

**(2005) 08 UK CK 0028**

**In the Uttarakhand High Court**

**Case No : Criminal Revision No. 329 of 2001**

Ram Saran Nautiyal

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

**Date of Decision : 05-08-2005**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 32

Criminal Procedure Code, 1973 (CrPC) — Section 155, 156, 156(1), 156(3), 2

**Citation : (2006) CriLJ 1713**

**Hon'ble Judges : J.C.S. Rawat, J**

**Bench : Single Bench**

**Advocate : Sudhir Singh, for the Appellant; A.G.A., for the Respondent**

## **Judgement**

J.C.S. Rawat, J.—Heard Sri Sudhir Singh learned Counsel for the revisionist and learned A.G.A. and perused the record.

2. This is a criminal revision against the order dated 10-12-1998 passed by Sri Ahmad Shamim, the then Special Judge, Gangsters & Anti-Social Activities (Prevention) Act, Garhwal Mandal, Dehradun.

3. The facts relating to this revision, in brief, are that respondent No. 2 Lata Gupta filed a complaint before the Special Judge u/s 2/3 of the U.P. Gangsters & Anti-social Activities (Prevention) Act against the revisionist, Harish Sehgal, Harbans Kapoor M.L.A., Dehradun, Vinod Chamoli and Surendra Agrawal with the allegations that there is a registered educational trust in the name of "Guru Ram Das Educational Trust" (for short-the "trust") which runs Guru Ram Das Academy since 1989 at 214-Rajpur Road, Dehradun. The trust has its property at 210, Rajpur Road, Dehradun and is the owner and in possession thereof. The accused persons are influential persons and have formed a gang of land Mafias and are indulging in grabbing the lands. The accused persons are connected with politicians. On 2-12-1998 at about 12 noon the accused persons along with hundreds of persons raided the premises of the trust and after breaking open the lock of the school, indulged into marpeet with the guards. They also threw the

belongings of the school children from their rooms and indulged into rioting. Some of the rioters led by the accused persons were drunken. The matter was brought to the notice of the police but the police did not do anything. The complainant prayed that the matter may be enquired into by the C.B.I.

4. The learned trial Court after recording the statement of the complainant u/s 200 and her witnesses u/s 202, Cr.P.C. and after hearing the parties directed the CBI to investigate the matter and report as expeditiously as possible preferably within two months. Feeling aggrieved by the said order the present revision has been filed before this Court.

5. In the instant case the question involved for consideration is whether the learned Special Judge was empowered to order investigation u/s 156(3), Cr.P.C. or u/s 202, Cr.P.C. to the CBI. There are three provisions under the Code of Criminal Procedure (for short "Cr.P.C.") by which a Magistrate can order investigation to be conducted. They are Sections 155, 156 and 202, Cr.P.C. Section 155, Cr.P.C. relates to the investigation into non-cognizable offences whereas Section 202 only enables a Magistrate to have the assistance of an investigation conducted either by the police or by any other person, for the limited purpose of deciding whether or not there is sufficient ground for proceeding with the complaint. Sections 156 and 202 of the Cr.P.C. are relevant for the purpose of the present case. Section 156, Cr.P.C. empowers the Magistrate to send the case for investigation. u/s 156, Cr.P.C. the word "Court" has not been used. There are two types of provisions under the Code. In some of the provisions the word "Magistrate" has been mentioned and in some of the provisions the word "Court" has been used. The intention of the legislature is clear by using the words "Magistrate" or the "Court". While deciding the question pertaining to the investigation the Magistrate having jurisdiction over the police station had the power to send the matter for investigation. Meaning thereby it becomes a part of the investigation. When the Court has been used the findings of the Court are binding on all concerns with regard to judicial decisions. If the power of a Magistrate to order an investigation to C.B.I, into non-cognizable offences cannot be traced in the above provision, it is not possible to trace such power in any other provision of the Cr.P.C. What is contained in Sub-section (3) of Section 156, is the power to order the investigation referred to in Sub-section (1), because the words "order such an investigation as above mentioned" in Sub-section (3) are unmistakably clear as referring to the other Sub-section. Thus the power is to order an "officer in charge of a police station" to conduct investigation. The two expressions "police station" and "officer in charge of a police station" have been given separate definitions in the Code. Section 2(o) of the Code defines "Officer in charge of a police station" which includes, when the officer in charge of the police station is absent from the station house or unable from illness or other cause to perform his duties, the police officer present at the station house who is next in rank to such officer and is above the rank of Constable or, when the State Government so directs, any other police officer so present. Section 2(s) defines a "police station" that police station" means any

