
(2006) 09 AHC CK 0003
In the Allahabad High Court

Smt. Masuman

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 25-09-2006

Acts Referred:

Arms Act, 1959 — Section 25
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 112, 139, 151, 154, 155
Explosives Act, 1884 — Section 4, 5
Penal Code, 1860 (IPC) — Section 120B, 147, 148, 161, 307

Citation : (2006) 09 AHC CK 0003

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vinod Prasad, J.—This cluster of petitions have been filed by the aggrieved persons who have been rebuffed by the Magistrate and in some cases by the lower revisional court as well in getting their FIR registered u/s 156(3) Cr.P.C. (herein after referred to as the code). The applicants in all these applications are victims of the alleged malefactors and all these applications raises a common question of law and argument. In all these petitions the applicants have questioned the scope of Section 156(3) Cr.P.C. and the power of the Magistrate there under. The prayer in all these applications are that the impugned orders passed by the concerned Magistrates, and in some cases also by the lower revisional court, refusing to order for registration of FIR on the application filed by various applicants u/s 156(3) Cr.P.C. be set aside and the concerned Magistrates be directed to reconsider the said applications afresh and pass orders in accordance with law. The applicants have also challenged the correctness of the law laid down in Gulab Chand Upadhyay v. State of U.P. 44 (2002) ACC 670 as in their submissions it is per-incurium. Since the arguments and the prayer made in all these cases are similar and identical therefore these applications were clubbed together and are being disposed of by this common judgment.

2. Before coming to the contentions raised a narration of the facts are inked below.

Criminal Misc. Application No. 6152 of 2006

Smt. Masuman v. State of UP and Ors.

The applicant Smt. Masuman wife of Faiz Mohammad resident of village Rasoolpur police station Billhor district Kanpur Dehat invoked the power of the Chief Judicial Magistrate, Kanpur Dehat on 20.9.2005, through an application u/s 156(3) Cr.P.C. with the allegations that Kallu Pal, Ram Pal, Raju, Munshi Lal, Vipin, Suresh, Jaggi Lal Kushwaha, and Chunna, alleged accused persons are her co-villagers. Her's is the only Mohammadan family in the village. Her husband is old, and fragile. The family earns it's livelihood by labouring. In the village Pradhan election in the recent past her family had supported the candidature of one Rajjan Singh who had defeated Sanjai in the said election. This had generated a feeling of revenge in the minds of alleged malefactors Kallu Pal, Ram Pal, Raju, Munshi Lal, Vipin, Suresh, Jaggi Lal Kushwaha, and Chunna who all are either relatives or well wishers of aforesaid Sanjai. Bubbling with feeling of revenge, on 7.9.2005 at 8 P.M when all the family members of the applicant except Iqrar, the younger son, were present in the house the aforesaid persons surrounded the house of the applicant vituperising the family. Faiz Mohd. and Mister, husband and elder son of the applicant Masuman were belaboured by raiders when they protested against the hurled abuses. Masuman, the applicant, her daughter Iskiman and grand daughter Afsana tried to save them but Iskiman was thrown on the ground by the alleged accused Kallu, Raju and Chunna caught hold of her hands and Juggi Lai by sliding her clothes above her waist attempted to rape her. Iskiman was also sexually assaulted and molested by Munshi Lal who pressed her breasts and after putting his hands on her private parts tried to lift her. On hue and cry being raised by the victim's family they were saved by the co-villagers who had collected there. The accused left the place of the incident threatening the family with dire consequences. Masuman could not get her FIR registered as she was surrounded in the way by the malefactors and was threatened for her life. Next day morning her husband and son were picked up by the alleged accused persons and were got implicated in a false case of theft. Injured Iskiman and Kumari Afsana got themselves medically examined in Ursala hospital, district Kanpur Nagar. The application of the applicant to the Senior Superintendent of Police, Kanpur Nagar, dated 13.9.2005 yielded no results and therefore the applicant approached the Chief Judicial Magistrate, Kanpur Dehat, through an application u/s 156(3) Cr.P.C. against the respondents alleged accused to get her FIR registered for offences under Sections 376/511/354/323/504/506 IPC and get it investigated by the police. She appended the injury reports of the two injured, her own affidavit and a copy of her application to SSP, Kanpur Nagar along with her application which are filed as annexure No. 1, 2 and 3 to the affidavit filed in support of this application. The aforesaid application of the applicant u/s 156(3) Cr.P.C. was however rejected by

the Chief Judicial Magistrate, Kanpur Dehat by the impugned order dated 9.11.2005 (Annexure No. 4) by passing an order as if, he was deciding the case finally. The revision preferred by Masuman being Criminal Revision No. 145 of 2005, too also rejected by the lower revisional court vide its impugned order dated 24.2.2006 (Annexure No. 6) Hence this application to this court u/s 482 Cr.P.C. by the applicant for quashing both the impugned orders and for a direction for fresh consideration of her application u/s 156(3) Cr.P.C. by the Chief Judicial Magistrate, Kanpur Dehat.

Criminal Miscellaneous Application No. 1442 of 2006

Uma Dutta Diwedi v. State of U.P.

3. This application has been filed by the applicants for quashing of the order dated 18.1.2006 passed by Judicial Magistrate, Mau in Case No. 315 of 2006. By the aforesaid order, annexure No. 7 the trial court has rejected the prayer for registration of FIR on application of the applicant filed u/s 156(3) Cr.P.C. on the ground that the applicant is in the knowledge of complete facts about the incident including the names of the accused and therefore, in view of the judgment in Gulab Chand Upadhyay v. State of U.P. 2002 (1) JIC 853 Allahabad and Ram Babu Gupta v. State of U.P. 2001 (2) JIC 203 the said application was registered as a complaint case and an order for getting statement u/s 200 Cr.P.C. recorded was passed. The facts of the case were that the applicant who is retired railway government servant had very good relations with Virendra Singh, Vinod Kumar Singh and Iftikhar Ahmad. Seema Singh wife of Virendra Singh, who is grand daughter of Jagdish Singh was a teacher in the school started by his grand father. Virendra Singh aforesaid, who is a land mafia had misappropriated Rs. 125000/= which was given to him by the applicant to start a brick kiln. He also got a tractor financed in the name of Vinod Kumar Singh, brother of applicant Uma Dutta Diwedi by deceiving Union Bank, Mazawara Branch and had also obtained signature of the applicant on papers to grab his property and had also committed theft of applicant's suit case. The applicant dispatched many registered letters on 24.12.2004, 27.12.04, 30.12.04 and 31.12.04 but no action was taken against alleged accused so much so that his registered letter dated 24.12.04 to S.S.P. Mau, D.I.G. Azamgarh and I.G. Varanasi range also proved futile in getting the FIR registered. Hence he filed application u/s 156(3) Cr.P.C. on 14.3.2005 annexing therewith the photocopy of forged stamp papers, the copy of the application sent to S.S.P. on 24.12.04 and the registry receipts. The Magistrate however turned down his prayer by passing the impugned order on 18.1.2006. hence this application.

Criminal Miscellaneous Application No. 3420 of 2006

Indra Mohan Gautam v. State of U.P. and Ors.

4. In this application order dated 7.7.05 passed by A.C.J.M. Court No. 1 Aligarh in Miscellaneous Application No. 838 of 2004 Indra Mohan Gautam v. Ramesh Chandra and Ors. as well as order dated 24.3.06 passed by Additional Sessions

Judge, court No. 5 Aligarh in Criminal Revision No. 531 of 2005, u/s 156(3) of the code is under challenge.

5. By order dated 7.7.05 the application u/s 156(3) filed by the applicant was ordered to be registered as a complaint case and 30.7.05 was fixed for recording of the statement u/s 200 Cr.P.C. By order dated 24.3.06, lower revisional court has rejected the revision also filed by the applicant. The facts of the case in nut shell were that on 3.6.2005 at 9 AM, when the applicant along with his father Bas Deo Sahai Gautam was going on his motor cycle to Aligarh to deposit the installments of his Ambassador car then near Nala crossing an attempt to murder him was attempted by shooting at him by the alleged accused Ramesh Chand Sharma, Subhash, Vinod and Kuldeep because his brother was a witness against these persons in a case for offence u/s 392 IPC. The aforesaid persons were also threatening him on phone to annihilate him since last fifteen days, as a result of which he was unable to go to the police station to get his F.I.R lodged. Even though he had intimated the incident to S.S.P. Aligarh through registered post on 25.6.05 his FIR was not registered and hence he had filed application u/s 156(3) Cr.P.C. on 29.6.2005 which was ordered to be registered as complaint by ACJM Court No. 1, Aligarh on the ground that the police report, which was called for on the said application u/s 156(3) mentioned that there was enmity between the applicant and Ramesh Chandra regarding the land dispute and that no injury report was filed by the applicant in the court. The revisional court also rejected his revision hence this Criminal Miscellaneous Application.

