

(2019) 10 CHH CK 0200
In the Chhattisgarh High Court
Case No : Writ Appeal No. 426 Of 2019

Faiz Ahmed And Ors

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 24-10-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 177, 154, 154(1), 154(3), 156(3), 482
Indian Penal Code, 1860 — Section 34, 294, 452, 498A, 506B
Chhattisgarh High Courts (Appeal To Division Bench) Act, 2006 — Section 2, 2(1)
Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005
— Section 2
Constitution Of India, 1950 — Article 26, 32, 226, 227

Citation : (2019) 10 CHH CK 0200

Hon'ble Judges : P.R. Ramachandra Menon, CJ; Parth Prateem Sahu, J

Bench : Division Bench

Advocate : Sharmila Singhai, Sudeep Verma

Final Decision : Dismissed

Judgement

P. R. Ramachandra Menon, CJ

1. Dismissal of the writ petition filed by the Appellants challenging the Annexure-A/2 order dated 21/06/2019 passed by the learned Magistrate,

directing the Police Officer concerned to register FIR and to proceed with the investigation under Section 156(3) of the Code of Criminal Procedure

(in short, 'CrPC'), in respect of the cognizable offences and the subsequent proceedings whereby FIR came to be registered by the Police Officer are

put to challenge in this appeal. The main ground of challenge is that the order passed by the Magistrate under Section 156(3) of the CrPC is not

correct or sustainable for non-satisfaction of the pre-requirements under Section 154(1) and 154(3) of the CrPC, which has not been correctly

appreciated by the learned Single Judge while holding that no such requirement is there in Section 156(3) of the CrPC. It is pointed out that the verdict

passed by the learned Single Judge is contrary to the law declared by the Apex Court in *Priyanka Srivastava and Another vs. State of Uttar Pradesh*

and *Others* (2015) 6 SCC 287 and hence the challenge.

2. Heard Ms. Sharmila Singhai, the learned counsel appearing for the Appellants and Mr Sudeep Verma, the learned counsel representing the State.

3. The crux of the factual sequence which led to the proceeding, as revealed from the materials on record, is that there were some hiccups in the

matrimonial relationship between the 1st Appellant and his wife, who is the daughter of the 3rd Respondent, alleging various offences against the

Appellants (Appellants No.2 & 3 are the parents of the 1st Appellant and Appellant No.4 is the maternal uncle). The 3rd Respondent filed a petition

before the learned Magistrate at Bilaspur under Section 156(3) of the CrPC and after considering the same, the learned Magistrate forwarded the

same to the Station House Officer, Police Station, Civil Line, Bilaspur / 2nd Respondent directing to register FIR and to investigate. Pursuant to the

said order, Annexure-A/4 FIR came to be registered by the 2nd Respondent, against the Appellants, in respect of the offences under Sections 452,

498A, 294 and 506B, read with Section 34 of the Indian Penal Code. This made the Appellants to approach this Court by filing WP(Cr) No.507/2019,

seeking to set aside Annexure-A/2 order passed by the learned Magistrate and to quash the FIR registered by the police with Crime No.504/2019 of

the Police Station Civil Line, Bilaspur.

4. As mentioned already, it was specifically contended that no petition/proceeding was ever filed by the complainant in terms of Sections 154(1) and

154(3) of the CrPC, without which no proceeding could be entertained under Section 156(3) of the CrPC. It was also contended that a 'preliminary

enquiry' had to be conducted in view of the nature of grievance, being a matrimonial dispute, as declared by the Constitution Bench of the Apex Court

in *Latita Kumari vs. Government of Uttar Pradesh and Others* (2014) 2 SCC .1 After hearing both the sides, the learned Judge declined interference

and the writ petition was dismissed, which hence is subjected to challenge in this appeal.

5. When the matter came up for consideration before this Court on 23.09.2019,

maintainability of the appeal was doubted and the learned counsel was required to address the Court on this ground as well, apart from the merit involved and accordingly, the matter was heard elaborately.

