
(2016) 04 SHI CK 0059
In the High Court Of Himachal Pradesh
Case No : Cr.MMO No. 363 of 2015

Sh. K.C. Sharma	Vs	APPELLANT
State of Himachal Pradesh and others		RESPONDENT

Date of Decision : 18-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 403, 406, 420, 467, 468

Citation : (2016) CriLJ 4105 : (2016) 3 HimLR 1560 : (2016) ILRHP 1188

Hon'ble Judges : Tarlok Singh Chauhan, J.

Bench : Single Bench

Advocate : Neeraj Gupta, Advocate, for the Appellant; Meenakashi Sharma, Additional Advocate General with Parul Negi and Parul Negi, Deputy Advocate Generals and Malay Kaushal and Paresh Sharma, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Tarlok Singh Chauhan, J.—Can recourse to Section 156(3) of the Code of Criminal Procedure be taken as if it is a routine procedure, especially when the case is predominantly of a civil nature, is the question which falls for consideration in this petition?

2. The petitioner is the accused, who has approached this Court under Section 482 of the Code of Criminal Procedure (for short "Cr.P.C.") for quashing of FIR No. 145 registered at Police Station Sadar, Shimla on 6th July, 2015 under Sections 403, 406, 420, 467 and 468 IPC pursuant to the directions issued by the Judicial Magistrate, Ist Class, Court No. (5), Shimla to this effect in a complaint filed by respondent No. 2 (complaint) under Section 156(3) Cr.P.C. before it.

3. Initially the respondent No. 2 addressed a complaint to the SHO Police Station Sadar, Shimla on 22nd August, 2014 for registration of an FIR against the petitioner on the allegation that he was dealing in business of tour and travels by the name of Jai Maa Bhima Kali Tour and Travels and participated in the tenders

invited by the ARTRAC, Shimla for passenger carrying light vehicles. He deposited Rs. 1,62,500/- as security amount with the Station Headquarter Shimla ARTRAC vide bank draft No. 348959 dated 20.3.2012 drawn on UCO Bank ARTRAC Shimla, in favour of Station Commander, which was issued through the bank account of the petitioner, because at that time the complainant had no account in his name in this bank. It is further alleged that for preparing the aforesaid bank draft, the complainant had already paid an amount of Rs. 1,65,000/- through cheque bearing No. 179180 in the bank account of the petitioner on 15.1.2013 from the bank account No. 32160648686 SBI Totu of M/s Jai Maa Bhima Kali Tour and Travels.

4. The tender of the complainant was accepted and accordingly the tender work was awarded in his favour. The Station Headquarter Shimla ARTRAC being fully satisfied with the work performed and services rendered by the complainant, renewed/extended the work for the year 2013-14 i.e. up to September, 2013 and the complainant even got renewed the security amount of Rs. 1,62,500/- in favour of the Station Commander Shimla.

5. The grievance of the complainant is that when on completion of the contract, the Station Commander, Shimla Headquarter ARTRAC released/refunded the security amount to the complainant vide bank draft No. 348959 dated 20.3.2012, (which had been renewed by the complainant on 20.7.2013), the same was presented by him to his banker i.e. SBI Ghanahatti Branch but was returned by the bank vide memo dated 21.10.2013 with the endorsement "DD has been reported lost/Out of date." The complainant thereafter visited the UCO Bank ARTRAC from time to time and made oral request for release of the draft, which was not acceded to by the officials of the UCO Bank. Thereafter the complainant approached the Station Headquarter ARTRAC, Shimla, who issued a letter dated 17.2.2014 to the UCO Bank, ARTRACT requesting the bank to credit the draft amount to the account of the complainant.

6. The complainant thereafter sought information from the UCO Bank ARTRAC Branch under the Right to Information Act regarding the nonpayment of the aforesaid draft amount and as per information supplied it transpired that the petitioner had filed an affidavit, wherein apart from other averments it had been averred that the draft in question had been lost/misplaced and therefore, should not be encashed.

