

(2018) 04 MP CK 0170
In the Madhya Pradesh High Court
Case No : MCRC 21353 OF 2017

Smt. Kamla Yadav And Others	Vs	APPELLANT
State Of Mp And Another		RESPONDENT

Date of Decision : 27-04-2018

Acts Referred:

Constitution of India — Article 227
Code Of Criminal Procedure, 1973 — Section 156(3), 482
Indian Penal Code, 1860 — Section 120B, 420, 463, 464, 465, 467, 468, 471

Citation : (2018) 04 MP CK 0170

Hon'ble Judges : G.S. AHLUWALIA, J

Bench : Single Bench

Advocate : VK Saxena, RVS Ghuraiya, Anil Mishra, Prashant Sharma, Himanshu Pandey

Final Decision : Allowed

Judgement

This application under Section 482 of CrPC has been filed against the order dated 20/06/2014 passed by the CJM, Gwalior in unregistered Criminal

Case No...../2014 by which the CJM Gwalior had directed the police authorities to register the FIR in case the police comes to a conclusion that the

complaint discloses the commission of cognizable offence. It is submitted that in compliance of the order dated 20/06/2014 the police has also

registered the FIR on 16/11/2017 in Crime No.775/2017 registered at Police Station Bahodapur, District Gwalior.

The necessary facts for the disposal of the present application in short are that respondent No.2 is the son of applicant No.1 Smt. Kamla Yadav,

whereas the applicant No.2 is the real brother of the respondent No.2 and son of the applicant No.1. A complaint was filed by the respondent No.2

against the applicants for offence under Sections 463, 464, 465, 467, 468, 471,

420, 120-B of IPC alleging in nutshell that the father of the applicant

No.2 & respondent No.2 and husband of the applicant No.1, namely, late Shri Ramesh Yadav was admitted in the hospital at Delhi and on the said

date a forged "Will" was prepared by the applicants No.1 & 2 contrary to the interest of the respondent No.2 and the applicants No.3 & 4

knowingly well that the said "Will" of the father of the respondent No.2 is a forged document, signed the same as witnesses and accordingly, the

complaint was filed. By order dated 20/06/2014 the JMFC, Gwalior has passed the following direction under Section 156(3) of CrPC and observed as

under:-

lafgrk dh /kkjk&156(3) ds v/khu iqfyl vkj{kh dsUnz cgksMkiqj ds Hkkjlk/kd vf/kdkjh dks bl funsZ'k ds lkFk iszf'"kr fd;k tk, fd og ifjokfnr rF;ksa ds

laca/k esa vUos'"k.k dj laKs; vij/k izdV gksus dh voLFkk esa vfHk;ksx&i=k vFkok vU;Fkk fLFkfr esa izfrosnu U;k;ky; ds le{k izLrqr djsaA lafgrk dh

/kkjk&156(3) ds v/khu iqfyl vkj{kh dsUnz cgksMkiqj ds Hkkjlk/kd vf/kdkjh dks bl funsZ'k ds lkFk iszf'"kr fd;k tk, fd og ifjokfnr rF;ksa ds laca/k esa

vUos'"k.k dj laKs; vij/k izdV gksus dh voLFkk esa vfHk;ksx&i=k vFkok vU;Fkk fLFkfr esa izfrosnu U;k;ky; ds le{k izLrqr djsaA

Challenging the order passed by the Magistrate, it is submitted by counsel for the applicants that it is well-established principle of law that the order

under Section 156(3) of CrPC cannot be passed mechanically. The Magistrate has to prima facie get himself satisfied that the allegations made in the

complaint prima facie discloses the commission of cognizable offence. However in the present case, the Magistrate did not apply its mind, on the

contrary, left its discretion to the discretion of the police to lodge the FIR, if the police comes to a conclusion that the allegations made in the complaint

discloses the commission of cognizable offence. It is submitted by the counsel for the applicants that such an order passed by the Magistrate is

contrary to the judgments passed by the Supreme Court in the cases of Priyanka Shrivastava and Another Vs. State of U.P. reported in (2015) 6 SCC

287, Anil Kumar and Others vs. M.K.Aiyappa and Another reported in AIR 2014 SC (Suppl) 1801 and the judgment passed by this Court in the case

of Sugni Devi vs.State of Madhya Pradesh, reported in 2016(2) Cr.L.R.(MP) 327. It is further submitted by the counsel for the applicants that during

pendency of this application, the police in compliance of the order passed by

JMFC, has also registered the FIR and from the FIR, it is apparent that before lodging the FIR no preliminary enquiry was conducted and the FIR has been lodged merely in compliance of order of the Magistrate, therefore, it is clear that even the order of the Magistrate was not complied with by the police and without coming to a conclusion that whether the complaint discloses the commission of cognizable offence or not, the police has registered the FIR. It is further submitted that the dispute is of civil nature and the respondent No.2 has already filed a civil suit challenging the authenticity of the "Will", which is pending.

