
(1997) 12 RAJ CK 0035

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 824 of 1997

Satya Deo Sharma and Another

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 08-12-1997

Acts Referred:

COMPANIES ACT, 1956 — Section 235, 237, 397, 398, 43A

Constitution of India, 1950 — Article 21, 226

Criminal Procedure Code, 1973 (CrPC) — Section 156, 157, 161, 173, 174

Evidence Act, 1872 — Section 114, 3

Penal Code, 1860 (IPC) — Section 147, 323, 342, 365, 384

Citation : (1998) 2 RLW 862 : (1998) 3 WLC 400 : (1998) 1 WLN 438

Hon'ble Judges : Amaresh Ku. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amaresh Ku. Singh, J.—Heard the learned Counsel for the petitioners and the learned Public Prosecutor and perused the relevant record.

2. By this petition filed u/s 482 Cr. P.C. the petitioners have prayed that the order passed by the learned Chief Judicial Magistrate, Pali on 23.6.1997, directing the police to start investigation in connection with the offence u/s 420 I.P.C. the order dated 22.7.1997 passed by the learned Additional Sessions Judge, Pali in criminal revision No. 39/97 whereby he upheld the order of the learned Chief Judicial Magistrate and the first information report No. 248/97 registered at police station Kotwali, Pali in compliance with the order passed by the learned Chief Judicial Magistrate and the investigation conducted by the Police be quashed.

3. The facts relevant for the disposal of the petition may be summarised as below:

4. On 22.6.1997 Shri Satya Deo Sharma (petitioner No. 1) lodged the first information report No. 245/97 at Police Station Kotwali, Pali. In his report Shri

Satya Deo Sharma stated that he is the Director of the Gurushikhar Savings and Finance Company which has its administrative office at Sojat City. According to the first information report the above named company of which Satya Deo Sharma is the Director collects money from the public by way of deposits on interest and utilises that money for the purpose of purchasing lands and other properties, and those lands and other properties are later on sold, and from the profit earned by the Company, the interest is paid by the company to the depositors. The collections are made through agent and in the territorial area of Sojat City. Pukhraj Vaishnav, Gopal Parihar, Uttam Tanvedi, Suresh Rathore, Bhanu Prakashak and Rajesh Joshi are the agents of the Company. It was further stated in the first information report that the company is carrying out its business for the last six years and has conducted business of Rs. 4 crore and sum of Rs. 3 crore 75 lakhs has been paid to the depositors and payment to some of the depositors has not been made because the term of deposit has not expired. It was also mentioned in the first information report that the above named agents of the Company persuaded the depositors to demand the refund of the money deposited by them but their money could not be paid back. According to the first information report on 21.6.1997 at about 11.00 P.M. Pukharaj Vaishnaw, Suresh Rathore, Gopal Parihar, Gajendra Joshi, Uttam and one other person went to the house of the petitioner (Satya Deo Sharma). They surrounded him and started beating him. When Satya Deo Sharma raised hue and cry, persons from the neighbourhood collected at the spot and at that time Satya Deo Sharma was forcibly placed on the back seat of a maruti car by the assailants who threatened Satya Deo Sharma that if he would cry his life would be in danger. After obtaining key of the car from Satya Deo Sharma, Gajendra Joshi drove the car to Pali and then went to a house which was constructed on a field near the canal. In that house Satya Deo Sharma was confined. Gajendra Joshi asked him to sign some papers but when he refused to sign the papers. He was threatened with beating and then he signed some papers. For the purpose of signing some other papers Satya Deo Sharma sought time. On the night of occurrence at about 2.30-3.00 A.M. Pukharaj Vaishnaw, Gajendra Joshi and Uttam went to Sojat on maruti car belonging to Satya Deo Sharma. In the next morning he was again given a beating. At about 6.15 A.M. Satya Deo Sharma succeeded in giving information about his confinement to Shri Kripa Shanker Trivedi. After sometime Gajendra Joshi, Uttam and Pukhraj Vaishnaw returned from Sojat. According to the petitioner he was recovered by the police from the house where he was confined and was informed by Shri Kripa Shanker and after his rescue he lodged first information report at police station Kotwali.

