

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH

AT SRINAGAR

CRM(M) 12/2022

MOHAMMAD IMRAN GANAI AND ANR.

...Petitioner/Appellant(s)

Through: Mr. Shafqat Nazir, Advocate.

Vs.

GOVERNMENT THROUGH POLICE STATION DANGIWACHA

...Respondent(s)

Through: Mr. Hakim Aman Ali, Dy AG

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

10.03.2025

1. In the instant petition, the petitioners herein have invoked inherent power of this Court enshrined in section 482 Cr PC (now 528 BNSS) for quashing of FIR No. 145/2021 registered with P/S for the commission of offences under section 385, 506-II, 420, 120-B, 468 and 201 IPC along with charge sheet filed thereto pending trial before the Court of learned Judicial Magistrate, Dangiwachha for short the Trial Court.
2. The facts detailed out in the petition by the petitioners are that the petitioner 1 is the Editor in Chief of a News Channel /Portal namely "Kashmir Crown" whereas petitioner 2 is the Editor/Correspondent thereof.

It is stated that one Parveena D/o Abdul Rashid Bhat R/o Chatloora Rafiabad, Baramaulla impleaded as respondent-2 herein had approached the petitioners with a request to make and broadcast a story on Drug Menace in Rafiabad area in which her brother was actually involved and that the issue being of tremendous public importance, the petitioners agreed to the request of the respondent 2 herein subject to proper cooperation from her.

It is stated that in furtherance of the aforesaid process, the complainant/respondent 2 herein also offered monetary donations to the petitioner 1 and upon completion of the project, a story was aired which received tremendous viewership from public.

It is being next stated that it appears that broadcast of the story in question in the public, resulted into resentment against the respondent 2 herein from her family members as also the drug mafia operating in the area, whereupon respondent 2 approached the petitioners and requested for deleting of the videos from the social media and when the said request of respondent 2 was not acceded to by the petitioners, the respondent 2 approached the Court of Judicial Magistrate, Dangiwacha with a complaint leveling frivolous allegations therein against the petitioners and whereupon the Magistrate in violation of the provisions of the Criminal Procedure Code forwarded the complaint to the Police Station for registering an FIR in the matter, whereupon the impugned FIR came to be registered against the petitioners and the investigating agency without ascertaining the genuineness and veracity of the complaint filed by the respondent 2 herein in right

perspective concluded the investigation and filing of the charge sheet before the trial court.

3. The petitioners have challenged the initial complaint filed by respondent 2 herein proceedings initiated thereon by the Magistrate including the registration of impugned FIR as also the consequently charge sheet filed thereto on the following grounds;-

a. For that, the complainant filed by the complainant Parveena against the petitioners was apparently filed under Chapter 14 of Cr PC and therefore the learned Magistrate was required to proceed in the matter in accordance with the procedure laid down in Chapter 14 and 15 of Cr PC. The learned Magistrate was as such, required to record the statement of the complainant and her witnesses and then take cognizance of the matter himself or postpone the issuance of process and himself enquire into the matter or direct an investigation to be made by a Police Officer. The form and format of the complaint is admittedly as having been maintained under section 190 Cr PC. The learned Magistrate however while by passing the law neither enquired into the matter himself nor directed any police officer to investigate the same for the purpose of taking cognizance but right away directed the concerned SHO to register an FIR against the petitioners if a cognizable offence is made out. The learned Magistrate has therefore erred in law in doing so.

b. For that, the registration of an Fir on the basis of a private complaint against the petitioners has done great prejudice to the rights and interests of the petitioners besides amounting to miscarriage

of justice. The learned Magistrate instead of proceeding against the petitioners under chapter 15 Cr PC has perceived the complaint as an application filed under chapter 12 (section 156 (3)) Cr PC and directed the police to register an FIR against the petitioners. This act of the learned Magistrate amounts to abuse of process of Court and therefore deserves to interfere in the matter while exercising its inherent jurisdiction.

c. For that, treating a private complaint as an application seeking direction upon police to register an FIR has rendered the petitioners defenceless and unnecessarily resulted in curtailment of their liberty. Had the private complaint been proceeded in accordance with law the petitioners may not have been subjected to custodial interrogation and the petitioners would have got enough opportunity to lead evidence and prove their innocence. The Magistrate has erroneously delegated his powers to the concerned SHO and the SHO has also for extraneous considerations improperly investigated the matter in view of the Media trial of petitioners and then presented the final investigation report before the Court. IT is the submission of the petitioners that they have been firstly wrongly implicated by the complainant in the case and then wrongly proceeded against the learned Magistrate which has resulted in great injustice to the petitioners.

4. Reply to the petition has been filed by the official respondents, wherein it is being admitted that upon receipt of an order from the Court of Judicial Magistrate, Dangiwachha dated 09.08.2021 the

FIR under challenge came to be registered against the petitioners and investigation set into motion and during the course of the investigation, statement of the witnesses came to be recorded recorded as also the screenshots of the bank transactions made by the complainant were seized and certified statements of transactions also were obtained from the concerned bank accounts of the complainant besides mobile phone of the complainant was also seized and M. Pay transactions were retrieved and forwarded to the FSL for expert opinion and after completion of the investigation, the case was challaned before the court of learned JMIC, Dangiwachha on 30.10.2021, in that, the accused/petitioners were found to have committed offences under section 385, 506-II, 120-B, 420 and 468 IPC.

Heard learned counsel for the parties and perused the record.