6. With regard to the merits involved, the contention of the Appellants is that the complainant had not preferred any application under Section 154(1)

of CrPC before the Station House Officer and no petition was filed before the Superintendent of Police under Section 154(3) of the CrPC, before

filing the petition before the Magistrate under Section 156(3) of the CrPC, if there was any lapse on the part of the Station House Officer in

registering the crime. Without completing the pre-requirements under Sections 154(1) and 154(3) of the CrPC, it was not open for the complainant to

have moved the Magistrate directly under Section 156(3) of the CrPC and hence Annexure-A/2 order passed by the Magistrate, directing the Police

to register the FIR and to conduct the investigation without satisfying the pre-requirements as above, is not correct or sustainable, being contrary to the

law declared by the Apex Court in Priyanka Srivastava's case (supra). The next contention is that the dispute involved is a 'matrimonial dispute', with

reference to the alleged demand for dowry and such other instances and in the said circumstance, it was very much obligatory for conducting a

preliminary enquiry before registering the FIR, as declared by the Constitution Bench of the Apex Court in Lalita Kumari's case (supra). The said

requirement having not been satisfied, the learned Single Judge ought to have interdicted the impugned orders and having not chosen to do so,

miscarriage of justice has been resulted. The learned counsel for the Appellants further points out with reference to the materials on record, that the

wife of the 1st Appellant by name 'Shifa Anjum' had not preferred any complaint regarding cruelty or harassment and that, it was the 3rd

Respondent/complainant, who is the father of the victim, who had made a false and fabricated complaint in the Police Station, Civil Lines, Bilaspur. As

such, the direction given by the Magistrate to register an FIR and to conduct investigation, in a mechanical manner, is quite alien to the scheme of the

statute and is liable to be set aside. The last contention is that the alleged incident took place at Raipur and that the FIR has been caused to be

registered in the Police Station at Bilaspur. It is stated that the Police Station, Bilaspur has no territorial jurisdiction to register the FIR and that the

course pursued is contrary to the provision of Section 177 of the CrPC. The learned counsel submits that the finding of the learned Single Judge that

satisfaction of the requirements under Sections 154(1) and 154(3) of the CrPC (wrongly mentioned as 154(3) and (4) in paragraphs 5 and 7 of

Annexure-A/1 order passed by the learned Single Judge) is not a requirement as per the Rule for bringing application under Section 156(3) of the

CrPC is not correct. Apart from the reliance sought to be placed on the verdict passed by the Apex Court in Priyanka Srivastava's case (*supra*)

reliance is also sought to be placed on the recent judgment dated 14.05.2019 passed by a learned Single Judge of this Court in WP(Cr) No. 146 of

2016. With regard to the maintainability, the learned counsel sought to place reliance on the verdict passed by the Apex Court in Ram Kishan Fauji vs.

State of Haryana and Others (2017) 5 SCC 533 and such other decisions which will be dealt with in due course.

7. The learned counsel representing the State sought to sustain the order passed by the learned Magistrate and the subsequent registration of the FIR

by the Police, pointing out that a cognizable offence has been made out and satisfaction has been recorded by the learned Magistrate with reference

to the contents of the application and the materials produced. It is stated that the requirements of Sections 154(1) and 154(3) of the CrPC stand

satisfied in the instant case and the contention to the contrary is not correct or sustainable. The learned counsel further submits that the appeal itself is

not maintainable, by virtue of the specific bar under the proviso to Section 2(1) of the Chhattisgarh High Courts (Appeal to Division Bench) Act, 2006

(for short, 'the Act'); adding that the decisions sought to be relied on by the Appellants, including, in Ram Kishan Fauji's case (*supra*) do not come to

the rescue of the Appellants in this regard. Reliance is sought to be placed on the common judgment dated 24.06.2015 passed by a Division Bench of

this Court in Writ Appeal Nos. 181/2015 and 206/2015 to the effect that no appeal will lie against the verdict passed by the learned Single Judge in the

writ petition filed with reference to the order passed by the learned Magistrate under Section 156(3) of the CrPC. Various other rulings are also

sought to be relied on in support of the contentions, which will be discussed later.