Criminal Miscellaneous Application No. 3313 of 2006

Pradeep Kumar v. State of U.P. and others

6. In this application the order dated 3.12.05 passed by A.C.J.M court No. 1 Kanpur Dehat in criminal case No. 3096 of 2005, Pradeep Kumar V. Rams Shanker and Ors. as well as order dated 20.12.05 passed by District Judge Kanpur Dehat in criminal revision No. Nil of 2005 have been challenged. By the aforesaid orders the application u/s 156(3) Cr.P.C. by the applicant has been rejected by both the courts. A.C.J.M. court No. 1 has observed in his impugned order that a report from police station has been received and he has perused the application and the annexure appended therewith. It seems just to get the application u/s 156(3) registered as complaint in register No. 9 and hence he fixed 7.1.06 for recording of statement u/s 200 Cr.P.C. The lower revisional court relying upon the judgment reported in 2001(2) JIC 231 Ram Babu Gupta v. State of U.P. has rejected the revision only on the ground that application u/s 156(3) Cr.P.C. can be registered as a complaint as well. The allegations in nutshell were that Mahabir was assaulted with Kulhadi and lathi by the alleged accused Rama Shanker and Manoj on the pretext that he had bet his pigs on 6.11.05 at 9 A.M. Injured Mahavir had received injuries. The incident was witnessed by the applicant and Anil Kumar. The application to S.S.P. Kanpur Nagar dated 7.11.2005 proved futile hence the application u/s 156(3) was filed on 9.11.05. Along with it the affidavit of the applicant Pradeep Kumar, copy of application

sent to S.S.P. Kanpur Nagar Registry receipt and the injury report dated 7.11.05.were annexed. Injury report indicated one incised wound and three contusions caused by sharp edged weapon and blunt object respectively were sustained by the applicant. Since the prayer for getting the FIR registered was denied by both the courts below hence, this application for setting aside the two orders and for a fresh consideration of the application u/s 156(3) Cr.P.C.

Criminal Miscellaneous Application No. 3207 of 2006

Dimi v. State of Uttar Pradesh

7. In this case application u/s 156(3) dated 17.1.06 filed by the applicant was rejected on 25.1.06 by Additional Civil Judge (Senior Division) Room No. 13, Allahabad. The facts of the case were that the respondents Rashid, Sadhu, Dildar, Liyakat Ali and Shaukat Ali armed with lathi and danda looted the house of the applicant on 5.1.06 at 9.00 P.M. and belaboured the application inside his house. He was saved by the intervention of the villagers. The accused had left the spot threatening him. It is mentioned in the impugned order by the Magistrate that according to the police report both the rival factions assaulted each other 5.1.06 in which Saukat Ali respondent had lodged a NCR No. 6/06, under Sections 323, 504 I.P.C. The A.C.J.M. has referred various ruling reported in AIR 1961 S.C. 896 Gopal Das v. State of Assam 1977 ACC 364 (HC) Tula Ram v. Kishore Singh 41 (2001) ACC 459 (HC) Suresh Chandra Jain v. State of M.P. and ultimately ordered that the application be registered as complaint as there was no reason to direct the police to register the F.I.R. and investigate the case. He had fixed 27.2.06 for recording of statement u/s 200 Cr.P.C.

8. Hence, this application.

Criminal Miscellaneous Application No. 3275 of 2006

Mahakar Singh v. State of U.P.

9. In this Criminal Miscellaneous Application order dated 22.3.06 passed by Judicial Magistrate/Additional Civil Judge Junior Division, Court No. 2, Meerut, passed in case No. 461/06 has been challenged by which the application u/s 156(3) Cr.P.C. has been rejected by the trial court. The synopsis facts of the case were that the applicant Mahkar Singh had enmity with respondents Raj Karan because of land dispute. On 2.3.06 at 4.30 P.M. the applicant accompanied with his cousin brother Harveer had gone to Bally Bazar Meerut for purchasing and while returning at 8 P.M. he met his friend Bhanu Pratap Chandel. When they were chatting alleged accused, namely, Rajkaran, Prem Singh with one person, who was driving the motorcycle, surrounded them and Rajkaran assaulted the applicant with knife on the chest and head. When the applicant tried to escape, Prem Singh assaulted him with Saria as a result of which the applicant sustained injuries. On hue and cry being raised the accused escaped on the motorcycle. The F.I.R. of the applicant was not registered at P.S. Delhi Gate and the applicant was directed to get his medical examination done. The applicant was got

admitted in P.L. Sharma Hospital and after two days of hospitalization he was discharged. Since the F.I.R. of the applicant was not registered, therefore, he filed an application u/s 156(3), for offences u/s 307, 324, 506, 120B I.P.C. before the Magistrate ACJM II (JD), Meerut, on 13.3.06, which was rejected by the impugned order on the ground that the place of the incident is populated and the applicant has not filed any affidavit of witnesses, who had reached on the spot. Hence, this application challenging the aforesaid rejection.

Criminal Miscellaneous Application No. 3184 of 2006

Smt. Suman Kumari v. State of U.P. and Ors.

10. In this Criminal Miscellaneous Application order dated 16.2.06 passed by Additional Chief Judicial Magistrate, Moradabad, passed in Miscellaneous Case No. 82/9/06 has been challenged.

11. The facts were that on 2.1.06 at 9.45 A.M. when Pankaj son of applicant Suman Kumari was going to school Asgar Hussain (Constable in G.R.P.) started abusing him. On protest being raised by the applicant, Asgar Hussain aforesaid, with knife and his wife Afrosch and Ors. bet Smt. Suman Kumari. The applicant was saved by the neighbors. Since the F.I.R. of Smt. Suman Kumari was not taken down and she was arrested falsely u/s 151 Cr.P.C. therefore, she filed an application u/s code Cr.P.C. The said application and her prayer for registration of FIR was rejected by the Magistrate by passing the impugned order on the ground that no medical report was filed and the incident was known to her and no new fact can come to light. Therefore, in view of Gulab Chand Upadhyay v. State 2002 LCR 2907 Joseph Madhuri v. Sachidanand Hari Shashtri the application was ordered to be registered as complaint. Hence, challenge has been thrown to the aforesaid order dated 6.2.06 by this application.

Criminal Miscellaneous Application No. 3617 of 2006

Asraf Ali v. State of U.P. and Ors.

12. In this case application u/s code Cr.P.C. was ordered to be registered as a complaint vide impugned order dated 4.8.05. The facts were that an application u/s code Cr.P.C. was filed on 15.3.05 before Judicial Magistrate first, Allahabad being Miscellaneous Case No. 750 of 2005 on the facts that on 14.2.05 at 2.30 P.M. the accused respondents Raja @ Irfan, Nafees Khan, Muzibulla @ Majjan, Mohd. Rijwan Khan, Farooq, Jameel, Ramjaan, Laddan, Imran, Zulifikaar attacked the complainant the other villagers and caused injuries to the applicant Ashraf Ali, Shakil, Imran @ Guddu. Two other person Suhail and Jameel also received injuries while trying to save the applicants. The police had connived with the accused. Applicant Ashraf Ali, Shakil and Imran @ Guddu have received serious injuries including fracture. Suhail and Mohd. Jameel had also received serious injuries. Since the police has not taken down the F.I.R. in spite of sending registry to the S.S.P. Allahabad and giving an application to him, therefore, the applicant Asraf Ali filed an application u/s 156(3) Cr.P.C. It is relevant to mention

here that the police in respect of this very incident had registered the F.I.R. being crime No. 41 of 2005, u/s 307 I.P.C., crime No. 42 of 2005, u/s 25 Arms Act, crime No. 43 of 2005, u/s 4/5 Explosive Act, crime No. 44 of 2005, u/s 4/5 Explosive Act against the applicant Asraf Ali and injured Shakeel, Imran etc. Since the Magistrate refused to get the F.I.R. registered for the applicant's version of the incident hence this application u/s 482 Cr.P.C. for quashing of the aforesaid order.

Criminal Miscellaneous Application No. 3611 of 2006

Bobby Khan v. State of U.P. and Anr.

