
(2008) 05 DEL CK 0031

In the Delhi High Court

Case No : Writ Petition (Criminal) 1009 of 2007 and Criminal MAs 8813 of 2007 and 4862 of 2008

Harpal Singh Arora and Others

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 01-05-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 154(1), 156(1), 156(3), 173
Penal Code, 1860 (IPC) — Section 307, 324, 406, 498A

Citation : (2008) 1 DMC 826 : (2008) 103 DRJ 282 : (2008) ILR Delhi 50 Supp

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Ali Afsar, for the Appellant; Mukta Gupta, Senior Standing Counsel, Pawan Behl, APP, Indrani Ghosh and S.K. Bhaduri for R-2, for the Respondent

Judgement

S. Muralidhar, J.—The facts leading to the filing of this petition and the issues that arise for determination are set out in a detailed order passed by this Court on 24th April 2008 the following order which reads as under:

1. The challenge in the instant case is to an order dated 3rd August 2007 passed by the learned Metropolitan Magistrate ("MM"), New Delhi directing registration of the FIR and investigation into the allegations made in the complaint filed by the Respondent No.2 wife complaining of harassment and demand for dowry by the Petitioner No.1 husband and his relatives.

2. The marriage of the Respondent No.2 with the Petitioner No.1 took place on 19th September 2004. She filed a complaint on 24th April 2006 with the police which was taken up by the Crime Against Women ("CAW") Cell on 24th April 2006. The CAW cell examined the matter, looked into the evidence produced by the parties and on 5th December 2006 a report was prepared by the Sub Inspector ("SI") that the case was not related to dowry harassment. The SI then forwarded the matter to the Assistant Commissioner of Police ("ACP") who concurred with the findings on 8th January 2008.

3. Conscious of the fact that the CAW cell had decided to close the matter, the Respondent No.2 filed a complaint on 15th December 2006 in the court of the learned Additional Chief Metropolitan Magistrate ("ACMM") Delhi. The complaint is captioned as "Complaint u/s 200 CrPC read with 156 (3) CrPC for summoning the above named accused person and for registration of FIR against the above named accused persons." The prayer in the complaint is for the Court to "direct the concerned police authorities to register an FIR against all the aforesaid accused persons and to investigate and to take legal action against all the accused as per law, in the interest of justice."

4. Initially, on 2nd January 2007 the learned MM passed an order acknowledging the receipt of the complaint and directing it to be checked and registered. Thereafter, it was assigned to the Mahila Court. On 4th January 2007 while registering the complaint and hearing the submissions of learned counsel for the complainant, the learned MM noted that the "the complaint is pending with the CAW Cell, Amar Colony for the past about eight months, yet no concrete step is alleged to have been taken. Notice be issued to the in charge CAW Cell, Amar Colony to appear and file status report on 5th February, 2007."

5. On 4th April 2007 a status report dated 6th March 2007 was filed where, inter alia, the Enquiry Officer ("EO") of the CAW cell stated that "there are substantial evidence in the file against the allegations made by the complainant hence it is under consideration." On 6th June 2007 another status report was also filed. On 4th April 2007 the learned MM was informed by the EO that "there is evidence in support of the allegations made."

6. On 3rd August, 2007 the learned MM was provided with the status report which indicated that the complaint of Respondent No.2 had been closed at the CAW Cell. The learned MM then passed the impugned order which reads as under:

3.8.2007

Present: Complainant with counsel Sh. Amit Khanna.

SI Kusum Lata, EO, who has filed the status report. As per which the complaint of the complainant has been closed at the CAW Cell. As per directions, she has produced the original file. The same be taken on record.

Heard. Ld. counsel for complainant prays that the directions for registering the FIR be issued to the SHO, PS, Lajpat Nagar. SHO, PS Lajpat Nagar is directed to register the FIR and get the same investigated, in view of the allegations made.

Matter be listed for filing of status report on 18.9.2007.

7. Mr. Tarun Sharma, learned counsel for the Petitioner urges that the impugned order could not have been passed in the teeth of the report of the CAW Cell deciding to close the case and that the learned MM erred in law directing registration of the FIR by exercising the powers u/s 156 (3) CrPC. He submits that the judgment in *Rajinder Singh Katoch v. Chandigarh Administration* 7

(2007) SLT 584 support his submissions.