Per contra, it is submitted by counsel for the respondent No.2 that the father of the respondent No.2 was admitted in the Hospital and it was well known to all the applicants but in spite of that, a forged "Will" was prepared by the applicants No.1 & 2 and the applicants No.3 & 4 had signed the said "Will" as witnesses. So far as the pendency of civil suit is concerned, this fact is not disputed by counsel for the respondent No.2, but it was submitted that merely because the civil suit is pending, it would not ipso facto mean that no criminal case can be registered even if allegations prima facie show the criminal intent.

Heard the learned counsel for the parties.

It is submitted by counsel for the applicants that since the civil suit is pending between the parties in which the "Will" in question is already under challenge, therefore, the allegations are predominantly of civil in nature, under the circumstance, the Magistrate should not have passed an order under Section 156(3) of CrPC and the police should not have registered the FIR.

The moot question for determination is that where the investigation final report has not been filed by the police, then whether the order passed by the Magistrate under Section 156(3) of CrPC can be challenged on the ground that the allegations made in the complaint do not prima facie disclose the commission of cognizable offence and are predominantly of civil in nature? The question is no more res integra.

The Supreme Court in the case of HDFC Securities Limited Vs. State of Maharashtra reported in (2017) 1 SCC 640 has held as under:-

"27. It appears to us that the appellants approached the High Court even before the stage of issuance of process. In particular, the appellants challenged the order dated 4-12-2011 passed by the learned Magistrate under

Section 156(3) CrPC. The learned counsel appearing on behalf of the appellants after summarising their arguments in the matter have emphasised also in the context of the fundamental rights of the appellants under the Constitution, that the order impugned has caused grave inequities to the appellants. In the circumstances, it was submitted that the order is illegal and is an abuse of the process of law. However, it appears to us that this order under Section 156(3) CrPC requiring investigation by the police, cannot be said to have caused an injury of irreparable nature which, at this stage, requires quashing of the investigation. We must keep in our mind that the stage of cognizance would arise only after the investigation report is filed before the Magistrate. Therefore, in our opinion, at this stage the High Court has correctly assessed the facts and the law in this situation and held that filing of the petitions under Article 227 of the Constitution of India or under Section 482 CrPC, at this stage are nothing but premature. Further, in our opinion, the High Court correctly came to the conclusion that the inherent powers of the Court under Section 482 CrPC should be sparingly used.â??

Thus, in the light of the judgment passed by the Supreme Court in the case of HDFC Securities Limited (supra), this Court is of the considered opinion that the submission that the complaint made by the respondent No.2 is predominantly of civil in nature, cannot be considered at this stage and the petition is held to be premature to that extent. However, this Court can always consider the correctness and genuineness of the order passed by the Magistrate under Section 156(3) of CrPC to the effect that whether the Magistrate has passed the impugned order after due application of mind or not.Â Â

It is well-established principle of law that an order under Section 156(3) of CrPC should not be passed in a routine manner. The Magistrate must apply its mind to the allegations made in the complaint and the application of mind by the Magistrate should be reflected in the order and he should not issue a direction without proper application of mind.

The Supreme Court in the case of Priyanka Shrivastava (supra)Â has held as under:-

"20. The learned Magistrate, as we find, while exercising the power under Section 156(3) CrPC has narrated the allegations and, thereafter, without any application of mind, has passed an order to register an FIR for the offences

mentioned in the application. The duty cast on the learned Magistrate, while exercising power under Section 156(3) CrPC, cannot be marginalised. To understand the real purport of the same, we think it apt to reproduce the said provision:

156. Police officer's power to investigate cognizable case:—(1) 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.

(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.

21. Dealing with the nature of power exercised by the Magistrate under Section 156(3) CrPC, a three Judge Bench in *Devarapalli Lakshminarayana*

Reddy v. V. Narayana Reddy (1976) 3 SCC 252¹ had to express thus: (SCC p. 258, para 17)

17. It may be noted further 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 under Section 156(1). Such an investigation embraces the entire continuous process which

begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173.

22. In *Anil Kumar v. M.K. Aiyappa* (2013) 10 SCC 705, the two-Judge Bench had to say this: (SCC p. 711, para 11)

11. The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in *Maksud Saiyed* (2008) 5 SCC

668 examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where

jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a

case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The

application of mind by the Magistrate should be reflected in the order. The mere

statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.â??

23. In *Dilawar Singh v. State of Delhi* (2007) 12 SCC 641 this Court ruled thus: (SCC p. 647, para 18)

â??18. â??11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under

Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein.

For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in

doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the

cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not

say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in

charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take

further steps contemplated in Chapter XII of the Code only thereafter.â??

24. In *CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd.* (2005) 7 SCC 467, the Court while dealing with the power of the Magistrate taking

cognizance of the offences, has opined that having considered the complaint, the Magistrate may consider it appropriate to send the complaint to the

police for investigation under Section 156(3) of the Code of Criminal Procedure. And again: (*Madhao v. State of Maharashtra*, (2013) 5 SCC 615,

SCC pp. 620-21, para 18)

â??18. When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an

offence. The Magistrate has discretion in the matter. If on a reading of the

complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence itself. As said earlier, in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)

(a).

However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the precognizance stage and avail of Section 156(3)."

