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

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CRM-M-59093-2024 (O&M)
Date of decision : 29.01.2026

Ritesh Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Gaurav Datta, Advocate
for the petitioner.

Ms. Himani Arora, DAG, Haryana.

Ms. Madhu Dayal, Advocate
for respondents No. 5 and 6.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) seeking quashing of order dated 31.07.2024 (*Annexure P-12*), passed by the Court of learned Additional Chief Judicial Magistrate, Ambala in case titled as ***Ritesh Kumar vs. Ram Singh and another***, filed under Section 156(3) of the Code of Criminal Procedure (*for short 'the Code'*), whereby while declining the prayer made by the petitioner to send his complaint for registration of an FIR under Section 156(3) of the Code, the same was ordered to be treated as a private complaint and the matter had been adjourned for producing preliminary evidence by the petitioner.

2. Brief facts relevant for the purpose of disposal of this petition are that the petitioner had filed an application under Section 156(3) of the Code

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before the learned Magistrate on the allegations that he was one of the partners of the firm namely M/s Mohinder Ashok Agro Industries, which was engaged in the business of rice shelling. For the purpose of expansion and smooth functioning of his firm, he had availed financial assistance to the tune of Rs.30 Lakhs as working capital limit and two term loans to the tune of Rs.66 Lakhs and Rs. 60 Lakhs, respectively, from the State Bank of India, Panchkula Branch. During the period from 2013-2014, the credit facilities were secured by way of hypothecation of machinery etc. and also by way of equitable mortgage of the immoveable property. He had maintained financial discipline of repayment of the credit facility. However, subsequently, he was unable to maintain the same, due to which, his loan account was classified as Non-Performing Asset (NPA) on 01.04.2016. He made requests to the petitioner, who was officer of the bank, for rehabilitation and restructuring of the loan but to no avail. Notices under the provisions of SARFAESI Act were issued. He had made the payment of an amount of Rs.67.95 Lakhs during the period from 01.04.2016 to 01.07.2018 by exhibiting his bonafide and the bank had classified his account as standard. However, on 08.05.2018, he received intimation qua taking over possession of his immoveable property mortgaged by him. He had not been given any intimation by the bank qua his account having been declared as NPA. The bank conducted an auction of his property at a throw away price. Even the auction was conducted without giving any notice to the petitioner. He alleged that the officials of the bank had sold his property to the relative of respondent No. 5 for extraneous consideration. By alleging that the bank and respondents No. 5 and 6 were liable to be prosecuted under the provisions of the Prevention of Corruption Act and as the paddy crop

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lying within his sheller had been removed by bank officials, hence, they were also liable to be prosecuted under Section 380 of IPC, the petitioner made prayer for registration of FIR against them.

3. On receipt of the aforementioned complaint, the learned Magistrate passed the following order on 31.07.2025, which is impugned before this Court:

“Complaint presented. It be checked and registered. Complainant submitted that he has moved a complaint u/s 7 and section 13 of Prevention of Corruption Act, but no FIR was registered. As such, direction be given to the police for registration of FIR and for investigating him-self u/s 156(3) Cr. P.C. Heard. From the facts and circumstances of the case and documents produced on record, no ground is made out to send the present complaint under Section 156(3) of Cr.P.C for registration of FIR. Hence, the request for sending the present complaint under Section 156(3) Cr.P. is hereby declined. Now case is adjourned to 29.11.2024 for preliminary evidence of the complainant to be produced at own responsibility.

So far as, the judgments relied upon by the accused are concerned. I have gone through these judgments with due respect these judgments are not applicable to the fact and circumstances of the present case because facts and circumstances of the present case are different from the fact and circumstances of the judgment relied upon by the accused as such no benefit can be drawn in favour of the accused from these judgments.”

4. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law as while passing the same, the

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learned Magistrate did not take into consideration that the allegations levelled therein made out a case for registration of the FIR against the bank and respondents No.5 and 6 for commission of offences punishable under Sections 7 and 13 of the Prevention of Corruption Act and Section 380 of IPC. The learned Magistrate did not apply his judicial mind. No reasons had been recorded for declining the prayer made for sending the case for registration of the FIR. The case had been kept for recording preliminary evidence. The allegations disclose commission of a cognizable offence by the private respondents and as such, registration of FIR was mandatory. However, this material aspect was not appreciated by the learned Magistrate. It is, therefore, argued that the impugned order is liable to be set aside, the petition deserves to be allowed and further that the application, filed by the petitioner, deserves to be allowed, thereby directing the police authorities to register an FIR against the bank and the private respondents.

5. Respondents have appeared on advance notice of this petition and have contested the same without filing any reply.

6. It is argued by learned State counsel that there is no illegality in the impugned order as the learned Magistrate, after finding that no cognizable offence had been made out, had passed the same.

7. Learned counsel for respondents No. 5 and 6 has argued that the petition is premature and not maintainable. The learned Magistrate, in exercise of his powers and after considering the allegations made in the complaint, had passed the impugned order. At pre-cognizance stage, no right had 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

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Section 528 of BNSS are to 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. This Court has heard the rival submissions.

9. The only question that arises for consideration before this Court is as to whether the impugned order, passed by the learned Magistrate, thereby declining the prayer made by the petitioner for registration of FIR and treating the application filed by him as a private complaint and granting opportunity to lead preliminary evidence, is liable to be quashed?

10. At the outset, it will be proper to refer to the relevant provision i.e. the provisions of Section 156 of the Code (*which are pari materia with Section 175 of BNSS, 2023*) 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.”

11. 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

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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 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.

12. 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

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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 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 of course 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,

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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 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.

13. 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

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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 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.

14. 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

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issue of sending case to police under Section 156(3) of Code, the Magistrate records detailed or explicit reasons, than this would adversely affect the 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.

15. In ***National Institute of Mental Health and Neuroscience vs. Dr. K. Kalyana : AIR 1992, SC 1806***, 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 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.

16. Now coming to the peculiar facts of the present case. It is apparent from the record that the petitioner approached the jurisdictional Magistrate by filing an application/complaint under Section 156(3) of the Code. After applying his mind to the contents of the complaint, the learned Magistrate

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arrived at a conclusion that no ground was made out for sending the case for registration of FIR. The learned Magistrate was not required to record the detailed reasons while passing this order and merely because of that reason, this order cannot be stated to have been rendered arbitrary or perverse. The impugned order reflects due application of judicious mind by the learned Magistrate to the facts of the case. After applying his mind to the facts disclosed in the complaint, he was of the opinion that investigation by the police was not required and, therefore, by treating the complaint as a private complaint, he had given opportunity to the petitioner to produce preliminary evidence, which obviously he could do well within the powers given under Section 156(3) of the Code. On going through the allegations as levelled in the complaint filed by the petitioner, even in the considered opinion of this Court, no case for giving any direction to the police authorities to register FIR has been made out.

17. 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 under Section 528 of BNSS 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.

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18. 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.

29.01.2026
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>