

(2017) 04 DEL CK 0021

In the Delhi High Court

Case No : CRL.M.C. 666 of 2017 and CrI. M.A. 2837 of 2017 (stay)

Ramesh Awasthi

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision : 13-04-2017

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), Section 190

Citation : (2017) 4 ADDelhi 260

Hon'ble Judges : Ms. Mukta Gupta, J.

Bench : Single Bench

Advocate : CRL.M.C. 666 of 2017 & CrI. M.A. 2837 of 2017 (stay); Mr. Ramesh Gupta, Sr. Advocate with Mr. Bharat Sharma, Mr. Saurabh Jain and Ms. Neha Gupta, Advocates, for the Petitioner; Mr. Ashok Kr. Garg, APP with SI Neeraj Kumar, PS New Ashok Nagar, for the Respondents; Mr. Smarhar Singh and Ms. Kusum Pandey, Advocates, for the Respondent No. 2; CRL.M.C. 667 of 2017 & CrI. M.A. 2839 of 2017 (stay); Mr. Rahul Tyagi, Mr. Saurabh Jain, Ms. Neha Gupta, Advocates, for the Petitioner; Mr. Amit Ahlawat, APP with SI Neeraj Kumar, PS New Ashok Nagar, for the Respondents; Mr. Smarhar Singh and Ms. Kusum Pandey, Advocates, for the Respondent No. 2; CRL.M.C. 668 of 2017 & CrI. M.A. 2841 of 2017 (stay); Mr. Rahul Tyagi, Mr. Saurabh Jain and Ms. Neha Gupta, Advocates, for the Petitioner; Mr. Ravi Nayak, APP with SI Neeraj Kumar, PS New Ashok Nagar, for the Respondents; Mr. Smarhar Singh and Ms. Kusum Pandey, Advocates, for the Respondent No. 2

Final Decision : Disposed off

Judgement

Ms. Mukta Gupta, J.—The three petitions are being decided together as they challenge the common impugned order dated 10th February, 2017 whereby on the application of respondent No. 2 under Section 156 (3) Cr.P.C. the learned Metropolitan Magistrate having territorial jurisdiction over the area of PS New Ashok Nagar directed SHO PS New Ashok Nagar to register zero FIR and thereafter to transfer the same to the concerned Police Station having jurisdiction in the matter as per procedure.

2. Learned counsels for the petitioners submit that the learned Metropolitan Magistrate vide the impugned order dated 10th February, 2017 despite noting the fact that there was not even a single allegation of commission of any offence within the territorial jurisdiction of PS New Ashok Nagar and allegations related to the workplace of the complainant which is situated at Sector-11, NOIDA and not within the jurisdiction of PS New Ashok Nagar entertained the application and passed the impugned order as noted above.

3. It is submitted that a Magistrate exercising jurisdiction under Section 156 (3) Cr.P.C. cannot direct registration of FIR and investigation thereon to a Station House officer of a Police Station which does not fall within its local territorial jurisdiction. Though the learned Trial Court noted that the decisions relied upon by the respondent No.2 were not applicable to the facts of the case and no part of cause of action arose within its jurisdiction still proceeded to issue directions on the ground that there was no bar against the same as Section 156 (3) Cr.P.C. states that any Magistrate empowered under Section 190 Cr.P.C. may order an investigation under Section 156 (3) Cr.P.C. and Section 190 Cr.P.C. which provides for cognizance of offence by a Magistrate does not debar a Magistrate from taking cognizance of an offence committed outside its territorial jurisdiction. Reliance is placed on the decision of the Orissa High Court reported as 1995 CriLJ 1486 Brij Kishore Singh & Ors. v. Smt. Nutan Singh & Anr. and 236 (2017) DLT 612: 2017 (161) DRJ 305 Nishu Wadhwa v. Siddharth Wadhwa & Anr. of this Court.

4. Learned counsel for the respondent No. 2 submits that Section 156 (3) Cr.P.C. does not bar a Magistrate to issue directions to a SHO to register FIR, investigate a matter beyond its territorial jurisdiction and comply with its statutory duties. Issue of jurisdiction is relevant only at the stage of inquiry and trial and since while deciding the application under Section 156(3) Cr.P.C. the complaint is at the pre-cognizance stage, there is no bar to the exercise of the jurisdiction by the Magistrate. Reliance is placed on the decisions reported as 1999 (8) SCC 728 Satvinder Kaur v. State (Govt. of NCT of Delhi) & Anr., 1999 (8) SCC 686 Trisuns Chemical Industry v. Rajesh Agarwal & Ors., 2001 (7) SCC 679 State of M.P. v. Bhooraji & Ors. and 2010 (1) SCC 1 Rasiklal Dalpatram Thakkar v. State of Gujarat & Ors.

