

(2020) 10 SHI CK 0400

In the High Court Of Himachal Pradesh

Case No : ?Criminal Writ Petition No. 15 Of 2019

Jagdish Singh

APPELLANT

Vs

State Of H.P And Others

RESPONDENT

Date of Decision : 12-10-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 420, 425, 465, 468, 471
Code Of Criminal Procedure, 1973 — Section 154, 156(3), 173, 190, 210, 210(2)

Citation : (2020) 10 SHI CK 0400

Hon'ble Judges : Sureshwar Thakur, J;Chander Bhusan Barowalia, J

Bench : Division Bench

Advocate : R.K. Gautam, Megha K. Gautam, Hemant Vaid, Ashwani Sharma, J.S. Guleria

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J

1. The writ petitioner, purportedly became victim, of, cognizable offences, constituted, under Sections 420, 425, 465, 468, 471, 120B, and, under Section 34 of the Indian Penal Code, inasmuch as, co-respondents No. 5 to 11, through theirs, purportedly hatching, a, criminal conspiracy, theirs forging the signatures, of, the petitioner, upon, the apposite Power of Attorney, and whereafter, fraudulent sale deed(s), vis-à-vis, the writ property, became executed, with the vendees concerned, before, the sub-Registrar concerned. The writ petitioner, as apparent, on a reading, of, Annexure P-1, hence embodying the afore factum, and cast, as an application, under Section 156(3) of Cr. PC, made therethrough, a, motion, before the learned JMIC concerned. Upon the afore application, the learned Chief Judicial Magistrate, Chamba, made a reference, to, the SHO Chowari, Chamba. However, it becomes further apparent, on a reading, of, Annexure P-3, annexure whereof embodies therein, qua an order of dismissal, as withdrawn, becoming made, on, the apposite complaint, as became preferred therebefore, by the complainant, writ petitioner herein. However, the afore order

of dismissal, as withdrawn, of, the apposite complaint, hence made, by the learned Judicial Magistrate concerned, was yet, with a liberty to the complainant/writ petitioner, to, institute it afresh. Nonetheless, preceding therewith, as apparent, on a reading, of, Annexure P-7, vis-à-vis, the SHO, Police Station Chowari, Chamba, after making inquiries, vis-à-vis, the subject matter of the complaint, his concluding, vis-à-vis, no cognizable offence, being made, against the private respondents, (i) and further he has made echoing(s) therein, vis-à-vis, the remedy available to the complainant/writ petitioner, being comprised in, his making an endeavor, to, correct the revenue records.

2. Now, the effect, of, the afore dismissal, as withdrawn, of, the apposite complaint, through an order, made by the learned Chief Judicial Magistrate, (1) hence upon a motion, qua therewith, being made theretofore, by the writ petitioner, has to be construed, vis-à-vis, the trite factum, (ii) qua, thereafter also whether the writ petitioner holding any enlivened cause of action, for, ensuring, qua the preliminary inquiry, as made by the SHO concerned, upon a reference made to him, by the learned Chief Judicial Magistrate concerned, being legally deficient, and also, rather empowering him, to make a valid endeavor, before the Court that, yet, an FIR, qua therewith, being directed to be lodged, by, the SHO concerned.

3. The answer to the afore is purveyed, by, Section 210, of, the Cr. PC, provisions whereof stand extracted hereinafter:

210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.-

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence, which is the subject matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

4. Since for the reasons ascribed hereinafter, the institution of an application, by an aggrieved victim, vis-à-vis, any perpetration(s) upon him, of, cognizable