13. In this application the impugned order is dated 13.3.06 passed by C.J.M. Jaunpur by which the application u/s 156(3) Cr.P.C. of the applicant was rejected and the same has been ordered to be registered as complaint on the ground that there is no need for investigation by the police and the complainant can produce the evidence, which is available to him. The facts in nutshell were that the respondent Rakesh Kumar Srivastava had taken away Marshal Jeep No. MP 18BB 1372 belonging to the applicant and thereafter was threatening him to get him murdered through anti-social elements and was not returning his aforesaid vehicle. The alleged accused had wrongly detained the vehicle and it was not possible to get the vehicle recovered without the help of police. Since his prayer for getting the matter investigated by the police was rejected by the impugned order therefore, this application u/s 482 Cr.P.C. for setting aside that order.

Criminal Miscellaneous Application No. 3637 of 2006

Om Prakash v. State of U.P. and Ors.

14. In this case the impugned order is dated 20.3.06 passed by Additional Chief Judicial Magistrate, Bijnor in Miscellaneous Application No. Nil of 2006. In this case also the application u/s 156(3) Cr.P.C. has been ordered to be registered as complaint on the ground that all the facts are clear including the names of the accused with their addresses and hence there was no need to order for investigation by the police on the basis of judgment in Gulab Chand Upadhyay and Ram Bahadur Gupta (Supra). The facts in nutshell were that the applicant Om Prakash son of Ram Dayal was cheated to a tune of Rs. 50,000/- by Mohd. Arif, which was entrusted to him by the applicant on 4.4.05 and repeated demand of the same resulted in his beating by Mohd. Arif aforesaid, his brother Malwa, and father Mujareen Ahmad with one more person inside his house with lathi and Dandas. The applicant had received injuries and got himself medically examined in district hospital yet his F.I.R. was not taken down. Aggrieved by the said refusal by the Magistrate in getting the FIR registered and investigated by the police this application u/s 482 Cr.P.C. to set aside the said impugned order has been filed.

Criminal Miscellaneous Application No. 3725 of 2006

Gava Prasad v. State of U.P. and Ors.

15. In this case the impugned order is dated 17.2.06 passed by A.C.J.M. court No. 1 Kanpur Dehat in Case Gaya Prasad V. Rajendra Singh @ Lakhan. By the impugned order the application u/s 156(3) Cr.P.C. by the applicant has been ordered to be registered as complaint fixing 1.3.06 for recording of statement u/s 200 Cr.P.C. The challenge has also been made to the revisional court's order dated 25.3.06 by which the revision has also been dismissed mentioning cases of Ram Babu Gupta and Gulab Chand Upadhyay which was filed against the said order of rejection. The facts in nutshell were that Subhash Chandra @ Lalla son of applicant Gaya Prasad was fired at when he was sitting at his door by Sunil son of Suresh Chand, who was accompanied by Rajendra @ Lakhan, Sunil son of Rajendra and Babloo, who all were armed with lathi, kantq and barchi. This incident was witnessed by Puttu, Jamaluddeen, Rambali and Ors. including the applicant. The son of the applicant was sent for medical treatment to Kanpur. The police had arrested the three accused but later on released them. The accused persons were threatening the applicant with dire consequences. The injured son of the applicant was admitted in Hallet Hospital. Since the F.I.R. of the applicant was refused to be registered the applicant filed an application u/s 156(3) Cr.P.C. but the registration of case by the police was denied by the Magistrate as well and also by lower revisional court. Hence, this application u/s 482 Cr.P.C. to set aside both the orders.

Criminal Miscellaneous Application No. 3106 of 2006

Radhev Shvam v. State of U.P. and Ors.

16. In this case the impugned order is dated 18.2.06 passed by C.J.M. Farrukhabad in Miscellaneous Case No. Nil of 2005, Radhy Shyam v. Rakesh and Ors. by which application u/s 156(3) Cr.P.C. filed by the applicant has been rejected by C.J.M. Farrukhabad on the ground that all the facts were known to the applicant including the names of witnesses. Hence, on the basis of case of Glulab Chand Upadhyay there was no need for investigation. The facts were that the application u/s 156(3) Cr.P.C. was filed on 16.12.05 by applicant Radhey Shyam for offences u/s 147, 148, 323, 452, 504 and 506 I.P.C. and SC/ST Act. The occurrence alleged in nutshell were that on 28.11.05 at 7.30 P.M. the accused, ten in number armed with lathi and danda and one accused armed with licensee gun raided the house of the applicant making utterances of filthy abuses relating to castes and bet the wife of the applicant Sushila Devi and Shyam Singh. The accused left the spot threatening the family members. Since the registry sent to the administrative authorities and the other applications did not yielded any result in getting the F.I.R. lodged therefore, the application u/s 156(3) was filed by the applicant. The medical examinations of the injured was done in Dr. Ram Manohar Lohia Government Hospital Farrukhabad on 1.12.2005. Since the F.I.R. was not ordered to be registered by the impugned order hence this application u/s 482 Cr.P.C. for quashing the said order and direction for fresh consideration.

Criminal Miscellaneous Application No. 2290 of 2006

Mahendra Singh v. State of U.P.

17. In this case the impugned order is dated 7.1.06 passed in Miscellaneous Case No. 15 of 2005, Mahendra Singh v. State of U.P. by which order of registration of F.I.R. and investigation by the police has been refused by A.C.J.M. Ghaziabad and the application u/s 156(3) Cr.P.C. was ordered to be registered as complaint. The incident in short were that a fraud has been committed regarding a land scam in respect of Gram Sabha land relating which the civil suit is already pending. The said land scam has been committed by preparation of forged and false documents, sale deeds, agreements to sell etc. by the accused. Since the registration of F.I.R. was denied by the Magistrate hence this application u/s 482 Cr.P.C. for quashing and direction for fresh consideration in accordance with law of the application u/s 156(3) Cr.P.C.

Criminal Miscellaneous Application No. 2298 of 2006

Naresh Kumar Taneia v. State of U.P.

18. In this case the impugned order is dated 29.11.2005 by which the application u/s 156(3) Cr.P.C. of the applicant has been ordered to be registered as complaint and the registration of F.I.R. and investigation has been denied by the Judicial Magistrate II, court No. 15, Saharanpur. The aforesaid application was for offences u/s 323, 504, 506, 441, 120B, 427, 327, 341, 342 I.P.C. The incident incapsulated was that the applicant Naresh Kumar Taneja was assaulted on 2.10.05 at 11.00 A.M. and the accused had grabbed the plot belonging to the applicant by opening a way on the said plots. The accused also snatched away his licensee revolver and had illegally captured the plot belonging to the nephew of the applicant. The police had registered a false case against the applicant u/s 307 I.P.C. and had taken his licensee revolver as well. The applicant was got medically examined by the police. Since the applicant's efforts to get the F.I.R. registered failed he filed an application u/s 156(3) for getting his F.I.R. registered, which was denied by the Magistrate on the basis of cases of Glulab Chand Upadhyay v. State and Vinay Pandey v. State 52 (2005) ACC 568. Since the effort to get his F.I.R. registered failed hence, this application u/s 482 Cr.P.C. by the applicant.

Criminal Miscellaneous Application No. 2199 of 2006

Badshah v. State of U.P. and Ors.

19. In this case the impugned order is dated 19.4.05 passed by A.C.J.M court No. 8, Aligarh in case No. 1100 of 2004 Badhshah v. Netrapal Singh and Ors. wherein application u/s 156(3) Cr.P.C. was ordered to be registered as complaint and the revision against the said order was also dismissed by Additional Sessions Judge court No. 5, Aligarh vide impugned order dated 29.8.05 in revision No. 373 of 2004. The facts indicated that the applicant was defrauded of his land as well as of an amount of more than Rs. 3 lakhs on the basis of a false sale deed which had been registered in the name of Rosh Kumar, Sunil Kumar and Subhash

Kumar by the power of attorney holder Netra Pal Singh. Because of the aforesaid fact Badshah was threatened on 17.10.03 at 8.00 P.M. for being annihilated by the said Netra Pal and his sons and hence he had filed application u/s 156(3) Cr.P.C. The rejection of his prayer to order for registration of FIR by the Magistrate is under challenge in this application.

Criminal Miscellaneous Application No. 2093 of 2006

Anil V. State Of U.P.