8. Ms. Indrani Ghosh, learned counsel appearing on behalf of the Respondent No.2 seeks to rely upon the judgment of the Supreme Court in *H.S. Bains, Director, Small Saving-Cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State (Union Territory of Chandigarh)*, wherein it has been held that the Magistrate is not bound to accept the closure report that may be submitted by the police u/s 173 CrPC. He may take cognizance of the offence on the basis of the original complaint and proceed to examine upon oath the complainant and the witnesses u/s 200 CrPC. While doing so the learned MM may hold or direct an inquiry u/s 202 if he thinks fit.

9. Ms. Mukta Gupta, learned Senior standing counsel appearing on behalf of the State seeks to rely upon the judgment in *Suresh Chand Jain Vs. State of Madhya Pradesh and Another*, . She submits that even before taking cognizance of the offence, the Magistrate can direct registration of the FIR u/s 156(3) CrPC and investigation by the police into the allegations.

10. It is clear that none of the judgments cited by the counsel on either side deals with the situation faced in the present case where an exhaustive enquiry has been conducted by the CAW Cell of the police into the allegations made by the Respondent No.2 and it has come to the conclusion the complaint must be closed. No additional facts have come on record and on the same set of allegations a complaint has been filed in the court u/s 200 CrPC. A prayer is also made for registration of the FIR u/s 156(3) CrPC and investigation by the police.

11. The question that arises is as to what is the nature of the report of the CAW cell in such a case. Can it be treated as a report of the investigation by the police, and is the learned MM then bound to deal with the said report before proceeding with the complaint u/s 200 CrPC and making an order u/s 156(3) CrPC?

12. Learned counsel for the parties wish to examine this question further and address arguments.

13. List on 1st May, 2008.

14. Interim order to continue.

15. A copy of order be given dusty to learned counsel for the parties."

2. Counsel for the parties addressed arguments today on the question highlighted in the above order dated 28th April 2008. Mr. Tarun Sharma, learned counsel appearing on behalf of the Petitioner refers to a judgment of the Division Bench of Punjab & Haryana High Court in *Ganesh Dass and Others Vs. State of Kerala and Another*, to contend that the investigation by the police after registering an FIR was entirely in the realm of Section 154 CrPC and that the Magistrate has no power to direct registering of an FIR. Mr. Sharma further submits that the report of enquiry by the CAW Cell in the instant case should be

considered to be a report of investigation by the police in terms of Section 173 CrPC and that the learned Magistrate ought not to have ignored the said report and proceeded to direct investigation u/s 156(3) CrPC. He nevertheless does not contest the proposition that in terms of the judgment of the Supreme Court in H.S. Bains, Director, Small Saving-Cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State (Union Territory of Chandigarh), it was open to the learned Magistrate to reject the closure report and proceed with the complaint in terms of Section 200 CrPC i.e. by recording the statement of complainant and taking further steps thereafter in accordance with law.

3. Ms. Gupta, learned Senior standing counsel appearing on behalf of the State submits that the CAW Cell was set up only to provide, at the pre-litigation stage, a facility for exploring the possibility of settling their disputes through mediation with the help of the police. She informs the Court that the CAW cell has now been notified as a police station. She submits that although there are no specific provisions in CrPC which contemplate a preliminary enquiry by the police on a complaint by a person aggrieved by the commission of a cognizable offence, certain observations of the Supreme Court in State of Haryana and others Vs. Ch. Bhajan Lal and others, implicitly recognize this practice by the police. Ms. Gupta is categorical in her submission that report of the CAW cell, prepared after the completion of an enquiry, is not a report of investigation within the meaning of Section 173 CrPC. She nevertheless submits that in a case like the present one where a detailed report of enquiry by the CAW Cell was available and taken on record by the learned Magistrate, the latter ought not to issue a direction to the police to investigate a case u/s 156(3) CrPC. He should apply his mind to the report of the CAW cell and set out even briefly the reasons why he still thinks it necessary to issue a direction for investigation. If after considering the report of the CAW cell the Magistrate is not inclined to order the investigation u/s 156(3) CrPC he may still decide to proceed u/s 200 CrPC by recording the statement of the complainant and thereafter if necessary direct a limited investigation u/s 202 CrPC.

