

(2008) 09 DEL CK 0135

In the Delhi High Court

Case No : Criminal M.C. No"s. 3425 and 5521 of 2005

State

APPELLANT

Vs

Mohd. Iqbal Ghazi and Others
 Vivek Gogia Vs State

RESPONDENT

Date of Decision : 12-09-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 154(1), 156(1), 156(3), 173
Penal Code, 1860 (IPC) — Section 302, 308, 323, 324, 334

Citation : (2008) 09 DEL CK 0135

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Mukta Gupta, in Criminal M.C. No. 3425/2005 and Vipin Gogia, in Criminal M.C. No. 5521/2005, for the Appellant; Bahar-U-Barqui, in CrI. M.C. No. 3425/2005 and Respondent No. 2 in CrI. M.C. No. 5521/2005, Rajesh Mahajan and Vipin Gogia, in CrI. M.C. No. 3425/2005 and Mukta Gupta, in CrI. M.C. No. 5521/2005, for the Respondent

Judgement

Pradeep Nandrajog, J.—Akbar was admitted at GTB Hospital on 19.3.2003. Medical record prepared at time of admission in the hospital records that Akbar was suffering from acute pulmonary-cum-respiratory disorder and was complaining of acute breathlessness. Past history of Akbar was recorded by noting that he was a known smoker and was an alcoholic. Akbar remained an indoor patient till 21.3.2003. He expired on 21.3.2003 at about 1.40 pm. Death certificate recorded cause of death : OPD c Carpulmnaire with hypotemensia; (meaning thereby, Chronic obstructive disease with enlarged heart and septicimia and low blood pressure).

2. Mohd. Iqbal Ghazi lodged a complaint with the Commissioner of Police on 4.6.2003 alleging that Akbar was murdered by Sh. Vivek Gogia, DCP North-East District, Delhi and Sh. Gurcharan Das, SHO PS Seelampur. He alleged that the local police had registered numerous false cases against his son and that pertaining to one such false case being FIR No. 212/2000, Sh. Vivek Gogia and Sh. Gurcharan Das were pressurizing Akbar to give false evidence. He alleged

that Akbar resisted the pressure from the said police officers. He alleged that proceedings pertaining to FIR No. 212/2000 were to be taken up by Sh. Sanjeev Aggarwal, Metropolitan Magistrate, Delhi on 27.2.2003 and that Akbar reached the Court intending to tell the truth to the learned Metropolitan Magistrate but could not do so as the learned Magistrate was on leave. He stated that on 27.2.2003 itself, Akbar swore an affidavit before an Oath Commissioner recording:

3. That yesterday night SHO Seelampur, Shri Gurbachan Das came along with five police personnels asked me to appear before the Court on the date fixed. Today, I stated him that I do not know anything in the aforesaid FIR therefore, I cannot make any statement. He read over the FIR to me and threatened me to give the statement in accordance with the allegations made in the FIR. He further said that in case if he did not give the statement he and his wife will be murdered and their bodies shall be thrown in Jamuna, nobody on earth ever can identified their bodies.

4. That my life and the life of my wife is in danger if any untowards incident took place then for such an incident the SHO Police Station Seelampur, Mr. Gurcharan Das and other police personnel of Seelampur, Delhi should be responsible.

3. Mohd. Iqbal Ghazi further alleged in his complaint that on 4.6.2003 he learnt that Akbar had died and that when he went to Akbar's house, he learnt from the children of Akbar that Akbar remained untraceable from 17.3.2003 to 19.3.2003 and that Akbar was found lying unconscious next to his house in the morning and was removed to GTB Hospital where he died on 21.3.2003. He stated that Akbar's children gave him some papers which included the affidavit dated 27.2.2003.

4. The aforesaid complaint was enquired into and it was reported that the same was false. The said report was premised on a statement of Smt. Raheesan, wife of Akbar, recorded by the police during enquiry and the medical record of GTB Hospital. In her statement, Smt. Raheesan stated that her husband died due to prolonged illness. The medical record ruled out any torture and on the contrary recorded cause of Akbar's death as afore-noted in para 1 above.