offence(s), and, as become constituted, under Section 156(3) of Cr. PC, becoming construable to be, a complaint, (a) and, obviously, it not being construable to, empower the Magistrate, to, assume cognizance, as, he would assume, upon, a report filed under Section 173 of the Cr. PC, (b) and further when during the phase, of, investigation, underway, qua the appositely lodged FIR, and rather the learned Magistrate also becomes seized with a motion, made under Section 156(3) of Cr. PC, besides when in both, the subject matter, or the offences, embodied, is common or similar, (c) thereupon, the learned Magistrate concerned, is, empowered to stay, the further progression(s), upon, the inquiry launched, by, him, upon, a motion, made before him, under Section 156(3) of Cr. PC (d) and as also become(s) empowered, to, call for a report from the police concerned, vis-à-vis, the fate of the investigation(s), conducted by it, upon, a report preferred by the victim, under Section 154 of Cr. PC. Furthermore, thereafter the Magistrate concerned, is, through the mandate, as cast in sub-section 2, of, Section 210 of Cr. PC, becomes empowered, to, upon his receiving a report, under Section 173 of Cr. PC, from the Investigating Officer concerned, and its unveiling, vis-à-vis, commission of any cognizable offence(s), by the accused, (e) inasmuch as thereupon, his becoming, statutorily facilitated, to, assume valid cognizance(s), both, upon, the sub judice before him, a, motion, under Section 156 (3) of the Cr.P.C, and, also upon, the report, preferred before him, under Section 173 of Cr. PC, by the Investigating Officer concerned, especially, made, hence upon, the latter concluding investigation(s), upon a report, made under Section 154, of the Cr. PC. However, if the Magistrate concerned, does make(s), an objective analysis, hence appertaining to a report, preferred under Section 173 of Cr. PC, qua it rather not being relatable to the accused's, in a complaint case or upon the Magistrate, concluding that no cognizance, being enjoined to be made, upon, a police report, preferred before him, by the Investigating Officer, and as become instituted, under, Section 173 of Cr. PC, (f) thereupon, his being empowered to proceed with the complaint case, which was earlier stayed by him, on anvil of investigation(s), being underway, through, a, reporting, being made before the police station concerned, by the aggrieved victim, under Section 154 Cr. PC. A deep reading, of, the afore subtle nuances, of, the apposite provisions, borne in Section 210 of Cr. PC, does enable this Court, (g) to conclude that, since apart from the petitioner, instituting an application, under Section 156(3), of, Cr. PC, his conspicuously, not casting a report under Section 154 of Cr. PC, before the police station concerned, rather, upon, an, inquiry being made thereon(s) by the SHO concerned, the latter rather concluding qua no cognizable offence being committed, by the accused, (h) and whereafter, the learned Judicial Magistrate concerned, made an order, on the afore application, qua it being dismissed, as withdrawn (i) whereupon, the, afore does constitutes a grave statutory omission, and, its, begets, sequels, vis-à-vis, the learned Magistrate concerned, becoming neither enjoined, to, either stay the further progressions, being made, upon a complaint, preferred under Section 156 (3) of Cr. PC, (ii) nor was their any statutory occasion, for, the learned Magistrate concerned, to, await, for any investigation, being concluded, by the Investigating

Officer concerned, and thereafter, a report being preferred, before him, under Section 173 of Cr. PC, (j) nor thereafter there was any statutory occasion, for, the learned Magistrate concerned, to, try both the complaint case, and, the offences constituted in the report, made under Section 173 of Cr. PC, on an investigation, conducted by the police, on a motion being made, under Section 154 Cr. PC, nor the mandate of sub- section 3, of, Section 210 of Cr. PC, was recourseble, by the learned Magistrate concerned. Contrarily, rather when only, a, singular application, made under Section 156(3) of Cr. PC, hence became preferred, by the aggrieved victim, petitioner herein, before the learned Magistrate, concerned, (i) and ultimately, when there was, an order of dismissal, as withdrawn, hence made thereons, by the learned Judicial Magistrate concerned, (ii) and, order, whereof, remained unchallenged, (iii) whereupon, reiteratedly with there being no other motion, hence recoured by the aggrieved victim, except the afore, rather emphatically, the one embodied in Section 154 of Cr. P.C, remaining unrecoursed (iv) thereupon, this Court is constrained to conclude, that the order, of, dismissal of the complaint, as withdrawn, hence acquiring conclusive and binding force. Moreover, the preliminary inquiry, if any, conducted prior thereto, on a reference, being made, by the learned Chief Judicial Magistrate concerned, on a motion, made therebefore, by the victim, under Section 156 (3) of Cr. P.C, also not capitalizing the petitioner, to make any valid espousal, that this Court, may make, a, mandamus, upon the respondents, to yet proceed, to discard the preliminary inquiry, made by the SHO, concerned, after, a, reference made to him, under Section 156 (3), Cr. P.C, and rather, to, make the strived, mandamus, upon, the respondents concerned, (i) otherwise available, only upon, his recouring the provisions, of, Section 154, of, Cr. PC and, whereupon, yet no FIR, being lodged rather only, an, illegal preliminary inquiry being made.

