

**(2012) 03 SHI CK 0256**  
**In the High Court Of Himachal Pradesh**  
**Case No : Criminal MMO No. 186 of 2011**

Gurpal Singh

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

**Date of Decision :** 20-03-2012

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 190(1), 193, 200, 202  
Penal Code, 1860 (IPC) — Section 120B, 34, 419, 420, 423

**Citation :** (2012) 03 SHI CK 0256

**Hon'ble Judges :** Kuldip Singh, J

**Bench :** Single Bench

**Advocate :** Vinod Thakur, for the Appellant; Ruma Kaushik, Addl. A.G. with Mr. J.S.Rana, Asstt. A.G. for Respondent No. 1, Mr. Ramakant Sharma, Advocate for Respondents No. 2 and 3, Mr. Dinesh Bhanot, Advocate for Respondent No. 4, Mr. Amrinder Singh Rana, Advocate, vice and Mr. H.S. Rana, Advocate, for the Respondent

## Judgement

Kuldip Singh, Judge

1. This is a petition u/s 482 Cr.P.C. for setting aside order dated 25.4.2011 passed by Additional Sessions Judge, Solan in Criminal Revision No. 1-NL/10 of 2011 affirming order dated 10.11.2010 passed by Judicial Magistrate 1st Class, Court No. II, Nalagarh in Complaint No. 107/2 of 2009. The prayer has also been made to direct the trial Court to refer the complaint to the police for investigation. The facts as alleged are that petitioner had filed a complaint under Sections 420, 423, 465, 466, 467, 468 and 120-B read with Section 34 IPC before Judicial Magistrate against respondents on the ground that Smt. Akki, mother of petitioner was owner in possession of 7 bighas and 7 biswas of land in Village Sandoli, H.B. No 199, Pargana Dharampura, Tehsil Nalagarh.

2. The respondent No. 4 Dwarki Devi in connivance with one Diwan Chand, Mangal and others prepared a false, forged and fabricated gift deed of the land of Smt. Akki and grabbed the land on the force of gift deed. FIR No. 102 dated

29.6.2008 under Sections 420, 467, 468, 471 and 120-B IPC has been registered at Police Station, Baddi. The petitioner has also challenged gift deed in Civil Suit.

3. It has been alleged that after grabbing the land of Smt. Akki Devi the persons namely Smt. Dwarki, Gurcharan Singh, Bagga Ram Chaudhary, Rattan Singh, Kanungo, Dilip Moudgill, Rajender Kumar Sharma, Rohtash Goyal, Pritam Chand, Madan Lal and Jaspal Singh in order to vitiate the rights, title and interest of the petitioner exchanged the part of the land in which the petitioner has interest by preparing false, forged and fabricated mutation No. 656 of 83/84 min land of village Sandoli, H.B. No. 199 and mutation No. 802 of 71-72/83-84 of the land of village Bilawali Gujran, H.B. No. 198, Tehsil Nalagarh. FIR No. 80 of 2009 is registered against said persons. The land has been shown exchanged on the basis of these mutations dated 13.10.2005 with Bhagwan Dass, who expired on 14.2.2004.

4. The petitioner obtained certified copy of the aforesaid mutations, he came to know that respondents have committed another forgery by tampering mutations No. 656 and 802 with ulterior motive and to hush up the previous forgery. The respondent No. 1 in connivance with respondents No. 3 to 10 took the permission of respondent No. 2 on 17.9.2008, who knew all facts, for reviewing the mutations by admitting that at the time of alleged exchange Bhagwan Dass had died and signatures of Numberdar were not obtained. The respondents instead of cancelling the mutations No. 656 and 802 tried to make illegal mutations legal. The petitioners approached the Police Station, Baddi to lodge FIR but the police refused to lodge FIR. On this, the petitioner filed complaint under Sections 420, 423, 465, 466, 467, 468 and 120-B read with Section 34 IPC and application was filed to send the complaint to SHO, Police Station, Baddi for registration of the case and investigation.

5. The trial Court on 10.11.2010 took the cognizance of the matter, however, not passed any specific order on application u/s 156(3) Cr.P.C. and declined to refer the matter for investigation to the police, fixed the complaint for preliminary evidence on 4.1.2011. The petitioner challenged the order dated 10.11.2010 which was dismissed by Additional Sessions Judge, Solan on 25.4.2011. It has been stated that once the trial Court had taken cognizance of the offence mentioned in the complaint, then in the facts and circumstances as mentioned in the complaint, the complaint was required to be investigated by the police in view of serious allegations against the respondents. The orders passed by the Courts below are not sustainable.