4. Ms. Indrani Ghosh, learned counsel appearing on behalf of the Respondent No.2 submits that if this Court were to hold that the learned Magistrate has to discuss the reasons why he is not accepting the report of the enquiry by the CAW Cell then the matter should be remanded back to the learned Magistrate at the stage of considering the application u/s 156(3) CrPC and a direction given for a time bound disposal of the application in accordance with law.

5. The questions that arise for determination, as formulated in the previous order of this Court are:

(a) What is the nature of the report of enquiry of the CAW cell? Is it a report of the investigation by the police in terms of Section 173 CrPC?

(b) Is a Magistrate, when approached thereafter by a complainant with a complaint u/s 190 read with Section 200 CrPC along with an application u/s

156(3) CrPC seeking a direction for investigation by the police, bound to deal with the said report before disposing of the application u/s 156(3) CrPC and proceeding with the complaint u/s 200 CrPC?

6. This Court has to first consider the nature of the proceedings before the CAW Cell, which has now been notified as a police station. There is no dispute that the complaint, at the stage at which it is referred to the CAW Cell by the police, has not been registered as an FIR in terms of Section 154 (1) CrPC. The CAW cell, manned entirely by the police, is indeed a kind of pre-litigative alternate dispute resolution mechanism that might help in resolving a dispute before the criminal justice process is set in motion by registering an FIR. This may not be a statutorily recognised device. Nevertheless given the nature of matrimonial disputes, straightway registering an FIR, which triggers the criminal justice process, can place the parties in an inflexible position and thereafter less inclined to reconcile their differences. The offences u/s 498A and 406 IPC being cognizable and non-bailable, the process of anticipatory bail, arrest, regular bail, filing of charge sheet, if any, have to follow the registration of an FIR. The reference of the complaint to the CAW cell has the effect of postponing the activation of the criminal justice process by facilitating dialogue between the parties with the help of the police. Of course, while not all attempts at settlement may be successful, going by the official statistics, there is a reasonable measure of success at such efforts by the CAW Cell in Delhi. The enquiry by the CAW Cell is at the pre-FIR stage and is therefore only a preliminary enquiry. Even if, as in the instant case, it takes eighteen months to conclude, the report of the CAW Cell would only be that of a preliminary enquiry and nothing more. The question whether any legal sanctity is to be attached to such a report of preliminary enquiry requires to be addressed next.

7. The Supreme Court has in some of its decisions recognised the practice of the police conducting a preliminary enquiry before registering an FIR. In *P. Sirajuddin v. State of Madras* (1970) 1 SCC 597 in the context of a criminal complaint against a public servant, it was observed in the judgment of Mitter, J. (SCC, p.601): "Before a public servant, whatever his status, is publicly charged with acts of dishonesty which amount to serious misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. Earlier in *The State of Uttar Pradesh Vs. Bhagwant Kishore Joshi*, in the concurring opinion of Mudholkar J., it was expressly stated: (SCR pp. 86-87)

In the absence of any prohibition in the Code, express or implied, I am of the opinion that it is open to a police officer to make preliminary enquiries before registering an offence and making a full scale investigation into it.

8. In *Bhajan Lal*, in para 79 of the judgment, the Supreme Court expressed its agreement with the above "views" in *P. Sirajuddin* and *Bhagwant Kishore Joshi*. Therefore the practice adopted by the police of conducting a preliminary enquiry by the police even before registering an FIR has received the judicial imprimatur

and Therefore its legality cannot be questioned.

9. This Court would like to observe that since an enquiry by the CAW Cell might take some time. If at the end of such enquiry, the police decides not to register an FIR, the complainant cannot be without a remedy. There would be little purpose for the complainant to approach the Superintendent of Police (SP) u/s 154(3) CrPC since the report of the CAW Cell, at least in Delhi as is evident from the records of the instant case, is reviewed up to the level of the Deputy Commissioner of Police (DCP), an officer of an equivalent rank. The complainant can file a complaint before the learned MM u/s 190 read with Section 200 CrPC along with an application u/s 156(3) CrPC asking for a direction to the police to investigate the case. For this limited aspect the observations of the Supreme Court in para 16 of *Minu Kumari and Another Vs. The State of Bihar and Others*, are relevant, which reads as under: (SCC page 365)

16. When the information is laid with the police, but no action in that behalf is taken, the complainant is given power u/s 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint u/s 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused.