5. Mohd. Iqbal Ghazi thereupon filed a complaint before Metropolitan Magistrate on 25.7.2003 alleging same facts as were stated in his complaint dated 4.6.2003. He alleged that his complaint evidenced commission of the cognizable offence of Akbar's murder. He alleged that the police was bound to register an FIR u/s 302 IPC and investigate the matter. He prayed that the accused i.e. Vivek Gogia, DCP and Gurcharan Das be summoned, tried and punished according to law. Along with the said complaint, Mohd. Iqbal Ghazi filed an application u/s 156 (3) Cr.P.C. praying:

a. Direct the SHO of Police Station, Seelampur, Delhi to investigate the matter thoroughly and to lodge FIR against the accused person and to submit its report of investigation before this Hon''ble Court on the date to be fixed by this Hon''ble

Court which will be in the interest of justice.

6. Complaint dated 25.7.2003 along with the accompanying application u/s 156(3) Cr.P.C. was taken up for consideration on 31.7.2003 by the learned Metropolitan Magistrate. It was adjourned to 4.8.2003 and thereafter to 11.8.2003, on which dated following order was passed:

Arguments heard.

Arguments of Counsel for complainant heard on application u/s 156(3) Cr.P.C. He states that he does not press his application u/s 156(3) Cr.P.C. as accused persons are high ranking police officials and prays that it will be expedient if the matter is fixed for CE/Complainant's Evidence. In these facts and circumstances as the Counsel for the complainant is not pressing his application u/s 156(3) Cr.P.C., matter be fixed for CE on 30.9.2003.

7. On 30.9.2003 Mohd. Iqbal Ghazi led no evidence. Matter was adjourned to 16.10.2003. No evidence was led. Date notified was 21.10.2003. On said date the Presiding Officer had changed. Mohd. Iqbal Ghazi filed another application u/s 156(3) Cr.P.C. praying that directions be issued to the police to register an FIR u/s 302 IPC pertaining to Akbar's murder and thereafter conduct investigation.

8. This application was disposed of vide order dated 5.11.2003 directing the police to lodge an FIR. The order reads as under:

The complainant has filed this complaint against the accused persons. Accused No. 1 is stated to be the then DCP North East District and accused No. 2 is stated to be the then SHO PS Seelampur.

The complaint of the complainant that the aforesaid accused have committed the murder as per details given in the complaint.

Ld. Counsel for complainant has requested before the Court that the complaint be sent to the concerned PS for registration of an FIR and consequent investigation.

Ld. Counsel has also relied upon the citation "Madhu Bala v. Suresh Kr. 1957 JCC 532 (SC) and Suresh Chand Jain v. State 2001 I AD (Cr.) SC 34". Both the aforesaid cases deal with legal position regarding Magistrate's power to direct investigation after directing lodging an FIR in case cognizable offences. In Suresh Chand Jain (supra), the Hon'ble Supreme Court had held, "For the purpose of enabling the police to start investigation it is open to 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 u/s 156(3) of the Code that an FIR should be registered, it is cognizable offence disclosed by the complaint because that police officer could take further steps

contemplated in Chapter XII of the Code only thereafter".

The Hon"ble Supreme Court following its earlier judgment in Gopal Dass Sindhi AIR 1961 SC 986 reiterated:

If the Magistrate had not taken cognizance of the offence on the complaint filed before him, he was not obliged to examine the complainant on oath and the witnesses present at the time of the filing of the complaint. We can not read the provisions of Section 190 to mean that once a complaint is filed, a Magistrate is bound to take cognizance if the facts stated in the complaint disclose the commission of any offence. We are unable to construe the word "may" in Section 190 to mean "must". The reason is obvious. A complaint disclosing cognizable offences may well justify a Magistrate in sending the complaint u/s 156(3) to the police for investigation. There is no reason why the time of the Magistrate should be wasted when primarily the duty to investigate in cases involving cognizable offence is with the police. On the other hand, there may be occasions when the Magistrate may exercise his discretion and take cognizance of a cognizable offence.

This is the position of law which was earlier laid down by the Hon"ble Supreme Court in Madhu Bala (supra) also.

Therefore, this Court is of the view that primarily it is the duty of the police to investigate such cognizable offences, hence a copy of the present complaint is hereby directed to be transmitted to the SHO, PS Seelampur to lodge an FIR and register a criminal case and file report before this Court as per law. The compliance of this order be communicated to this Court latest by 20.11.03.

