2024 PLRonline 448777 = (2024-3)215 PLR 737 (SN)

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Vinod S. Bhardwaj.

DIVYANSHU MEHTA – Petitioner,

Versus

STATE OF PUNJAB and another – Respondents.

CWP-24409-2024

Criminal Procedure Code, 1973 Section 156(3), 200 – Upon a Magistrate taking cognizance of a complaint under Section 200 of the Criminal Procedure Code, 1973, the Court is precluded from directing an investigation under Section 156(3) of the Criminal Procedure Code – The option to either pass an order as per Section 156(3) or the option to proceed further as provided by Section 202, were both available to the magistrate at its disposal – However, the magistrate had already taken cognizance of the matter and proceeded further as per Section 202 – Magistrate had already taken cognizance and treated it as a complaint, the magistrate was right to treat the application under 156(3) as non-maintainable. [Para 20, 22, 23]

Held,

20. Coming back to the facts of the present case, the magistrate on receipt of the protest petition, decided to take cognizance and exercised his discretion to treat the same as a complaint vide orders dated 01.02.2022. In light of the Supreme Court's discerning observations in the aforementioned cases, it becomes evident that upon a Magistrate taking cognizance of a complaint under Section 200 of the Criminal Procedure Code, 1973, the Court is precluded from directing an investigation under Section 156(3) of the Criminal Procedure Code.

21. Hon'ble Supreme Court recently in the case of *Kailash Vijayvargiya v. Rajlakshmi Chaudhuri* 2023 SCC OnLine SC 569, while reaffirming the view taken in the matter of *Mona Panwar v. High Court of Judicature at Allahabad* (2011) 3 SCC 496 held that:

"...when a complaint is presented before a Magistrate, he has two options. One is to pass an order contemplated by Section 156(3). The second one is to direct examination of the complainant on oath and the witness present, and proceed further in the manner provided by Section 202. An order under Section 156(3) is in the nature of a peremptory reminder or intimation to the police to exercise its plenary power of investigation under Section 156(1). However, once the Magistrate has taken cognizance under Section 190 of the Code, he cannot ask for an investigation by the Police."

22. Coming to factum of the petitioner relying upon the judgment of *Sakiri Vasu* (supra), the same is not applicable to the present case due to differential facts and circumstances. In *Sakiri Vasu* (supra) even though the investigating authority had investigated the matter and submitted a detailed report, the magistrate had taken no action on the same. The option to either pass an order as per Section 156(3) or the option to proceed further as provided by Section 202, were both available to the magistrate at its disposal. However, in the present case, the magistrate had already taken cognizance of the matter and proceeded further as per Section 202.

23. Moreover, the counsel had wrongly placed reliance on the case of *Mukhtar Zaidi* (supra) wherein the Hon'ble Supreme Court had taken a view that since the magistrate had already recorded his satisfaction that the case was worth taking cognizance, the magistrate ought to have followed the provisions and the procedure prescribed under Chapter XV of the Cr.P.C. to treat the protest petition as a complaint and proceed in accordance to law. The judgment does not advance the case of the petitioner. In the case at hand, the magistrate had already taken cognizance of the matter and proceeded to treat the protest petition as a complaint. Hence, taking action in affirmation to the observations of the Apex Court.

24. Keeping in view the aforementioned judicial precedents and facts of the case at hand, since the magistrate had already taken cognizance and treated it as a complaint, the magistrate was right to treat the application under 156(3) as non-maintainable.

Cases referred to:-

1. (2008) 2 SCC 409 *Sakiri Vasu v. State of Uttar Pradesh.*

2. 2024 SCC OnLine SC 553 , *Mukhtar Zaidi v. The State of Uttar Pradesh.*

3. (2019) 8 SCC 27, *Vishnu Kumar Tiwari v. State of Uttar Pradesh*

4. 2023 SCC OnLine SC 569, *Kailash Vijayvargiya v. Rajlakshmi Chaudhuri.*

5. (2011) 3 SCC 496*, Mona Panwar v. High Court of Judicature at Allahabad.*

Mr. Swarnendu Chatterjee, for the petitioner.