5. On the basis of the first information report lodged by Satya Deo Sharma the police registered a case under Sections 365, 342, 323, 384 and 147 IPC. Accused Pukharaj Vaishnaw, Gajendra, Gopal Parihar, Mangi Lal, Uttam and Suresh Rathore were arrested by the police and an application u/s 437 Cr. P.C. was filed for the release on bail. The learned Chief Judicial Magistrate, Pali heard the arguments on bail application and on 23.6.1997 he granted bail to accused

Pukharaj and others.

6. By the same order dated 23.6.1997 the learned Chief Judicial Magistrate, Pali directed the Police to register a case relating to offence u/s 420 I.P.C. and gave as many as five directions as to the points on which investigation was to be conducted by the Police Officer. The reasons for giving the directions were given in Para 1 on page 2 of the order where in it was observed by the learned Chief Judicial Magistrate that the complainant had deposited money after collecting from the public through the agents and the dispute occurred when the money was not re-paid to the depositors.

7. On reading of the order passed by the learned Chief Judicial Magistrate it appears that from the facts which were brought to the notice during the hearing of the bail application he suspected that an offence u/s 420 I.P.C. had been committed. He, therefore, directed the Police to register a case relating to offence u/s 420 I.P.C.

8. It appears, that in compliance of the order passed by the learned Chief Judicial Magistrate, the police registered the first information report No. 248/97 relating to offence u/s 420 I.P.C. and started investigation. A revision petition was filed against the order dated 23.6.1997 passed by the learned Chief Judicial Magistrate but the revision petition was dismissed. Feeling aggrieved by the order dated 23.6.1997 passed by the learned Chief Judicial Magistrate and the order dated 22.7.1997 passed by the learned Additional Sessions Judge in revision petition No. 39/97 the petitioners have come to this Court u/s 482 Cr. P.C. with a prayer that the orders of the courts below and the investigation started by the Police should be quashed as it amounts to abuse of the process of law.

9. The first submission made by the learned Counsel for the petitioner is that the learned Chief Judicial Magistrate, Pali had no sufficient ground or justification to direct an investigation u/s 156(3) Cr. P.C. as there was no complaint in writing alleging that offence u/s 420 I.P.C. had been committed. In view of this submission it is necessary to consider whether the learned Chief Judicial Magistrate was legally empowered to direct the police u/s 156(3) Cr. P.C. to commence investigation in the case.

10. It is not disputed, that by the time the learned Chief Judicial Magistrate passed the order on 23.6.1997, no complaint alleging the commission of offence u/s 420 I.P.C. was filed before him by any person. The crucial question is whether in the absence of a complaint by any person the learned Chief Judicial Magistrate had the legal authority to direct investigation u/s 156(3) Cr. P.C.

11. At the very outset it may be pointed out that the order u/s 156(3) Cr. P.C. is not a judicial order of the Magistrate. It is an administrative direction given to the police with a view to intimate to the police in a peremptory manner, so that the police may exercise their statutory powers to investigate into cognizable offence. In *Devarapalli Lakshminarayana Reddy and Ors. v. Narayana Reddy and*

Ors. AIR 1976 1672 the Hon''ble Supreme Court considered the scope of the powers conferred on the Magistrate u/s 156(3) Cr. P.C. At page 1678 their Lordships observed:

It may be noted that an order made under Sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation u/s 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence u/s 156 and ends with a report or charge-sheet u/s 173.

12. In view of the observation of the Hon''ble Supreme Court, the direction given by the Magistrate u/s 156(3) Cr. P.C. is at best a peremptory reminder to the police to exercise their plenary powers of investigation. Since the very object of giving intimation by means of peremptory direction u/s 156(3) Cr. P.C. is to intimate to the police that they have to exercise their statutory powers u/s 156(1) Cr. P.C., the circumstances in which a direction u/s 156(3) Cr. P.C. can be given must be the same which empower the police officer to start investigation on their own in exercise of power under Sections 156 and 157 Cr. P.C.