Any delay by the learned MM in taking cognizance of the offence in such event can be condoned by exercising power u/s 473 CrPC.

10. The decision of the Division Bench of the Punjab and Haryana High Court in *Ganesh Dass*, which was relied upon by the learned counsel for the petitioner is no longer good law as is evident from two decisions of the Supreme Court. The first is *Madhu Bala v. Suresh Kumar* 1997 JCC 532 (SC) where the Supreme Court held (JCC, p.534):

10. From the foregoing discussion it is evident that whenever a Magistrate directs an investigation on a "complaint" the police has to register a cognizable case on that complaint treating the same as the FIR and comply with the requirements of the above Rules. It, Therefore, passes our comprehension as to how the direction of a Magistrate asking, the police to "register a case" makes an order of investigation u/s 156(3) legally unsustainable. Indeed, even if a Magistrate does not pass a direction to register a case, still in view of the provisions of Section 156(1) of the Code which empowers the Police to investigate into a cognizable "case" and the Rules framed under the Indian Police Act, 1861 it (the police) is duty bound to formally register a case and then investigate into the same. The

provisions of the Code, Therefore, does not in any way stand in the way of a Magistrate to direct the police to register a case at the police station and then investigate into the same. In our opinion when an order for investigation u/s 156(3) of the Code is to be made the proper direction to the Police would be "to register a case" at the police station treating the complaint as the First Information Report and investigate into the same.

11. In *Suresh Chand Jain Vs. State of Madhya Pradesh and Another*, the Supreme Court reiterated the above position and observed: "For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so."

12. The procedure that is to be adopted by the learned Magistrate is determined by the collective reading of Section 200 and 190 CrPC. Before taking cognizance the learned Magistrate wishes to have an investigation done by the police then he can pass necessary direction to that effect u/s 156(3) CrPC. The following passage in *Madhu Bala* explains the position (JCC, p.534):

8. From a combined reading of the above provisions it is abundantly clear that when a written complaint disclosing a cognizable offence is made before a Magistrate, he may take cognizance upon the same u/s 190(1)(a) of the Code and proceed with the same in accordance with the provisions of Chapter XV. The other option available to the Magistrate in such a case is to send the complaint to the appropriate Police Station u/s 156(3) for investigation. Once such a direction is given under Sub-section (3) of Section 156 the police is required to investigate into that complaint under Sub-section (1) thereof and on completion of investigation to submit a "police report" in accordance with Section 173(2) on which a Magistrate may take cognizance u/s 190(1)(b) - but not under 190(1)(a). Since a complaint filed before a Magistrate cannot be a "police report" in view of the definition of "complaint" referred to earlier and since the investigation of a "cognizable case" by the police u/s 156(1) has to culminate in a "police report" the "complaint" - as soon as an order u/s 156(3) is passed thereon - transforms itself to a report given in writing within the meaning of Section 154 of the Code, which is known as the First Information Report (FIR). As u/s 156(1), the police can only investigate a cognizable "case", it has to formally register a case on that report.

13. This Court agrees with the submission of Ms. Gupta, learned Senior Standing counsel for the State that the report prepared by the police, in the CAW Cell, partakes the character of a report of preliminary enquiry and not that of a report of investigation as contemplated u/s 173 CrPC. It is clear from reading of the various provisions of Chapter XII CrPC that the report of investigation by the police is consequent upon the registration of the FIR as contemplated by Section 154(1) CrPC. The proceedings before the CAW Cell are anterior to the stage of registration of FIR. If after registration of the FIR the report of investigation by the police indicates that no cognizable offence is made out, then such a report is termed a closure/ cancellation report. After a closure report is filed by the police,

there are three courses of action open to the Magistrate as explained by the Supreme Court in H.S. Bains. Paras 6 and 7 of the said decision are instructive and read as under:

