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**(1990) 07 P&H CK 0033**

**In the Punjab And Haryana At Chandigarh**

**Case No : Criminal Miscellaneous No. 7145-M of 1987**

Champa Rani and ors.

APPELLANT

Vs

State of Punjab and ors.

RESPONDENT

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**Date of Decision : 13-07-1990**

**Acts Referred:**

**Citation : (1990) 2 AICLR 265 : (1990) 3 RCR(Criminal) 577**

**Hon'ble Judges : S.D.Bajaj, J**

**Advocate : Sarwan Singh, Rajpal Singh, G. S. Sandhawalia, A. S. Kalra,**  
Advocates for appearing Parties

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## **Judgement**

S.D. Bajaj, J.

1. Wife Kiran Bala filed against her husband Madan Mohan, his parents, two sisters named Sushma and Santosh husband of Santosh named Ashok Kumar and Dhani Ram, father of Ashok Kumar, complainant. Annexure P. 2 on 16th April, 1987, urging criminal breach of trust of her dowry articles and cruelty towards her by the husband and his relations aforesaid under sections 406 and 498A of the Indian Penal Code.

2. Learned trial court of Judicial Magistrate, Ist Class Ludhiana, made therein the following order on 25.4.1987 :

Present : Complainant in person.

The complaint is directed to be sent to S.H.O. Police Station Division No. 3, Ludhiana, under section 156(3) Cr.P.C. for registration of a case and for investigation.

Sd/ J.M.I.C.

Ludhiana.

25.4.1987"

All the six petitioners (excluding the husband) arrayed as coaccused in the

complaint, have filed Criminal Misc. No. 7145M of 1987 for quashing the complaint aforesaid on the grounds that allegations obtaining therein do not disclose the commission of criminal offence, by anyone from amongst them and the learned trial court did not have the jurisdiction to order registration of a case against them by the police.

3. I have heard Shri Sarwan Singh, Advocate, for the petitioner, Shri A. S. Kalra, Advocate, for respondent No. 2 and have carefully perused the relevant record.

4. The first and foremost point going to the root of the case is, could the learned trial court vide its order dated 5th April, 1987 (reproduced order registration of a case by the police against the petitioners. Conflicting views in this regard have been expressed by different Hon"ble Judges of this Court at intervals. Initially the matter came to be examined by Hon"ble Mr. Justice K.P.S. Sandhu (as his lordship then was) in Jaggar A Singh v. The State of Haryana, 1984(2) Chandigarh Law Reporter 536.

The relevant observations read, "The main contention raised by Mr. D. S. Bali, learned counsel for the petitioner, is that the Magistrate was not competent under section 156(3) of the Code of Criminal Procedure to order the registration of a case against the petitioner. He was only empowered to order investigation of the case under section 156(3) of the Code of Criminal Procedure. The learned counsel therefore prays that this order and the consequent registration of case against the petitioner are illegal in view of the provisions of section 156(3) of the Code of Criminal Procedure. Mr. A. K. Jaiswal, learned counsel for the State of Haryana, has very fairly conceded that the Magistrate was certainly not competent to order the registration of a case in exercise of the powers under section 156(3) of the Code of Criminal Procedure. He was only competent to send the complaint to the police for investigation. Consequently I quash order Annexure P/2/A, first information report No. 361 dated 15th September, 1979, Annexure P/I, and all other proceedings in consequence of the registration of the case. Similar view was expressed by my learned brother S. S. Sodhi, J. in Rattan Amol Singh and another v. State of Punjab and another, 1988(2) Recent Criminal Reports 600 . Relevant observations read. "The matter here arises from a complaint filed against the petitioner by Preetinder Kaur under sections 405 and 406 of the Indian Penal Code. The trial magistrate, after recording some evidence of the respondent Preetinder Kaur, came to the finding that he was satisfied that a prima facie case against the respondents under section 406 of the Indian Penal Code existed and then proceeded thereafter to send the complaint to the Station House Officer, Police Station, Sangrur, under section 156 of the Code of Criminal Procedure, 1973, for the registration of a case against all the accused and then to investigate it. Such an order is clearly not envisaged under section 156 of the Code. Under subsection (3) thereof, all, that the Magistrate is empowered to do is to order an investigation and no more. This being so, the impugned order of the Chief Judicial Magistrate, the registration of the case against the respondent and the registration of the case by the police as a

consequence thereof are hereby quashed."