8. With regard to the primary contention raised by the Appellants as to the non-satisfaction of the requirements under Section 154(1) and 154(3) of the

CrPC before proceeding with under Section 156(3) of the CrPC, this Court finds it appropriate to extract the relevant provisions for clear understanding.

154. Information in cognizable cases.

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to

writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as

aforsaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the

State Government may prescribe in this behalf.

(2) xxx xxx xxx (3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in

subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such

information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any

police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police

station in relation to that offence.

156. Police officer's power to investigate cognizable case.

(3) Any Magistrate empowered under section 190 may order such an investigation as above- mentioned.

9. The gist of the above provisions is to the effect that; Section 154(1) casts a duty upon the Police Officer in-charge of police station to register a

crime, if information is obtained to him as to the commission of a cognizable offence as mentioned therein. Under sub-Section (3) of Section 154, any

person aggrieved by refusal on the part of such Police Officer to discharge his duty under sub-Section (1), may send the substance of such

information in writing and by post to the Superintendent of Police, who has to deal with the matter as specified therein. Section 156(3) of the CrPC

deals with Police Officer's power to investigate the cognizable case without an order of the Magistrate and under sub-Section (3), it is stipulated that

any Magistrate empowered under Section 190 may order such an investigation as mentioned in sub- Sections (1) and (2).

10. Taking note of the alarming circumstance as to filing of frivolous complaints to harass persons of dislike in various ways by invoking the power

under Section 156(3) of the CrPC, the Apex Court heavily came against such steps/course in Priyanka Srivastava's case (supra) and it was held that,

it was quite necessary to file an 'affidavit' of the informant along with the application filed under Section 156(3) of the CrPC so as to make the

informer responsible for the course of action, if found to be proceeded against later. The Apex Court also made it clear that, Section 156(3)

proceeding cannot be taken as a matter of routine and it should precede the circumstances envisaged under Sections 154(1) and 154(3) of the CrPC.

The Apex Court emphasized that there had to be application of mind on the part of the Magistrate which should be reflected in the order passed under

Section 156(3) of the CrPC. The question is whether the said requirements have been satisfied in the instant case or not.

11. On going through contents of Annexure-A/2 order passed by the Magistrate, it is seen that the nature of grievance/complaint has been discussed

in detail. The relevant portion with regard to filing of application before the Police Officer on 21.04.2019 is adverted to in the bottom paragraph of the

4th page's order, which is to the following effect :

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12. Similarly, with regard to the satisfaction of Section 154(3) of the CrPC by approaching the Superintendent of Police, the observation made by the

learned Magistrate, as it appears in the penultimate paragraph at page 5 of Annexure-A/2 order, is to the following effect :

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13. It is evident from the order that, it was passed with reference to the contents of the complaint and the various documents produced along with

application. Annexure-A/3 is the application preferred by the 3rd Respondent. Paragraph 12 of the said application is extracted below :

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- 21.04.2019

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14. On the last page of complaint, besides providing the List of Witnesses, List of Documents are also annexed. It is also extracted below :

21.04.2019 3. 30.04.2019

21.04.2019 3. 30.04.2019

21.04.2019

15. This clearly shows that copy of the complaint dated 23.12.2018 filed before the Rajendra Nagar Police Station, copy of the petition filed before the

Police Station, Civil Lines, Bilaspur dated 21.04.2019 and copy of the petition dated 30.04.2019 filed before the Superintendent of Police were also

attached along with the petition filed before the Magistrate under Section 156(3) of the CrPC. That apart, the 3rd Respondent also filed an 'affidavit',

swearing to the correctness as to the contents of the application in this regard. Paragraph 12 of the said affidavit, which is in similar lines as in the

application, is reproduced below :