7. It appears that the copy of the complaint so preferred by the complainant was also sent to the Deputy Secretary (Home), to the Government of Himachal Pradesh, who endorsed the same to the Director General of Police for taking necessary action in the matter. The Director General of Police inturn forwarded the complaint to the Superintendent of Police, Shimla, vide communication dated 23.9.2014. The complaint was inquired into by one Sh. Mohinder Lal of Police Station Sadar, who after investigating the matter came to the conclusion that no action was required to be taken on the complaint in view of the fact that the dispute between the complainant and the petitioner was of mutual financial

transaction and being a dispute of civil nature, no offence was made out.

8. On the basis of the investigation and the report furnished, a communication dated 1.12.2014 was sent to the Director General of Police by Sh. Balbir Singh Jaswal, Additional Superintendent of Police (Urban) and a copy thereof was also sent to the complainant.

9. Once the matter was closed by the police, the complainant thereafter invoked the jurisdiction of the learned Chief Judicial Magistrate, Shimla by filing a complaint under Section 156(3) Cr.P.C., which was registered as case No. 41/4 of 2015.

10. On 8.4.2015, learned Magistrate after perusing the office report ordered the case to be put up for orders on 1.5.2015. On 1.5.2015 it appears that the order was not ready and the case was thereafter ordered to be listed on 7.5.2015 and for the same reasons the case was thereafter ordered to be taken up on 3.6.2015 and on this date again the order was not ready and the case was adjourned to 11.6.2015. It is eventually on 23.6.2015 that the learned Magistrate passed the following order:-

"23.06.2015 Present: Complainant in person.

Heard. Record perused. The Complainant has filed the present application under Section 156(3) of Cr.P.C. on the ground for committing the offences of Cheating, Fraud, forgery, dishonest intention, misappropriation of property, deceiving the public authority by swearing a false affidavit and disobedience of the law by the public authority. IN the present case, it has been alleged by the Complainant that the respondent No. 1 filed an affidavit whereby, he swore falsely on the affidavit to the effect of lost of the bank draft no. 348959 dated 20.3.2012 which was renewed on 20.7.2013 because it was handed over to the Complainant on 17.10.2013. Moreover, the accused No. 1 and 2 had no reason to stop the payment in favour of the Complainant. It is alleged that it is the act of the Respondent due to which he has suffered the fraud, cheating and being misled by the Respondents. Accordingly, there are certain grounds for which the cause of the Complainant appears to be reasonable, hence, the SHO PS Sadar, Shimla is directed to register the FIR against the Respondents and carry out the investigation and take action as per the law."

11. Aggrieved by the order and by the further registration of FIR, the petitioner has approached this Court seeking quashing of the FIR on the ground that once the investigating agency had already investigated the matter and come to a conclusion that the complaint was predominantly of a civil nature and no offence was made out, the learned Magistrate could not have ordered the registration of the FIR, that too on concocted and distorted facts as made by the complainant in his application under Section 156(3) Cr.P.C.

12. It is further alleged that it was not a case where the investigating agency had not carried out proper investigation, rather the record reveals that statements of

all concerned persons including the officials of the bank, ARTRAC and even the complainant and the petitioner had been recorded and it is only after thorough investigation that the investigating agency had concluded that being financial transactions, the same did not involve the commission of any offence by the petitioner. It is also averred that the impugned order has been passed by the learned Magistrate without any application of mind and without going through the facts of the case and the complaint and therefore, deserves to be quashed and set aside.

I have heard the learned counsel for the parties and have also gone through the records of the case.

13. The Constitution Bench of Hon^{ble} Supreme Court in *Lalita Kumari v. State of U.P.*, (2014) 2 SCC 1, had posed the following two questions:-

"(i) Whether the immediate non-registration of FIR leads to scope for manipulation by the police which affects the right of the victim/complainant to have a complaint immediately investigated upon allegations being made; and

(ii) Whether in cases where the complaint/information does not clearly disclose the commission of a cognisable offence but the FIR is compulsorily registered then does it infringe the rights of an accused."

