
(1989) 08 P&H CK 0105

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 2342-M of 1989 O&M

Babu Ram and ors.

APPELLANT

Vs

State of Haryana and ors.

RESPONDENT

Date of Decision : 23-08-1989

Acts Referred:

Citation : (1989) 08 P&H CK 0105

Hon'ble Judges : S.S.Grewal, J

Advocate : S.P. Laler, Kulbir Singh, P.S. Saini, Advocates for appearing Parties

Judgement

S.S. Grewal, J.

1. This petition under Section 482 of Code of Criminal Procedure (for short "the Code") relates to quashment of order of the Additional Chief Judicial Magistrate Kurukshetra, dated 931989 (copy Annexure P1) and consequent FIR dated 10.3.1989 (copy Annexure P2) registered against the petitioners on the basis of the impugned order of the Additional Chief Judicial Magistrate, Kurukshetra Annexure P1.

2. In brief the facts relevant for the disposal of this case, are that a case against respondent No. 2 was registered under Section 325/34 of the Indian Penal Code on 421989 at Police Station Sadar Thanesar. Respondent No. 2 along with his other coaccused was arrested on the basis of the said case. Thereafter, he is said to have filed a false complaint in the Court of Additional Chief Judicial Magistrate, Kurukshetra, under sections 323/325/452/148/149/504/506 of the Indian Penal Code read with Section 120 IPC. The aforesaid Court sent the said complaint to the Station House Officer of P. S. Sadar, Thanesar for registration of case and investigation.

3. The counsel for the parties were heard. The counsel for the petitioner submitted that since the Magistrate had chosen to act under Section 156(3) of the Code, he could only order the police to conduct investigation concerning allegations mentioned in the complaint, and could not legally direct the police to

registers a case on the basis of the said complaint.

4. Before dealing with the contention made by the counsel for the petitioners, it would be desirable to know the distinction of power of Magistrate to order police investigation under Section 156(3) of the Code from his power to direct the investigation, under Section 202(1) of the Code. Dealing with this aspect of the matter, it was observed in *Devarapalli Lakshminarayana Reddy and others v. V. Narayana Reddy and others*, 1976 S.S.C. (Cri.) 380, by their Lordships of the Supreme Court, as under :

"The power to order police investigation under S. 156(3) is different from the power to direct investigation conferred by Sec. 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the precognizance stage, the second at the post cognizance stage when the Magistrate is in seisin of the case.

Therefore, in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV he is not competent to switch back to the cognizance stage and avail of section 156 (3)."

5. The counsel for the petitioners relied upon authority of this Court in *Rattan Amol Singh and another v. State of Punjab and another*, 1988(2) Recent Criminal Reports 600. A careful perusal of the said authority would indicate that after recording some evidence the trial Magistrate came to a finding that he was satisfied that a prima facie case against the respondent under Section 406 IPC existed, and thereafter directed the complaint to be sent to the Station House Officer, Police Station, Sangrur, under Section 156 of the Code, for the registration of the case and then to investigate the matter. Dealing with this aspect of the case, it was held that such an order is clearly not envisaged under Section 156 of the Code. Under sub Section (3) thereof, all that the Magistrate is empowered to do is to order an investigation and no more.

6. The Single Bench authority in *Rattan Amol Singh and another's* case (supra) obviously relates to a case where the Magistrate had already taken cognizance of the offence under Section 190(1)(a) of the Code, inasmuch as the trial Magistrate in the said case had already recorded some evidence therefore, the Magistrate could not legally invoke his power under Section 156(3) of the Code, whereas in the present case the Magistrate has exercised his power under Section 156(3) of the Code at the precognizance stage. The aforesaid authority in *Rattan Amol Singh's* case (supra) does not help the case of the petitioner as the same is clearly distinguishable and not applicable to the facts of the case in hand.

7. The counsel for the petitioners also cited latest authority of the Apex Court in *Messrs India Carat Pvt. Ltd. v. State of Karnataka and anr.*, 1989(1) Recent

Criminal Reports 395 , wherein it was held that yet another course open to the Magistrate is that instead of taking cognizance of the offence and following the procedure laid down under Section 200 or Section 202 he may order an investigation to be made by the police under Sec. 156(3). When such an order is made the police will have to investigate the matter and submit a report under Sec. 173(2).

8 The authority in Messrs India Carat's case (supra) does not specifically deal with distinction of power of the Magistrate to order investigation under Section 156(3) before taking cognizance under Section 190(1)(a), and his power conferred under Section 202(1) of the Code to direct investigation, after he had taken cognizance of the offence. Nor the same directly deals with the question whether the Magistrate while acting under Section 156(3) of the Code is legally empowered to order registration of case or not. This authority too does not help the case of the petitioners.

9. In the instant case obviously the Additional Chief Judicial Magistrate, Kurukshetra has not taken cognizance of the offence disclosed in the complaint himself as contemplated under Section 190(1)(a) of the Code, and, as such he was legally empowered to direct investigation under Section 156(3) of the Code after registration of the case. On this aspect of the case, I am fortified in my view by authority in case Hari Singh and others v. The State of Punjab and others, 1985(2) RCR(Cr.)134 (P&H) : 1986(1) RCR(Cr.) 555 (P&H) : 1986(1) CLR 67 , wherein it was held that the Magistrate before taking cognizance of the case, can certainly order the registration of the case and the investigation by the police.

10. I find further support in my view on this point by Single Bench authority of this Court in case Jagdish Rai and others v. State of Punjab and another, 1988(1) Recent Criminal Reports 202 , wherein it was held as under :

"Even if direction of the Magistrate, with the order for registering a case on the complaint, is somewhat irregular, the registration of the FIR and the investigation following it cannot be said to be illegal as even otherwise, the Police Officer could register a case and investigate and then submit a report under Sec. 173 of the Code of Criminal Procedure."

The argument raised by the counsel for the petitioners, therefore, cannot be legally sustained.

11. For the foregoing reasons, the impugned order passed by the Additional Chief Judicial Magistrate, Kurukshetra dated 931989 Annexure P1 and the consequent registration of impugned FIR dated 1031989 do not suffer from any legal infirmity and the same are not liable to be quashed.

This petition is accordingly dismissed. The trial Court, however, is directed to proceed with the case according to law.

12. A copy of this order be sent to the trial Court.