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16. In addition to the affidavit sworn to by the 3rd Respondent, he had produced an affidavit of Shifa Anjum (wife of the 1st Appellant) which is also

in similar lines. 'Paragraph 12' of said affidavit of Ms. Shifa Anjum is extracted below :

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Â From the above, it is explicitly clear that all the relevant materials to sustain invocation of power under Section 156(3) were provided by the 3rd

Respondent. It was after considering the same, that Annexure-A/2 order was passed by the Magistrate, applying his mind.

17. On going through the order passed by the Magistrate, the learned Single Judge observed that cognizable offence was, prima-facie, made out and

there was no reason to interdict the said order. It is also revealed that the Police, despite revealing cognizable offences, caused the matter to be sent

for Mediation (with steps of counselling), to which it appears that the wife of the 1st Appellant was not amenable. It was because of the lapse on the

part of the Police Officer in discharging the duty under Section 154(1) of the CrPC and lethargy on the part of the Superintendent of Police under

Section 154(3) of the CrPC, that the 3rd Respondent was compelled to approach the Magistrate's Court under Section 156(3) of the CrPC, in turn

leading to Annexure-A/2 order, directing the Police Officer to register FIR and to investigate the matter.

18. On confronting the position with regard to the filing of complaint before the Police Officer under Section 154(1) of the CrPC and as to the filing of

petition before Superintendent of Police on 30.04.2019 (despite which no action has been taken), the learned counsel for the Appellants points out that

the Police had relegated the parties for counselling and in the said circumstance, if the 3rd Respondent was aggrieved in any manner, it was for him to

have filed a fresh application/complaint before the Police Officer under Section 154(1) of the CrPC and thereafter, if the Police Officer had refused to

register the Crime, if cognizable offence was made out, it was for the 3rd Respondent to move the Superintendent of Police in terms of Section 154(3)

of the CrPC; before filing a complaint petition before the Magistrate under Section 156(3) of the CrPC. We find it difficult to accept the said

proposition as the requirement to satisfy the provisions under Sections 154(1) and 154(3) of the CrPC and as to filing of the affidavit, as stipulated by

the Apex Court in Priyanka Srivastava's case (supra) stand very much satisfied and the contention to the contrary does not hold any water.

19. With regard to the maintainability of the appeal, there cannot be any dispute

to the fact that appeal is a remedy provided under statute. The decision sought to be relied on by the Appellants in Ram Kishan Fauji's case (supra) was with reference to the provisions of the Prevention of Corruption Act, 1988 in relation to the Letters Patent Appeal (in short, 'LPA'). Insofar as the State of Chhattisgarh is concerned, a separate legislation has been framed by the State Legislature as the Chhattisgarh High Courts (Appeal to Division Bench) Act, 2006. Section 2 provides for appeal, which is to the following effect :

Section 2 - Appeal to the Division Bench of the High Court from a Judgment or order of one judge of the High Court made in exercise of original

jurisdiction (1) An appeal shall lie from a judgment or order passed by one Judge of the High Court in exercise of original Jurisdiction under Article

226 of the Constitution of India, to a Division Bench comprising of two Judges of the same High Court.

Provided that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227

of the Constitution of India.

(2) An appeal under sub-section (1) shall be filed within 45 days from the date of order passed by a single Judge.

Provided that any appeal may be admitted after the prescribed period of 4.5 days, if the petitioner satisfies the Division Bench that he had sufficient

cause for not preferring the appeal within such period. Explanation.--The fact that the petitioner was misled by any order, practice or judgment of the

High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this sub-section. (3) An appeal under

sub-section (1) shall be filed, heard and decided in accordance with the procedure as may be prescribed by the High Court.