13. Section 156(1) provides that:

14. Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable 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.

15. Section 156(1) does not indicate the grounds on the basis of which the police officer may exercise power u/s 156(1) Cr. P.C. these grounds are indicated by Section 157(1) Cr. P.C. which 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, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:

16. A bare perusal of Section 157(1) shows that the power to investigate can be exercised when the officer incharge of the police station has "reason to suspect commission of an offence which he is empowered to investigate u/s 157 Cr. P.C., whether such reason is in the nature of information received from any person or otherwise. What is necessary for starting investigation by the police officer is that he must have reason to suspect that an offence which he is empowered to investigate u/s 156(1) Cr. P.C. has been committed. It shows that presence of written information from any person is not the only material on the basis of

which investigation may be started by police officer. He may have reason to suspect, that cognizable offence has been committed, even without a complaint.

17. Since "reason to suspect the commission of cognizable offence" is necessary for the commencement of investigation by the Police u/s 156(1) it would be proper to hold that a Magistrate would also be competent to give direction u/s 156(2) Cr. P.C. if he has reason to suspect from an Information received by him or otherwise that cognizable offence which the police officer can investigate u/s 156 has been committed. In other words it is not necessary that there must be a complaint in writing or an information in writing from any person about the alleged commission of offence before the powers u/s 156(3) Cr. P.C. can be exercised by the Magistrate.

18. In view of above reasons it is to be seen whether the learned Chief Judicial Magistrate had reason to suspect the commission of offence u/s 420 I.P.C.

19. The facts which were brought to his notice by first information report was that Satya Deo Sharma was the Director of the Finance Company which was collecting money from public by way of deposits through the agents, against whom first information report had been lodged and who were made accused in that case. It was also mentioned in the first information report that some of depositors could not be paid back their money on account of certain compulsion being faced by the complainant. There was a prima facie a case, where money had been collected from the public and when the demand of the refund of the money was made the demand was not fulfilled, and when the money was not paid and the agents through whom the money was collected, indulged in the alleged offence for the purpose of obtaining some kind of guarantee which was being demanded by the depositors. The crucial question is whether in these circumstances the learned Chief Judicial Magistrate can be said to have reason to suspect the commission of offence u/s 420 I.P.C. If the answer is in the affirmative the order passed by the learned Chief Judicial Magistrate would have to be regarded as permissible part u/s 156(3) Cr. P.C. Otherwise the order would not be protected by Section 156(3) Cr. P.C.

20. Suspicion is distinguishable from knowledge, whether it is derived personally by using one's own sense organs or obtained from any other person. Suspicion is in the nature of inference drawn from the facts and circumstances which have come to the notice of the concerned person. In other words suspicion is based on conclusion which may be drawn from a set of circumstantial evidence and, therefore, whenever a fact is capable of being inferred from circumstantial evidence, the initial stage is suspicion and subsequent inquiry or investigation may either confirm the inference or it may show that the suspicion was baseless. It may show that the circumstantial evidence is sufficient not only to raise a suspicion but to prove the fact in dispute. It is well known that circumstantial evidence is legal evidence under the Evidence Act and Courts draw the inferences (presumption) under Sections 3 and 114 of the Evidence Act from the circumstances which are brought to their notice subject of course to the

conditions laid down in Sections 3 and 114 and other provisions of the Evidence Act. The word "suspicion" is, therefore, a prima facie inference drawn in view of the circumstances and so long inferences on the basis of circumstantial evidence are permissible under the laws, the legal importance and legal use of suspicion cannot be minimised or ignored. Reasonable ground for suspicion is not only sufficient for commencing investigation u/s 157(1) Cr. P.C. by the Police, it is also sufficient for the purpose of framing of charges where the case has been investigated and the evidence on which prosecution relies is circumstantial evidence. The only condition is that the suspicion must not be baseless. It must be based on reason and inference should be one which a prudent man, exercising discretion under the Sections 3 and 114 of the Evidence Act, considers to be so probable as to act on the supposition that the fact about which inference is drawn, exist or does not exist, as the case may be.