6. It is seen from the provisions to which we have referred in the preceding paragraphs that on receipt of a complaint a Magistrate has several courses open to him. He may take cognizance of the offence and proceed to record the statements of the complainant and the witnesses present u/s 200. Thereafter, if in his opinion there is no sufficient ground for proceeding he may dismiss the complaint u/s 203. If in his opinion there is sufficient ground for proceeding he may issue process u/s 204. However, if he thinks fit, he may postpone the issue of process and either enquire into the case himself or direct an investigation to be made by a Police Officer or such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. He may then issue process if in his opinion there is sufficient ground for proceeding or dismiss the complaint if there is no sufficient ground for proceeding. On the other hand, in the first instance, on receipt of a complaint, the Magistrate may, instead of taking cognizance of the offence, order an investigation u/s 156(3). The police will then investigate and submit a report u/s 173(1). On receiving the police report the Magistrate may take cognizance of the offence u/s 190(1)(b) and straightaway issue process. This he may do irrespective of the view expressed by the police in their report whether an offence has been made out or not. The Police report u/s 173 will contain the facts discovered or unearthed by the police and the conclusion drawn by the police there from. The Magistrate is not bound by the conclusions drawn by the Police and he may decide to issue process even if the Police recommend that there is no sufficient ground for proceeding further. The Magistrate after receiving the Police report, may, without issuing process or dropping the proceeding decide to take cognizance of the offence on the basis of the complaint originally submitted to him and proceed to record the statements upon oath of the complainant and the witnesses present u/s 200 Criminal Procedure Code and thereafter decide whether to dismiss the complaint or issue process. The mere fact that he had earlier ordered an investigation u/s 156(3) and received a report u/s 173 will not have the effect of total effacement of the complaint and Therefore the Magistrate will not be barred from proceeding under Sections 200, 203 and 204. Thus, a Magistrate who on receipt of a complaint, orders an investigation u/s 156(3) and receives a police report u/s 173(1), may, thereafter, do one of three things : (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence u/s 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report : (3) he may take cognizance of the offence u/s 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses u/s 200. If he adopts the third alternative, he may hold or direct an inquiry u/s 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be.

7. In *Abhinandan Jha and Ors. v. Dinesh Mishra*, (supra) the question arose whether a Magistrate to whom a report u/s 173(1) had been submitted to the effect that no case had been made out against the accused, could direct the police to file a charge-sheet, on his disagreeing with the report submitted by the Police. This Court held that the Magistrate had no jurisdiction to direct the police to submit a charge-sheet. It was open to the Magistrate to agree or disagree with the police report. If he agreed with the report that there was no case made out for issuing process to the accused, he might accept the report and close the proceedings. If he came to the conclusion that further investigation was necessary he might make an order to that effect u/s 156(3). If ultimately the Magistrate was of the opinion that the facts set out in the police report constituted an offence he could take cognizance of the offence, notwithstanding the contrary opinion of the police expressed in the report. While expressing the opinion that the Magistrate could take cognizance of the offence notwithstanding the contrary opinion of the police the Court observed that the Magistrate could take cognizance u/s 190(1)(c)". We do not have any doubt that the reference to "Section 190(1)(c)" was a mistake for "Section 190(1)(b)". That appears to be obvious to us. But Shri Kapil Sibal urged that the reference was indeed to Section 190(1)(c) since at that time Section 190(1)(c) included the words "or suspicion" and the Court had apparently taken the view that the Magistrate could take cognizance of the offence not u/s 190(1)(b) as if on a police report but u/s 190(1)(c) as if "on suspicion". We do not agree with this submission. Section 190(1)(c) was never intended to apply to cases where there was a police report u/s 173(1). We find it impossible to say that a Magistrate who takes cognizance of an offence on the basis of the facts disclosed in a police report must be said to have taken cognizance of the offence on suspicion and not upon a police report merely because the Magistrate and the Police arrived at different conclusions from the facts. The Magistrate is not bound by the conclusions arrived at by the police even as he is not bound by the conclusions arrived at by the complainant in a complaint. If a complainant states the relevant facts in his complaint and alleges that the accused is guilty of an offence u/s 307 Indian Penal Code the Magistrate is not bound by the conclusion of the complainant. He may think that the facts disclose an offence u/s 324 Indian Penal Code only and he may take cognizance of an offence u/s 324 instead of Section 307. Similarly if a police report mentions that half a dozen persons examined by them claim to be eye witnesses to a murder but that for various reasons the witnesses could not be believed, the Magistrate is not bound to accept the opinion of the police regarding the credibility of the witnesses. He may prefer to ignore the conclusions of the police regarding the credibility of the witnesses and take cognizance of the offence. If he does so, it would be on the basis of the statements of the witnesses as revealed by the police report. He would be taking cognizance upon the facts disclosed by the police report though not on the conclusions arrived at by the police. It could not be said in such a case that he was taking cognizance on suspicion.

