

(1992) 08 AHC CK 0024

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 31367 of 1992

Suraj Mal and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 27-08-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 154(1), 154(3), 156, 156(1)
Penal Code, 1860 (IPC) — Section 120B, 167, 218, 219, 466

Citation : (1993) 1 AWC 101

Hon'ble Judges : S.K. Verma, J; R.R.K. Trivedi, J

Bench : Division Bench

Advocate : Devendra Swarup, for the Appellant;

Final Decision : Dismissed

Judgement

R.R.K. Trivedi. J.

1. We have heard learned Counsel for Petitioners and learned Standing Counsel.
2. In this petition, Petitioners have questioned the legality of the order dated 29.7.1992 passed by Judicial Magistrate, Roorkee, by which he has directed the S.H.O. Jhabrera, district Hardwar to register a case under Sections 167/218/219/466/467/468/471/477A/474 read with Section 120-B IPC and to investigate the offences and to submit his report to the Court. This order has been passed by the learned Magistrate u/s 156(3) of the Code of Criminal Procedure (hereinafter referred to as the Code).
3. The facts giving rise to the aforesaid order are that Respondent No. 2 Brahma Singh filed an application before the Judicial Magistrate, which has been filed as Annexure I to this petition, u/s 156(3) of the Code with the prayer that the S.H.O. Jhabrera be directed to register the case at the Police Station and to investigate the offence. In the application he has stated that he attempted to lodge a FIR and with this purpose he went to the Police Station, Jhabrera but the police being in collusion refused to record his report. His grievance, as stated in

the application, appears to be that he is an handicapped person Agricultural land viz plot No. 102 with area 1.321 acres is recorded in his name in Khata No. 61. It has been alleged by him that the Petitioners in collusion with the consolidation staff forged a Parvana Amaldaramad purporting to have been issued under Sections 34/35 of the Land Revenue Act from the Court of Tahsildar, Roorkee bearing Case No. 419 of 1991, dated 30.9.1991. On the basis of this forged Parvana Amaldaramad, Petitioners got their names recorded and thereafter on 13.5.1992 the Parvana Amaldaramad was returned to the Tahsildar after compliance. The Tahsildar, however, enquired into the matter and it has been found that no such Parvana was issued either from his Court or from any Court of Naib Tahsildar. The Tahsildar intimated to the consolidation authorities that Parvana Amaldaramad was forged and any entry made on the basis of the same should be corrected. On these allegations It has been stated that the Petitioners have knowingly forged the document and used the same as genuine for depriving the Respondent No.2 of his property and for wrongful gain fraudulently and they are liable to be prosecuted for the offences mentioned above. On receipt of this application the learned Magistrate dismissed the impugned order.

4. We have heard Shri Devendra Swarup, learned Counsel for the Petitioner, and also perused the impugned order. Learned Counsel for Petitioners assailed the order on the grounds that the learned Magistrate though could direct investigation by police u/s 156(3) of the Code, however, he could of direct to register the case. Learned Counsel for Petitioners has placed reliance on a case Raghbir Singh v. State of Haryana 1990 (1) Crimes 600.

5. Learned Counsel for Petitioner has also relied on a Full Bench judgment of this Court Ram Lal Yadav v. State of U.P. 1989 (26) ACC 181. It has been further submitted that learned Magistrate was not justified in recording a finding after noticing the statement of the complainant, Respondent No. 2, as no statement on oath was recorded.

6. Lastly, it has been submitted that cognizance could not be taken without proceeding further and without recording the statements on oath under Sections 200 and 202 of the Code. Learned Counsel further submitted that the learned Magistrate ought to have treated the application filed by Respondent No. 2 as a complaint and should have adopted the procedure provided under Chapter XV of the Code.

7. We have considered the submissions made by the learned Counsel for Petitioners and in our opinion none of the submissions made by the learned Counsel can be accepted in the facts and circumstances of the present case. A perusal of the application moved by Respondent No. 2 clearly shows that his grievance before the learned Magistrate was against the police as on being approached, his report was not recorded u/s 154 of the Code. After stating the injustice caused to him he prayed before the learned Magistrate that police be directed to register his case and Investigate the same. The contention of the learned Counsel for Petitioners that the application moved by the Respondent No.

2 was a complaint thus is not correct. As it was not a complaint, there was no occasion for the learned Magistrate to adopt the procedure provided under Chapter XV of the Code.

