

**(1998) 01 RAJ CK 0053**

**In the Rajasthan High Court**

**Case No :** Criminal Miscellaneous Petition No. 900/96

Mahant Baba Madhav Das

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

**Date of Decision :** 19-01-1998

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(3), 156(6), 157, 157(1)  
Penal Code, 1860 (IPC) — Section 120B, 406, 408, 417, 418

**Citation :** (1998) CriLJ 4341 : (1999) 1 RLW 345 : (1999) 1 WLC 334 : (1998) 1 WLN 49

**Hon'ble Judges :** Amaresh Kumar Singh, J

**Bench :** Single Bench

**Advocate :** H.R. Soni, for the Appellant; C.R. Punia, for Non-petitioner No. 2 and R.K. Bishnoi, Public Prosecutor, for the Appearing Parties

**Final Decision :** Allowed

## Judgement

Amaresh Ku. Singh, J.—Heard the learned counsel for the petitioner, learned Public Prosecutor for non-petitioner No. 1 and Mr. C.R. Punia, learned counsel for non-petitioner No. 2.

2. By this petition u/s 482 of the Criminal Procedure Code, the petitioner has prayed that the first information-report No. 14 dated 12-1-96 registered at Police Station Maha Mandir, Jodhpur in respect of offences Under Sections 406,408, 417, 418 419, 420, 421, 422, 423, 467, 468, 469, 471 and 120B of the Indian Penal Code be quashed.

3. The learned Public Prosecutor has Submitted that the allegations made in the first-information-report are vague.

4. Learned counsel for non-petitioner No. 2 has opposed this petition and prayed that it may be dismissed. It is further Submitted by him that the Station House Officer of the Police Station Maha Mandir has Submitted final report u/s 173 of the Criminal Procedure Code after completing the investigation and, therefore,

this petition should be treated as infructuous because when the final report has been Submitted by the police it is not necessary to quash the first-information-report.

5. I have carefully considered the arguments advanced by the parties and perused the F.I.R. No. 14 dated 12-1-96 registered at Police Station Maha Mandir. After carefully considering the facts and circumstances of the case and the allegations made in the first-information-report, I am of the opinion that the first-information-report No. 14 of 1996 registered at Police Station Maha Mandir deserves to be quashed on the ground that it does not contain any facts which may be said to constitute the alleged offences, Nor, this first-information-report contains such facts which may be said to raise a reasonable suspicion that the offences alleged in the first-information-report have been committed.

6. The First Information Report No. 14 of 1996 of Police Station Maha Mandir was registered by the Station House Officer of the Police Station in compliance of the order dated 05-12-95 passed by the learned Addl. Chief Judicial Magistrate No. 3, Jodhpur under Sub-section (3) of Section 156 of the Criminal Procedure Code. The endorsement dated 12-01 -96 made by the Station House Officer of the Police Station Maha Mandir, Jodhpur shows that he did not apply his mind to the contents of the complaint forwarded to him for the purpose of ascertaining whether there was or was not reasonable ground for raising the suspicion that one or more of the cognizable offences mentioned in the complaint had been committed and, that he registered the case in compliance of the order passed by the learned Addl. Chief Judl. Magistrate No. 3, Jodhpur, as he was bound to comply with that order.

7. The order dated 05-12-95 passed by the learned Addl. Chief Judicial Magistrate No. 3, Jodhpur does not indicate that the learned Addl. Chief Judicial Magistrate applied his mind to the contents of the complaint Submitted before him to find out whether the complaint contained any facts constituting one or more offences alleged in the complaint. In other words, neither the learned Additional Chief Judicial Magistrate No. 3, Jodhpur, who directed the Police u/s 156(6), Cr.P.C. to register the case, on the basis of the complaint, nor the Station House Officer, Police Station Maha Mandir who registered the first-information-report No. 14 of 1996, applied his mind to the contents of the complaint to find out whether any offence was or was not committed by the accused-persons.