5. Be that as it may, respondents No. 1 to 4, in their reply, furnished to the extant writ petition, raise contention(s) therein, vis-à-vis, respondent No. 2, ensuring the making, of, an inquiry, qua the grievances, ventilated by the writ petitioner, rather, through Tehsildar Bhatiyat, however, fate thereof, being unknown, hence leading co-respondent No. 2, through letter No. CBA-Peshi-M-26(7)/2019/42489/1, dated 20.12.2019, ordering for a fresh inquiry, being conducted. Moreover, it is also spelt out in the reply, to, the writ petition instituted, by, co-respondent No. 2, vis-à-vis, show cause notice, being issued, to, the then SDO Civil Bhatiyat, Sh. Ashwani Sood, as well as, to, the then Tehsildar Bhatiyat, Sh. Shamsher Dhiman, for, dereliction of duties. Consequently, the afore made contention(s), as borne in the reply furnished, to the writ petition, by, co-respondent No. 2, are, rather suggestive, vis-à-vis, a domestic inquiry, being in contemplation, for, any dereliction being made, by, the then SDO Civil Bhatiyat, Sh. Ashwani Sood, as well as, by, the then Tehsildar Bhatiyat, Sh. Shamsher Dhiman. In sequel, no cause of action, yet survives or remains subsisting, inasmuch as, it being comprised in the investigating officer, being yet seized, of, a, report, under Section 154 of Cr. PC., whereas, obviously

when it visibly remained un-recoursed, (i) thereupon, reiteratedly, the petitioner, is, disabled, to, make, any valid espousal before this Court, vis-à-vis, the preliminary inquiry, as made by the SHO concerned, being discarded, and, this Court, proceeding to make an order, for, institution of an FIR, and, appertaining to theirs, committing misconduct, or theirs, purportedly, derelicting, in, registering the sale deed(s) concerned, which become(s) challenged, through the extant writ petition, to be fraudulently executed, through false/forged, registered General Power(s) of Attorney.

6. The afore factual conspectus, as appears from the records, of, the extant writ petition, does, obviously unfold(s), vis-à-vis, (i) with the writ petitioner, withdrawing his complaint, constituted under Section 156(3) of Cr. PC, and yet, his ventilating grievances, before this Court, vis-à-vis, a direction being issued, upon, the respondents concerned, to, lodge an FIR, qua the cognizable offences, as become embodied, in, Annexure P-1, hence being, an, unvindictable endeavor (ii) conspicuously, when the learned JMIC concerned, upon, a request, made before him, by the complainant, for, dismissing the complaint, as withdrawn, with liberty to him to file it afresh, hence made an affirmative order thereon. Since the afore complaint, wherefrom the criminal machinery, became galvanized, hence became dismissed, thereupon, fault lines or flaws, if any, committed by the SHO concerned, to hence preceding the afore order, his not lodging an FIR, qua the purportedly committed cognizable offences, rather, is/are beyond, and, outside the mandate, of, expostulations, borne in a judgment rendered, by, Hon'ble Apex Court, in Lalita Kumari vs. Government of Uttar Pradesh and others, 2014 (2) SCC 1, neither the mandate borne therein, can be construed, to, become breached, by, the contesting respondents nor any directions, in consonance therewith, are enjoined to be made by this Court.