Answering the questions posed, the larger Bench opined thus:

"49. Consequently, the condition that is sine qua non for recording an FIR under Section 154 of the Code is that there must be information and that information must disclose a cognisable offence. If any information disclosing a cognisable offence is led before an officer in charge of the police station satisfying the requirement of Section 154(1), the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. The provision of Section 154 of the Code is mandatory and the officer concerned is duty-bound to register the case on the basis of information disclosing a cognisable offence. Thus, the plain words of Section 154(1) of the Code have to be given their literal meaning.

* * *

72. It is thus unequivocally clear that registration of FIR is mandatory and also that it is to be recorded in the FIR book by giving a unique annual number to each FIR to enable strict tracking of each and every registered FIR by the superior police officers as well as by the competent court to which copies of each FIR are required to be sent.

* * *

111. The Code gives power to the police to close a matter both before and after investigation. A police officer can foreclose an FIR before an investigation under Section 157 of the Code, if it appears to him that there is no sufficient ground to investigate the same. The section itself states that a police officer can start

investigation when he has "reason to suspect the commission of an offence". Therefore, the requirements of launching an investigation under Section 157 of the Code are higher than the requirement under Section 154 of the Code. The police officer can also, in a given case, investigate the matter and then file a final report under Section 173 of the Code seeking closure of the matter. Therefore, the police is not liable to launch an investigation in every FIR which is mandatorily registered on receiving information relating to commission of a cognisable offence.

* * *

115. Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognisable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint." (emphasis in original) After so stating the constitution Bench proceeded to state that where a preliminary enquiry is necessary, it is not for the purpose for verification or otherwise of the information received but only to ascertain whether the information reveals any cognisable offence. After laying down so, the larger Bench proceeded to state:-

"120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- (a) Matrimonial disputes/family disputes
- (b) Commercial offences
- (c) Medical negligence cases
- (d) Corruption cases
- (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months" delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry."

14. It would be evident from the aforesaid decision that in certain circumstances, the police is also required to hold preliminary inquiry whether cognisable offence

is made out or not and therefore, the police was well in its rights to have conducted the aforesaid preliminary inquiry.

15. In view of the aforesaid exposition of law, the learned Magistrate, while dealing with a complaint under Section 156(3) Cr.P.C. had to remain vigilant with regard to the allegations made and the nature of allegations and should have avoided issuing directions to register the FIR without proper application of mind.

16. The learned Magistrate had also to bear in mind as to whether the registration of the case would be conducive to justice and only then should have passed the requisite order. The learned Magistrate was required to take note of the allegations therein in entirety, the date of incident and whether any cognisable case was made out.

17. Therefore, it follows that in case the police had already investigated into the matter, then obviously until and unless the investigation carried out was either shoddy, single sided or contrary to all norms and procedures, more care, caution and circumspection had to be exercised before directing the registration of FIR. That apart, resort to Section 156(3) Cr.P.C. cannot be a routine procedure and in matters which are predominantly of civil nature, recourse of criminal law in a casual and routine manner cannot be permitted.

18. At this stage, it shall be apt to quote the following observations of the Hon"ble Supreme Court in Priyanka Srivastava and another v. State of Uttar Pradesh and others, (2015) 6 SCC 287:-

"29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.

30. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

19. Here it would be proper that a reference to the precise grievance of the complainant as contained in para 17 of his complaint under Section 156(3) Cr.P.C. be made and the same reads thus:-

