

(2010) 07 MP CK 0057
In the Madhya Pradesh High Court

Jagdish Prasad Gupta

APPELLANT

Vs

State of M.P. and Gyaan Singh

RESPONDENT

Date of Decision : 09-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 190, 200, 482

Penal Code, 1860 (IPC) — Section 166, 294, 488, 506

Prevention of Corruption Act, 1988 — Section 13, 19, 7

Citation : (2011) 1 MPLJ 255

Hon'ble Judges : Indrani Datta, J;A.K.Shrivastava, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.

By this revision application the applicant has called in question the pregnability of the impugned order dated 28/7/2009 passed by learned Special Judge, Gwalior in a criminal case which has not yet been registered directing respondent No. 1 to investigate the complaint filed by the respondent No. 2-Gyaan Singh u/s 156(3) of the Code of Criminal Procedure (in short "the Code").

A private complaint was submitted by respondent No. 2 before learned Special Judge appointed under the Prevention of Corruption Act, 1988 (in short "the Act") praying to register the complaint under Sections 294, 166, 506 later part and 488 of IPC as well as u/s 7, 13(a) of the Act against the applicant on 28/7/2009 and to convict him. According to the complainant/respondent No. 2, the applicant, who is a public servant holding the post of Tahsildar, made demand of illegal gratification of Rs. 25,000/- to get the name of complainant mutated in the revenue record and also showered filthy abuses to him. The applicant also gave threat to cause hurt.

The learned Special Judge recorded the statement of the complainant u/s 200 of the Code and thereafter directed the Station Officer Incharge of the concerning

police station to enquire the matter u/s 156(3) of the Code and to submit the report. Against this order, this revision application has been filed by the applicant.

The contention of Shri V.K. Saxena, learned senior counsel for the applicant, is that once learned Special Judge took cognizance of the case, the investigation u/s 156(3) of the Code was not at all warranted and the impugned order directing the concerning police station to investigate the matter u/s 156(3) of the Code is wholly without jurisdiction. In support of his contention learned Counsel has placed heavy reliance on some decisions of Supreme Court viz. Tula Ram and Others Vs. Kishore Singh, , Mohd. Yousuf v. Afaq Jahan (SMT) and Anr. (2006) 1 SCC (Cri) 460 , Sakiri Vasu Vs. State of U.P. and Others, and A.R. Antulay Vs. Ramdas Srinivas Nayak and Another, .

By placing reliance on the decision of Supreme Court State of T.N. Vs. M.M. Rajendran, it has been contended by learned senior counsel that without obtaining sanction to prosecute the applicant u/s 19 of the Act the complaint could not have been filed and cognizance cannot be taken. Learned senior counsel has also placed reliance on another decision of Supreme Court Parkash Singh Badal and Another Vs. State of Punjab and Others, .

On the other hand, Shri Suryavanshi, learned Counsel appearing for respondent No. 1, argued in support of the impugned order and has submitted that the objection which has been raised by this revision application is premature and learned Special Judge was in her domain to direct investigation u/s 156(3) of the Code and, therefore, learned Special Judge did not commit any error in passing the impugned order. In support of his contention learned Counsel has placed reliance on Nirmaljit Singh Hoon Vs. The State of West Bengal and Another, . Learned Counsel has also placed reliance on A.R. Antulay's case (supra) (para 14, 21, 30 and 31) and also placed reliance on some other decisions of Supreme Court viz. Maksud Saiyed Vs. State of Gujarat and Others, , Mohd. Yousuf Vs. Smt. Afaq Jahan and Another, and Suresh Chand Jain v. State of M.P. and Anr. (2001) 2 SCC 628. By replying the contention of learned senior counsel for the applicant about the sanction u/s 19 of the Act it has been submitted by learned Counsel for respondent No. 1 that during enquiry sanction is not at all required and after the investigation is over, sanction from the sanctioning authority as envisaged u/s 19 of the Act would be obtained. Learned Counsel further submitted that if the investigating agency comes to the conclusion that there is no material against the applicant in the matter, final report will be submitted and, hence, this revision application be dismissed.