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Vinod S. Bhardwaj, J. (Oral) – *(Judgment reserved on: 23.09.2024 Pronounced on: 04.10.2024)* – The present petition has been filed seeking quashing the SIT report dated 06.04.2021; the closure report dated 15.04.2021 (wrongly mentioned in the original document as 15.04.2020) filed in the case number UCR 216/21 registered in FIR No. 88 dated 26.04.2019 registered at P.S. City, Khanna; the orders of the Sub Divisional Judicial Magistrate, Khanna dated 01.02.2022 in case number UCR 216/21 not accepting the cancellation report and proceeding ahead with the same as a complaint case as well as the orders of Sub Divisional Judicial Magistrate, Khanna dated 19.08.2023 in complaint case

COMI/15/2022 declining direction under Section 156(3) Cr.P.C. and to direct the respondent authorities to conduct a fresh investigation in the above mentioned FIR No. 88 dated 26.04.2019.

2. The facts of the case are that an FIR No. 88 dated 26.04.2019 was registered under Sections 409, 417 and 477A of the Indian Penal Code at P.S. City Khanna on the complaint of the petitioner against Dev Krishan Jindal, Santosh Rani and Rohit Jindal (hereinafter referred to as accused), all directors of the company Trimurti Resorts Private Limited having its registered office at G.T. Road, Khanna. It is pertinent to mention that Ravinder Singh Mehta (now deceased), father of the petitioner, his mother Alka Mehta and sister Gauri Mehta are also shareholders of the said company Trimurti Resorts Private Limited. The father of the petitioner was one of the promoters and mother of the petitioner is a director of the abovementioned company.

3. It was alleged in the said FIR that there was three groups that were shareholders in Trimurti Resorts namely the Jindal Group, the Mehta Group and the Kalia Group to the extent of 33% each and had nominated one director each.

4. The Jindal and the Kalia group colluded and became oppressive against the Mehta Group against which it approached the Company Law Board. During pendency of those proceedings, Director of Mehta Group was removed illegally. Thereafter, the accused persons misappropriated an amount of more than Rs.37.91 lacs by showing it as a work in progress. False accounts were prepared and comparing that value of completed building is Rs.43.38 lakh, such huge amount could not be a work in progress and the same could be got assessed. An amount of Rs.21.27 lacs was due from one lessee Hasma Milex but an amount of Rs.18.86 lakh was written off the balance sheet by the accused persons and a civil suit having also been filed. The company never received the said amount. They also entered loans in the books of the company at higher rates, Movable assets of the company went missing from the balance sheet and as such culpable criminal acts were being conducted by the accused persons. After conducting an inquiry, it was recommended that FIR be registered into the incident.

5. That after the registration of the FIR and during pendency of the investigation therein, one of the accused namely Dev Krishan Jindal made a representation to the DIG, Ludhiana, who then forwarded the same to the police authorities in Khanna, praying that FIR No. 88 of 2019 be reinvestigated by some higher police authorities. The concerned police authorities in Khanna instituted an investigation by senior officers, whereupon the same was carried out by the Superintendent of Police.

6. Alleging an inordinate delay in the investigation in the abovementioned FIR, the present petitioner approached this Court in a Criminal

7. Miscellaneous Petition bearing number CRM-M-36142 of 2020 titled as *'Divyanshu Mehta v. State of Punjab &Anr.'* with a prayer to get the matter investigated as per provisions of law and also to monitor the investigation in the said FIR.

8. During the hearing of the said petition, the police authorities ordered for an S.I.T to

investigate the said FIR. The S.I.T submitted its investigation report on 06.04.2021 and on the basis of the said report, a final/cancellation report was filed by the concerned police authorities, Khanna on 15.04.2021 in the court of Sub Divisional Judicial Magistrate, Khanna (hereinafter referred to as SDJM) in case No.UCR 216/21 registered in the abovementioned FIR No. 88. It was concluded by the investigating agency that as per of the orders of Company Law Board, Alka Mehta was given a number of notices to attend the Board meetings but she did not come to attend the same on 80-82 occasions due to which she was removed. The work under progress for Rs.37.91 lakh was shown under consent since company was into losses. Other fixtures were available at the resort. The money shown as a loan from Directors, was taken to pay the installments of loans for the resort and other dues. All audit reports were found to be duly sent to Alka Mehta and her husband. The work in progress was being shown even when Alka Mehta and her husband were Directors. Even the settlement with the lessee was to their knowledge. All the documents were duly considered and it transpired that the company had purchased 5K-18-2/3M for the resort from Ravinder Mehta (father of petitioner) but he did not give possession of 1K-1M land and instead started filing complaints. A case was also filed by the Company in Civil Court to take possession of the land and that the petitioner has been filing the complaints after death of his father. The SIT concluded the there was no criminal cognizable offence and was at best a civil dispute and recommended cancellation.