"17. That aggrieved by the act and conduct of the UCO Bank, ARTRAC Branch and accused persons, the complainant preferred an application/complaint before the S.H.O. Sadar, Shimla for registration of FIR against the accused. Firstly the SHO and his officials straightway refused the complainant to take the complainant Annexure C/12 and the complainant left with no option except to sent the same through registered post to the SHO copy to the Superintendent of police and Secretary (Home). The complainant verily and bonafidely was under the belief that the SHO Sadar, Shimla had registered an FIR against the accused but to the utter surprise of the complainant the SHO Sadar issued a letter to the complainant whereby he has suggested the complainant to file a case before the competent court of jurisdiction. The SHO, Police Station Sadar has totally failed to take note of the fact that swearing of false affidavit that is too intentionally with a view to cause loss to someone is a serious offence under the Indian Penal Code otherwise if such things are allowed to happen the very sanctity of swearing the affidavit will be lost and it will cause law and order problem in the society. The copy of the Communication dated 11.12.2014 is being annexed herewith as Annexure C/11. However, surprisingly from the perusal of the annexure C/11 which is a investigation report submitted by the Dy.SP to the Inspector General of Police, Himachal Pradesh on the complaint of Complainant, it is also mentioned that the complainant has already filed Civil Suit against the UCO Bank, ARTRAC Branch, Shimla-1. But at this stage here it is submitted the sad fact is erroneous and from what source this fact has come in the knowledge of Police it also cast doubt about the action of the Police because the complainant has not filed any Civil Suit pertaining to the present cause of action against the

UCO Bank, ARTRAC Branch, Shimla or any of the above accused persons."

20. It would be evident from the above that the complainant had specifically stated that the police though had investigated the case, but it failed to take note of the fact that the petitioner had sworn a false affidavit with a view to cause loss to someone, which was a serious offence.

21. Whereas, the record reveals that all the relevant aspects of the matter had in fact been duly inquired into by the police and the same have been summarised in the letter sent by the investigating officer to the Superintendent of Police, Shimla, vide Annexure P-3. It has been clearly stated therein that the matter in issue had been thoroughly investigated by associating all concerned and it is only thereafter concluded that the matter was predominantly of civil nature and the parties had also failed to prove and establish the commission of any criminal offence. As noticed earlier, holding of preliminary inquiry in matters of commercial offence is not otherwise prohibited in terms of the law laid down by the Hon"ble Supreme Court in Lalita Kumari's case supra.

22. Now adverting to the order passed by the learned Magistrate, the same does not seem to have been passed after application of judicial mind to the facts of the case. Once the police agencies which are primarily entrusted with the task of investigation, had duly submitted their report, then without adverting or touching upon the same, directions to straight away register FIR ought to have been avoided.

23. This however is not to suggest that the Magistrate could not have under any circumstance ordered the registration of the FIR, as this Court is absolutely clear in its mind that for the purpose of enabling the police to start investigation, it is always open to the Magistrate to direct the police to register FIR and there is nothing illegal in doing so. After all registration of FIR involves the process of recording the substance of information relating to commission of cognisable offence in the book kept by the officer in charge of the concerned police station, as indicated in Section 154 of the Code.

24. But here is a case where the preliminary inquiry had already been conducted establishing therein that the dispute inter se the parties was only of civil nature. Therefore, best course for the Magistrate in such circumstances should have been to have called for a fresh report from the police rather than directing the registration of FIR, more particularly when the complainant had not only arrayed the present petitioner, but had also named Sh. B.K. Bhardwaj, Senior Manager, UCO Bank ARTRAC Branch, Incharge/Branch Manager UCO Bank ARTRAC Branch, Shimla and Sh. Balbir Singh, Additional SP (Urban) as accused and against all of whom the FIR has been ordered to be registered.

25. As observed by the Hon"ble Supreme Court in Priyanka Srivastava case supra, the remedy available under Section 156(3) Cr.P.C. is not of routine nature and exercise of powers there under requires application of judicial mind. The Magistrate exercising said powers must remain vigilant with regard to the

allegations made in the application and not to issue directions without proper application of mind. The power under Section 156(3) Cr.P.C. cannot be invoked by the litigant at his own whims to harass others. It can be invoked only by a principled and really grieved citizen to approach the Court with clean hands.

26. The aforesaid observations are being made in the backdrop that both the complainant and the petitioner are in the same business and dealing in tenders awarded by the ARTRAC.

