be satisfied that proper investigation by the police takes place. An order made

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under Section 156(3) of Code is in the nature of preemptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1) of Code. Such an investigation embraces entire continuous processes which begins with collection of evidence under Section 156 (3) of Code and ends with filing of challan report.

12. In view of the above, it is explicit that the Magistrate is very much competent to pass an order for investigation by the police under Section 156(3) of the Code, if a cognizable offence is made out from the allegations levelled in a complaint. Now so far as the question as to whether the Magistrate is required to go into merits of the allegations and/or enter into the merits of the case, while considering the prayer for passing an order under Section 156(3) of the Code is concerned, in the opinion of this Court, while considering the allegations made in a complaint, it is sufficient to observe that there are triable issues/allegations which are required to be gone into and considered at the time of investigation and trial, if any, and at that stage, it would be premature to point that no case is made out from the allegations levelled in the complaint. This Court, in exercise of powers under Section 482 of the Code to quash such proceedings, has to consider that such exercise is an exception and not a rule. More so, an order of police investigation passed under Section 156(3) of the Code is not a matter of moment which affects or adjudicates the rights of the accused or a particular aspect of the trial and, therefore, at the stage of investigation by the police either under Section 156(1) of the code when the jurisdictional police officer proceed to investigate on 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. Reference in this

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regard can be made to the authority cited as ***Parmar Rameshchandra Ganpatray vs. State of Gujarat : 2017 (3) GLR, 1825***, wherein it was observed so.

13. So far as the question that the Magistrate is required to record reasons for ordering investigation or not is concerned, it may be stated that it is a well settled proposition of law that the Magistrate is not under such obligation. No doubt, he has to be extra cautious in exercise of power under Section 156(3) of the Code, lest this provision should be turned into a routine tool of harassment by the unscrupulous defaulters but the provisions of Section 156(3) of the Code do not cast any duty upon him to record the reasons and this omission in the language of Section 156(3) of the Code is deliberate and is for good reasons. In ***M/s Sujan Multi Ports Ltd Vs. State of Haryana and others : 2019 (3) RCR (Criminal) 372***, it was observed by a Coordinate Bench of this Court that recording of reasons by the Magistrate at the stage of exercise of powers under Section 156(3) of Code can lead to further undesirable and absurd consequences and complications, and sometimes; lead to direct confrontation with other provisions contained in the Code. If the Magistrate is required to record all the reasons to justify his order in such terms, that the order can be analyzed in revision and appeal, then it would, definitely, be dilating upon the merits of the case. It was observed that once the Magistrate enters into the merits of the case at the stage of Section 156(3) of the Code that would tantamount to taking the case in the realm of Section 200 of Code and might tantamount to taking cognizance. If while deciding the issue of sending case to police under Section 156(3) of Code, the Magistrate records detailed or explicit reasons, then this would adversely affect the

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consideration of case by the Magistrate either in case of possible protest petition against cancellation report or in case of consideration under Section 203 or 204 of the Code or even at the stage of framing of charge. By any means, since it has to be pre-cognizance stage, application of mind for the purpose of recording any finding is not even germane and jurisprudentially sustainable.

In *M/s Sujan*'s case (supra), it was further observed that bare language of Section 156 of Code would also make it clear that no reasons are required to be recorded by the Magistrate for ordering investigation. After an FIR has been registered by the police under Section 156 of Code, it can investigate a case regarding which a local Court has jurisdiction to take cognizance and the police officer need not record any reasons for either registering an FIR or for entering into investigation. Since the power of the police to investigate is flowing only from competence of the Court to take cognizance of a matter, therefore, Section 156(3) of Code as a clarifactory provision of general supervisory powers of Magistrate to control and monitor the investigation; provides that a Magistrate may also order investigation of a case. This power of the Magistrate is without any statutory 'ifs' and 'buts'. The only regulatory factor for this power is the competence of Magistrate to take cognizance of the offence. Similar proposition of law was laid down in *National Institute of Mental Health and Neuroscience vs. Dr. K. Kalyana : AIR 1992, SC 1806*", wherein it was observed that the Magistrate can apply his mind to the facts disclosed in the complaint and documents attached therewith for limited purpose to see if cognizable offence is disclosed, and if it is so disclosed; whether an investigation by police is required but he need not

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put-out his thinking on order sheet. It was also observed that the Magistrate would be required to dilate upon the matter in such a manner which reflects upon the application of mind. Such application of mind can be reflected even by a terse and telling language; giving indication of application of mind though not directly recording reasons. In such a situation, of course, the Magistrate while acting under Section 156(3) of Code may be required to record a few lines; which might reflect application of mind. He, however, is not required to record the detailed reasons for passing the order either way.

14. Now coming to the facts of the present case. It is apparent from the record that respondent No. 2 approached the Magistrate by filing an application under Section 156(3) of the Code. Under Section 156(3) of Code when admittedly the police failed to act on his complaint against the petitioner. The Magistrate, after satisfying himself that no case had been registered on the basis of complaint moved by the respondent no.2, directed investigation under Section 156(3) of Code. On perusal of the impugned order, it is clear that the Magistrate had applied his mind to the contents of the complaint and directed only investigation under Section 156 of Code and did not take cognizance of the matter and the matter, as such, was still at pre cognizance stage. The first information report has already been registered and investigation is being conducted. The scheme of Criminal Procedure Code does not provide any right of hearing to the accused at the time of registration of first information report. No-doubt after registration of first information report, a person is entitled to take recourse to various provision of law. However, no opportunity of hearing is to be given. The petitioner has challenged the order dated 21.05.2024 by submitting that the mandatory steps required to be taken before invoking

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jurisdiction under Section 156(3) of Code were not taken. However, learned counsel has not been able to point out as to what were those required steps which had not been so taken. No-doubt, it is revealed that inquiry had been conducted by the police authorities on two complaints previously filed by respondent no.2 and the same had been filed. But this cannot be stated to be a ground for not directing investigation in the matter. In my opinion, stage of the cognizance would arise only after investigation report is filed before the Magistrate. Conducting of the investigation by the police does not amount to causing any injury of irreparable nature requiring quashing of the investigation.

15. While passing the impugned order, the Magistrate has duly recorded reasons and on perusal of the impugned order, it is explicit that the same reflects due application of judicious mind by the Magistrate to the facts of the present case. Merely because detailed reasons are not recorded in the order, the same is not liable to be rendered arbitrary or perverse. More so, merely because there is a remedy provided for breach of contract, that does not by itself clothe the Court/Investigating Agency to come to a conclusion that civil remedy is the only remedy available to the complainant. Both Criminal Law and Civil Law can be perused in diverse direct situation. As a matter of fact, they are not mutually exclusive but clearly co-extensive and essentially differ in their content and consequences since the object of criminal law is to punish an offender who commit an offence against person property or State for which the accused on proof of offence is liable for punishment. This does not affect civil remedies. Reference in this regard can be made to ***Medchi Chemicals and Pharma (P) Ltd. vss Biological E. Ltd., 2000(2) JIC 13 (SC).***

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16. In view of the discussion as made above, it is held that the petitioner is trying to get adjudicated upon correctness, validity and propriety of the order passed by the learned Magistrate in the garb of invoking the powers of High Court and Section 482 of Code which are to be exercised sparingly and in exceptional circumstances, though, no circumstance has been made out in this case. As such, finding no flaw or illegality in the impugned order, the same is affirmed and the petition is dismissed.

17. However, it is made clear that the observations made herein above are only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

25.10.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>