7. For the afore stated reasons, the application under Section 156(3) of Cr. PC, is construable, to be a complaint, and, is not construable to be, a, recouring, vis-à-vis, the mandate of Section 154 of Cr. PC (a) hence the elicited assistance, if any, by the learned Magistrate, from the police agency cannot assume the colour, of, a reporting made, to, the police, under, Section 154 of Cr. PC. Reiteratedly, any endeavor of the learned Senior counsel for the petitioner, to, draw, any strength, from a judgment, of, Hon'ble Apex Court, rendered in a case (supra), and its carrying therein, vis-à-vis, registration of an FIR, qua cognizable offence, being a dire statutory necessity, cast upon the SHO, concerned (b) is a misrecoursed endeavour especially, when vis-à-vis, cognizable offences, embodied in the apposite motion, rather the SHO concerned, merely carried a valid preliminary inquiry, nor hence, the mandate, of, the verdict (supra) becomes available, vis-à-vis, the petitioner (c) also does not, give the espoused leverage, to the learned counsel for the writ petitioner, given, all the aforestated reasons meted, by this Court, hence for dispelling the vigour of attraction(s) thereof qua the prevailing factual matrix, hereat. Contrarily, with this court, making, the, hereinabove conclusion, vis-à-vis, the apposite application, hereat, vis-à-vis, the provisions borne, in, Section 156(3), Cr. P.C, relevant provisions

whereof, stands extracted hereinafter:

"(3) Any Magistrate empowered under Section 190 may order such an investigation as above mentioned"

(c) hence, empowering the learned Magistrate concerned, wherebeforewhom, the afore application, becomes preferred, to try it, as a complaint. Also, the afore conclusions become derivable, from, the statutory language, borne in sub-Section 3 of Section 156 of Cr. P.C, and from, the apparent signification, acquired, by all the statutory phrases, borne therein, whereupon(s) the Magistrate concerned, becomes empowered, to, assume jurisdiction(s), upon, a motion, made, under Section 156 (3) of, Cr. P.C, hence in the manner(s) contemplated, under Section 190 of Cr. P.C, provisions whereof, stands extracted hereinafter :

"190. Cognizance of offences by Magistrates- (1) Subject to the provisions of this 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 constitute such offence;

(b) upon a police report of 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.

(2) The chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try."

(a) and, when therein occurs a statutory prescription, vis-à-vis, valid cognizance, becoming assumable, by the learned Magistrate concerned, upon, (a) a complaint, being preferred, before him, (b) upon a police report, being preferred before him, and, when for the reasons aforestated, the criminal machinery, became not galvanized, upon, recourse being made, vis-à-vis, Section, 154 of Cr. P.C, hence by the victim, petitioner herein, rather, when he recoured, the mandate, of sub-Section 3, of, Section 156 of Cr. P.C, (c) and hence thereon(s), there was, a, statutory empowerment(s), bestowed, upon, the learned Magistrate concerned, to, assume jurisdiction thereon, rather as a complaint, to be tried by him, (d) besides a statutory bestowment was made upon him, qua if even during the pendency of the complaint, to, as and when if he deems fit, make a reference, for an inquiry, to be made by the police concerned. Since, as aforestated, the learned Magistrate concerned, upon being seized, with an application, preferred, under Section 156 (3) of Cr. P.C, made a reference, for, an inquiry to the Investigating Officer concerned, and whereafter, the complainant made a motion, seeking dismissal, as withdrawn, of, the complaint, motion whereof became accepted, through, a binding of conclusive order, being made thereons, by the learned Magistrate concerned, (e) hence, reiteratedly the

assumption, of, jurisdiction, by, the learned Magistrate concerned, inasmuch as, his making, a reference, to, the Investigating Officer concerned, to, inquire into the offence(s), embodied in the complaint, preferred under Section 156 (3) of Cr. P.C, does, squarely fall within the domain, of, the statutory jurisdiction, conferred upon him. Moreover, when in sequel thereof, an order, of, dismissal, as withdrawn, became recorded, hence upon, the afore complaint, whereupon, the petitioner, becomes fully estopped, to, seek from this Court, an, order, for, an FIR, qua the offences, being directed to be lodged.

8. Be that as it may, since the order, made by the learned Magistrate concerned, comprised in, Annexure P-3, hence dismissing, as withdrawn, Annexure P-1, yet, is with a liberty to the petitioner, to, file the same afresh, thereupon, the afore reserved liberty, to, the petitioner, to, file a fresh application, vis-à-vis, the cause of action, embodied in Annexure P-1, can, strictly in accordance with law, and only, if permissible, be availed, by the writ petitioner, before the learned Magistrate concerned.

9. With the afore observations, the extant writ petition is dismissed. All pending applications are disposed of.