9. Aggrieved by the order dated 5.11.2003, Gurcharan Das and Vivek Gogia filed a petition invoking the inherent jurisdiction of this Court, praying therein, that the order dated 5.11.2003 be quashed. The said petition was registered as CrI. Misc.(C) No. 4588/2003. A single point was urged. It was submitted that the learned Metropolitan Magistrate having dismissed the application u/s 156(3) Cr.P.C. vide order dated 11.8.2003 resulting in the learned Metropolitan Magistrate having proceeded u/s 200 Cr.P.C. the learned Judge could not retrace his steps and direct registration of an FIR exercising power u/s 156(3) Cr.P.C.

10. Vide CrI.Misc. No. 7213/2004 the State sought impleadment as a co-petitioner in CrI.Misc.(C) No. 4588/2003. The said application for impleadment remained pending when CrI.Misc.(C) No. 4588/2003 was heard and decided by a learned Single Judge at this Court vide order dated 30.5.2005. Dismissing the same, it was held that nothing in the order dated 5.11.2003 shows that the learned Metropolitan Magistrate had come to a conclusion that a cognizable offence had been committed; by that date the learned Metropolitan Magistrate had not recorded that statement of the complainant; that no process was issued; that the complainant had withdrawn the application u/s 156(3) Cr.P.C. thus nothing prevented the complainant to file the second application. Holding that the learned Metropolitan Magistrate had not embarked upon the procedure

provided under Chapter XV of the Code of Criminal Procedure, it was thus concluded that there was no bar on the magistrate issuing a direction to the police to register a case and investigate into the offence.

11. The State, Gurcharan Das and Vivek Gogia filed Petitions for Special Leave to Appeal before the Hon"ble Supreme Court against the order dated 30.5.2005. The said petitions were dismissed as withdrawn vide order dated 22.7.2005 which reads as under:

Learned Counsel for the petitioners submit that they would like to move before the Magistrate for appropriate relief in accordance with law and seek permission to withdraw the SLP and the application for permission to file SLP. Permission is granted. The SLP as well as the application for permission to file SLP are dismissed as withdrawn.

12. Relegated to the remedy before the learned Metropolitan Magistrate the State as well as Vivek Gogia and Gurcharan Das filed applications before the learned Metropolitan Magistrate praying that order dated 5.11.2005 be treated as void and that the complaint filed by Mohd. Iqbal Ghazi be proceeded ahead in terms of the order dated 11.8.2003 i.e. the complainant be directed to lead evidence.

13. Vide order dated 25.7.2005 the application filed by Vivek Gogia and Gurcharan Das were dismissed. The application filed by the State was deferred but with a direction that a FIR be registered in terms of the order dated 5.11.2003. Order dated 25.7.2005 reads as under:

Present : Complainant with Counsel Sh. Gautam Pal

Ld. Chief Public Prosecutor from Patiala House

Courts with acting SHO PS Seelam Pur (who is
in fact SHO, PS New Usmanpur).

Advocate Sh. Sunil Mittal moving an application
on behalf of Vivek Gogia and Gurcharan Dass.

Sh. Surya Prakash Katri on behalf of the applicant Raeesan.

Ld. Counsel Sh. Sunil Mittal has moved an application praying a relief to:

- i. examine the present matter in the light of the permission granted by the Hon"ble Supreme Court of India vide order dated 21.7.2005.
- ii. proceed with the matter in terms of order dated 11.8.03 passed by this Hon"ble Court without awaiting the registration of a case.
- iii. Treat the order dated 5.11.03 as void ab initio as the same was obtained by the complainant by making a false statement.

The order of the Hon"ble Supreme Court dt. 21.7.05 is already on record wherein the Hon"ble Supreme Court has granted permission to the petitioner to "move before the Magistrate for appropriate relief in accordance with law".

Ld. Counsel has also argued that this Court has directed the police on the complaint of the complainant; hence the accused has also the right to be heard even prior to the conclusions of the proceedings, in the form of chargesheet u/s 173 Cr.P.C. emanated from the order of this Court u/s 156(3) Cr.P.C.

Ld. Counsel for complainant has opposed this application of Sh.Mittal on the ground that it is not properly signed by the applicants. But Ld. Counsel for accused submits that the Vakalatnama has been duly signed by the accused persons.

This Court has put a query to the Ld. Counsel Sh. Mittal, appearing for the accused as to under what provisions of law this Court has take, hear and dispose of this application at this stage when after an order u/s 156(3) Cr.P.C. even the FIR has not been registered by the concerned police. Under what provisions of law an accused can move the Court before being summoned pursuant to the chargesheet u/s 173 Cr.P.C.