8. Learned Counsel for Petitioners seriously questioned the power of the learned Magistrate while directing investigation u/s 156(3) of the Code, to register the case. Learned Counsel placed reliance on the case of Raghbir Singh v. State of Haryana mentioned above. We have already found that the application moved by Respondent No. 2 could not be termed as a complaint In view of the relief sought and the allegations made therein. Respondent No. 2 did not pray the Court to punish the Petitioners. He only prayed for a direction to the police to register the case and investigate the offences. The case relied on by the learned Counsel is distinguishable as it had arisen out of a complaint case.

9. Further, in case of Raghbir Singh reliance has been placed on two earlier cases decided by the same Court wherein it was held that the learned Magistrate in terms of Section 156(3) of the Code of Criminal Procedure, 1973, can send the complaint to the police for investigation and not for registration of the case. It has been further observed that view taken in those cases is based on observations of Hon"ble Supreme Court in case Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others, .

10. We have gone through the judgment of Hon"ble Supreme Court in the case of Devarapalli Lakshminarayana Reddy and in our opinion, there is nothing in the judgment of Hon"ble Supreme Court on which basis it could be said that while directing the police to investigate into an offence u/s 156(3) of the Code, registration of the case could not be directed. On the other hand, Hon"ble Supreme Court in para 17 of the judgment has observed that an order under Sub-section (3) of Section 156 is in the nature of peremptory reminder or intimation to the police to exercise their plenary powers of investigation u/s 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence u/s 156 and ends with a report or charge-sheet u/s 173, para 17 of the judgment can be gainfully quoted below:

17. Section 156(3) occurs in Chapter XII, under the caption : "Information to the Police and their powers to investigate", while Section 202 is In Chapter XV which bears the heading "Of complaints to Magistrate". 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, when the Magistrate is in seizing 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 takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3). It may be noted further that an order made Under Sub-Section (3) of Section 156 is in

the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation u/s 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence u/s 156 and ends with a report or charge-sheet u/s 173. On the other hand, Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceeding under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered u/s 202 to direct, within the limits circumscribed by that Section, an investigation "for the purpose of deciding whether or not there is sufficient ground for proceeding." Thus the object of an investigation u/s 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings, already instituted upon a complaint before him

11. In the instant case, the Magistrate has only applied his mind for satisfaction that the facts alleged "disclosed cognizable offences and required to be investigated by the police. It cannot be said in any manner that the learned Magistrate took cognizance of the case merely because he also Heard Respondent No. 2 orally in support of the application. The satisfaction thus reached was not for purpose of taking cognizance of the offence but for passing an order u/s 156(3) of the Code directing the police to investigate the matter.

12. Now the question arises whether an order u/s 156(3) of the Code could be for registering the case also In our opinion, there is no provision anywhere in the Code from which an inference could be drawn that from a peremptory reminder or intimation to the police to exercise their plenary powers of investigation u/s 156(1) the case could not be registered u/s 154. It cannot be denied that the investigation of the case is an executive action and its supervision lies with the State. While investigating into the offence u/s 156(1) under the orders of 156(3) Police does not act as a delegate of the Magistrate. The investigation thus carried out is not an investigation by or on behalf of the Magistrate. The observations of Hon"ble Supreme Court in case Nirmaljit Singh Hoon Vs. The State of West Bengal and Another, , while repelling the argument that the investigation by the Police under the orders passed u/s 156(3) of the Code was part of the proceeding of the Court can be gainfully quoted here:-

...Such a proposition does not appear to be correct. Firstly, the Police Authorities have u/s 154 and 156 of the Code a statutory right to investigate into a cognizable offence without requiring any sanction from a judicial authority of AIR 1945 18 (Privy Council) and even the High Court has no inherent power u/s 561-A of the Code to interfere with the exercise of that statutory power. It is true that the Chief Presidency Magistrate had u/s 156(3) ordered in the present case an investigation by the Police. But, once that was done, the inquiry by the Police was of the same nature and character as the one which the police had power to conduct under Sub-sections (1) and (2) of that Section. indeed Sub-section (3) expressly states that an investigation ordered by a Magistrate would be an investigation "as above-mentioned", i.e. an investigation made by a police officer