5. The issue whether a Magistrate can direct registration of FIR and investigation to an officer in charge of a police station beyond its territorial jurisdiction came up for consideration before the Supreme Court in the decision reported as 2001 (3) SCC 333 Central Bureau of Investigation through S.P., Jaipur v. State of Rajasthan & Anr. The Supreme Court held that sub-section (3) of Section 156 empowers the Magistrate to order an "officer in charge of a police station" to conduct an investigation referred to in sub-section (1). The words "order such an investigation as above mentioned" in sub-section (3) are unmistakably clear as referring to the other sub-section. The two expressions "police station" and "officer in charge of a police station" have been given separate definitions in the

Code in Sections 2(o) and 2(s) respectively. A place or post declared by the Government as police station, must have a police officer in charge of it and if he, for any reason, is absent in the station house, the officer who is in the next junior rank present in the police station, shall perform the function as officer in charge of that police station. The primary responsibility for conducting investigation into offences in cognisable cases vests with such police officer. Section 156 (3) of the Code empowers a Magistrate to direct such officer in charge of the police station to investigate any cognisable case over which such Magistrate has jurisdiction. Though a Magistrate under Section 156(3) can only direct an officer in charge of a police station to conduct such investigation and not a superior police officer, nevertheless, when such an order is passed, any police officer superior in rank of such officer, can as well exercise the power to conduct an investigation, and all such investigations would then be deemed to be the investigation conducted by the officer in charge of a police station. Section 36 of the Code is not meant to substitute the magisterial power envisaged in Section 156 (3) of the Code, 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. However, the magisterial power cannot be stretched under Section 156(3) beyond directing the officer in charge of a police station to conduct the investigation. A Magistrate cannot direct CBI to conduct investigation in exercise of its powers under Section 156 (3) of the Code.

6. In *CBI v. State of Rajasthan* (supra) the Supreme Court also noted with approval the decision of the Kerala High Court reported as 1994 CriLJ 1288 (Ker) *State of Kerala v. Kolakkacam Moosa Haji* wherein the direction by the Magistrate to the Inspector General of Crimes for investigation under Section 156 (3) Cr.P.C. was challenged by the State before the High Court and the High Court held that the Magistrate cannot order any police officer, other than one who is in charge of a police station to conduct the investigation, though the government in exercise of its executive power can authorize any superior officer to investigate a case and such direction can be issued by a higher officer to his subordinate officer in the police department. This decision of the Kerala High Court was upheld by the Supreme Court in *Crl. Appeal No. 410/1994* vide order dated 8th April, 1997.

7. No doubt as held by the Supreme Court Section 154 Cr.P.C. does not circumscribe the jurisdiction of an officer in charge of a police station to enter into an investigation on an offence committed beyond the territorial jurisdiction of his Police Station however, Section 177 Cr.P.C. provides that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. This Court had the occasion to consider the legal issue involved in the present petitions i.e. whether a Magistrate can issue directions to officer in-charge of a police station beyond its territorial jurisdiction in *Nishu Wadhwa* (Supra) and it was held: 15. Learned counsel for the petitioner justifying the order passed by the learned Metropolitan Magistrate, relies upon

the decision of the Supreme Court reported as 1999 (8) SCC 728 *Satvinder Kaur v. State (Govt. of NCT of Delhi) & Anr.* wherein in respect of territorial jurisdiction to try an offence, the Hon'ble Supreme Court held that the SHO has statutory authority under Section 156 (3) Cr.P.C. to investigate any cognisable case for which the FIR is lodged and at the stage of investigation there is no question of interference under Section 482 Cr.P.C. on the ground that the Investigating officer has no territorial jurisdiction. After the investigation is over, if the Investigating officer arrives at a conclusion that the cause of action for lodging the FIR had not arisen within his territorial jurisdiction, he is required to submit a report accordingly under Section 170 Cr.P.C. and to forward the case to the Magistrate empowered to take cognizance of the offence. 16. The issue in the present petition is not whether the SHO concerned or the Investigating officer investigating the offence had the territorial jurisdiction to investigate the offences but whether the learned Metropolitan Magistrate who passed the order dated 22nd June, 2015 had the jurisdiction to pass directions on an application under Section 156 (3) Cr.P.C. to the SHO of a police station which did not fall within its territorial jurisdiction. 17. Section 154 Cr.P.C. casts a duty on the officer in-charge of a police station to register the first information, if the same discloses the commission of a cognisable offence, even if the offence is not committed within its territorial jurisdiction. However, a Magistrate exercises its jurisdiction under Section 156 (3) Cr.P.C. Section 156 Cr.P.C. provides as under:

156. Police officer's power to investigate cognisable case. - (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognisable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above- mentioned. 18. Therefore, Section 156 (1) Cr.P.C. requires that any officer in-charge of a police station may, without the order of a Magistrate, investigate any cognisable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII. Further sub-section (3) of Section 156 Cr.P.C. is qualified by sub-section (1) of Section 156 Cr.P.C. Thus though Section 154 Cr.P.C. does not qualify the territorial jurisdiction of the officer in-charge who receives the information to register the same, however, Sections 155 and 156 Cr.P.C. qualify the territorial jurisdiction of the officer in-charge to investigate offences within the limits of such station. Therefore, a Magistrate can direct the officer in-charge of a police station to investigate a cognisable offence which is within the jurisdiction of its local area. Thus a Magistrate is required to adhere to the territorial jurisdiction and in case it is not

empowered to try the said offence, it has no jurisdiction to pass order under Section 156 (3) Cr.P.C.

19. While deciding the issue whether Magistrate has power under Section 156(3) Cr.P.C. to direct CBI to conduct investigation into any offence, the Supreme Court in the decision reported as (2001) 3 SCC 333 Central Bureau of Investigation v. State of Rajasthan & Anr. held:

"5. For deciding the present question we may refer to the powers of the Magistrate in ordering an investigation. There are three provisions in the Code of Criminal Procedure (for short "the Code") by which a Magistrate can order investigation to be conducted. They are Sections 155, 156 and 202 of the Code. Among them Section 155 concerns only with the investigation into non-cognisable 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. Hence we need not vex our mind with those two provisions. It is Section 156 of the Code which is relevant for the present purpose as it deals with investigation into cognisable offences. The section reads thus: "156. Police officer's power to investigate cognisable cases.- (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognisable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII. (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. (3) Any Magistrate empowered under Section 190 may order such an investigation as above mentioned." If the power of a Magistrate to order an investigation by CBI in non-cognisable cases cannot be traced in the above provision, it is not possible to trace such power in any other provision of the Code. 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" as under: " 2. (o) "officer in charge of a police station" 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" as under: "2.(s) "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;" It is clear that a place or post declared by the

Government as police station, must have a police officer in charge of it and if he, for any reason, is absent in the station house, the officer who is next in the junior rank present in the police station, shall perform the function as officer in charge of that police station. The primary responsibility for conducting investigation into offences in cognisable cases vests with such police officer. Section 156(3) of the Code empowers a Magistrate to direct such officer in charge of the police station to investigate any cognisable case over which such Magistrate has jurisdiction."

[Emphasis Added]

20. Sections 177 to 184 Cr.P.C. provides for territorial jurisdiction to try the offence which qualification is not prescribed under Section 154 Cr.P.C. but under Sections 155 and 156 Cr.P.C. Hence the Magistrate cannot pass directions under Sections 155 and 156(3) Cr.P.C. to an officer in-charge of a police station beyond the territorial jurisdiction of the area which has the power to inquire into or try under the provisions of Chapter XIII.

8. Reliance of the learned Trial Court on the decision in *Satvinder Kaur* (supra) is misconceived. In the said case the High Court quashed the FIR on the ground of lack of territorial jurisdiction of the police to investigate the offence. Supreme Court held that it was true that territorial jurisdiction was prescribed under sub-section (1) of Section 156 to the extent that the officer can investigate any cognisable case which a court having jurisdiction over the local area within the limits of such police station would have power to inquire into or try under the provisions of Chapter XIII. However, in view of sub-section (2) to Section 156 no proceeding of a police officer in any such case can at any stage be called in question on the ground that such officer was not empowered to investigate and in view of sub-section (2) of Section 156 the Supreme Court held that after investigation is completed and the result of such investigation is required to be submitted as provided under Sections 168, 169 and 170 and further if the investigating officer arrives at the conclusion that the crime was not committed within the territorial jurisdiction of the police station then the FIR can be forwarded to the police station having jurisdiction over the area in which crime is committed.

9. As noted above Section 154 Cr.P.C. unlike Section 156 (1) does not prescribe for a restriction on registration of FIR in respect of an offence committed within the territorial jurisdiction of the police station. Thus even if the offence may have been committed beyond the territorial jurisdiction of a police station, the officer in-charge of the police station would still register the FIR and investigate thereon, however, a Magistrate under Section 156 (3) Cr.P.C. cannot direct to an officer in-charge of a police station beyond its territorial jurisdiction.