8. In the complaint Submitted by non-petitioner No. 2 allegations of various offences were levelled against as many as 15 persons namely, Madhav Das, Onkar Singh, Lalas Prasad, Santosh Kumar, Chandra Prakash Gupta, Suraj Kumar, Ram Chandra Rathore, Kamal Kishore, Surendra Kumar, Ganga Singh, Vikaram Singh, Naresh Chandra, Krishna Kumar, Nathu Lal and Naresh Singh.

9. According to the averments made in the complaint, late Shri Yukti Ramji created a trust in respect of his own property as well as the property inherited by him from his Guru. A declaration regarding creation of the Trust was made on

13-09-68 and registration was done on 19-09-68. The office of the Trust was set up at Ram Dwara. Mandore Road, Jodhpur and the properties for which the Trust had been created included some properties situated in district Bareilly (U.P.). Shri Yukti Ramji acted as Mahant and Managing Trustee and he appointed 7 other trustees during his life-time. Madhav Das (accused No. 1 as shown in the complaint) was appointed as incharge of Ram Dwara and he was given a direction to look after the movable and immovable properties of the Ram Dwara and he used to report about the administration of the Trust by him. It was also alleged in the complaint that the Ram Dwara, Richhola Tarachand had sufficient income on account of Substantial offerings by the devotees and, therefore, the accused-persons entered into a conspiracy with a view to grab the properties of the Trust and, in the year 1978, Madhav Das (accused No. 1) stopped Submitting the accounts. In 1981, Madhav Das was removed from the post of Trustee and he was asked to hand over the management of the Trust. Madhav Das approached the civil Court and obtained an injunction order and continued to be the incharge of the Ram Dwara.

10. Para No. 8 and Para No. 9 of the complaint are relevant because they contain the allegations relating to commission of various offences mentioned in the complaint. In para No. 8 it is alleged that the suit filed in the Court of District & Sessions Judge was dismissed and the accused persons after entering into a conspiracy to grab the property of the Ram Dwara, got a co-operative society registered on 10-07-95 and, in that connection, Submitted an affidavit and some documents. It is also alleged that the accused-persons entered into the conspiracy to grab the property of the Ram Dwara. No facts relating to alleged offence have been given in para No. 8 of the complaint.

11. In para No. 9 of the complaint, it is alleged that Madhav Das (accused No. 1) who was entrusted with the duty of looking after the property and management of the Ram Dwara but he entered into conspiracy with other accused persons, committed breach of trust, tampered with the documents and thereby committed the offences. No facts have been given in para No. 9 of the complaint to show that any offence was committed by anyone or more of the 15 persons named as accused in the complaint.

12. Since Non-petitioner No. 2 had filed the complaint before the learned Addl. Chief Judicial Magistrate No. 3, Jodhpur and that complaint formed the basis for registering F.I.R. No. 14 of 1996 because the complaint had been forwarded under Sub-section (3) of Section 156 to the Police Station for investigation, it is proper to refer to the provisions of Clause(a) of Section 190 of the Criminal Procedure Code which indicates what the complaint must contain.

13. In Clause(d) of Section 2 of the Criminal Procedure Code, the complaint has been defined in the following words :

"complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or

unknown, has committed an offence, but does not include a police-report.

Explanation.- A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint and the police officer by whom such report is made shall be deemed to be the complainant.

The definition of "complaint" requires that the complaint should contain allegations that some person, whether known or unknown, has committed an offence and that it should have been made with a view that action should be taken on it. Clause (a) of Sub-section (1) of Section 190 of the Criminal Procedure Code requires the complaint to contain "facts which constitute such offence". As indicated by the words "upon receiving a complaint of facts which constitute such offence", shows that the complaint which may be Submitted before the Magistrate under Clause(a) of Sub-section (1) of Section 190 of the Criminal Procedure Code must contain not only the allegation that an offence has been committed but should also contain the facts constituting the offence. The reason for insisting on "facts which constitute such offence" is not difficult to be found out. A mere allegation that a certain person has committed an offence, without stating the facts which constitute the offence, cannot enable the Magistrate or the police officer to apply his mind independently to the case in order to ascertain whether any offence has or has not been committed. The Magistrate before whom the complaint is filed is required to apply his mind independently and judicially to the complaint Submitted before him in order to find out whether any offence has or has not been committed. Whatever the complainant alleges cannot be accepted as correct. The very fact that the Magistrate is required to act independently in the matter and that he should form his own opinion regarding the commission of one or more offences shows that the facts of the case must be brought to his notice. This is why clauses (a), (b) and (c) of Sub-section (1) of Section 190 of the Criminal Procedure Code expressly require that the complaint or the police-report or other information must contain facts constituting the alleged offence. If a complaint contains only the allegations and does not contain the facts constituting the offence such a complaint would not be a complaint contemplated under Clause(a) of Sub-section (1) of Section 190 of the Criminal Procedure Code.