No appropriate or clear provision of law has been cited or relied upon. The Hon"ble Supreme Court has clearly mentioned in the aforesaid order for appropriate relief in accordance with law and in absence of any such provision of law this Court does not deem it fit to allow the accused persons, at this stage to move this Court to reconsider its order dt. 5.11.03 and 11.8.03 in particular circumstances when these orders have already been unsuccessfully challenged before the Hon"ble High Court. Hon"ble Supreme Court has also no granted any relief to the accused. The effect of the application of the accused, if allowed, would be to place this, the lowermost court in an appeal over and above the findings of the Hon"ble High Court, from where this Court gets all its powers. The most illegal and absurd outcome!

With these observations, the application of the accused and arguments in its favour is hereby dismissed as being not supported by law. Ld. Counsel has also argued that complainant Md. Iqbal Ghazi, by moving an application u/s 156(3) Cr.P.C. has tried to force the court not to exercise its discretion and list the case for recording evidence of complainant u/s 202 Cr.P.C. on wards. This Court does not find this argument worth consideration.

Ld. Chief Public Prosecutor has argued that u/s 202 Cr.P.C. it was not opened for the court to direct an investigation by the police after lodging an FIR as the present one was a case exclusively triable by the Ld. Sessions Court. Copy of this application supplied.

Ld. Chief Public Prosecutor submits that he has no objection if the case is preponed. The acting SHO PS Seelampur has filed report/reply for the preponement. It is submitted by the local police that the FIR has not been lodged

so far.

The argument of the Ld. Clause for the complainant, led on the LDOH has not still lost its relevance that despite these all applications the SHO PS Seelampur is not still absolved from his obligation to lodge an FIR immediately, which he has not done despite repeated directions. On the NDOH the SHO PS Seelampur is to come after due compliance of the directions of this Court, duly upheld by the Hon"ble Superior Courts. Failing compliance, the court would be forced to take action as per law.

In addition to the compliance as aforesaid, the application of the Ld.Public Prosecutor and Smt. Raeesan be taken for hearing and disposal.

The NDOH is preponed to 02.8.05.

14. Afore-noted 2 petitions were thereupon filed praying that orders dated 5.11.2003 and 25.7.2005 be quashed. CrI.Misc.(C) No. 3425/2005 has been filed by the State and CrI.Misc.(C) No. 5521/2005 has been filed by Vivek Gogia.

15. Ms. Mukta Gupta, Learned Counsel for the State, Sh. Rajesh Mahajan, Learned Counsel for Gurbachan Das (respondent No. 2 in CrI.Misc. No. 3425/2005) and Sh.Vipin Gogia, Learned Counsel for Sh. Vivek Gogia, urged the following:

1. Whether the learned Metropolitan Magistrate before passing an order u/s 156(3) Cr.P.C. is duty bound to apply his mind to the fact whether any cognizable offence is made out or not from the complaint?

2. Whether the learned Metropolitan Magistrate is duty bound to look into the documents filed along with the complaint to see whether on the face of it a cognizable offence is made out or not before passing an order u/s 156(3) Cr.P.C?

3. Whether the learned Metropolitan Magistrate can look into the documents filed with the complaint selectively while passing an order u/s 156(3) Cr.P.C?

4. When on the face of it, in a case of natural death whether a direction u/s 156(3) can be given to register FIR by the learned Metropolitan Magistrate?

5. In case the case is at the stage of precognizance and the learned Metropolitan Magistrate had the mobility of passing any order as held by this Hon"ble Court, whether pursuant to the leave/permission granted by the Hon"ble Supreme Court the learned Metropolitan Magistrate was not duty bound to consider the application/report filed by the State before asking for compliance of the order dated 5.11.2003?

6. Whether learned Metropolitan Magistrate ought not to have got conducted a Preliminary Enquiry before directing registration of a case u/s 156(3) Cr.P.C. as held in the case of The State of Uttar Pradesh Vs. Bhagwant Kishore Joshi, P. Sirajuddin v. State of Madras 1971 CrI.J. 523 & State of Haryana v. Bhajan Lal 1992 (Suppl.) (1) SCC 335. That as per law laid down by the Hon"ble Supreme

Court, Preliminary Enquiry should be got conducted where there are accusations against head of Government Institution.