Although respondent No. 2/complainant has been served, but he has not put his appearance and none is appearing for him.

Having heard learned Counsel for the parties, we are of the considered view that this revision application deserves to be allowed.

Chapter XV of the Code which includes Section 200 relates to complaints to Magistrates and according to us, this Chapter lays down the procedure

empowering Magistrates to take cognizance of an offence. Chapter XIV of the Code deals with the conditions requisite for intimation of proceedings. On going through Section 190 of the Code which is in Chapter XIV, we find that it speaks about taking of the cognizance of an offence by Magistrates. According to Sub-section (1) of this Section subject to the provisions of this XIV Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under Sub-section (2), may take cognizance of any offence-

- (a) upon receiving a complaint of facts which constitutes such offence;
- (b) upon a police report such facts;
- (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

According to us, cognizance indicates the point when a Magistrate or a Judge takes judicial notice of an offence. It is entirely different thing from initiation of proceedings rather it is the condition to the initiation of the proceedings by the said Magistrate or Judge. Indeed, cognizance is taken of a case and not of a person. The term "cognizable offence" although has been defined in the Code, but the word "cognizance" has not been defined. In broader spectrum we may say that the word "cognizance" would mean to become aware of and when it is used in context to a Court or Judge, it would mean to take notice of judiciary. Under the Code it would mean and indicate the point when a Magistrate or a Judge takes judicial notice of an offence. We may also rely the meaning of the word "cognizance" from Corpus Juris Secundum, which reads thus:

COGNIZANCE, COGNISANCE, or CONUSANCE. In its ordinary meaning, the word has been defined as apprehension by the understanding, conscious recognition or identification, knowledge or notice. It has been said that while in ordinary parlance, to "have cognizance of" means to have knowledge of, the legal meaning of the word "cognizance" is broader than its ordinary meaning; it not only implies knowledge of the subject matter, but also the power to deal with it. In its broader sense, the word has been defined as meaning judicial knowledge, or jurisdiction; the right to take notice of and determine a cause.

Section 156 of the Code which is in Chapter XII pertains to police officer's power to investigate cognizable offence.

By keeping the abovesaid provisions, namely, Sections 190(1)(a), 200 and 156(3) of the Code in juxtaposition to each other as well as by reading these provisions vis a vis to each other, it emerges that when a Magistrate or a Judge at pre- cognizance stage orders for investigation u/s 156(3) of the Code, he is not bound to record the statement of complainant. We have no scintilla of doubt by taking a view that the action of a Magistrate after examination of complainant on oath amounts to taking cognizance as envisaged u/s 200 of the Code. We may further add that once the Magistrate after scrutinizing the complaint, the

sworn statements and other material comes to the conclusion that he can take cognizance of an offence, there is no need to have resort to Section 156(3) of the Code. By visualizing the scope of these three provisions we are of the firm view that whether a Magistrate or a Judge at pre-cognizance stage orders for investigation u/s 156(3) of the Code, he is not bound to record the statement of complainant, but after taking cognizance and examining the complainant administering him oath u/s 200 of the Code, the Magistrate or Judge cannot direct the concerning police to investigate the matter u/s 156(3) of the Code because the object of the examination of complainant u/s 200 of the Code is to find out whether the complaint is justifiable or whether it is frivolous or vexatious and in that situation, the Magistrate or Judge must not refer the complaint to a police officer and after examining the complainant he is required to proceed according to law as provided under Chapter XV of the Code. According to us, the Magistrate or Judge before taking cognizance or we may say at pre-cognizance stage may order for investigation u/s 156(3) of the Code and in that situation, he is not required to record the statement of complainant, but once the complainant has been examined and the cognizance has been taken, the Magistrate or Judge cannot direct investigation provided u/s 156(3) of the Code.