10. The Division Bench of this Court in the decision reported as 2001 (1) JCC Delhi 16 *Ajay Raj Sharma v. State* also considered the scope of power vested in a Magistrate under Section 156 (3) Cr.P.C. Setting aside a direction issued by the

learned Metropolitan Magistrate directing the Commissioner of Police to transfer further investigation to the Deputy Commissioner of Police, Crime Branch it was held that the Metropolitan Magistrate had no authority in law to transfer the further investigation to any other investigating agency. The Division Bench held that a Metropolitan Magistrate can under Section 156 Cr.P.C. get a case investigated only by the officer in-charge of a police station within its local jurisdiction and it cannot take the case out of its jurisdiction by transferring it to another authority or agency.

11. Similar view was expressed by the Division Bench of the Bombay High Court in the decision reported as 2008 CriLJ 1496 State of Maharashtra v. Ibrahim A. Patel. It was held :

5. The Short point for consideration which arises is whether the Magistrate in exercise of the powers under Section 156(3) of Cr. P.C. can direct the investigation by State CID"

6. Section 156(1) provides that "any police officer in charge of a police station may, without the order of a Magistrate, investigate any cognisable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII." Sub-section (2) thereof provides that "no proceedings of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this Section to investigate" and Sub-section (3) which is relevant for consideration provides that "Any Magistrate empowered under Section 190 may order such an investigation as above mentioned."

7. Plain reading of Sub-section (3) of Section 156 would, therefore disclose that the Magistrate who is empowered to take cognizance of an offence in terms Section 190 of Cr. P.C. can direct the investigation thereof by any police officer in charge of the police station, who is empowered to perform his duties within the local area demarcated for such police station and that such local area lies within the jurisdiction of the Court of the Magistrate.

8. Section 14(1) provides that "subject to the control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local limits of the areas within which the Magistrate appointed under Section 11 or under Section 13 may exercise all or any of the powers with which they may respectively be vested under this Code. Provided that the Court of a Special Judicial magistrate may hold its sitting at any place within the local area for which it is established". Sub-section (2) of Section 14 provides that "except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district". Section 173(2)(i) provides that as soon as the investigation is completed, the officer in-charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by giving the details specified in the said Section.

Section 177 of Chapter XIII provides that "every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed".

9. Conjoint reading of Section 14, 156(3), 173 and 177 of Cr. P.C. would reveal that the authority of the Magistrate to direct the investigation to a police officer relate to his powers to take cognizance of such offence and secondly to a police officer, who can function within the jurisdiction of the local limits of his Court and this authority or empowerment does not travel beyond those limits. Section 190 of Cr. P.C. speaks of the power of the Magistrate "to take cognizance" of an offence. The Code does not define the said expression. But, it is settled law that the cognizance tantamount to taking judicial notice of an offence. It is different from merely initiating proceedings. Commencement of criminal proceedings relating to an offence by itself does not amount to taking cognizance. 14. The provisions of law comprised under the Code of Criminal Procedure nowhere empower the Magistrate to direct the investigation to the police officer other than one attached to the police Station situated within the territorial jurisdiction of the Court of such a Magistrate. Such powers undoubtedly can be exercised by this Court in writ jurisdiction or even while exercising the powers under Section 482 of Cr. P.C. It is settled law that a Magistrate does not enjoy inherent power. His powers are those specified under the Code and has to function strictly in accordance with the provisions of law made thereunder. The provisions of law comprised under the Cr. P.C. cannot be amended otherwise than the procedure known to law. The issuance of Manual of Instructions cannot be said to cause amendment to the Code of Criminal Procedure, as rightly submitted by the learned APP. The provisions comprised under Clause 2, Chapter III of the Manual would not empower a Magistrate to refer the matter for investigation by CID.

12. In view of the discussion aforesaid the learned Metropolitan Magistrate vide the impugned order dated 10th February, 2017 having clearly noted that there was not even a single allegation of commission of any kind of offence alleged to have been committed within the jurisdiction of PS New Ashok Nagar and the allegations were related to the workplace of the complainant which was Noida, U.P. and not within the jurisdiction of PS New Ashok Nagar clearly erred in issuing directions to the SHO, PS New Ashok Nagar for registration of zero FIR and thereafter to transfer the same to the concerned Police Station having jurisdiction in the matter as per the procedure. Consequently, Crl. M.C. Nos. 666/2017, 667/2017 and 668/2017, Crl. M.A. Nos. 2837/2017, 2839/2017 and 2841/2017 are disposed of setting aside the impugned order dated 10th February, 2017. Crl. M.A. No. 4842/2017 in Crl.M.C. No.666/2017 is dismissed.

13. Needless to note that the impugned order issuing directions under Section 156 (3) Cr.P.C. has been set aside purely on the issue of lack of territorial jurisdiction and the complainant/respondent No.2 would be at liberty to pursue her remedies before the Court or the investigating agency of the competent territorial jurisdiction, if so advised.