16. It was, inter alia, urged by learned Counsel:

a. That the complaint had to be read along with the documents accompanying the complaint and so read, in view of the death certificate issued by GTB Hospital, it was obviously a case of natural death and hence the complaint and the documents annexed therewith did not disclose the commission of a cognizable offence. Learned Counsel urged that u/s 156(3) Cr.P.C. a Magistrate can direct investigation by police only if information received by him discloses the commission of a cognizable offence.

b. That some cryptic information disclosing an occurrence and not disclosing the commission of a cognizable offence cannot be treated as an FIR. Thus, in the instant case no investigation could be directed by the learned Magistrate for the reason no FIR could be registered on the information disclosed.

c. That even at the stage of directing registration of an FIR u/s 156(3) Cr.P.C. the learned Magistrate has to apply his mind whether the facts disclosed to him disclosed the commission of a cognizable offence.

d. That as held by the Hon"ble Supreme Court in various decisions and in particular in the decision reported as P. Sirajuddin, etc. Vs. State of Madras, etc., while directing registration of FIR against a head of a department a suitable preliminary enquiry should be conducted because not only it affects him but the entire institution.

e. That the learned Magistrate, as per the view taken by this Court vide order dated 30.5.2005 when Crl.Misc.C. No. 4588/2003 was decided, had not yet taken cognizance of the complaint and had not embarked upon the procedure provided for in Chapter XV Cr.P.C. and hence was competent to entertain the application filed by the State as also by the police officers requiring him to treat the order dated 5.11.2003 as void and proceed ahead in terms of the order dated 11.8.2003. Learned Counsel urged that the ratio of the order dated 30.5.2005 passed by a learned Single Judge of this Court was that till a Magistrate embarked upon the procedure provided for in Chapter XV Cr.P.C. he retained jurisdiction to decide whether to proceed u/s 156(3) Cr.P.C. or call upon the complainant to lead evidence in support of the complaint and merely because at some stage the application u/s 156(3) Cr.P.C. was dismissed did not prevent the Magistrate to reconsider another application u/s 156(3) Cr.P.C. but subject to the condition that the learned Magistrate did not proceed under Chapter XV Cr.P.C. Learned Counsel urged that the logic of the same reasoning enjoined upon the learned Magistrate to decide on merits the applications which were the subject matter of the impugned order.

f. It was further urged that the complainant had an axe to grind against the police officers evidenced by not only him but even his close family relations

involved in a series of offences. Thus, it was all the more necessary for the learned Magistrate to have acted with circumspect considering the criminal antecedents of the complainant and the probability of the complaint being motivated, malicious, mala fide and intended to sub-serve a collateral motive.

g. Lastly, Ms. Mukta Gupta, Learned Counsel for the State urged that the complaint did not state that the complainant had witnessed Akbar being tortured by the police. The allegations in the complaint were admittedly hearsay because the complainant himself stated that what was written in the complaint was told to him by the family members of Akbar. That along with the complaint at serial No. 40 of the list of documents the death certificate dated 21.3.2003 issued by G.T.B. Hospital was filed. Learned Counsel urged that a bare perusal of the said death certificate rules out any physical torture and conclusively records that Akbar died in the hospital due to medical complications which were the result of Akbar being an alcoholic. Where was the material or the information before the learned Magistrate of Akbar's death being homicidal? Wondered the counsel. Thus, it was urged that it was a fit case to quash not only the impugned order but even the order dated 5.11.2003 as also the complaint being a vexatious complaint.

17. In response, Mr. Bahar-U-Barqui, Learned Counsel for the complainant urged that in so far challenge was raised to the order dated 5.11.2003, the issue was res-judicata in view of the order dated 30.5.2005 dismissing CrI.Misc.(C) No. 7213/04. As a sequetur, Counsel urged, order dated 25.7.2005 suffered from no infirmity. Mr. Bahar-U-Barqui, Learned Counsel urged that there was no provision in law under which a Magistrate can review or recall his order and hence the learned Magistrate correctly held that he could not recall the order dated 5.11.2003. On merits, Learned Counsel urged that affidavit dated 27.2.2003 sworn before a learned Oath Commissioner was sufficient prima facie evidence of Akbar being murdered and hence a cognizable offence being committed u/s 302 IPC.