14. Therefore, there is no manner of doubt that whether a complaint is referred to the CAW Cell no FIR is registered at that stage. The report of preliminary enquiry by the police in the CAW Cell is not a report of investigation u/s 173 CrPC. Question (a) is answered accordingly.

15. In the instant case the records show that a detailed report of preliminary enquiry was prepared by the CAW Cell over a period of almost 18 months and was reviewed by the officers at various levels up to the DCP before concluding that no cognizable offence was made out. When the complaint was filed by the complainant before the learned MM and was taken up on 4th January 2007 the Court was informed "the complaint is pending with the CAW Cell, Amar Colony for the past eight months...". Later when on 3rd August 2007 the learned MM was shown the report of the enquiry of the CAW Cell the learned MM observed "the same be taken on record." Thereafter, a direction was issued to the police "to register an FIR and get the same investigated in view of the allegations made."

16. Considering the fact that the learned MM called for the report of the CAW Cell, which is fairly detailed, the proper course of action before ordering an investigation u/s 156(3) would have been to examine that report before deciding to issue a direction for investigation. When the police in the CAW Cell has come to conclusion that no cognizable offence is made out, the Magistrate cannot brush aside that conclusion lightly. Although that the said conclusion of the CAW Cell is not binding on the Magistrate at that stage, since his order is a judicial one he must give reasons, however brief, why he is inclined to order investigation notwithstanding the said report. Question (b) is answered accordingly.

17. Therefore, the course of action is available to the Magistrate in a case like the instant one is to either to accept the conclusion arrived at by the CAW Cell and decline the prayer for ordering investigation u/s 156(3) CrPC or give reasons and order an investigation u/s 156(3) CrPC. If after registering the FIR and carrying out investigations the police again file a cancellation or closure report, then the Magistrate can adopt one of the three courses as indicated in H.S. Bains.

18. Even where a Magistrate, on a perusal of the report of the CAW Cell decides not to order investigation by the police u/s 156(3) CrPC he may proceed u/s 200 CrPC by recording the statement of the complainant and if according to him, the commission of cognizable offence is made out, he may take cognizance and proceed further in accordance with law including ordering a limited investigation u/s 202 CrPC if he thinks it to be necessary before issuance of process to the accused.

19. The net result of the above discussion is that the learned MM in the instant case must now be asked to recommence the proceedings from the stage where the complaint was filed by the complainant with a prayer for a direction u/s 156(3) CrPC. Although the complaint appears to have been filed by the

complainant by titling it as a complaint u/s 200 CrPC read with Section 156(3) CrPC, the prayer was confined to seeking a direction for investigation. This, however, is a technical hitch and need not prejudice the complainant. The learned MM is directed to proceed in the matter by treating the complaint as one u/s 200 CrPC with a separate prayer for a direction u/s 156(3) CrPC for investigation by the police. In other words even if the learned MM declines, for any reason, the prayer u/s 156(3) he will nevertheless have to deal with the complaint u/s 200 CrPC in accordance with law, in the manner explained hereinabove.

20. In that view of the matter, the order dated 3rd August 2007 passed by the learned MM is hereby set aside. The case is remanded to the learned MM for recommencing the proceedings from the stage at which they were as on that date. The learned MM will now consider the report of the CAW Cell before disposing of the prayer u/s 156(3) CrPC within two months from the date of receipt of this order and in any event not later than 11th July 2008. He will proceed in the matter in terms of this judgment. It is made clear that at the stage of deciding the prayer u/s 156(3) CrPC the Magistrate is not required to hear the Petitioner here but only the complainant.

21. The petition is disposed of. All the pending applications stand disposed of accordingly.

22. A copy of order be given dusty to learned counsel for the parties. A certified copy of the order be sent to the learned MM concerned immediately along with the trial court record.