

SURESH CHAND JAIN

A

v.
STATE OF MADHYA PRADESH AND ANR.

JANUARY 10, 2001

[K.T. THOMAS AND R.P. SETHI, JJ.]

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Criminal Law:

Criminal Procedure Code, 1973—Chapters XII and XV—Sections 156 and 202—Power of Judicial Magistrate to direct investigation by Police on receiving complaint—Examination of Complainant on oath—Held, order of investigation under Chapter XII is before taking cognizance of offence and therefore examination on oath is not required; investigation under Chapter XV is after taking cognizance of offence.

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Respondent filed a complaint against appellant and his wife before Chief Judicial Magistrate for initiating action under section 3 of Prizes Chits and Money Circulation Scheme (Prohibition) Act and under Section 420 IPC. The Magistrate ordered investigation by Police under Section 156(3) of the Criminal Procedure Code, 1973 (Code) and directed to register an FIR. The appellant challenged the order by an application for revision before the Sessions Court which was dismissed. The appellant moved High Court under Section 482 of the Code which was also dismissed. Hence the appeal.

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The appellant contended that Magistrate on receipt of a complaint should have examined the complaint on oath before proceeding further; and that the Magistrate has no power to direct the police to register an FIR.

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Dismissing the appeal, the Court

HELD : 1.1. An investigation would start with making an entry in a book to be kept by the officer-in-charge of a Police station of the substance of the information relating to the commission of a cognizance offence. The investigation started thereafter can end only with the Report filed by the Police under Section 173 of the Code. The investigation contemplated in Chapter XII can be commenced by the Police even without the order of a Magistrate. But that does not mean that when a Magistrate orders an investigation under

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A Section 156(3), it would be a different kind of investigation. Such an investigation must also end up only with the Report contemplated in Section 173 of the Code. When a Magistrate orders investigation under Chapter XII, he does so before he takes cognizance of the offence. [261-G-H; 262-A-B]

B 1.2. A Magistrate need not order an investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the Code. A reading of Section 202(1) of the Code would convince that the investigation referred to therein is of a limited nature. The Magistrate can direct such an investigation to be made either by a police officer or by any other person. Such investigation is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further. This can be discerned from the culminating words in Section 202(1) of the Code. This is because he has already taken cognizance of the offence disclosed in the complaint and the domain of the case would thereafter vest with him. [262-B-C-D]

D 1.3. Any Judicial Magistrate, before taking cognizance of an offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he is not taking cognizance of any offence. For the purpose of enabling the police to start investigation, it is open to the Magistrate to direct the Police to register an FIR. There is nothing illegal in doing so. Registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer-in-charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer-in-charge of the Police station to register an FIR regarding the cognizable offence disclosed by the complaint because that Police officer could take further steps contemplated in Chapter XII of the Code only thereafter. [262-E-F-G]

G *Suresh Kumar v. State of Haryana*, (1996) 3 Recent Criminal Reports 137, overruled.

Ram Narain v. Lokuram, (1986) 37 Rajasthan Law Weekly 143, distinguished.

H *Gopal Das Sindhi & Ors. v. State of Assam & Anr.*, AIR [1961] SC 986 and *Tula Ram & Ors. v. Kishore Singh*, AIR (1977) SC 2401, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. A
43 of 2001.

From the Judgment and Order dated 1.5.2000 of the Madhya Pradesh
High Court in M.Cr. C. No. 1409 of 2000.

R.K. Jain Ajay Jain, Jitendra Jain and Sushil Kumar Jain for the Appellant. B

Ashok Kumar Shing and Uma Nath Singh for the Respondent.

The Judgment of the Court was delivered by

THOMAS, J. Leave granted. C

A complaint was forwarded by a magistrate to the police for registering
an FIR and for conducting investigation. One of the persons arrayed in the
complaint as accused questioned the legality of the above order first in
revision before the Sessions Court and then by invoking the inherent powers
of the High Court. Both did not succeed. This appeal is by the same person D
contending that the order of the magistrate should have been upset in the
interest of justice.

The complaint was filed by the second respondent (Mahesh Patidar)
before the Chief Judicial Magistrate, Neemuch (M.P.) on 12.8.1999 alleging E
that the appellant and his wife Geeta Devi have committed offence under
Section 3 of the Prizes Chits and Money Circulation Scheme (Prohibition) Act
and under Section 420 of the Indian Penal Code. The Chief Judicial Magistrate
passed an order on 18.8.1999 which is extracted below:

“The complaint submitted by the complainant has been perused. This
complaint has been submitted by the complainant for initiating action F
against the accused under Section 3 of the Prizes, Chits and Money
Circulation Scheme (Prohibition) Act and Section 420 of the IPC. Both
the offences are serious, therefore, the case is required to be
investigated by the police station, Neemuch Cantt. under Section
156(3) Cr.P.C., therefore, the complaint submitted by the complainant G
be sent to the In-charge, Police Station Neemuch Cantt. with the
direction to register F.I.R. and initiate investigation. The copy of the
F.I.R. be sent to this court immediately.”