21. After going through the police diary of the case, the statements, recorded by the police u/s 161 Cr. P.C., the complaints made by several persons before the investigating officer, I am of the opinion that it cannot be said that the suspicion of the learned Chief Judicial Magistrate about the commission of offence u/s 420 I.P.C. or that of police officer who started investigation u/s 157(1) Cr. P.C. was not in accordance with the provisions of Sections 156 and 157(1) Cr. P.C.

22. The second ground raised by the learned Counsel for the petitioners is that the Company Act, 1956 contains ample provisions for the purpose of conducting investigation into the matter relating to internal management or mis-management of the Company and, therefore, all the matters relating to internal management or mis-management of the Company are required to be investigated in accordance with the Companies Act and, therefore, it should be held that the police officer acting under Sections 156 and 157 Cr. P.C. does not have any jurisdiction to make any investigation in respect of matters relating to management of the company. While elaborating his argument he has argued that "management" is vide enough to include the business of the Company and if any offence, irregularity or illegality is committed by any company then the power to investigate by the Police u/s 157(1) Cr. P.C. cannot be applied. Reliance has been placed by the learned Counsel for the petitioner on recent judgment of the Hon'ble Supreme Court reported in *Sri Ramdas Motor Transport Ltd. and Others Vs. Tadi Adhinarayana Reddy and Others*,

23. In the case of *Ramdas Motor Transport Ltd. v. Tadi Adhinarayana Reddy* (supra) the first appellant company was established under the Companies Act, 1913. It continued as private limited company till 1956. However, with effect from 1.2.1975, by virtue of Section 43A of the Companies Act, 1956, it became a public limited company in view of the fact that the annual turn over of the company was above the prescribed limit. The first appellant company, however, continued to be a closely held company consisting of only 61 share-holders including 11 employees and ex-employees. The second appellant was the Chairman and Managing Director of the first appellant company. The third

appellant was the Joint Managing Director of the first appellant company. The main object of the company is to carry on the business of parcel lorry service, manufacture of automobile components and dealership of Telco. Some disputes between the Managing Director i.e. second appellant, and his son-in-law. Srihari Rao who was a former Director of the first appellant company and a former Member of Parliament. The disputes started sometime in 1993. In 1994 eight shareholders of the company filed before the Company Law Board, Principal Bench, New Delhi, a company petition bearing C.P. No. 7 of 1994 under Sections 397 and 398 of the Companies Act, 1956, on the ground of oppression of minority shareholder and mismanagement of the affairs of the company by the second and third appellant. In the said petition an injunction was sought to restrain the first appellant company from proceeding with the Rights Issue of its shares. After hearing both the parties, however, the Company Law Board declined to grant any interim order to the effect. The Company Law Board directed the company to file an affidavit with regard to the Rights Issue and to follow the procedure which it had followed earlier for the Rights Issue. Thereafter, Srihari Rao and some others filed before the Company Law Board another Company Petition No. 15 of 1994 under Sections 397 and 398 of the Companies Act, 1956 on the ground of oppression of minority shareholder and mismanagement of the affairs of the company by the second and third appellants. An interim relief was sought from the Company Law Board for supersession of the Board of Directors of the first appellant company and for reconstitution of the Board of Directors. An interim injunction was also sought against appellants 2 and 3 to restrain them from functioning as Managing Director and Joint Managing Director of the first appellant-company. On 12.1.1996 Shrihari Rao filed another company application for appointment of an administrator. During the hearing of this application, the petitioners in the said petition took further time for filing a better affidavit. Company Law Board failed to pass an order. During the pendency of all these proceedings before the Company Law Board, the 1st respondent filed a writ petition under Article 226 of the Constitution before the High Court of Andhra Pradesh for a writ of mandamus directing Union of India and the Secretary (Finance), Union of India (respondents 1 and 2 in the writ petition) to forthwith prosecute the present appellants 2 and 3 in accordance with law. The 1st respondent challenged in the writ petition various transactions entered into by the first appellant-company relating to purchases and sales. The 1st respondent has also challenged the correctness of the figures shown in the balance-sheet and profit and loss accounts of the first appellant-company.