20. In this case the impugned order is dated 7.2.06 passed by A.C.J.M. II, Meerut by which the application u/s 156(3) Cr.P.C. had been ordered to be registered as complaint. The allegations were that on 1.1.06 at 7.30 P.M. the accused armed with country made pistol entered into the house of the applicant Anil and committed a decoity of motorcycle, colour T.V., Fridge, CD. Player, Almirah, Dressing table, Mixy etc. when the applicant was in jail. The registration of the F.I.R. was denied on the basis of judgment reported in 52 (2005) ACC 568 by the A.C.J.M. (2) Meerut. Hence, this application u/s 482 Cr.P.C. for quashing the said order and for a direction for reconsideration of the application u/s 156(3) afresh by the Magistrate concerned A.C.J.M. II, Meerut.

Criminal Miscellaneous Application No. 2301 of 2006

Raiendra Singh v. State of U.P. and Ors.

21. In this case the impugned order is dated 16.1.06 passed by Special Judge (D.A.A.) Etawah in Miscellaneous Case No. 7 of 2006, under Sections 395 I.P.C. By the impugned order the registration of the F.I.R. has been denied by the Special Judge D.A.A. Etawah the ground that the applicant knew the accused, who are resident of his village and all the facts regarding the incident is known to the him. The impugned order mentions the rulings of Ram Babu Gupta reported in 43 (2001) A.C.C. 50. The application u/s 156(3) Cr.P.C. has been ordered to be registered as complaint. Since the registration of F.I.R. was denied and hence this application for quashing and direction for fresh consideration by the Special Judge D.A.A of the application filed by the applicant.

Criminal Miscellaneous Application No. 2385 of 2006

Brii Kishore Diwedi v. State of U.P. and Ors.

22. In this case the impugned order is dated 16.1.06 passed by A.C.J.M. Court No. 2 Kanpur Dehat by which the application u/s 156(3) Cr.P.C. filed by the applicant Brij Kishore being case No. 24 of 2006 has been ordered to be registered as complaint. The application u/s 156(3) was filed for offences u/s 323, 324, 325, 452, 504, 506 I.P.C. on the synopsized allegations that on 22.8.05 at 10.30 A.M. the accused filthily abused the applicant on the ground of washing of clothes and after entering into his house bet the applicant and his wife Madhu Dwivedi with lathi, danda and Kurphi as a result of which they sustained injuries. The applicant got themselves medically examined on 24.8.05

and 25.8.05. Fractures were found in their injuries. Along with the application the applicant had appended the medical reports as well as the X-ray reports. In spite of the fact that the application disclosed cognizable offences his F.I.R. was not registered and therefore, he filed application u/s 156(3) Cr.P.C. for registration of his F.I.R., which was denied by the Magistrate, ACJM Kanpur Dehat, Court No. 1 and the application u/s 156(3) was ordered to be registered as a complaint. Hence, this application u/s 482 Cr.P.C. for quashing of the aforesaid order and for a direction to the Magistrate concerned to proceed in accordance with law.

Criminal Miscellaneous Application No. 2516 of 2006

Naimuddin v. State of U.P. and Anr.

23. In this case the impugned order is dated 4.2.06 passed by A.C.J.M. 1st Bulandshahar in Miscellaneous Case No. 31 of 2006 Naimuddin V. Shamsu by which application u/s 156(3) Cr.P.C, which was filed by the applicant Naimudeen has been ordered to be registered as complaint by the impugned order. The facts in short were that the applicant is litigating with the family members of his wife and because of the aforesaid enmity on 12.1.06 at 4.30 P.M. the accused armed with knife, country made pistol and danda assaulted the applicant Naimuddin, who sustained injuries. Since his F.I.R. was not registered he filed application u/s 156(3) Cr.P.C. but the Magistrate also denied passing an order for registration of the F.I.R. by the impugned order. Hence, this application u/s 482 Cr.P.C. for quashing of the impugned order and a direction for registration of the F.I.R. and investigation thereon.

Criminal Miscellaneous Application No. 2773 of 2006

Ram Prasad Tiwari v. State of U.P. and Ors.

24. In this case the impugned order is dated 3.3.06 passed by civil Judge, Judicial Magistrate, court No. 6, Allahabad in Miscellaneous Case No. 34/XII/06. The order for registration of F.I.R. was not made by the Magistrate on the basis of the case of Gulab Chand Upadhyay. The facts were that the tractor and trolley belonging to the applicant Ram Prasad Tiwari had been stolen but his F.I.R. was not taken down by the police nor his aforesaid tractor being tractor No. U.P. 70 V 9289 and the trolley have been recovered by the police. The Magistrate had refused to order for registration of the FIR on the ground that there is no need of investigation and ordered that the application u/s 156(3) be registered as complaint. Hence this application u/s 482 to set aside the said order and for a direction for reconsideration of the application u/s 156(3) Cr.P.C. afresh by the Magistrate.

25. From the facts mentioned above there is a comity of prayer and legal question which is engulfing all these cases. All these applications are filed by victims who had earlier approached the concerned Magistrates u/s 156(3) Cr.P.C. for getting their FIR registered by the police but the said prayer has been rebuffed by the concerned Magistrates and in some cases even by the lower

revisional courts mainly on two grounds, in some cases by ordering the applicant to file a complaint as he is in full knowledge of all the facts and investigation is not required on the basis of Gulab Chand Upadhyay's and Ram Lal's case and in others by rejecting his application u/s 156(3) Cr.P.C. Thus, in all these cases a common grievance and a common question of law have been raised.

26. I have heard respective counsels for the applicants in all these applications in support of their case as well as learned A.G.A. in opposition.

27. Learned Counsels for the applicants in all these cases contended with force that the order passed by the Magistrate is wholly illegal without jurisdiction and de hors the law. They contended that the application u/s 156(3) Cr.P.C. disclosed commission of cognizable offences and hence the Magistrate had no jurisdiction to refuse passing of an order for registration and investigation of the FIR. The counsels contended that the Magistrate has to act in accordance with law and he cannot travel beyond the scope of the power, which has been conferred on him u/s 156(3) Cr.P.C. They harangued that once a cognizable offence is disclosed in the application filed u/s 156(3) Cr.P.C. the Magistrate is left with no other option but to order for investigation as the applicants had invoked the administrative jurisdiction of the Magistrate for a direction to the police to register the FIR under chapter XII of the code and the Magistrate acted illegally in not granting the said relief. They further argued that the Magistrate who is not in a position to deal with the cases already pending before him further saddled himself to inquire into the matter under chapter XV Cr.P.C. when the applicants never wanted it from him under chapter XII of the code. They urged that the Magistrate has acted on his own by passing the impugned orders and it is he who has started the lis by taking cognizance under chapter XV which was never prayed for by the applicants and which is not permissible under the law. According to their submission the power of investigation lies with the police and not with the Magistrate and hence he is incompetent to decide as to whether a cognizable offence is investigable or not and it is only the police who can decide it u/s 157(1) &(2) Cr.P.C. and if the police decides not to investigate the FIR then it has to record it's reasons for the same and communicate it to the informant. They contended that the Magistrate by usurping the power of the police has acted de-hors the law and without jurisdiction. They further submitted that it was choice of the applicants to decide as to under which forum he wants the redressal of his grievances and start the lis. They further contended that the Magistrate cannot be a party to a lis and he can not decide the forum for it which is the right of the victim. The Magistrate does not have the advisory jurisdiction to direct them to file a complaint they harangued. In some cases the counsels even went on to argue that the Magistrate by directing the applicants to file a complaint has sided with the accused as they will never be arrested for committing the cognizable offences and there by the Magistrate has circumvented the power of the police u/s 41 of the code and thus the applicants can bring the culprits before the court only after a gap of many days when the summoning order is issued against them and even after that the accused will be

released on bail under the normal procedure. The counsels further submitted that no justice has been done by the Magistrates, by passing the impugned orders and he has given a further blow to victim, the injured and aggrieved which is nothing but adding insult to injury. The counsels further contended that the Magistrate in fact has made himself a party to the litigation by starting the litigation under chapter XV against the mandate of law ignoring the definition clause of the "complaint" u/s 2(d) Cr.P.C. With other collateral submissions the counsels in chorus in all these cases concluded their arguments by submitting that the impugned orders passed by the concerned Magistrate is illegal and deserves to be set aside and they - the Magistrate in all these cases deserves a direction from this court to reconsider the application of the applicants u/s 156(3) Cr.P.C. afresh in accordance with the law and decide the same within a stipulated period of time. They seriously questioned the correctness of the law laid down in *Gulab Chand Upadhyay v. State of U.P* 44 (2002) ACC 670 and contended that it is per- incurium and should be declared as such. They further contended that in full Bench decision of this Court reported in *Ram Babu Gupta v. State of U.P.* 43(2001) ACC 50 it is nowhere laid down that if a cognizable offence is disclosed the Magistrate even then can refuse to direct registration of FIR and follow up investigation and further that the Magistrate can suo motu on his own convert an application u/s 156(3) Cr.P.C. into one as "complaint". In support of their contentions, the learned Counsels relied upon many judgments of apex court as well as of this Court which will be "referred to at the appropriate stage subsequently in this judgment.