20. The above provision clearly mentions that no appeal will lie against interim order and similarly, no appeal shall lie, if the order / verdict under

challenge is passed in exercise of power under Article 227 of the Constitution of India. The point to be considered is whether the order passed by the

learned Single Judge in the writ petition stated to be filed under Article 226 of the Constitution of India, was an order passed in the original exercise of

jurisdiction or whether it was under the supervisory jurisdiction envisaged under Article 227 of the Constitution of India.

21. In the above context, it will be appropriate if a survey is made to the various judgments / rulings cited from the part of both the Appellants and the

Respondents/State. A three member Bench of the Apex Court held in Devarapalli Lakshminarayana Reddy and Others vs. V. Narayana Reddy and

Others (1976) 3 SCC 252 Â that an order made under sub-Section (3) of Section 156 of the CrPC is in the nature of a peremptory reminder or

intimation to the police to exercise their plenary powers of investigation under Section 156(1) and that such an investigation embraces the entire

continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173. The

Bench also made it clear that the object of an investigation under Section 202, on the other hand, is not to initiate a fresh case on the basis of police

report but to assist the Magistrate in completing the proceedings already instituted upon a complaint before him.

22. In Mohd. Yousuf vs. Afaq Jahan (Smt.) and Another (2006) 1 SCC 627 , a two member Bench of the Apex Court held that any judicial

Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the CrPC. But if he does so, he is not to examine

the complainant on oath because he was not taking cognizance of any offence therein. Once the Police Officer is directed under Section 156(3) of the

CrPC, it is the duty of the Officer in-charge to register an FIR and to conduct the investigation. It was also held by the Apex Court that there is no

particular format for a complaint and hence nomenclature is inconsequential; adding that a petition to the Magistrate containing an allegation that an

offence has been committed and ending with a prayer that the culprits be suitably dealt with is a complaint good enough.

23. The scheme of the CrPC, with reference to the Sections 154(1), 154(3) and 156(3), was explained by the Apex Court in a two member Bench

judgment in Sakiri Vasu vs. State of Uttar Pradesh and Others (2008) 2 SCC 409, where it was held that, on a petition under Section 156(3), the

Magistrate can direct the FIR to be registered and can also direct a proper investigation to be made. Further, in a case where, according to the

aggrieved person, no proper investigation was made, the Magistrate can, under the same provision, monitor the investigation to ensure a proper

investigation. It was held by the Apex Court that Section 156(3) of the CrPC provides for a check by the Magistrate on the Police performing its

duties under Chapter XII of the CrPC and 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. It was also made clear that Section 156(3) of the CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation on the different counts as mentioned above. The above observations were made by the Apex Court deprecating the move on the part of the litigants in rushing to the High Court by filing petitions under Section 482 of the CrPC or otherwise, without causing the remedy as provided under the CrPC exhausted as mentioned above.

24. M.M.T.C. Limited vs. Commissioner of Commercial Tax and Others (2009) 1 SCC 8 decided by a two member Bench of the Apex Court was a case involving the scope of Section 2 and its proviso under the M.P. Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 [which is almost similar to Section 2 of the State Act, 2006 as applicable here]. The verdict passed by the learned Single Judge was challenged directly before the Apex Court by filing SLP, which was disposed off, for causing the matter to be considered by the High Court on merits. Pursuant to further proceeding, the Division Bench of the M.P. High Court dismissed the appeal, holding that the order passed in exercise of power of superintendence under Article 227 of the Constitution of India, against which Letters Patent Appeal was preferred, was not maintainable. Referring to the facts involved, the Apex Court held that it was open to the Respondent to invoke the jurisdiction of the High Court both under Article 226 and 227 of the Constitution of India and once such jurisdiction was invoked and when the writ petition was dismissed on merits, it cannot be said that the learned Single Judge had exercised the jurisdiction only Article 227 of the Constitution of India. The Bench held that the High Court did not consider the nature of the controversy and the prayer involved in the writ petition, which prayed for quashing of the assessment passed by the Assistant Commissioner, Commercial Tax, levying the purchase as well as entry Tax. The nomenclature / cause title of the appeal styled as under both Article 226 and 227 of the Constitution of India, was held as not of much consequence to decline the remedy by way of appeal.