6. Heard. The learned counsel for the petitioner has submitted that the learned Additional Sessions Judge has erred in affirming the order of the trial Court, who erred in not ordering the registration of the case and investigation by police u/s 156(3) Cr.P.C. in view of serious allegations. The learned counsel for the respondents have supported the order dated 11.10.2010 of the trial Court. It has been submitted that it is for the trial Court to proceed u/s 156(3) Cr.P.C. or to take cognizance and follow the procedure u/s 200 Cr.P.C. The Magistrate has

power to take the help of the police for investigation u/s 202 Cr.P.C. The Magistrate has taken the cognizance and followed the procedure prescribed u/s 200 Cr.P.C., no fault can be found with such order. This has caused no prejudice to the petitioner.

7. In *Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others*, it has been held that in case of a complaint regarding the commission of a cognizable offence, the power u/s 156(3) can be invoked by the Magistrate before he takes cognizance of the offence u/s 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 pre-cognizance stage and avail of Section 156(3).

8. The Supreme Court in *Mohd. Yousuf Vs. Smt. Afaq Jahan and Another*, has held that when a Magistrate orders investigation under Chapter XII, he does so before he takes cognizance of the offence. But a Magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the Code.

9. The question in *Rameshbhai Pandurao Hedau Vs. State of Gujarat*, was whether the Magistrate committed any error in refusing the appellant's prayer for an investigation by the police u/s 156(3) of the Code and resorting to Section 202 of the Code instead, since both the two courses were available to him. The Supreme Court has held the learned Magistrate has chosen to adopt the latter course and has treated the protest petition filed by the appellant as a complaint u/s 200 of the Code and has thereafter proceeded u/s 202 Cr.P.C. and kept the matter with himself for an inquiry in the facts of the case. There is nothing irregular in the manner in which the learned Magistrate has proceeded and if at the stage of sub-section (2) of Section 202 the learned Magistrate deems it fit, he may either dismiss the complaint u/s 203 or proceed in terms of Section 193 and commit the case to the Court of Session.

10. In *Smt. Mona Panwar Vs. The Hon"ble High Court of Judicature at Allahabad and Others*, it has been held that if on a reading of a complaint the Magistrate finds that the allegations therein disclose a cognizable offence and forwarding of the complaint to the police for investigation u/s 156(3) of the Code will not be conducive to justice, he will be justified in adopting the course suggested in Section 200 of the Code.

11. In the present case on 11.6.2009 the Magistrate has observed that FIR No. 80 of 2009 under Sections 419, 420, 423 and 465 IPC has already been registered on the intervention of the Court qua mutations No. 656 and 802. The complainant has tried to invoke the jurisdiction of this Court u/s 156(3) Cr.P.C. The FIR with regard to aforesaid mutations has already been registered, in such circumstance, it seems to be a misuse of process of law to order the concerned SHO to register another FIR. On the request of learned counsel for the

complainant, the case was adjourned. The Magistrate virtually refused to proceed u/s 156(3) Cr.P.C. on 11.6.2009. On 10.11.2010 the Magistrate has observed that as per report of SHO, cancellation report has been prepared with respect to FIR No. 80 of 2009. There are serious allegations of forgery by tampering mutations No. 802 and 656 which fact allegedly came to the knowledge of the complainant on 27.5.2009. The Magistrate ordered registration of the complaint and recording of preliminary evidence in the complaint.

12. In the petition, it has been stated that once the trial Court had taken cognizance of the offence mentioned in the complaint then in the facts and circumstances as mentioned in the complaint, the complaint was required to be investigated by the police. In Devarapalli Lakshminarayana Reddy and others (supra) the Supreme Court has held that power u/s 156(3) can be invoked by the Magistrate before he takes cognizance of the offence u/s 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 pre-cognizance stage and avail of Section 156(3). The stand taken in the petition by petitioner that Magistrate should have referred the case u/s 156(3) Cr.P.C. to police for investigation after taking cognizance is in conflict with the law laid down by the Supreme Court. The Magistrate after taking cognizance of the case has proceeded to follow the procedure prescribed in Chapter XV of the Code and in doing so, he has not committed any illegality. The Magistrate has still option to take the assistance of the police at appropriate stage u/s 202 Cr.P.C. The Magistrate has committed no error of jurisdiction while passing the impugned order. There is no merit in the petition and the same is dismissed. Cr. M.P. No. 747 of 2011 has become infructuous in view of disposal of the main petition.