27. Moreover, it is the specific case of the petitioner in Cr.M.P. No. 22 of 2016 that the complaint preferred by the complainant under Section 156(3) Cr.P.C. for registration of FIR was only because of the reason that the petitioner had got contracts from the ARTRAC and on account of registration of FIR, the petitioner would be blacklisted and thus deprived of further contracts. This is because of the practise followed whereby, towards the close of every year, the authorities of ARTRAC send request to concerned Police Station to find out whether any case has been registered against the person who has applied for the grant of contract from market and because of registration of FIR, the petitioner would henceforth be deprived of award of contract.

28. It was after taking into consideration, the averments contained in this application that this Court on 7.1.2016 passed the following order:-

"Cr.M.P. No. 22 of 2016

Heard. Taking into consideration the fact that this Court is already seized of the matter, it is made clear that mere registration of FIR No. 145 of 2015 shall not cause any prejudice to the petitioner insofar as it relates to awarding of the tenders/contract. Reply be filed during the course of the day."

29. The complainant in reply to this application had not denied the procedure being followed by the ARTRAC, but had only stated that the contents of the application were more in the realm of speculation and the application had been filed under mere apprehension without there being any factual proof of the same.

30. The matter can be looked at from yet another angle. The petitioner has arrayed the State of Himachal Pradesh, Sh. Balbir Singh Jaswal, Additional Superintendent of Police (Urban), and SHO, Police Station Sadar, Shimla as party-respondents No. 1, 5 and 6, who in joint reply have categorically stated that even after registration of FIR in compliance to the directions passed by the learned Magistrate, it has yet again been found that the complaint is of a civil nature and therefore, cancellation report was prepared and has been submitted to the appropriate Court.

31. It is apt to reproduce the contents of paras 5, 5A and 8 of the reply, which reads thus:-

"5. That in reply to the para 5 of the petition it is submitted that the averments made therein also seems to be based on true facts, as far as the filing of

complaint under Section 156(3) of Cr.PC and investigation carried out by concerned Police Official are concerned. It is also further submitted that in the case sections 403, 406, 420, 467, 468 of IPC were added on the basis of complaint made by complainant/respondent No. 2. During the investigation, it was found that the allegation made by complainant/respondent No. 2 in his complaint against the accused/petitioner and other were found baseless and complaint of respondent No. 2 could not produce any cogent evidence and on the basis of evidence led by the complainant/respondent No. 2 and the evidence collected by the investigation agency were not found sufficient to implicate the accused/petitioner and thus cancellation report was prepared and the same was submitted before the Ld. Chief Judicial Magistrate, Shimla and is still pending in the Ld. Court.

5A. That it is further submitted that 3/4 investigation officers of Police Station Sadar investigated the matter of respondent No. 2 and all the investigation official/officers found the matter civil in nature hence, cancellation report was prepared."

8. That the contents of para 8 to the petition it is submitted that FIR was registered on the basis of complaint filed and order for further investigation which were issued by Ld. JMJC-5. As far as the allegation the same were found of Civil nature for which the remedy available to the complainant/respondent No. 2 by way of filing of civil suit before the competent Court of law. Therefore, cancellation report was prepared and submitted before the appropriate Court."

32. It is a settled legal proposition that criminal liability should not be imposed in the dispute of civil nature. It is also equally settled that the High Court's inherent powers, be it in civil or criminal matters, is designed to achieve a salutary public purpose and that a Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution.

33. This settled proposition of law was once again reiterated by the Hon'ble Supreme Court in its recent decision in International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and others v. Nimra Ceramics Technics Private Limited and another (2016) 1 SCC 348, wherein it was observed as under:-

"22. By an analysis of terms and conditions of the agreement between the parties, the dispute between the parties appears to be purely of civil nature. It is settled legal proposition that criminal liability should not be imposed in disputes of civil nature. In Anil Mahajan v. Bhor Industries Ltd. & Anr. (2005) 10 SCC 228, this Court held as under:-

"6. ?..A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction.