Learned AGA on the other hand contended that since in all these cases the Magistrate thought it essential not to order for an investigation, therefore, the order can not be faulted with. He contended that the Magistrate can treat the application u/s 156(3) Cr.P.C. as a "Complaint". He submitted that since that the Magistrate felt that there is no requirement of investigation in view of the law laid down in *Ram Babu Gupta* and *Gulab Chand Upadhyay*(Supra), therefore, he has passed the impugned orders which should be upheld. He further contended that the Magistrate u/s 156(3) of the code on his own can order the registration of an application under that section as a "complaint" and that power vests in him.

28. Cogitating over the rival contentions raised by the contesting rival sides it is clear that the contentions raised by both the sides mainly rotates around the Controversy as to what is the scope of Section 156(3) Cr.P.C. and what are the powers of the Magistrate there under and whether the Magistrate on his own, without prayer being made by the aggrieved persons, direct the applicant to take recourse to a particular forum of litigation and to refuse his prayer for the other forum by starting a lis. The last bone of contention is as to whether the decision in *Gulab Chand Upadhyay*'s case(Supra) is against the provision of Section 2(d) & 156(3) Cr.P.C. and is per incurium

For an indepth analysis and for determination of the rival submissions a glimpse of the various relevant provisions of the Code seems to be an indispensable

must. To start with Section 156(3) Cr.P.C. describes the "complaint" thus:

"Complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

29. This definition of "Complaint" reproduces, with adjustments in sequence of words, old Section 4(h) Cr.P.C. of 1898 (Old Code) and it brings out the salient features of "complaint" A complaint is an allegation made orally or in-writing to a Magistrate in respect of some person whether known or unknown who has committed an offence with a view to his taking action (Emphasis Supplied). Under the code there is no definite form for lodging of the "Complaint" It is the prayer made and intention shown, of the person making it, that will determine the document to be a "Complaint" or not? This ingredient of "taking action by the Magistrate himself in a definite manner provided under chapter XV of the code is the sine qua non for any Magistrate to take action on a complaint. For a document to be "Complaint" u/s 2(d) of the code there has to be an express or implied intention of the person concerned for the Magistrate to take action himself. It does not include a police report, which is defined u/s 2(r) Cr.P.C. The actions which a Magistrate is required to take on a complaint are provided under chapter XV titled as "COMPLAINT TO A MAGISTRATE" The action is to record statement of the complainant u/s 200 and that of his witnesses u/s 202 of the code. However if the prayer is of any other kind then that will not be a complaint as is defined u/s 2(d) Cr.P.C. Let me clear a doubt here. The word "Complaint" as is used in common parlance in a generic sense is different from the word "Complaint" u/s 2(d) Cr.P.C. An application for issuing a warrant or for recovery of a thing or article or for registration of a case u/s 156(3) Cr.P.C. or for issuance of search warrants etc. falls outside the periphery of the definition of "Complaint" u/s 2(d) of the code. In the case of Superintendent and Remembrancer of legal affairs. Superintendent and Remembrancer of Legal Affairs Vs. Abani Kumar Banerjee, while explaining taking of cognizance on a "complaint" Calcutta High Court has observed thus:

When the Magistrate applies his mind not for the purposes of proceedings under the subsequent sections of this chapter, but for taking action of some other kind, eg; ordering investigation u/s 156(3). or issuing a search warrant for the purpose of the investigation, he can not be said to have taken cognizance of the offence.

The aforesaid judgment has the approval of the apex court in case of Mohd. Yousuf v. Afaq Jahan and Anr. 2006 JT II 10 and R.R. Chari Vs. The State of Uttar Pradesh, Thus it is clear that the prayer made before the Magistrate by an aggrieved person of any other kind or with the prayer to direct the police to register the case and investigate is not a "Complaint". In Mohd. Yousuf Vs. Smt. Afaq Jahan and Another, the apex court has observed thus -

What is taking cognizance has not been defined in the Criminal Procedure Code

and I have no desire to attempt to define it. It seems to me clear however that before it can be said that any Magistrate has taken cognizance of any offence u/s 190(1)(a), Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter—proceeding u/s 200 and thereafter sending it for inquiry and report u/s 202. When the Magistrate applies his mind not for the purpose of proceedings under the subsequent sections of this Chapter, but for taking action of some other kind, e.g., ordering investigation u/s 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence.

(Emphasis Mine)

30. In *Haidar Raza v. King Emperor* ILR 36 All 222: 12 ALJ 306 it has been held by this court that:

Now the original statement made by Sukhari to the Honorary Magistrates, by which their attention was first drawn to the commission of an offence punishable u/s 161 of the Indian Penal Code, was certainly not a complaint" within the meaning of the definition given in Section 4 of the Criminal Procedure Code. It is clear to me that Sukhari had no intention of asking the Magistrates to take action under the Criminal Procedure Code. When he made that statement, he was merely explaining to them why he was holding out for certain terms before he could consent to compound the offence in the case in which he appeared as complainant. If therefore, the Honorary Magistrates proceeded to take cognizance of this offence, they could only do so u/s 190, clause 1(c). The learned Sessions Judge's view of the proceedings which followed seems either to be coloured by the assumption that the Honorary Magistrates, being empowered by law to take cognizance of the matter under the clause aforesaid, were legally bound to do so and to do so immediately, or else to rest on the supposition that their examination of Sukhan on solemn affirmation shows that they had so taken cognizance. I am not prepared to admit either of these propositions.

The same view has been reiterated in *Durga Dutt Khemka Vs. The State*, ILR 19 Bom.51 *Emperor v. Phu Lal* ILR 35 All 102 : 11 ALJ 15. and many other decisions. Thus there does not remain any doubt that any or all and sundry application is not a complaint and the Magistrate does not have the power to take cognizance on such an application u/s 190(1)(a). An application u/s 156(3) Cr.P.C. falls within the category of one of such applications as is clear from the above judgments. The said matter has also come up before this Court on numerous occasions in *Ram Anui Dubey v. State of U.P.* 47 (2003) ACC 140 *Mahboob Ali v. State of U.P. and Ors.* 2001 (sup) ACC 277 *Dinesh Chandra and Ors. v. State of U.P.* 2001(1) JIC 942 (Allahabad) and *Madhubala v. Suresh Kumar and Ors.* 35 (1997) ACC 371. It has been held in *Dinesh Chandra and Ors.* (Supra) as follows:

The Apex Court has definitely not used the term complaint to thwart or defeat

the purpose behind the enactment of Section 156(3) itself. The term was never used with any intention that the reference order appears to channelise. Thus, in my view it should be an application and not a complaint.

(Emphasis mine)

It has been further held in the same case that:

It is, therefore, abundantly clear from the above analysis that the application given u/s 156(3) has only a limited purpose i.e. to seek the interference of the court of concerned Judicial Magistrate for an order to the police to register and investigate the cognizable case, facts of which are disclosed in such an application. Such an application is never meant for cognizance u/s 190 Cr.P.C. or for drawing of proceedings under Chapter XV and XVI

(Emphasis mine)

31. It has been held in the case of *Mahboob Ali v. State of U.P. and Ors.* 2001 ACO(suppl.) 277 that -

The scope and procedure of application u/s 156(3) Cr.P.C. and the complaint are totally different. The provisions of 156(3) Cr.P.C. are contained in Chapter XI of Code of Criminal Procedure which deals with the information to the police officers and their powers to investigate. Sub-section (1) of Section 156 Cr.P.C. empowers Officer In-Charge of a police station to investigate any cognizable case without the order of the Magistrate. Section 156(3) empowers a Magistrate to order investigation of a cognizable offence. Therefore, the provisions of Section 156 are concerned with the investigation of a case and since there can be no investigation without registering of a case, it may be said that the above provisions of Section 156(3) relate to the registration and investigation of a case. In case, any order is passed u/s 156(3) Cr.P.C., the police will follow the procedure contained u/s 156(1) Cr.P.C. and after investigation submit a report u/s 173 Cr.P.C. The procedure for taking cognizance on the report submitted u/s 173 Cr.P.C. shall be separate i.e. cognizance on a police report u/s 190(b) Cr.P.C. Separate procedure for trial of such cases is also provided in the Cr.P.C. While on a filing a complaint the Magistrate had to adopt a procedure under Chapter XIV of Cr.P.C. If the Magistrate takes cognizance on a complaint, it would be under Section 190(a) Cr.P.C. and separate procedure is also provided for trial of a complaint case. Thus, the legislature had intentionally made to separate procedures to be followed and therefore, the Magistrate cannot convert one procedure into other. It has also been held in several cases of this Court that Magistrate has no power to register an application u/s 156(3) Cr.P.C. as complaint. Moreover, the definition of complaint given in Section 2(d) says that "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report. Thus, the scope of application u/s 156(3) Cr.P.C. and that of a complaint are also different.