9. The petitioner filed a protest petition before the SDJM challenging the abovementioned final report filed by the S.H.O. The said protest petition was accepted and it was ordered to be treated as a complaint by the SDJM vide orders dated 01.02.2022 and accordingly, the cancellation report was not accepted. Consequently, a complaint case bearing number COMI/15/2022 titled *'Divyanshu Mehta v. Dev Krishan Jindal'* was registered.

10. Since the investigation had been concluded, this court disposed of CRM-M-36142, vide order dated 30.11.2022 allowing the petitioner to file an appropriate application before the trial court for further investigation.

11. The petitioner thereafter filed an application on 07.07.2022 before the SDJM under section 156(3) praying for directions to the police authorities for reinvestigating the case in accordance with law and for the SDJM to monitor the same. However, the SDJM, vide order dated 19.08.2023, dismissed the application for being devoid of merits as investigation had already been completed and cancellation report had been filed by the police, and also for the reason that the protest petition had already been treated as a complaint by the SDJM and proceeding was already being conducted on the same.

12. The counsel for the petitioner, placing reliance on the abovementioned facts, contends that the accused have indulged in embezzlements of funds from the company under the garb of payment of interest and principal amount and proper investigation has not been carried out by the above mentioned SIT regarding unsecured loans in the books of the abovementioned company by the accused. The companies/firms and the persons from whom the unsecured loans were availed on behalf of the company Trimurti Resorts Private Limited were not looked into and neither the utilization of the said unsecured loans nor the payments made to the companies and persons who provided these unsecured loan were

looked into.

13. Further, the counsel argues that there is nothing in the report of the SIT and the subsequent final report filed in the court of SDJM to suggest that proper investigation was made into the allegation of misappropriation of movable assets of the above mentioned company by the accused. He mentions that in the final SIT report there are no photographs or description of assets found in the premises of the company.

14. The counsel places reliance on annexed documents including the Memorandum of Board Meetings, relevant bank account of the company and the Statement of Secured loan account from the Punjab Financial Corporation, to contend that no proper investigation was done by the SIT into the allegation of misappropriation of lease rent receivable by the accused persons on behalf of the company. And that the minutes of meeting of the Board of the Directors of the company show that the accused persons entered into an unlawful compromise agreement with lessee HasmaMilex regarding reducing the outstanding lease amount from Rs. 25,64,184/- to Rs. 6,80,000, that too payable in installments with the lessee on behalf of the company, and the same fact had been ignored by the SIT in the investigation. Moreover, enquiry into the receipt and utilization of the lease amount by the company has also not been looked into by the SIT.

15. The counsel further contends that since the investigation was interfered into upon the representation of the accused, it vitiates the entire subsequent investigation and the same has been done in bad faith, haste and without application of mind.

16. The counsel places reliance on the judgment of the Hon'ble Supreme Court in the case of *Sakiri Vasu v. State of Uttar Pradesh & Others* [1] (2008) 2 SCC 409 to contend that under Section 156(3) in all such cases where the magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily then there is an implied power in the magistrate to order registration of a criminal offence and /or to direct the officer in charge of the police station concerned to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same.

17. The counsel vehemently argues to establish his case that similar observations have been made by the Hon'ble Supreme Court in the case of *Mukhtar Zaidi v. The State of Uttar Pradesh &Anr.* [2] reported as 2024 SCC OnLine SC 553 and *Vishnu Kumar Tiwari v. State of Uttar Pradesh &Anr.* [3] reported as (2019) 8 SCC 27.

18. No further arguments raised by the petitioner.

19. Before proceeding further with the merits of the case, in order to answer the issues at hand, it is important to examine the provisions of law laid down in the erstwhile Criminal Procedure Code and the same reads as follows:

"Section 156 of Criminal Procedure Code 1973:

1. Any officer in charge of a police station may, without the order of a Magistrate,

investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

2. No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

3. Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

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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.