in his statutory right under Sub-sections (1) and (2). That being so, once an investigation by the police is ordered by a Magistrate, the Magistrate cannot place any limitations on or direct the officer conducting it as to how to conduct it. Secondly, it is well settled that before a Magistrate can be said to have taken cognizance of an offence u/s 190(1)(a) of the Code, he must have not only applied his mind to the content, of the complaint presented before him, but must have done so for the purpose of proceeding u/s 200 and the provisions following that Section. But where he has applied his mind only for ordering an investigation u/s 156(3) or issuing a warrant for purposes of investigation, he cannot be said to have taken cognizance of the offence *R.R. Chari Vs. The State of Uttar Pradesh*, ; *Jamuna Singh and Others Vs. Bhadai Sah*, . The Chief Presidency Magistrate having not even taken cognizance of the offence but having applied his mind for the purpose only of directing a police investigation, u/s 156(3), no proceeding could be said to have commenced before him, of which the enquiry by the Police could be said to be part and parcel. Further, it cannot be said that the Police Officer acting u/s 156(3) was a delegate of the Chief Presidency Magistrate or that the investigation by him was an investigation by or on behalf of the Magistrate. Production of the receipt by Hoon in the course of such an investigation was therefore, not production in a proceeding before the Chief Presidency Magistrate so as to attract the ban u/s 195(1)(c). The first limb of Mr. Chagla's argument therefore cannot be accepted.

13. From the observations of Hon'ble Supreme Court in the aforesaid two cases it is clear that the police has to investigate the offence in the same manner as the offence was actually reported to the police u/s 154(1) of the Code. It is not that the proceedings are still pending before the Magistrate. In one way or the other the officer in charge of a police station is under a statutory obligation to reduce writing any information given to him in writing. In the facts of the present case if the report disclosing the cognizable offence has been received from the Magistrate with an order u/s 156(3) of the Code, the person giving information is not changed. The informant continued to be Respondent No. 2 and the police was bound to register the offence in the book contemplated u/s 154(1) of the Code. After a close scrutiny of the provisions contained in Chapter XII of the Code it could be said that, while investigating into an offence under the orders u/s 156(3) of the Code, the officer-in-charge of the police station was obliged to register the case in the book meant for the same in our opinion, even if there was no direction by the Magistrate to register the case, the officer-in-charge of the police station is under a legal obligation to register the case for purpose of investigation in the same way as if it was reported to him u/s 154(1). Thus the objection of the learned Counsel that the registration of the case in the police station could not be directed by the learned Magistrate is not correct and we express our respectful disagreement to the case of *Raghubir Singh* aforesaid relied on by the learned Counsel for Petitioners. We would like to clarify it here that the position may be different when the investigation is ordered by the Magistrate u/s 202 of the Code which is in the process of deciding whether or not

there is sufficient ground for proceeding further. u/s 202 the proceedings before the Court remain pending but the position u/s 156(3) is entirely different where the investigation by the police is Magistrate.

14. We have also perused the Full Bench decision of this Court in Ram Lal Yadav v. State of U.P. mentioned supra and in our opinion, this judgment does not help the Petitioners in any manner.

15. A comparison of Sections 154(3) and 156(3) of the Code will also be relevant for appreciating and resolving the controversy in the present case. The legislature u/s 154(3) of the Code has given power to the Superintendent of Police to order investigation on being approached by a person aggrieved by refusal to record the Information. The Superintendent of Police on being satisfied that information disclosed the commission of cognizable offence could investigate into the offence himself or could depute any police officer. u/s 156(3) the only thing mentioned is that any Magistrate empowered u/s 190 Code of Criminal Procedure can direct investigation which means that a Magistrate should be competent to take cognizance of the offence u/s 190 and if he comes across any information disclosing commission of a cognizable offence, he could direct investigation. The information may reach him in any manner, including through a person aggrieved by refusal on the part of an officer-in-charge of the police station to record the information as in the present case. The power of the Magistrate to order investigation u/s 156(3) is thus much wider than the Superintendent of Police contemplated u/s 154(3) for directing investigation. But, in all such cases, recording of information-in the book kept in the police station or registration of the case is necessary step for investigation of the case under Sections 156(2) and 157 Code of Criminal Procedure when the investigation is directed either under Sections 154(3) or 156(3), the informant remains the same. The report or information comes to the officer-in-charge of the police station with the command of the higher authority or the learned Magistrate to compel such officer to investigate into the offence. The legislative Intent behind both the aforesaid provisions appears to be to provide protection to the public and a special care in respect of the victims of cognizable offences and not to leave the investigation of such offences at the whim and sweet-will of the officer-in-charge of the Police Station.

16. For the reasons recorded above, In our opinion, this petition has no force and is accordingly dismissed, no order as to costs.