(Emphasis Mine)

32. It is further been held in the case of *Bharat Kishore Lal Singh Deo Vs. Judhistir Modak*, as follows:

The definition of a complaint is to be found in Section 4(h), Criminal PC and is as follows:

Complaint means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown has committed an offence, but it does not include the report of a police officer.

In my opinion these words mean this. First of all there must be an allegation of an offence, and it is true that the petition in this case does contain that requirement, but secondly, the allegation of the specific offence must be with a view to action being taken under the Code, that is to say action being taken for the prosecution of the offender for having committed the specific offence, and it must be made to the Magistrate in his judicial capacity so that he may exercise his power of taking cognizance of that specific offence and proceed in respect of it against the person accused. In this case an examination of the petition shows clearly that the object of the petition was not that the particular offence should be punished but rather (he mentions the particular offence is put in with a view to illustrate the kind of conduct which is the accused person is supposed to be following and against which kind of conduct the petitioner seeks protection. The whole tenor of the petition shows that what is uppermost in the mind of the petitioner is the anticipated conduct of the person whom he mentions and against that conduct he asked the Deputy Commissioner in his executive capacity to make enquiry and protect him against a repetition of such conduct.

(Emphasis Mine)

33. It has been held in the case of *Subodh Chandra v. Jamsar Mandal* AIR 1949 Cal 55 as follows:

It has been urged by Mr. Mukherjee on behalf of the petitioner that the so-called petition was not a complaint within the meaning of Section 4(1)(h), Criminal P.C. "Complaint" is there defined as an allegation made orally or in writing to a Magistrate with a view to his taking action under this Code, that some person whether known or unknown had committed an offence, but it does not include a report by a police officer, In short to amount to a complaint the allegation must be made with a view to the recipient taking action under the Code charging some person with a particular offence.

It is clear that the petition or complaint of the opposite party was not presented to the Sub Divisional magistrate with a view to the latter taking action under the Criminal Procedure Code. The learned Magistrate is in terms asked to take administrative action. Therefore, the petition or complaint was not such a complaint as a Magistrate could act upon u/s 190(1), Criminal P.C.

(Emphasis Mine)

34. Thus, it is clear that a document to be a "complaint" must be made before the Magistrate for his taking action in a defined manner under Chapter XV of the Code after taking cognizance of the offence u/s 190(1)(a). Hence, there is a scuttle but well perceptible distinct between a "complaint"¹ and an application u/s 156(3) Cr.PC. and that difference lies between the intention and prayer of the applicant. If he wants the Magistrate to take action against the culprits then that is a "complaint". If the aggrieved person does not want the Magistrate to take action himself but he wants a different kind of action from him such as a direction to the police to take action then it is not a "complaint". I do not mean to say that if a "complaint" covered by Section 2(d) is filed before the Magistrate, he cannot direct for an investigation. The Magistrate certainly can send a "complaint" for investigation but that he has to send to the police before he takes cognizance of the offence u/s 190(1)(a) but after being satisfied that the application discloses, prima facie, commission of a cognizable offence. Thus, it is amply clear that the blanket order of treating every application with a prayer for a direction to register and investigate the FIR can not be registered as a "complaint" by the Magistrate and in case he does so the action will be unsanctified by law. The purpose of a "complaint" and an application for investigation u/s 156(3) Cr.PC are entirely different. In this view of the matter, the contention of the learned Counsel for the applicants that an application u/s 156(3) cannot be treated to be a complaint on its own by the Magistrate is well founded and has to be upheld. I am fortified in my view from the above judgments of this court.

35. Coming to the second aspect of the argument which was elaborately submitted regarding the registration of FIR and its investigation by the police it is to be noted that the FIR is registered u/s 154(1) or under the directions Section 154(3) or 156(3) of the code. All information which discloses commission of a cognizable offence has to be mandatorily registered u/s 154(1) Cr.P.C. and the same has to be investigated u/s 156(1) of the code unless the officer in charge of the police station decides not to investigate it u/s 157(2) of the code for which the officer in charge has to mention his reasons for not entering into such an investigation and inform the informant regarding the said decision. Informant thereafter can take recourse to the remedy available to him under the law. This aspect of the matter has been dealt with exhaustively by the apex court in the case of *State of Haryana and Ors. v. Bhajan Lal and Ors.* 1992 SCC 426. In paras 30, 31 and 33 the apex court has laid down that:

30. The legal mandate enshrined in Section 154(1) is that every information relating to the commission of a "cognizable offence" (as defined u/s 2(c) of the code) if given orally (in which case it is to be reduced into writing) or in writing to "an officer in charge of a police station" (within the meaning of Section 2(o) of the code) and signed by the informant should be entered in a book to be kept by such officer in such form as the state government may prescribe which form is commonly called as "First Information report" and which act of entering the

information in the said form is known as registration of a crime or a case.

31. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the code, the concerned police officer can not embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered u/s 156 of the code to investigate subject to the proviso to Section 157. In case, an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the superintendent of police concerned who if satisfied that the information forwarded to him discloses a cognizable offence should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by Sub-section (3) of Section 154 of the Code.

33. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the code 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.

(Under line Emphasis Supplied).

Section 156(3) provides that "Any Magistrate may order such an investigation as mentioned above" These words "Any Magistrate" includes Executive Magistrates as well besides Judicial Magistrates. This Sub-section does not create any distinction between these two types of Magistrates. Further words "an investigation as mentioned above" relates to an investigation which is to be conducted by the police u/s 156(1) Cr.P.C. The purview of the power of the Magistrate conferred u/s 156(3) Cr.P.C. does not travel beyond the said scope. It is limited in nature and the Magistrate under that sub-section is empowered only to look to the application or complaint only to find out as to whether a cognizable offence is disclosed or not? Let me make it clear that registration of a FIR is quite different than the investigation of the offence disclosed. It has been so held in the case of Bhajan Lal (Supra) by the apex court in para 41 of the said judgment. The apex court has held:

We shall now examine as to what are the requirements to be satisfied by an officer in charge of a police station before he enters into the realm of investigation of a cognizable offence after the stage of registration of the offence u/s 154(1). We have already found that the police have u/s 154(1) of the code a

statutory duty to register a cognizable offence and thereafter u/s 156(1) a statutory right to investigate any cognizable case without requiring sanction of a Magistrate. However, the said statutory right to investigate a cognizable offence is subject to the fulfillment of pre-requisite condition, contemplated in Section 157(1). The condition is that the officer in charge of the police station before proceeding to investigate the facts and circumstances of the case should have "reason to suspect" the commission of an offence which he is empowered u/s 156 to investigate.

(Emphasis Supplied)

In para 48 and 49 of the same judgment the apex court has reiterated the same view and has held thus-

Resultantly, the condition precedent to the commencement of the investigation u/s 157(1) Cr.P.C. of the code is the existence of the reason to suspect the commission of a cognizable offence which has to be, prima facie, disclosed by the allegations made in the first information report laid before the police officer u/s 154(1).

(Emphasis Supplied)

In the case of *Madhu Bala v. Suresh Kumar and Ors.* 1998 SCC 111 it has been held by the Supreme Court in para 10 thereof:

The provisions of the code therefore do not in any way stand in the way of a Magistrate to direct the police to register a case at the police station and then investigate into the same. In our opinion when an order for investigation u/s 156(3) of the code is to be made the proper direction to the police would be "to register a case at the police station treating the complaint as the first information report and investigate into the same.

The above quoted passage in unequivocal terms brings forth the ambit of power of Magistrate u/s 156(3) Cr.P.C. Under the said section the Magistrate does not take the cognizance himself and the said power is wielded at the pre cognizance stage falling under chapter XII relating to the power of the police to investigate into the cognizable offence. In the case of *Suresh Chand Jain v. State of Madhya Pradesh* JT 2001(21) SC 81 (Supra) it has been held by the Apex court that:

But the significant point to be noticed is when a Magistrate orders investigation under chapter XII he does so before he takes cognizance.