24. According to the 1st respondent there was misappropriation of the funds of the company by appellants 2 and 3. It was claimed by the first respondent that this amounts to misappropriation of public funds and that, for the alleged acts of appellants 2 and 3, the Union of India should be directed to prosecute appellants 2 and 3. There was further prayer in the writ petition that the Court should direct an inquiry by the Central Bureau of Investigation into the alleged financial

mismanagement of the company and misappropriation of funds by appellants 2 and 3; that a report should be submitted to the Court within four weeks and that an administrator should be appointed by the interim order to take charge of the affairs of the first appellant-company. All these prayers related to alleged mismanagement of the affairs of the first appellant-company by appellants 2 and 3 and in essence, the writ petition under Article 226 prays for an investigation into the affairs of the first appellant-company, and for action against appellants 2 and 3. The interim prayer for an administrator of the company also clearly shows that the main grievance of the first respondent in the writ petition relates to the management of the affairs of the first appellant-company. The learned Single Judge before whom the writ petition filed by the first respondent held that the Companies Act provides a forum to consider the grievances made out by the first respondent in the writ petition and such forum, statutory constituted, exists, it is but appropriate that resort to Article 226 should be discouraged. It was further held by the learned Single Judge that such a grievance cannot constitute a ground for invoking the jurisdiction of the High Court under Article 226, therefore, the prayer made in the writ petition for writ of mandamus was rejected. In appeal, the Division Bench of the Andhra Pradesh High Court entertained the appeal and issued the direction to make its own verification in the alleged writ petition. Being aggrieved by the order passed by the Division Bench the SLP was filed before the Hon''ble Apex Court. The Hon''ble Supreme Court in view of the facts and circumstances, the nature of grievance made by the first respondent, the object of the relief sought by the petitioner in their petition filed under Article 226 of the Constitution before Andhra Pradesh High Court held, that the order passed by the learned Single Judge was right. In para No. 9 the Hon''ble Supreme Court observed:

The power, therefore, to appoint Inspector to investigate the affairs of a company has to be exercised by the Central Government after a proper preliminary scrutiny by the Registrar or by the Company Law Board as the case may be. It cannot be instituted simple on the basis of allegations made by one shareholder. u/s 237, there is a further power given to the Central Government to appoint Inspectors to investigate the affairs of a company if the company, by a special resolution, or the court, by order declares that such investigation is necessary. Similarly, this may be done if in the opinion of the Company Law Board there are circumstances suggesting that the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive of any of its members or that the company was formed for any fraudulent or unlawful purpose. The Company Law Board may also come to a conclusion that there are circumstances suggesting that the persons concerned in the formation of the company or management of its affairs have been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or that the members of the company have not been given all the information with respect of its affairs which they might reasonably expect. In these circumstances

on the basis of the opinion so framed by the Company Law Board, the Central Government may order an investigation. Neither the Central Government nor the Company Law Board has been moved by the first respondent in accordance with the law for this purpose. In the case of Rohtas Industries Vs. S.D. Agarwal and Others, this Court examined the nature of the power conferred on the Central Government u/s 235 as well as 237(b) and held that the scheme of these sections makes it clear that unless proper grounds exist for investigation of the affairs of a company, such investigation will not be lightly undertaken. An investigation may seriously damage a company and should not be ordered without proper material gathered in the manner provided in the Companies Act. The power of investigation has been conferred on the Central Government on the faith that it will be exercised in a reasonable manner.