25. Recently, in *Ramdev Food Products (P) Ltd. v. State of Gujarat* (2015) 6 SCC 439, while dealing with the exercise of power under Section 156(3)

CrPC by the learned Magistrate, a three-Judge Bench has held that:

(SCC p. 456, para 22)

â??22.1. The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take

cognizance and does not find it necessary to postpone instance of process and finds a case made out to proceed forthwith, direction under the said

provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered

appropriate to straightaway direct investigation, such a direction is issued.

22.2. The cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine

â??existence of sufficient ground to proceedâ??.â??

26. At this stage, we may usefully refer to what the Constitution Bench has to say in *Lalita Kumari v. State of U.P.*Â (2014) 2 SCC 1 in this regard.

The larger Bench had posed the following two questions: (SCC p. 28, para 30)

â??(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 cognizable offence but the FIR is compulsorily registered then does it infringe the rights of an accused.â??

Answering the questions posed, the larger Bench opined thus: (Lalita Kumari case SCC pp. 35-36, 41 & 58-59, paras 49, 72, 111 & 115)

â??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 cognizable offence. If any information disclosing a cognizable 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 cognizable 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. â?| 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 â??reason to suspect the commission of an offenceâ??. 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 cognizable offence.

115. Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable

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.â??

Â Â Â Â Â Â Â (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 cognizable offence. After laying down so, the larger Bench proceeded to state: (Lalita Kumari case, SCC p. 61, para 120)

â??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 monthsâ?? 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.â??

We have referred to the aforesaid pronouncement for the purpose that in certain circumstances the police is also required to hold a preliminary enquiry whether any cognizable offence is made out or not.

27. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending

the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the Bank. We are absolutely conscious that the position does not matter, for nobody is above the law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156(3) CrPC and also there is a separate procedure under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.

28. Issuing a direction stating "as per the application" to lodge an FIR creates a very unhealthy situation in society and also reflects the erroneous approach of the learned Magistrate....."

The Supreme Court in the case of Anil Kumar and Ors. Vs. M. K. Aiyappa and Another, reported in AIR 2014 SC (Supp) 1801 has held as under:-

"8. We may first examine whether the Magistrate, while exercising his powers under Section 156(3)Cr.P.C., could act in a mechanical or casual

manner and go on with the complaint after getting the report. The scope of the above mentioned provision came up for consideration before this Court

in several cases. This Court in Maksud Saiyed case (supra) examined the requirement of the application of mind by the Magistrate before exercising

jurisdiction under Section 156(3) and held that where a jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 Cr.P.C.,

the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3)against a public

servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has

gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the

complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) Cr.P.C., should be

reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the

learned Special Judge which, in our view, has stated no reasons for ordering

investigation."

Thus, it is clear that the order dated 20/06/2014 passed by JMFC, Gwalior completely lacks the due application of mind. The Magistrate should not have left his discretion to the police authorities to find out that whether any cognizable offence is made out or not. The Magistrate, in fact, must have applied its mind to find out that whether prima facie the allegations made in the complaint disclose commission of cognizable offence or not, whether the investigation by the police is necessary or not. Nothing is reflected in the order passed by the Magistrate indicating the application of mind. Under these circumstances, this Court is of the view that the order dated 20/06/2014 suffers from inherent weakness and cannot be allowed to stand.

Now, the next question arises for consideration is that whether the FIR which has been registered by the police during pendency of this petition would automatically get scrapped because of setting aside the order dated 20/06/2017 passed by JMFC, Gwalior or not? This Court in the case of Dinesh Singh Raghuvanshi & Anr. vs. State of MP (decided on 11/04/2018 in MCRC 10475/2017) has held that merely because an order passed by the Magistrate under Section 156(3) of CrPC is set aside on technical ground, then the FIR lodged by the police would not ipso facto lose its effect because the FIR can be lodged by treating the complaint as an independent source of information itself. However, in the present case, the principle of law laid down by this Court in the case of Dinesh Singh Raghuvanshi (supra) would not apply because the Magistrate by order dated 20/06/2014 has directed the Police to register the FIR only after coming to a conclusion that whether the allegation made in the complaint prima facie discloses the commission of cognizable offence or not.

In the present case, since the police has not registered the FIR after conducting a preliminary enquiry, or after coming to a conclusion that the complaint discloses the commission of cognizable offence, therefore, as a natural consequence, this Court is of the considered opinion that the FIR registered at Police Station Bahodapur, District Gwalior in Crime No.775/2017 would also automatically lose its effect and accordingly, the FIR registered by Police on 16/11/2017 against the applicant in Crime No.775/2017 is also hereby quashed. The matter is remanded back to the Magistrate

to consider the complaint afresh and by keeping in mind the law laid down by Supreme Court in the cases of Priyanka Shrivastava and Anil Kumar

(supra) while considering the application under Section 156(3) of CrPC. If the Magistrate comes to a conclusion that the complaint does not disclose

the commission of cognizable offence, then the Magistrate shall proceed further in accordance with law.Â Â

Accordingly, the application succeeds and is hereby allowed.