25. Anil Kumar and Others vs. M.K. Aiyappa and Another (2013) 10 SCC 70⁵ is cited only to show that, in dealing with a petition under Section

156(3) of the CrPC, application of mind by the Magistrate is very much essential and that it should be reflected in the order, though a detailed

expression of his views is neither required nor warranted. It was also made clear in the said ruling that the order directing to register FIR under

Section 156(3) of the CrPC does not amount to taking cognizance of the offence.

26. The landmark decision rendered by the Constitution Bench of Apex Court in Latita Kumari's case (supra) clearly holds that registration of FIR is

mandatory under Section 154 of the CrPC, if the information discloses commission of a cognizable offence and that no 'preliminary enquiry' is

permissible in such a situation which is an essential rule and must be strictly complied with. It is also pointed out that, if it does not disclose any

cognizable offence, in appropriate cases as mentioned, a 'preliminary enquiry' within a short time (seven days) is possible, only to ascertain whether

any cognizable offence is made out and it is not to ascertain veracity or otherwise of the information received. The Bench held that the proper stage

for verification of the veracity of the information received is only after registration of the FIR and not before. It was also asserted by the Bench that,

the Police Officer cannot avoid his duty of registering FIR, if cognizable offence was disclosed. By virtue of the specific terminology 'shall' used in the

provision {Section 154(1)} it is stated as mandatory; adding that Section 154(1) does not confer any discretion on the Officer in-charge of the police

station for embarking upon a preliminary enquiry prior to registration of FIR. It was also made clear that the expression 'information' under Section

154 CrPC is not qualified by the prefix 'reasonable' or 'credible'. It will be worthwhile to extract the conclusion/directions reached / given by the

Bench as contained in paragraph 120 of the judgment, which is reproduced below :

Conclusion/Directions:

120. In view of the aforesaid discussion, we hold: 120.1. Registration of FIR is mandatory under Section 154 of the Code, if the information discloses

commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but

indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- (a) Matrimonial disputes/ family disputes
- (b) Commercial offences
- (c) Medical negligence cases
- (d) Corruption cases
- (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the

said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

27. In *Radhey Shyam and Another vs. Chhabi Nath and Others* Â (2015) 5 SCC 42 3a three member Bench of the Apex Court, considered the scope

of jurisdiction under Article 227, as distinct from that under Article 226. The Bench held that Judicial orders of the Civil Court were not amenable to

writ jurisdiction under Article 226 of the Constitution of India. Challenge to such orders would lie only by way of statutory appeal or revision under

Article 227 of the Constitution of India, but not by a writ under Article 226 or 32 of the Constitution of India.

28. The principle as to maintainability of Letters Patent Appeal before Division Bench of High Court, against orders of Single Bench of the High Court

issued in exercise of writ jurisdiction, were summarised by a two member Bench of the Apex in *Jogendrasinghji Vijaysinghji vs. State of Gujaraj and*

Others (2015) 9 SCC 1. Apart from holding that in writ petitions under either or both of Articles 226 or 227 of the Constitution of India, the Tribunal /

Authorities which are not required to defend their impugned orders need not be impleaded (but that simple Adjudicating Authorities like Income Tax

Officer are required to be impleaded) except when personal allegation is raised against them [to be answered]. The Bench held that the jurisdiction of

the High Court under Article 226 and 227 of the Constitution of India are distinct, but both can co-exist and coincide. The Bench also held that writ

petition challenging order of Tribunal or Authority cannot always be regarded for all purposes to be under Article 227 of the Constitution of India.