(Emphasis Supplied)

The Apex Court in the same judgment has approved the following observations made by it in the case of *Gopal Das Sindhi and Others Vs. State of Assam and Another*,

There is no reason why the time of the Magistrate should be wasted when primarily the duty to investigate in a case involving cognizable offence is with the

police.

(Emphasis mine)

Nothing can depict the scope of the power of the Magistrate under the Section 156(3) of the code more clearly than the words of the apex court in Devarapalli Lakshaminaravana Reddy and Ors. v. V. Naravana Reddy and Ors. 1976 ACC 230 where the apex court has observed thus:

Peremptory reminder or intimation to the police to exercise their plenary powers of investigation u/s 156(1)

(Emphasis mine)

Thus if an application is filed by an aggrieved person u/s 156(3) Cr.P.C, his prayer is to be decided within the ambit of the aforesaid section by the Magistrate as is mentioned above. Magistrate cannot travel beyond the scope of the said section on his own. The Magistrate under that section cannot transform an application to one u/s 2(d) Cr.P.C. as a "complaint". There is yet another difficulty in allowing the Magistrate take cognizance suo motu by transforming application u/s 156(3) Cr.P.C to one u/s 2(d) and 190(1)(a) Cr.P.C. and that is that the Magistrate cannot start the lis on his own. It is for the aggrieved person to engineer it and that too in the form and forum he deems fit and proper. I may note a word caution here. It has been noticed by this Court that in some cases where the cognizable offences are disclosed the Magistrates does order for registration and investigation but in some cases they refuses it. The learned A.G.A. has pointed out that this gives a dis-advantage to the accused and fosters arbitrariness at the hands of the Magistrate. In my view if a cognizable offence is disclosed through an application u/s 156(3) Cr.P.C. the Magistrate has no option but to order for registration and investigation of the case. So far as injustice to accused is concerned if he is aggrieved by the registration of F.I.R. he can challenge the same by filing a writ petition under Article 226 of the Constitution of India within the ambit of the guidelines laid down by the apex court in the case of Bhajan Lal (Supra). Moreover, the Apex Court has taken a good care in cases of arbitrary exercise of power by the police through judgments in cases of Joginder Kumar Vs. State of U.P. and others, D.K. Basu Vs. State of West Bengal, State of Maharashtra Vs. Christian Community Welfare Council of India and Another, Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, ;and also in State of Haryana V. Bhajan Lal (Supra) where it has been held as such:

But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen then the court on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution.

36. These judgments by the apex court obliterate the anxiety shown by the learned A.G.A. during the course of his argument regarding the misuse of power by the police and malicious prosecution of citizens. It is to be reminded that investigation is the province of the police and not of the Magistrate. What cases are to be investigated and what are not to be investigated is to be judged by the investigating agency u/s 157(1) &(2) of the code and the Magistrate can not dwell upon the said question at all as it is not for him to decide whether the investigation is required or not. To be brief, he lacks the power to investigate and thereby lacks ancillary power to decide any question relating to it.

37. Another point is that the Magistrate can not pre-judge the issue of investigation merely on the basis of an allegations leveled in an application u/s 156(3) Cr.P.C. that the matter does not require an investigation and he will inquire it himself. If the Magistrate is of the opinion that a cognizable offence does not require investigation then what he is going to inquire himself is a big question as the law is that all cognizable offence must be investigated subject to exception u/s 157(2) of the code. In most of the cases the Magistrate has rejected the prayer by holding that the applicant is in the knowledge of all the facts and therefore, he will not order for an investigation. This, to me, seems to be a totally perverse and injudicious approach. For example in cases of murder, loot, decoity, rape etc. the informant is in the knowledge of all the facts of the incident but this does not mean that the Magistrate should not direct an investigation u/s 156(3) Cr.P.C. It is preposterous even to cogitate that merely because the victim applicant /complainant is in the knowledge of all the facts therefore his F.I.R. should not be directed to be registered. Such type of orders are wholly illegal and are glaring examples of injustice. Further under that section 156(3), the aggrieved person never wanted the Magistrate to take cognizance of the offence and inquire into the matter himself. The Magistrate by refusing the registration of FIR has done great injustice to the victim who is the worst sufferer.

38. From a third point of view also such types of orders can not be sustained. Filing of a complaint and prosecuting it many times is not viable. The complainant may be at a loss to lead the evidences because of so many reasons political as well as social. Normally the police does not register the FIR against politically and socially influential persons and the witnesses are not ready to give evidences against them. The poor aggrieved person who can not arrange for bringing witnesses to the court and launch a successful prosecution, or the accused may be so powerful so as to detest the complaint from bringing his witnesses or they may be politically so strong that the witnesses may not come forward to support complainant's case in the Court are some of such examples, which are not exhaustive in nature but where the insensitiveness of the Magistrate may result in total miscarriage of justice. Thus, there may be thousands of other reasons for an aggrieved victim not to file a complaint but to resort to the power of Magistrate u/s 156(3) Cr.P.C.

39. Moreover by not allowing the prayer for registration of FIR and investigation of cognizable offence the Magistrate in fact has made Section 156(3) of the code otiose. It has been held by the Apex Court in the case of Suresh Chand Jain (Supra) as follows:

Section 156, falling within Chapter XII, deals with powers of the police officers to investigate cognizable offences. True, Section 202 which falls under Chapter XV, also refers to the power of a Magistrate to "direct an investigation by a police officer". But the investigation envisaged in Section 202 is different from the investigation contemplated in Section 156 of the Code.

40. It has been further held by the Apex Court in the same judgment But the significant point to be noticed is when a Magistrate orders investigation under chapter XII he does so before he takes cognizance. (Emphasis Mine). It has been held by the Apex Court in case of Madhu Bala Vs. Suresh Kumar and others, as follows:

Indeed, even if a Magistrate does not pass a direction to register a case, still in view of the provisions of Section 156(1) of the Code which empowers the police to investigate into a cognizable "case" and the Rules framed under the Indian Police Act, 1861 it (the police) is duty-bound to formally register a case and then investigate into the same.

(Emphasis Supplied)

Thus from the above it is clear that the Magistrate by not directing investigation u/s 156(3) Cr.P.C. gives a long rope to the police to act on its whims and caprices and fosters illegality of inaction by the police in registration of information of cognizable offences. It is not permissible for any Magistrate under the code to act contrary to the provisions of the code. It has been held in the case of K.S. Bhoir Vs. State of Maharashtra and Others,

It is not permissible of the High Court to direct an authority under the Act to act contrary to the statutory provisions.

41. It has been held by the Apex Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, that:

At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the concerned police officer cannot embark upon any enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer-in-charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered u/s 157 of the Code to investigate, subject to the proviso to Section 157 (As we have proposed to make a detailed discussion about the power of a police officer in the field of investigation of a cognizable offence within the ambit of Sections

156 and 157 of the Code in the insuing part of this judgment, we do not propose to deal with those sections in extenso in the present context).

In case, an offence incharge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by Sub-section (3) of Section 154 of the Code.

Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression "information " without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions. " reasonable complaint" and "credible information" are used. Evidently, the non-qualification of the word "information" in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, "reasonableness" or "credibility" of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that "every complaint or information" preferred to an officer-in-charge of a police station should "be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872(Act 10 of 1872) which thereafter read that "every complaint" preferred to an officer-in-charge of a police station shall be reduced in writing. The word "complaint" which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word "information" was used in the Codes of 1882 and 1955 "which word is now used in Sections 154, 155, 157 and 189(c) of the present Code of 1973 (Act 2 of 1974).An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is "that there must be an information and that information must disclose a cognizable offence.

It is therefore, manifestly clear that if any information disclosing a cognizable offence is laid before officer-in-charge of a police station satisfying the requirements of Section 154(1) of the Code, 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

(Emphasis mine)

42. The aforesaid quoted portions of the said judgment of Bhajan Lal (Supra) has been quoted with approval in following judgments of apex court - Ramesh Kumari Vs. State (N.C.T. of Delhi) and Others, Superintendent Of Police, C.B.I. and Ors. v. Tapan Kumar Singh 2003 (2) JIC 126 where it has been observed by the apex court as follows:

The true test is whether the information furnished provides a reasons to suspect the commission of an offence which the concerned police officer is empowered u/s 156 of the code to investigate. If it does he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolve of his duty to investigate the case and discover the true facts, if he can.