By applying the aforesaid principles of law and the legal position in the present factual scenario, we find that a private complaint was submitted by the complainant/respondent No. 2 before learned Special Judge on 28/7/2009 praying to register and convict the applicant under Sections 294, 166, 506 later part and 488 of IPC as well as under Sections 7, 13(a) of the Act. After filing the complaint, the statement of complainant u/s 200 of the Code was recorded by learned Special Judge on the same date viz. 28/7/2009 and, therefore, according to us, as soon as the statement of complainant u/s 200 of the Code has been recorded, it would mean that the cognizance has been taken. Hence, since cognizance has already been taken by the learned Special Judge, it was not in her domain rather it was without jurisdiction to pass an order for issuance of letter to the concerning police station to enquire the matter u/s 156(3) of the Code and to submit the report.

The decisions which are cited by learned Counsel for the respondent are not applicable in the present case because in none of those cases after taking cognizance of the offence it was directed by the Magistrate or the Judge to make enquiry u/s 156(3) of the Code. Learned Counsel for respondent placed reliance on para 22 of the decision of Nirmaljit Singh Hoon (supra). In this decision too it has been held that the Magistrate can take cognizance u/s 200 of the Code of the offence made out in the complaint and then to examine the complainant and his witnesses. In para 14, 21, 30 and 31 of A.R. Antulay case (supra) nothing has been held by the Supreme Court that after the cognizance has been taken by the Magistrate or Judge u/s 200 of Cr.P.C. he can direct investigation u/s 156(3) of the Code. On going through the decision of Supreme Court Maksud Saiyed (supra), this Court finds that an order u/s 156(3) of the Code was passed by the Chief Judicial Magistrate relying on the basis of allegation made in the complaint

petition and directed the police authorities to investigate the complaint. In this case nowhere the complainant was examined u/s 200 of the Code nor cognizance was taken under that provision. Even otherwise, on going through para 4 of the said decision, this Court finds that against the order of Magistrate directing to investigate the matter u/s 156(3) of the Code, the respondent filed an application u/s 482 of the Code for quashing the complaint and for the reasons stated in the judgment by the High Court the said application was allowed and the Bombay High Court quashed the FIR. The Supreme Court concurred with the view of the High Court quashing the FIR and dismissed the appeal. According to us, this decision is not at all helpful to the respondent in any manner.

The decision of Supreme Court Mohd. Yousuf (*supra*) is also not applicable in the present case rather it supports the case of the applicant because in para 11 of this decision it has been held that any judicial Magistrate before taking cognizance of the offence can order investigation u/s 156(3) of the Code, if he thinks so and he is not bound to examine the complainant on oath because he was not taking cognizance of any offence therein. Hence, according to us, if the power is to be exercised by Magistrate directing to investigate the matter u/s 156(3) of the Code, those powers should be exercised before taking cognizance of an offence. Another decision Suresh Chand (*supra*) placed reliance by learned Counsel for the respondent is again not applicable in the present case because in that case the complaint which was submitted was forwarded by the Magistrate for registering FIR and to make investigation and the Magistrate did not take cognizance of the case nor recorded the statement of complainant and in that situation, when cognizance was not taken by the Magistrate on the complaint and it was directed to investigate the matter as provided u/s 156(3) of the Code. This action of the Magistrate was upheld by the this Court and the decision of this Court was affirmed by the Apex Court by dismissing the appeal. But, in the present case cognizance was already taken by learned Special Judge after examining the complainant, hence, this decision placed reliance by learned Counsel for the respondent is also not applicable in the present case.

For the reasons stated hereinabove we are unable to uphold that part of the impugned order by which learned Special Judge has directed to investigate the matter u/s 156(3) of the Code to the police station concerned and to submit its report, that part of the impugned order is accordingly set aside. This revision application is hereby allowed to the extent indicated hereinabove.