29. In *Social Action Forum for Manav Adhikar and Another vs. Union of India, Ministry of Law and Justice and Others* (2018) 10 SCC 44,3 a three

member Bench of the Apex Court reiterated the principles laid down by the Constitution Bench in *Lalita Kumari's case* (supra) and held that

'preliminary enquiry' mainly held in matrimonial / family disputes, however making it clear that, such preliminary enquiry does not mean veracity of

'information', but to ascertain whether 'information' discloses any cognizable offence and that alone. This clearly means, if cognizable offence is

already made out in the petition, it is not necessary to conduct any preliminary enquiry as a pre-requisite before registering FIR.

30. It was asserted by a three member Bench of the Apex Court in *Ram Kishan Fauji's case* (supra) that no Letters Patent Appeal lies against an

order passed by the Single Bench of the High Court in exercise of the criminal jurisdiction. The Bench held that the vital factor for determination of maintainability of Letters Patent Appeal is the nature of jurisdiction invoked by the party and root nature of the order passed by the Single Bench of the High Court. It was a case where FIR was 'recommended' to be registered as per the order passed by the Lokayukta which was subjected to challenge in the writ petition filed under Article 226 of the Constitution of India for quashing the recommendation of the Lokayukta, as recommendation would have led to lodging of criminal prosecution. Highlighting the principles as to the distinction between the powers under Article 226 and 227 of the Constitution of India, the Bench held that the nomenclature of the proceeding was not of much relevance in determining the true nature of the proceedings; adding that a statement Â by the Single Judge of the High Court that he has exercised power under Article 227 of the Constitution of India cannot take away the right of appeal (Letters Patent Appeal) against said judgment, if the power was otherwise found to have exercised under Article 226 of the Constitution of India; adding further that a writ petition which assails the order of a Civil Court in the High Court had to be understood in all circumstances, to be a challenge and determination under Article 227 of the Constitution of India. It was accordingly held that the order passed by the learned Single Judge in the said case quashing the recommendation of the Lokayukta was not liable to be appealed against. The observation and direction in paragraphs 61 and 62 are relevant, which are reproduced below :

61. In the case at hand, the writ petition was filed under Article 26 of the Constitution for quashing of the recommendation of the Lokayukta. The said recommendation would have led to launching of criminal prosecution, and, as the factual matrix reveals, FIR was registered and criminal investigation was initiated. The learned Single Judge analysed the report and the ultimate recommendation of the statutory authority and thought it seemly to quash the same and after quashing the same, as he found that FIR had been registered, he annulled it treating the same as a natural consequence. Thus, the effort of the writ petitioner was to avoid a criminal investigation and the final order of the writ court is quashment of the registration of FIR and the subsequent investigation. In such a situation, to hold that the learned Single Judge, in exercise of jurisdiction under Article

26 of the Constitution, has passed an order in a civil proceeding as the order that was challenged was that of the quasi- judicial authority, that is, the

Lokayukta, would be conceptually fallacious. It is because what matters is the nature of the proceeding, and that is the litmus test.

62. In view of the aforesaid prismatic reasoning, the irresistible conclusion is that the Letters Patent Appeal was not maintainable before the Division

Bench and, consequently, the order passed therein is wholly unsustainable and, accordingly, it is set aside. However, as the State had been diligently

agitating its grievance in a legal forum which it thought had jurisdiction, we grant liberty to the State to assail the order of the learned Single Judge in

accordance with law.

31. It was held by a Division Bench of this Court, in a common judgment passed on 24.06.2015 in WA No.181/2015 and WA No.2016/2015, that no

appeal will lie in respect of an order passed by the learned Single Judge with reference to a proceeding under Section 156(3) of the CrPC. It was also

held that, merely by labelling Writ Petitions (Criminal) as under Article 226 of the Constitution will not detract from the nature of jurisdiction exercised

by the learned Single Judge, which is supervisory in nature, under Article 227 of the Constitution of India, thus, declining to entertain the appeals and

dismissed the same as not maintainable.