25. Relying on the above observation the learned Counsel for the petitioner has submitted that these observations are applicable not only to the management of the company, nor they are confined to the acts of the company towards any of its member but they are equally applicable to the business of the company and to the parties who might be involved in the business and to the offence that might be committed by conducting business.

26. I have carefully considered the observation made by the Hon''ble Supreme Court and the facts of the case as have been mentioned in the judgment. They show that the observations made by the Hon''ble Supreme Court do not lay down the law, as has been suggested by the learned Counsel for the petitioners.

27. This is further obvious by the following observation of the Hon''ble Supreme Court in the same judgment at Page 2193:

We fail to see what public interest is involved in disputes of the kind referred to in the writ petition. They basically deal with mismanagement of the affairs of the company and oppression of the minority shareholders. The company is only a deemed public limited company. Its share holding is very closely held. The only other factor referred to in the writ petition to invoke the doctrine of so called public interest is the fact that the company had borrowed moneys from public institutions. This is no ground for not availing of the statutory remedies provided under the Companies Act before the appropriate statutory forums which are designed for this very purpose.

28. A careful reading of the judgment of the Hon''ble Supreme Court makes it clear that the question "whether the police officer exercising statutory power to conduct investigation u/s 156 Cr. P.C. is debarred from exercising his statutory powers under the Code of Criminal Procedure, by any provisions of the Companies Act, 1956 if a cognizable offence has been committed by the company or by any of its Directors or by its servants, agents etc. against a citizen was not considered by the Hon''ble Supreme Court.

29. The statutory powers which have been conferred on police to investigate cognizable offence is for public purpose which is to enforce the penal laws, when

the provisions contained in penal laws are violated by any criminal. The only manner in which penal laws can be enforced is by bringing offenders to trial and in the event of conviction to get them punished. My attention has not been drawn to any provision of Companies Act, 1956 which may be said to deprive the police of their power to investigate cognizable offences.

30. The submission that the observation made by the Hon'ble Supreme Court in *Ramdas Motor Transport Ltd. v. Tadi Adhinarayana Reddy* (supra) are applicable to business of the company as well and to the offences which might be committed by company in relation to persons who are not concerned with management of the company, does not appear to be correct. If the intention of the legislature were to deprive the police of their statutory right to investigate into cognizable offences, there was nothing to prevent the legislature from enacting provisions in the Companies Act to point out that in case of companies the police officer empowered u/s 156(1) Cr. P.C. will not have any jurisdiction at all, no matter what the offence may be. In the judgment relied upon by the learned Counsel for the petitioner there is nothing to indicate that any provisions of Companies Act, 1956 has the affect of depriving the police officer of their power to investigate into cognizable offence which appear to have been Committed against person not concerned with the internal management of the company.

31. In the instant case Satya Deo Sharma is the Director of the Company. According to the copy of memorandum there are only seven members of Gurushikhar Saving and Finance (India) Limited. The depositors from whom deposits have been obtained through agents have not been shown as subscribers or members in the memorandum. The alleged offence u/s 420 I.P.C. does not relate to the management or mismanagement of the company nor it relates to offence committed against any member of the company or against subscriber of the company. In these circumstances it is difficult to agree with the view that even if the finance company of this kind commits cognizable offence against any person, who is not a member or subscriber of the company, still the police will have no right to conduct investigation in the case. The object of the various provisions of Companies Act, 1956 was not to want any immunity to the office bearers and workers of the company against the operation of the Penal Laws.