14. So far as the powers of the Magistrate under Sub-section (3) of Section 156 of the Criminal Procedure Code are concerned, Sub-section (3) of Section 156 empowers the Judicial Magistrate, who is competent to take cognizance u/s 190, to order that an investigation be made as provided u/s 156 of the Criminal Procedure Code. This section presumes that the case in which the power to direct investigation is exercised by the Magistrate, would be one in which the Police Officer incharge of the Police Station may commence an investigation in accordance with the provisions of Section 156 and 157 of the Criminal Procedure Code. In other words, the powers under Sub-section (3) of Section 156 of the Criminal Procedure Code cannot be exercised in those cases, in which the police

officer cannot commence an investigation u/s 156 read with Section 157 of the Criminal Procedure Code. Unless the Magistrate is satisfied on the basis of the facts before him that one or more of the cognizable offences which can be investigated by the Station House Officer of the Police Station u/s 156 read with Section 171 of the Criminal Procedure Code, appear to have been committed he cannot exercise his power under Sub-section (3) of Section 156 of the Criminal Procedure Code. If the power to direct investigation is exercised in contravention of Sub-section (3) of Section 156 of the Criminal Procedure Code, the order would be without jurisdiction and such an order would not confer any authority on the Station House Officer of the Police Station to commence an investigation.

15. Section 156 of the Criminal Procedure Code does not point the ground for commencing an investigation u/s 156 of the Criminal Procedure Code. Sub-section (1) of Section 157 indicates the basis on which investigation may be commenced. Sub-section (1) of Section 157 reads,

If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered u/s 156 to investigate....

These words clearly indicate that before the Station House Officer of the Police Station commences an investigation he must be satisfied whether from the information received by him or otherwise there is reason to suspect that a cognizable offence has been committed. This shows that he has to apply his mind independently in order to find out whether he should or should not commence investigation and in order that he may form an opinion independently under Sub-section (1) of Section 157 of the Criminal Procedure Code, there must be facts necessary for raising a suspicion that one or more cognizable offence or offences have been committed. If such facts are not available to the Station House Officer of the Police Station and what is communicated to him is mere allegation devoid of facts constituting the offence he would not be in a position to independently apply his mind for the purpose of taking action under Sub-section (1) of Section 157 of the Criminal Procedure Code. It is not as if on a vague allegation which is not accompanied by a statement of facts showing the commission of a cognizable offence can be a sufficient basis of commencing the investigation.

16. In the instant case, the complaint filed by non-petitioner No. 2 does not contain facts constituting the offence though it contains the allegations in a vague manner that all the accused have committed the alleged offences. The complaint did not satisfy the requirement of Clause(a) of Sub-section (1) of Section 190 of the Criminal Procedure Code nor it contained any facts which could have enabled the learned Addl. Chief Judicial Magistrate No. 3, Jodhpur and the Station House Officer of the Police Station Maha Mandir to arrive at the conclusion that there was reason to suspect the commission of the cognizable offence. In these circumstances, it must be held that the grounds necessary for commencing an investigation, as required by Sub-section (1) of Section 157 of the Criminal Procedure Code are altogether missing in the case and, therefore,

the registration of the first-information-report and commencing of the investigation by the Station House Officer of Police Station Maha Mandire amounted to abuse of the process of law.

17. Since there was no justification for registering the case and commencing of investigation, it is a fit case in which the F.I.R. No. 14 of 1996 should be quashed.

18. For the reasons mentioned above, the petition is allowed. The First Information Report. No. 14 of 1996 of the Police Station, Maha Mandir (Jodhpur) is hereby quashed.