32. The learned counsel for the Appellants submits that, if appeal is not maintainable against the verdict passed by the learned Single Judge by virtue

of the proviso to Section 2 of the Act, 2006, treating it as an order passed under Article 227 of the Constitution of India, it is still maintainable since the

writ petition filed was also challenging Annexure- A/4 FIR registered by the Police pursuant to the Annexure-A/3 order. We are not impressed by the

said submission. Annexure-A/4 FIR is only a consequential proceeding in discharging of the official duty of the Police Officer, having obtained a

direction from the Magistrate under Section 156(3) of the CrPC to register the FIR and to conduct the investigation. As made clear by the Apex Court

in the decision cited supra, there is no option for the Police Officer to refrain from the registration of FIR, once he has been directed by the Magistrate

for registration of the FIR under Section 156(3) of the CrPC. So also, the Magistrate had forwarded the matter directing to register FIR and to

conduct investigation on satisfaction of the cognizable offence made out from the

proceedings. As it stands so, it is no more open for the Police Officer to conduct a 'preliminary enquiry' and arrive at a finding, to see whether any cognizable offence is made out or not; which otherwise will virtually amount to sitting in appeal over the order passed by the Magistrate. As such, there is absolutely no merit in the contention put forth by the Appellants that a 'preliminary enquiry' was mandatorily to be conducted by the Police Officer, it being a 'matrimonial dispute', in the light of law declared by the Constitution Bench of the Apex Court in Lalita Kumari's case (supra). The position is clear from the discussion, conclusion and directions given by the Apex Court at 'para 120.6' to the effect that preliminary enquiry may be contemplated in cases involved in Matrimonial disputes/family disputes, Commercial offences, Medical negligence cases, Corruption cases and cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay and the further direction in conclusion/directions in paragraph '120.5' to the effect that such preliminary enquiry is only to find whether any cognizable offence is committed or not and never to verify the correctness of the information.

33. In the light of the specific provision under Section 2 of the Act, 2006 and the 'proviso' thereunder and the effect of the rulings mentioned above, no

appeal is maintainable in respect of an order passed by the learned Single Judge in exercise of power under Article 227 of the Constitution of India.

Going by the nature pleadings, prayers and proceedings and the verdict passed by the learned Single Judge, it is quite evident that the correctness and

sustainability of the Annexure-A/2 order passed by the Magistrate in exercise of the power under Section 156(3) of the CrPC was put to scrutiny,

which is only in the supervisory jurisdiction under Article 227 of the Constitution of India and as such, it cannot but be held that this appeal is not

maintainable. Similarly, this Court finds that the contention raised by the Appellants that there is no complaint under Section 154(1) / 154(3) of the

CrPC prior to invocation of the power under Section 156(3) of the CrPC by the Magistrate, is contrary to the correct factual position as disclosed

from the materials on record. It is further seen that there is 'proper application of mind' on the part of the Magistrate and the same is reflected in

Annexure-A/2 order, scope of which was considered by the learned Single Judge.

34. In the above facts and circumstances, we are of the view that no relief can be extended to the Appellants and the challenge raised against the

order passed by the learned Single Judge is not liable to be sustained, besides the fact that the appeal itself is not maintainable at all.

35. We find no merit in the contentions raised by the Appellant and the appeal stands dismissed, on both the counts, as to the merits and

maintainability. It is however added that, the observations made by the learned Single Judge and this Court are only to the limited extent for

considering the sustainability of the course of action pursued by the Magistrate in ordering the Crime to be registered under Section 156(3) of the

CrPC and to conduct investigation and it is never to deal with the merits of the case as to the actual commission of the offences, if any. If continuance

of the proceedings are otherwise not sustainable, it is quite open for the Appellants to pursue other appropriate remedy, in accordance with law and

dismissal of the writ petition or the present appeal will not be a bar in this regard.