5. The counsel for the petitioners while making his submissions in tune with the case set up in the instant petition would contend that the Magistrate could not have entertained the impugned complaint without compliance of the provisions of Section 154 Cr PC if the Magistrate have had treated it as a complaint under section 156(3) Cr PC.

Learned counsel for the petitioners would further submit that the contents of the impugned complaint prima facie reveal that the same is filed under section 190 Cr PC and the Magistrate instead of proceeding under chapter XIV or else XV of Cr PC proceeded to direct the registration of FIR as if the Magistrate was considering the complaint as being one under section 156(3) Cr PC.

Learned counsel for the petitioners would lastly submit that notwithstanding the direction for registration of FIR by Magistrate, the consequential registration of FIR by the police as also investigation set into motion by investigating agency including filing of charge sheet thereto before the trial court would be nullity in law in case it is determined by this Court that the initial order passed by the Magistrate directing registration of FIR was legally invalid.

6. Insofar as the aforesaid issues/pleas urged by the counsel for the petitioners are concerned, the same stands extensively dealt with by the Apex Court in case titled as “**Vinubhai Haribhai Malaviya and Ors. Vs. State of Gujarat & Anr. Reported in 2019 (17) SCC 1**”, wherein at paras 24 and 25 following has been laid down.

Para 24.

Likewise, in Sakiri Vasu Vs. State of UP and Ors. (2008) 2 SCC 409, this Court held:-

“12. Thus in Mohd. Yousuf V. Afaq Jahan {(2006) 1 SCC 627 (2006) 1 SCC (Cri) 460 1 SC 10}, the clear position therefore is that any judicial Magistrate, before taking cognizance of the offence, can order investigation under section 156 (3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to state investigation, it is open to the Magistrate to direct the police to register and FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in

charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under section 156(3) of the Code that an Fir should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in chapter XII of the Code only thereafter”.

13. The same view was taken by this Court in Dilawar Singh Vs. State of Delhi (2007) 12 SCC 641 : JT (2007) 10 SC 585 (JT vide para 17). We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under section 156 (3) Cr PC, and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such orders (s) as he things necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under section 156(3) Cr PC.

Para 14. Section 156 (3) Cr PC

“156(3) Any Magistrate empowered under section 190 may order such an investigation as abovementioned.” The words “as abovementioned” obviously refer to section 156(1), which contemplates investigation by the Officer in charge of the police station.

15. Section 156 (3) provides for a check by the Magistrate on the police performing its duties under Chapter XII Cr PC. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

16. *The power in the Magistrate to order further investigation under section 156(3) is an independent power and does not affect the power of the investigating officer to further investigated the case even after submission of his report vide section 173 (8). Hence the Magistrate can order reopening of the investigation even after the police submits the final report, vide State of Bihar Vs. JAC Saldanha { (1980) 1 SCC 554: 1980 SCC (Cri) 272 AIR 1980 SC 326} (SCC:AIR para19).*

17. *In our opinion Section 165(3) Cr pC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) Cr PC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.*

18. *It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution.”*

Para 25.

It is thus clear that the Magistrate’s power under section 156 (3) of the Cr PC is very wide, for it is this judicial authority that must be satisfied that a proper investigation takes place in the sense of a fair and just

investigation by the police- which such Magistrate is to supervise Article 21 of the Constitution of India mandates that all powers necessary, which may also be incidental or implied are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him under section 173 (2) and which power would continue to ensure in such Magistrate at all stages of the criminal proceedings until the trial itself commences. Indeed, even textually, the “Investigation” referred to in section 156(1) of the Cr Pc would, as per the definition of “Investigation” under section 2 (h) include all proceedings for collection of evidence conducted by a police officer; which would undoubtedly include proceedings by way of further investigation under section 173(8) of the Cr PC.

What emanates from the law laid down by the Apex Court in the judgment supra, is that the Magistrate enjoys power under section 156 (3) before taking cognizance upon a complaint qua an offence and can direct investigation under section 156 (3) Cr PC and consequently, an FIR could be registered thereof.

- z. Insofar as the plea of the counsel for the petitioners that before maintaining an application/complaint under Section 156(3) CPC, the respondents did not fulfill the mandatory requirements of section 154 Cr PC, however, perusal of the complaint would manifestly tend to show that the respondent 2 herein had specifically stated therein the application that before filing, she have had approached the concerned police in the matter and upon

no action having been taken thereby Magistrate has been appointed.

Further, perusal of the complaint also reveals that the same has been supported with an affidavit thus manifestly revealing that requirements contemplated under section 154 Cr PC also have/had been fulfilled being sine qua non requirements to follow before invoking power of Magistrate under Section 156 (3) Cr PC having been held by the Apex Court in case titled as **“Priyanka Srivastava & Anr. VS. State of UP and Ors. Reported in (2015) 6 SCC 287.**

8. Having regard to the aforesaid position obtaining in the matter, inasmuch as the fact that the investigation in the case has been concluded since long and charge sheet as well filed before the trial court against the petitioners establishing the commission of offences supra by the petitioners herein, the plea of the petitioners about non-compliance of provisions of section 154 Cr PC (though the requirements stand complied with substantially) at this stage need not to be otherwise looked into by this Court in exercise inherent power invoked by the petitioners in view of the parameters set out by the Apex Court in a series of judgments including ***“Neeharika Infrasture pvt. Vs. State of Maharashtra reported in AIR 2021 SC 1918”***.

9. For the aforesaid reasons, the instant petition fails and is accordingly **dismissed**.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR

10.03.2025

“S. Nuzhat”