18. Before dealing with the contentions of the parties it would not be out of context to briefly note the antecedents of Mohd. Iqbal Ghazi and his family members. Mohd. Iqbal Ghazi was an accused in FIR No. 330/74 u/s 324, 452 IPC PS Seelampur, FIR No. 117/84 u/s 308, 323, 334 IPC PS: Seelampur and FIR No. 685/98 u/s 336, 502, 34 IPC PS: Seelampur. His son Mohd. Afzal is an accused in as many as 19 FIRs registered under various sections of the Penal Code and the Arms Act. 3 out of the 19 FIRs charged him with the offence of murder. His other son Kamaluddin is an accused in 14 FIRs, 2 of which relate to the offence of murder. Mirajuddin, the brother of Mohd. Iqbal Ghazi is a bad character of PS Seelampur and is an accused in 17 FIRs two of which relate to the offence of attempt to murder. Bundu, a cousin of Mohd. Iqbal Ghazi is a bad character of PS Seelampur and is an accused in 6 FIRs one of which relates to the offence of murder. Murslin son of Bundu i.e. nephew of Mohd. Iqbal Ghazi is an accused in 16 FIRs, one of which relates to the offence of murder and one relates to the

offence of attempted murder.

19. Reverting to the facts of the instant petitions and the law relatable thereto, it would be better to commence the journey with reference to the various provisions of the Code of Criminal Procedure 1973.

20. The commencement of a police investigation relating to the commission of a cognizable offence commences after a first information report is registered u/s 154(1) of the Code of Criminal Procedure 1973. The said provision reads as under:

154. Information in cognizable cases - (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

21. After a FIR is registered relating to the commission of a cognizable offence, u/s 156(1) of the Code of Criminal Procedure, any officer in-charge of a police station may, without the order of a magistrate, investigate into the matter. By virtue of Section 3 of Section 156 of the Code of Criminal Procedure 1973, any magistrate empowered u/s 190 of the Code may order an investigation to be made in relation to the commission of a cognizable offence.

22. It is settled law that where information is given to an officer in-charge of a police station which discloses the commission of a cognizable offence he is bound to reduce the information in writing in a book as prescribed in this behalf. This information is treated as a FIR u/s 154(1) of the Code of Criminal Procedure.

23. Section 190 of the Code of Criminal Procedure 1973 reads as under:

190. Cognizance of offences by Magistrates - (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under Sub-section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under Sub-section (1) of such offences as are within his competence to inquire into or try.

24. It is trite that u/s 190 of the Code a magistrate is empowered to take cognizance of any offence under 3 circumstances, namely the circumstances

listed out in Clause a, b and c of Sub-section 1 of Section 190 of the Code.

25. In case the magistrate purports to act under Clause (a) of Sub-section 1 of Section 190 of the Code, the magistrate proceeds u/s 200 of the Code of Criminal Procedure 1973. Said provision reads as under:

200. Examination of complainant - A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate u/s 192:

Provided further that if the Magistrate makes over the case to another Magistrate u/s 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

26. The inter play of Sub-section 3 of Section 156 of the Code of Criminal Procedure viz-a-viz Section 190 and Section 200 thereof has been a consideration of various judicial pronouncements. In the decision reported as Tula Ram and Others Vs. Kishore Singh, the legal position was summarized as under:

1. That a Magistrate can order investigation u/s 156(3) only at the pre-cognizance stage, that is to say, before taking cognizance under Sections 190, 200 and 204 and where a Magistrate decides to take cognizance under the provisions of Chapter 14 he is not entitled in law to order any investigation u/s 156(3) though in cases not falling within the proviso to Section 202 he can order an investigation by the police which would be in the nature of an enquiry as contemplated by Section 202 of the Code.

2. Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives:

(a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightway issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.

(b) The Magistrate can postpone the issue of process and direct an enquiry by himself.

(c) The Magistrate can postpone the issue of process and direct an enquiry by

any other person or an investigation by the police.

3. In case the Magistrate after considering the statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceeding he can dismiss the complaint.

4. Where a Magistrate orders investigation by the police before taking cognizance u/s 156(3) of the Code and receives the report thereupon he can act on the report and discharge the accused or straightway issue process against the accused or apply his mind to the complaint filled before him and take action u/s 190 as described above.