5. Contrary observations came to be made in Hari Singh and others v. The State of Punjab and others, 1985(2) Recent Criminal Reports 134 : 1986(1) Chandigarh Law Reporter 67 ; Jagdish Rai and others v. State of Punjab and another, 1988(1) Recent Criminal Reports 202 and Baru Ram and others v. The State of Haryana and another, 1990(1) Recent Criminal Reports 105 . With respect to the Hon"ble Judges deciding these cases it must be said that the observations made therein, regarding vesting of such power in the learned trial court to order registration of a case against the petitioners by the Police are not warranted from the provisions of sec. 156 of the Criminal Procedure Code which read :

"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 cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to enquire into or try under the provisions of Chapter XIII.

(2) No proceeding 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."

As order made under subsection (3) of section 156 is in the nature of a preemptory reminder or intimation to the police to exercise their plenary powers of investigation under section 156(1) Such an investigation embraces the entire continuous process which begins with the collection of evidence under sec. 156 and ends with a report or chargesheet under section 173.

On the other hand the object of an investigation under section 202 is not to initiate a fresh case on Police report, but to assist the Magistrate in completing proceedings already instituted upon a complaint filed in the Court.

The duty of the investigating Officer is not merely to bolster up a prosecution case with such evidence as may enable the Court to record a conviction but to bring out the real unvarnished truth. It is then for the learned Judicial Magistrate ordering investigation to appreciate the evidence so collected in the course of investigation for deciding under section 304 Cr.P.C., if it constitutes sufficient ground for proceeding further with the complaint."

6. Observations made by the Supreme Court in Deverapalli Lakshminarayana Reddy and others v. V. Narayana and others, 1976 Supreme Court cases 380 and Messrs India Carat Private Ltd. v. State of Karnataka and another, 1989(1) Recent Criminal Reports 395 , also do not support this conclusion. It must, therefore, be held that the learned trial Court did not have the power to order

registration of the case against the accused petitioners on the basis of complaint filed before it by respondent No. 2.

7. The basic distinction, between a complaint case and the case instituted on a police report is that in the former the duty of ascertaining whether there is sufficient ground for proceeding further with the complaint is on the learned Magistrate before whom the complaint is filed, who may either do it on the basis of the preliminary evidence adduced before him or base his finding in this regard on the inquiry report of another person or on the report submitted by the Police after investigation. While in a case instituted on police report, submitted by it after registration of the case within the police, the duty of finding out (i) the existence of reasonable suspicion in terms of Section 41; and (ii) the recording of satisfaction that the information received by the police discloses the commission of the cognizable offence in terms of subsection (3) of Section 154 is on the Police officer himself. The two jurisdictions having been held by the Supreme Court to be quite independent of each other. The Judiciary should not transgress the police jurisdiction aforesaid and order registration of case in terms of Section 156(3) of the Code of Criminal Procedure, 1973. Even otherwise also absence of enabling provisions in this regard in the Code of Criminal Procedure ought to have been construed by the learned trial Court as a negative provision disentitling it from ordering registration of case against the petitioners.

8. It has also been conceded by the learned counsel for respondent No. 2 that the complaint does not contain specific allegations of entrustment of dowry articles to any one from amongst the accused petitioner. Physical cruelty is attributed to the husband only, who is not a party to these proceedings. Demands for money attributed to the petitioners are also for augmenting the business of fatherinlaw, who is since dead. Similarly petitioner No. 7 has also died. Sisters of the husband are both married and are living in their matrimonial homes. Motherinlaw is also depressed after her husband's death and the sting in the cruel treatment attributed to her must have vanished thereafter. In result Criminal Misc. No. 7145M of 1987 succeeds and is allowed. The complaint and the proceedings based upon it thus fall through and are consequently quashed.