32. I am, of the view that so far as Penal Laws are concerned and the provisions of Criminal Procedure Code are concerned they, serve one of the greatest public purposes; namely, to enforce the rule of law. So long the rule of law is not given up it cannot be said that the statutory powers of the police are taken away by any provision of the Companies Act, 1956. It may, therefore, be stated that so far as internal management of company is concerned if there are allegation of any mismanagement, then ordinarily provisions contained in the Companies Act, 1956 should be resorted to because so long investigation is not completed as provided in the Companies Act, 1956, it is difficult to infer whether the allegations amounting to mismanagement are true. The management of the

company is its internal affair with which general public is not concerned directly. If there is mismanagement in the company it does not affect the public. It is, therefore proper to infer that the provisions of Companies Act, 1956 are enacted to provide for investigation into the matters relating to management of the company so that the interest of the company may not be adversely affected. So far as commission of offences committed against the common man is concerned it cannot be urged on any legitimate basis that commission of offences towards public should be treated as internal affair of the company. Commission of offence against persons who are not subscribers of company is a matter which cannot be said to be a matter relating to internal management of the company. In fact it is a matter relating to conduct of company towards the persons who are not its members or subscribers. With such conduct the public would be concerned if, in any way it involve commission of offence against the common man.

33. The matter may be viewed from another angle. When an offence is committed against any Citizen, he has the right to approach the authority established by law. If restrictions on right to life and personal liberty are permissible and if the right to life and personal liberty is to have any meaning, it must be held that citizens have the right to approach the authorities established by law if any offence is committed against their lives or personal liberty. Every citizen has the right to defend himself and his property as well as to defend others. These rights are contained in Indian Penal Code. It is well established that the right to defend, under the "general exceptions" contained in the Indian Penal Code can be exercised only if the citizen has informed public authorities about his apprehension that an offence is going to be committed against the person or property and no protection is provided to him. To deprive a citizen of his right to approach a public authority created by law for redressal of the wrong committed against him, when an offence is committed or is being committed, would be a serious curtailment of the statutory rights, which in the scheme of laws should, be read as part of fundamental right under Article 21 of the Constitution.

34. Citizen's right to approach the police and the Magistrate or other authority established by law, when any offence is committed against the person or property cannot be lightly taken away, otherwise citizens would be deprived of their right to get the criminal punished when the offence is committed against them. The statutory powers u/s 156 are not for the benefit of the police force nor they are for the benefit of any particular person or community. They are for the benefit of common man against whose person or property, cognizable offence might be committed.

35. For reasons mentioned above, it must be held that the police officer acting u/s 156 Cr. P.C. has a statutory powers to investigate the cognizable offences and this power does not appear to be taken away partly or wholly by the Companies Act, 1956. However, this power cannot be exercised for the purpose of investigation into the internal affairs of the company relating to management

because affairs relating to management of company do not by themselves constitute any cognizable offence.

36. In view of above reasons, as well as the fact that during investigation the police collected material which is prima facie indicative of cognizable offences the investigation commenced by the police cannot be quashed in exercise of the powers conferred by Section 482 Cr. P.C.

37. However, the learned Chief Judicial Magistrate was not justified in giving directions u/s 156(3) Cr. P.C., while disposing of the bail application u/s 174 Cr. P.C. It is true that there is nothing in the Criminal Procedure Code which requires that a direction u/s 156(3) Cr. P.C. cannot be given while passing a judicial order. But it would be advisable that a direction u/s 156(3) Cr. P.C. should be given separately after disposing of the case or the application which may be heard by the Magistrate. The learned Chief Judicial Magistrate was not justified in giving as many as five direction to the Police as to how to investigate the case. It has been held by this Court in some cases that while directing investigation u/s 156(3) Cr. P.C. the directions as to how investigation is to be conducted should not be given. The reason is two fold. The first is that such direction might interfere with the liberty of the police to investigate the case in their own way. The second is that such direction may create an impression that nothing is to be done by police officer beyond obeying the directions.

38. For reasons mentioned above the petition is partly allowed. The prayer for quashing the investigation, which is being conducted by the police is rejected. It is clarified that the direction to the police to conduct investigation should be deemed to be an executive direction notwithstanding that it is contained in a judicial order. The directions as how investigation should be conducted by the police are not warranted by law and, therefore, they are quashed. The police officer shall conduct the investigation to the best of his judgment and in accordance with law. A copy of this order be sent to the learned Chief Judicial Magistrate, Pali for information and necessary action.