27. The aforesaid decision of the Hon''ble Supreme Court in Tula Ram''s case clearly brings out that Chapter 12 and Chapter 14 of the Code of Criminal Procedure 1973 subserve two different purposes: one pre-cognizance action and the other post-cognizance action. This was recognized in an earlier decision of the Hon''ble Supreme Court reported as Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others, wherein it was observed:

The power to order police investigation u/s 156(3) is different from the power to direct investigation conferred by Section 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage where the magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power u/s 156(3) can be invoked by the magistrate before he takes cognizance of the offence u/s 190(1)(a). But if he once take such cognizance and embarks upon the procedure prescribed in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3).

28. It would be relevant to note that in the instant case this very principle of law was followed by Ms. Manju Goel, J. of this Court when her Ladyship passed the order dated 30.5.2005 dismissing CrI.M.C. No. 4588/03. In the said order it has been categorically held that since the learned Magistrate has not proceeded to take cognizance of the offence and proceed ahead in the direction referred to in Devarpalli Lakshminarayana Reddy''s case (supra), notwithstanding having earlier on dismissed as not pressed the application u/s 156(3) of the Code of Criminal Procedure 1973, the second application under said provision was clearly maintainable and the Magistrate had the power to entertain the same and pass necessary orders thereon.

29. Extending the same ratio of law to the applications filed by the petitioners before the learned Magistrate pursuant to leave granted by the Hon''ble Supreme Court, vide order dated 22.7.2005 to withdraw the petition for special leave to appeal and file appropriate applications as per law before the learned Magistrate, the applications which were filed by the State and Vivek Gogia and Gurcharan Dass were clearly maintainable for the reason as on date when the applications

were filed the learned Magistrate had not proceeded to take cognizance of the offence; he was still in the pre-cognizance state.

30. The impugned order dated 25.7.2005 is thus liable to be set-aside on said sole ground.

31. But, for the guidance of the learned Metropolitan Magistrate, the facts of the instant case require something more to be stated. I have noted hereinabove the language of Section 154(1) of the Code of Criminal Procedure 1973. A bare look at the language of said provision reveals that the pre-requisite of registration of a FIR is that the information disclosed must relate to the commission of a cognizable offence. Thus, even a Magistrate cannot proceed to issue any direction u/s 156(3) of the Code unless he is prima facie satisfied that the information before him relates to the commission of a cognizable offence for the reason an order directing the police to investigate any cognizable offence would require the registration of a FIR inasmuch as relating to the commission of a cognizable offence no investigation can proceed without the registration of a FIR. A Division Bench of the Karnataka High Court, in the decision reported as Guruduth Prabhu and Others Vs. M.S. Krishna Bhat and Others, observed as under:

10. ...But there is a restriction on the Magistrate before directing the police to investigate under Sub-section (3), the Magistrate should form an opinion that the complaint filed by the complainant before him discloses a cognizable offence. When the allegation made in the complaint does not disclose cognizable offence, the Magistrate has no jurisdiction to order police investigation under Sub-section (3).

11. ...It is therefore very important that the Magistrate applies his mind and finds that the allegations made in the complaint filed u/s 200, Cr.P.C., before him discloses an offence. If every complaint filed u/s 200 Cr.P.C. is referred to the police u/s 156(3) without application of mind about the disclosure of an offence, there is every likelihood of unscrupulous complainants, in order to harass the alleged accused named by them in their complaints, making bald allegations just to see that the alleged accused are harassed by the police who have no other go except to investigate as ordered by the Magistrate. Therefore, it is mandatory for the Magistrate to apply his mind to the allegations made in the complaint and in only cases which disclose an offence, the Magistrate gets jurisdiction to order an investigation by the police.

32. What does one mean by the expression: "apply ones mind to a case"?

33. It means that the person required to apply his mind has to come to grips with the facts before him and has to bring into focus the law on the subject and applying the facts to the law, to arrive at a conclusion by a process of reasoning, evidencing that all relevant facts have been taken note of and properly analyzed in the light of the law applicable. A truncated and a gibberish reproduction of facts, excluding relevant facts from the focus of the mind, would result in a

decision being taken which can be classified as a decision without the application of mind. Informed reasoning is the heart of the matter.

34. In the context of taking cognizance by a learned Magistrate, it would be relevant to note that a cryptic information cannot ever be treated as a FIR for the reason the sine qua non of a FIR is an information which discloses the commission of a cognizable offence. In the decision reported as Tapinder Singh Vs. State of Punjab and Another, it was observed: but prima facie this cryptic and anonymous oral message which did not in terms clearly specify a cognizable offence cannot be treated as first information report. What is true for a FIR applies with equal rigour to an order passed u/s 156(3) of the Code.