post or place declared generally or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf. The primary responsibility for conducting investigation into the offences vests with the police officer. Section 156(3), Cr.P.C. empowers the Magistrate to direct such officer in charge of the police station to investigate in non-cognizable offences over which such Magistrate has jurisdiction. In this connection Section 36, Cr.P.C. is also relevant in which it has been provided that the police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station. This means that any other police officer, who is superior in rank to an officer in charge of a police station, can exercise the same powers of the officer in charge of a police station and when he so exercises the power he would do it in his capacity as officer in charge of the police station. Section 36, Cr.P.C. is not meant to substitute the magisterial power envisaged in Section 156(3), Cr.P.C. though it could supplement the powers of an officer in charge of a police station. It is permissible for any superior officer of police to take over the investigation from such officer in charge of the police station either suo motu or on the direction of the superior officer or even that of the Government. In *State of Karnataka v. Thammairah* 1999 Cri LJ 53 the Magistrate directed the police to register a case and investigate the matter. The order was challenged before the High Court and the High Court cannot order other than to the officer who is superior in rank to an officer in charge of the police station to conduct the investigation. As such a superior officer can also issue the direction to the officer subordinate to him. I am in complete agreement with the findings given by the Kerala (Karnataka) High Court in this regard.

6. A plain reading of Section 6 of the Delhi Special Police Establishment Act, 1946, reveals that the power to send the matter for investigation to the CBI is only vests in the High Court and the Hon'ble Supreme Court under Articles 226 and 32 of the Constitution and Section 482, Cr. P.C. The Constitution gives unfettered powers to the High Court as well as to the Supreme Court to send the matters to C.B.I, for investigation. In such cases the permission is not required from the State Government or the Union of India. The learned trial Court has referred the decision of *State of West Bengal and Others Vs. Sampat Lal and Others*, . The learned trial Court has relied upon the observations of the Apex Court that while dealing with Section 6 of the Delhi Special Police Establishment Act, 1946 held that the said Act does not apply when the Court gives a direction to the CBI to conduct investigation and the learned Counsel for the parties did not dispute this position before the Apex Court. The trial Court has emphasised the word used in the judgment when the Court gives a direction to conduct the investigation. The trial Court has got the power to send the matter for investigation to the police. The observations of the Apex Court are not applicable in the present case. Firstly, the power has been conferred upon the Court. As I have discussed early Sections 156(3) and 202, Cr. P.O. this power has been

conferred upon the Magistrate and not on the Court. Apart this the Court while relying on the said decision has not gone into the entire judgment. In that case there was no formulated law that the Court in Sampat Lal's case (supra) held that the Magistrate has the power to direct CBI to conduct the investigation. The directions in Sampat Lal's case were issued by the High Court. The High Court exercised its power to send the matter for investigation to CBI. As such Sampat Lal's case is not applicable to the case of the present case.

7. In view of the above discussion I am of the view that the impugned order dated 10-12-1998 is liable to be set aside. As such the impugned order is quashed. A perusal of the record reveals that the revisionist was an ex-Chairman in the Zila Panchayat, Dehradun and now he is not holding any post in any department of the Government. However, looking to the special circumstances of the case the matter be referred to CB, CID, Dehradun for investigation.