PUNJAB AND UT OF CHANDIGARH.- *In relation to the specified offences, the Code shall be so read as if after Section 190 of the Code, the following section was inserted, namely :"190-A. Cognizance of offences by Executive Magistrate.- Subject to the provisions of this Chapter any Executive Magistrate may take cognizance of any specified offences. -(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, upon his own knowledge, that such offence has been committed." [Vide Punjab Act 22 of 1983,*

Section 6, w.e.f. 27.6.1983]

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Section 200: Examination of complainant.—

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnessespresent, 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 under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not reexamine them."

At this juncture, it would be relevant to refer to the observation of three judges bench of the Hon'ble Supreme Court in the matter of Devarapally Lakshminarayana Reddy v. V. Narayana Reddy reported as (1976) 3 SCC 252 that,

"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 Magistrates". The power to order police investigation under Section 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 seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). 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 subsection (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173. On the other hand, Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings 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 under Section 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 under Section 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.

The above observation had been recorded by the Apex Court while relying upon its own observations in the matter of Nirmal Jeet v. State of West Bengal reported as (1973) 3 SCC 753 wherein it was held that, "The power to order police investigation under Section 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 seisin of the case.

In Ramdev Food Products (P) Ltd. v. State Of Gujarat reported as (2015) 6 SCC 439, the Hon'ble Supreme Court on examining the issue of whether discretion of magistrate to call for a report under Section 202 instead of directing investigation under Section 156(3) is controlled by any defined parameters, held that:

"22. Thus, we answer the first question by holding that:

22.1. The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone the issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued.

22.2. The cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed". Category of cases falling under para 120.6 in Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] may fall under Section 202.

22.3. Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case."

20. Coming back to the facts of the present case, the magistrate on receipt of the protest petition, decided to take cognizance and exercised his discretion to treat the same as a complaint vide orders dated 01.02.2022. In light of the Supreme Court's discerning observations in the aforementioned cases, it becomes evident that upon a Magistrate taking cognizance of a complaint under Section 200 of the Criminal Procedure Code, 1973, the Court is precluded from directing an investigation under Section 156(3) of the Criminal Procedure Code.

21. Hon'ble Supreme Court recently in the case of *Kailash Vijayvargiya v. Rajlakshmi Chaudhuri* [4] reported as 2023 SCC OnLine SC 569, while reaffirming the view taken in the matter of *Mona Panwar v. High Court of Judicature at Allahabad* [5] reported as (2011) 3 SCC 496 held that:

"...when a complaint is presented before a Magistrate, he has two options. One is to pass an order contemplated by Section 156(3). The second one is to direct examination of the complainant on oath and the witness present, and proceed further in the manner provided by Section 202. An order under Section 156(3) is in the nature of a peremptory reminder or intimation to the police to exercise its plenary power of investigation under Section 156(1). However, once the Magistrate has taken cognizance under Section 190 of the Code, he cannot ask for an investigation by the Police."

22. Coming to factum of the petitioner relying upon the judgment of *Sakiri Vasu* (supra), the same is not applicable to the present case due to differential facts and circumstances. In

Sakiri Vasu (supra) even though the investigating authority had investigated the matter and submitted a detailed report, the magistrate had taken no action on the same. The option to either pass an order as per Section 156(3) or the option to proceed further as provided by Section 202, were both available to the magistrate at its disposal. However, in the present case, the magistrate had already taken cognizance of the matter and proceeded further as per Section 202.

23. Moreover, the counsel had wrongly placed reliance on the case of *Mukhtar Zaidi* (supra) wherein the Hon'ble Supreme Court had taken a view that since the magistrate had already recorded his satisfaction that the case was worth taking cognizance, the magistrate ought to have followed the provisions and the procedure prescribed under Chapter XV of the Cr.P.C. to treat the protest petition as a complaint and proceed in accordance to law. The judgment does not advance the case of the petitioner. In the case at hand, the magistrate had already taken cognizance of the matter and proceeded to treat the protest petition as a complaint. Hence, taking action in affirmation to the observations of the Apex Court.

24. Keeping in view the aforementioned judicial precedents and facts of the case at hand, since the magistrate had already taken cognizance and treated it as a complaint, the magistrate was right to treat the application under 156(3) as non-maintainable.

Without going into the further merits of the case and as to what procedure, the Magistrate should follow, as it is for the Magistrate to carefully consider and decide on these matters in accordance with law, the present petition is dismissed in limine.

R.M.S. – *Petition dismissed.*