35. In the decision reported as Satish Kumar Goel Vs. State and Others, the Division Bench of this Court drew a clear distinction where the information laid was vague, indefinite or doubtful. Should an FIR be registered on such a complaint or should some inquiry proceed before the registration of an FIR. The Division Bench held:

Thus, the legal position appears to be that where allegations made in the complaint lodged before the police clearly and specifically disclose commission of a cognizable offence, the officer incharge of the concerned police station is duty bound to register an FIR. However, where the information recorded in the complaint is uncertain, indistinct and not clearly expressed which creates a doubt as to whether the information laid before the incharge of the police station discloses commission of a cognizable offence therefrom, some inquiry should proceed before the registration of an FIR.

36. In a decision pronounced on 12.10.2007 in CrI.App. No. 1432/2007 Rajender Singh Katoh v. Chandigarh Administration & Anr., Hon''ble Supreme Court held:

8. Although the officer incharge of a police station is legally bound to register a first information report in terms of Section 154 of the Code of Criminal Procedure, if the allegations made gives rise to an offence which can be investigated without obtaining any permission from the Magistrate concerned; the same by itself, however, does not take away the right of the competent officer to make a preliminary inquiry, in a given case, in order to find out as to whether the first information sought to be lodged had any substance or not.

37. It is apparent that the principle that every information relatable to the commission of a cognizable offence must lead to the registration of a FIR has to be understood in its correct perspective, being that, if the information is prima facie credible; is definite and has a substance, the FIR must be registered. But where the information is vague and prima facie lacks credibility, a FIR need not be registered and some preliminary inquiry would be permissible to find out whether the information sought to be lodged has any substance therein or not. In the decision reported as State of Haryana and others Vs. Ch. Bhajan Lal and others, the dictum laid down in the earlier decision of the Hon''ble Supreme Court reported as P. Sirajuddin, etc. Vs. State of Madras, etc., was noted with

approval in the following words:

Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious mis-demeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general. The means adopted no less than the end to be achieved must be impeccable.

38. In the instant case it is of importance to note that along with his complaint, Mohd. Iqbal Ghazi had filed various documents and at serial No. 40 thereof was the death certificate dated 21.3.2003 issued by GTB Hospital pertaining to the death of Akbar. As noted in para 1 above, the same evidenced that Akbar was admitted to the hospital on 19.3.2003 and was suffering from acute pulmonary-cum-respiratory disorder and was complaining of acute breathlessness. Past medical history of Akbar was recorded by noting that he was a non-smoker and an alcoholic. It recorded that Akbar remained an in-door patient till 21.3.2003 and expired on said day at about 1:40 PM. The cause of death recorded was chronic obstructive disease with enlarged heart and septicimia and low blood pressure. The same did not record any bodily injury, external or internal. Prima facie, the certificate evidences a natural death triggered by the wayward life of Akbar. Be that as it may, neither order passed, be it the order dated 5.11.2003 or the order impugned in the instant petitions, reveals that the learned Metropolitan Magistrate has considered the said death certificate. As noted above while directing investigation u/s 156(3) of the Code of Criminal Procedure it is the duty of a Magistrate to consider all the material before him to record a satisfaction whether a police investigation should be directed, and since the police cannot be directed to investigate a cognizable offence without registering a FIR, the learned Magistrate has to consider whether the information laid before him, prima facie discloses the commission of a cognizable offence. It is trite that the information laid before a learned Magistrate would include all the documents placed before him or filed along with the complaint.

39. Since I have not gone into the issue whether the complaint should be quashed I am not dealing with the issue of res judicata raised by Mr. Bahar-u-Barqui, Learned Counsel for the complainant for the reason I have found fault with the order dated 25.7.2005 which was admittedly not the subject matter of challenge in the earlier proceedings.

40. The petitions are disposed of quashing the order dated 25.7.2005. Application filed by Vivek Gogia and Gurcharan Dass which was decided vide said order is revived for fresh adjudication holding that the said application was maintainable. Directions are issued to the learned Metropolitan Magistrate to decide the said application as also the application filed by the State which was

deferred vide order dated 25.7.2005.

41. No costs.

42. TCR be returned forthwith.