* * *

8. The substance of the complaint is to be seen. Mere use of the expression cheating in the complaint is of no consequence. Except mention of the words deceive and cheat in the complaint filed before the Magistrate and cheating in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay?.. We need not go into the question of the difference of the amounts mentioned in the complaint which is much more than what is mentioned in the notice and also the defence of the accused and the stand taken in reply to notice because the complainants own case is that over rupees three crores was paid and for balance, the accused was giving reasons as above-noticed. The additional reason for not going into these aspects is that a civil suit is pending inter se the parties for the amounts in question."

23. In *M/s Indian Oil Corporation v. NEPC India Ltd. & Ors.*, (2006) 6 SCC 736, this court observed that civil liability cannot be converted into criminal liability and held as under:- (SCC pp. 748-49, paras 13-14)

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In *G. Sagar Suri v. State of U.P.* (2000) 2 SCC 636 this Court observed: (SCC p. 643, para 8)

"8??It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb

unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 Cr. PC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

24. Learned counsel for the respondent submitted that any defence to be taken by the appellants is to be raised only during the course of trial and is not to be raised in the initial stage of the prosecution. In support of his contention, the learned counsel placed reliance upon *Trisuns Chemical Industry v. Rajesh Agarwal & Ors.* (1999) 8 SCC 686; *Rajesh Bajaj v. State NCT of Delhi and Ors.* (1999) 3 SCC 259; *P. Swaroopa Rani v. M.Hari Narayana Alias Hari Babu* (2008) 5 SCC 765 and *Iridium India Telecom Ltd. v. Motorola Incorporated & Ors.* (2011) 1 SCC 74. Learned counsel for the respondent further submitted that when the Magistrate has taken cognizance of an offence and the power of the High Court to interfere is only to a limited extent, the High Court cannot substitute its view for the summoning order passed by the Magistrate. In support of this contention, learned counsel placed reliance upon the decisions of this Court in *Fiona Shrikhande v. State of Maharashtra & Anr.* (2013) 14 SCC 44; *Bhushan Kumar & Anr. v. State (NCT) of Delhi & Anr.* (2012) 5 SCC 424 and *Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi & Ors.* (1976) 3 SCC 736.

25. The above decisions reiterate the well-settled principles that while exercising inherent jurisdiction under Section 482 Cr.P.C., it is not for the High Court to appreciate the evidence and its truthfulness or sufficiency inasmuch as it is the function of the trial court. High Courts inherent powers, be it, civil or criminal matters, is designed to achieve a salutary public purpose and that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. If the averments in the complaint do not constitute an offence, the court would be justified in quashing the proceedings in the interest of justice."

34. In view of the aforesaid discussion, this Court has no hesitation in concluding that the complaint filed by respondent No. 2 under Section 156(3) Cr.P.C. was neither bona fide and had rather been filed with the sole object of getting the petitioner blacklisted, so as to deprive him from consideration of award of tenders of the ARTRAC. Even in the further investigation carried out by the police after registering of FIR in compliance to the order of the learned Magistrate, it has been found that the contents of the complaint were baseless and the complainant had failed to produce any cogent evidence, which could be found to be sufficient to implicate the petitioner, rather the same has now led to submission of the cancellation report.

35. The complainant in such circumstances cannot, therefore, be termed to be a principled and really grieved citizen and having failed to approach the Court with clean hands cannot, therefore, be provided a free access to invoke the powers of the Magistrate. Powers under Section 156(3) Cr.P.C. only protects the citizens but when pervert litigants like the complainant herein takes this route to harass their

fellow citizens, efforts are to be made to scuttle and curb the same. (Refer Priyanka Srivastava case supra).

36. In view of the above discussion, there is merit in this petition and the same accordingly succeeds. Consequently, not only the order passed by the Judicial Magistrate, Ist Class, Court No. (5), Shimla on 23.6.2015, but also the FIR No. 145 dated 6.7.2015, registered pursuant to the aforesaid directions are ordered to be quashed.

37. Since the complainant/respondent No. 2 has unnecessarily harassed the petitioner, he is directed to compensate the petitioner by paying a sum of Rs. 50,000/- to him within one month, failing which the petitioner shall be at liberty to recover the same in accordance with law.

38. The petition is disposed of in the aforesaid terms.