The above quoted portion of the two judgments Bhajan Lal and Tapan Kumar Singh (Supra) (Under Line ones) provides the ample guide lines for the Magistrates to act u/s 156(3) Cr.P.C, since under that section he is required to order the same investigation which the officer in charge of the police station was required to conduct u/s 156(1) within the scope of Section 157(2) of the code. The investigation u/s 154(3) or u/s 156(3) are the same which the officer in charge of the police station is required to conduct. Once an order under these two sections are passed the power of the investigation u/s 156(1) of the code is infused with life and the investigation by the police is conducted under that section alone. It has been held by the apex court in the case of Central Bureau Of Investigation through S.P. Jaipur v. State of Rajasthan and Anr. 2001 SCC 524 as follows:

What is contained in Sub-section (3) of Section 156, is the power to order the investigation referred to in Sub-section (1), because the words "order such an investigation as above mentioned" in Sub-section (3) are unmistakably clear as referring to the other Sub-section. Thus the power is to order an "officer in charge of a police station" to conduct investigation.

(Emphasis mine and Supplied)

It has further been laid down in the same judgment:

The primary responsibility for conducting investigation into offences in cognizable cases vests with such police officer. Section 156(3) of the code empowers a Magistrate to direct such officer in charge of the police station to investigate any cognizable case over which such Magistrate has jurisdiction.

(Emphasis mine and Supplied)

In para 16 thereof the apex court has laid down the law, in respect of the power of Magistrate u/s 156(3) Cr.P.C. as follows:

We, therefore reiterate, that the magisterial power can not be stretched under the said Sub-section beyond directing the officer in charge of a police station to conduct the investigation.

(Emphasis mine and supplied)

This, leads us to the case of Gulab Chand Upadhyay and Ors. v. State of U.P. 2002(1) JIC 853. In the aforesaid judgment Hon''ble Sushil Harkauli, J. had relied upon the judgment rendered by Hislordship in Masuriyadin alia Nate and Ors. v. Additional Session's Judge, Allahabad 2002 (44) ACC 248. The aforesaid judgment of Masuriyadin ''s case was however over ruled by a Division Bench of this Court in the case of Govind and Ors. v. State of U.P. and Ors. 2003 CBC 934 (DB) Since Masuriyadin''s case was over ruled by a Division Bench of this Court therefore, the law laid down in the case of Gulab Chand (supra), in my humble view and with utmost respect to the Hon''ble Judge, does not lay down the correct law. In the aforesaid judgment Gulab Chand Upadhyay (Supra) Hislordship has taken a view that if the complainant is in the knowledge of all the details of an incident and where no investigation is required the investigation should not be ordered by the Magistrate u/s 156(3) Cr.P.C. With utmost respect and humility at my command, I am unable to agree with the aforesaid reasoning of the Hon''ble Judge being contrary to the Section 156(3) of the code itself and also being contrary to the judgment of the apex court in cases of Bhajan Lal (Supra), Suresh Chand Jain (Supra), B.C. Govind (Supra) and Tapan Kumar Singh (Supra). It is the responsibility of the Magistrate to direct the police to follow the mandate of law and it will be a travesty of justice that the Magistrate instead of directing the police to follow the statutory mandate of law gives it a long rope to act arbitrarily at it''s whims. Thus when ever the Magistrate is approached by an aggrieved person with the prayer that the police has refused to register his FIR of cognizable offence the Magistrate is required to look into his such prayer only to determine as to whether any cognizable offence is disclosed thereby or not, and if it does, then he has no option but to direct the police to register the FIR and investigate the offence.

(Emphasis Mine)

At this stage it may be pointed out that the Magistrate is not required to conduct an enquiry u/s 156(3) of the code and he should not saddle himself with additional burden of discharging the function of police as crime prevention and crime detection is the primary and foremost duty of the later and so it must be left to it to perform this part of his duty. It has been held by Privy Council in the case of Emperor v. Khwaia Nazir Ahmad 1945 PC 17 thus:

The function of the judiciary and the police are complementary and not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise it''s own

function, always, of course, subject to the right of the court to intervene in appropriate case when moved u/s 491, Criminal Procedure Code, to give direction in the nature of Habeas Corpus.

Further the observations in Gopal Das Sindhi's case(Supra) that:- "There is no reason why the time of the Magistrate should be wasted when primarily the duty to investigate in a case involving cognizable offence is with the police" is the law of the land. This observation by the apex court, with due respect and humility, in my view, runs counter to the following observations made by this court in Gulab Chand Upadhyay's case (Supra):- "it must be kept in mind that adding unnecessary cases to the diary of the police would impair their efficiency in respect of cases genuinely requiring investigation" A reading of Gulab Chand Upadhyay and Ors. v. State of U.P. 2002(1) JIC 853 I find that the above quoted passage in the judgments in Bhajan Lal (Supra). Central Bureau Of Investigation through S.P. Jaipur v. State of Rajasthan and Anr. 2001 SCC 524 (Supra) and observations of the apex court in Gopal Das Sindhi's case (Supra) were not placed before His Lordship and he had no occasion to consider the same which is clear from the following observation by His Lordship: - "No decision was cited before me to throw any light upon the consideration which should weight with the Magistrate to guide his discretion ". Since in the aforesaid judgment the law as is spelt out by the apex court, mentioned above was not placed before His Lordship and he did not dwell upon it,¹ with utmost respect and humility and humbleness, is bound by the law laid down by the apex court and therefore is of the opinion that the said judgment in Gulab Chand Upadhyay and Ors. v. State of U.P. 2002(1) JIC 853 does not lay down the correct law and have no binding effect so far it runs contrary to the law laid down by the apex court.

43. Resultantly all the above Criminal Misc. Applications, in this cluster of petitions, u/s 482 Cr.P.C, filed by various applicants being Criminal Misc. Application No. 6152 of 2006 Smt. Masuman v. State of UP and Ors.; Criminal Miscellaneous Application No. 1442 of 2006 Uma Dutta Diwedi v. State of U.P.; Criminal Miscellaneous Application No. 3420 of 2006 Indra Mohan Gautam v. State of U.P. and Ors.; Criminal Miscellaneous Application No. 3313 of 2006 Pradeep Kumar v. State of U.P. and Ors.; Criminal Miscellaneous Application No. 3207 of 2006 Dimi v. State of Uttar-Pradesh; Criminal Miscellaneous Application No. 3275 of 2006 Mahakar Singh v. State of U.P.; Criminal Miscellaneous Application No. 3184 of 2006 Smt. Suman Kumari v. State of U.P. and Ors.; Criminal Miscellaneous Application No. 3617 of 2006 Asraf Ali v. State of U.P. and Ors.; Criminal Miscellaneous Application No. 3611 of 2006 Bobby Khan v. State of U.P. and Anr.; Criminal Miscellaneous Application No. 3637 of 2006 Om Prakash v. State of U.P. and Ors.; Criminal Miscellaneous Application No. 3725 of 2006 Gaya Prasad v. State of U.P. and Ors.; Criminal Miscellaneous Application No. 3106 of 2006 Radhey Shyam V. State of U.P. and Ors.; Criminal Miscellaneous Application No. 2290 of 2006 Mahendra Singh v. State of U.P.; Criminal Miscellaneous Application No. 2298 of 2006 Naresh Kumar Taneja v. State of U.P.; Criminal Miscellaneous Application No. 2199 of 2006 Badshah v.

State of U.P. and Ors.; Criminal Miscellaneous Application No. 2093 of 2006 Anil V. State Of U.P.; Criminal Miscellaneous Application No. 2301 of 2006 Rajendra Singh v. State of U.P. and Ors.; Criminal Miscellaneous Application No. 2385 of 2006 Brij Kishore Diwedi v. State of U.P. and Ors.; Criminal Miscellaneous Application No. 2773 of 2006 Ram Prasad Tiwari v. State of U.P. and Ors.; all are allowed. The impugned order/orders passed by concerned Magistrates, and in concerned cases, also by the lower revisional courts, in all the above Criminal Misc. Applications are quashed. Concerned Magistrates are directed to take up the applications u/s 156(3) Cr.P.C. filed by respective applicant afresh and decide it in accordance with the law within one month from the receipt of the copy of this judgment by them.

44. Concludingly, in view of what has been stated above, all these Criminal Misc. Applications, mentioned above, u/s 482 Cr.P.C. are allowed in terms of observations mentioned above.

45. Let a copy of this judgment be sent to the Registrar General of this Court to be circulated to all the Magistrates and other Judicial Officers in the State for their intimation, guidance and compliance.