Appellant challenged the said order in a revision before the Sessions
Court and when the revision was dismissed he moved the High Court under H

A Section 482 of the Code of Criminal Procedure (for short 'the Code'). Learned Single Judge of the High Court of Madhya Pradesh took the view that "in a private complaint case under Section 156(3) of the Code the magistrate is empowered to order investigation; the allegation made in the complaint needs to be investigated in public interest."

B Shri R.K. Jain, learned senior counsel contended first that a magistrate on receipt of a complaint should have examined the complainant on oath before proceeding to any other step. Learned senior counsel adopted the alternative contention that the magistrate has no power to direct the police to register an FIR. In support of the said contention learned counsel cited two decisions. One is *Ram Narain v. Lokuram*, [1986] 37 *Rajasthan Law Weekly* 143 and the other was rendered by the Punjab and Haryana High Court in *Suresh Kumar v. State of Haryana*, [1996] 3 *Recent Criminal Reports* 137.

D The former decision of the Rajasthan High Court need not vex our mind as the consideration focussed therein was on the scope of Section 202(1) of the Code and the learned Single Judge observed therein that a magistrate cannot make any order regarding police investigation without examining the complainant on oath. If the facts in that case remained one under Section 202(1) of the Code then the observation cannot be faulted with. That apart, as the point involved in this case is different we do not think it necessary to examine the said decision. But the other decision rendered by a Single Judge of the Punjab and Haryana High Court *Suresh Kumar v. State of Haryana* has gone a step further as he held that "the magistrate has no power within the contemplation of Section 156(3) of the Code to ask for registration of the case, but could only refer the complaint to the police for investigation at the pre-cognizance stage to make the enquiry in the matter enabling the magistrate to apply his mind with regard to the correctness of the complaint." In that decision learned Single Judge, at the end of the judgment, made a direction as follows:

G "Before parting with the judgment, it is observed that often it is found that the Judicial Magistrates working under the control of this Court many a time upon the complaints preferred before them, allegedly showing that a cognizable offence has been committed by the accused, direct the police to register and conduct the investigation in such cases under Section 156(3) of the Cr.P.C. After the reports are received from the police the Magistrates deal with those cases as police challans and conduct the proceedings in the matters against the provisions of law as discussed above. Hence the Registry is directed to send a copy

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of this judgment to all the Judicial Magistrates in the States of Punjab, Haryana and Union Territory, Chandigarh, for information and guidance.”

In our opinion, the aforesaid direction given by the learned Single Judge of the Punjab and Haryana High Court in *Suresh Kumar v. State of Haryana* (supra) is contrary to law and cannot be approved. Chapter XII of the Code contains provisions relating to “information to the police and their powers to investigate”, whereas Chapter XV, which contains Section 202, deals with provisions relating to the steps which a magistrate has to adopt while and after taking cognizance of any offence on a complaint. Provisions of the above two chapters deal with two different facets altogether though there could be a common factor i.e. complaint filed by a person. 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. Section 156 of the Code reads thus:

“156. Police officer’s power to investigate cognizable cases.—(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.”

The investigation referred to therein is the same investigation the various steps to be adopted for it have been elaborated in Chapter XII of the Code. Such investigation would start with making the entry in a book to be kept by the officer-in-charge of a police station, of the substance of the information relating to the commission of a cognizable offence. The investigation started thereafter can end up only with the report filed by the police as indicated in Section 173 of the Code. The investigation contemplated in that Chapter can be commenced by the police even without the order of a magistrate. But that

A does not mean that when a magistrate orders an investigation under Section 156(3) it would be a different kind of investigation. Such investigation must also end up only with the report contemplated in Section 173 of the Code. But the significant point to be noticed is, when a magistrate orders investigation under Chapter XII he does so before he takes cognizance of the offence.

B But a magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the Code. A reading of Section 202(1) of the Code would convince that the investigation referred to therein is of a limited nature. The magistrate can direct such an
C investigation to be made either by a police officer or by any other person. Such investigation is only for helping the magistrate to decide whether or not there is sufficient ground for him to proceed further. This can be discerned from the culminating words in Section 202(1) i.e. "or direct an investigation to be made by a police officer or by such other persons as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for
D proceeding". This is because he has already taken cognizance of the offence disclosed in the complaint, and the domain of the case would thereafter vest with him.

The position is thus clear. Any judicial magistrate, before taking
E cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of
F the information relating to the commission of the cognizable offence in a book kept by the officer-in-charge of the police station as indicated in Section 154 of the Code. Even if a magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer-in-charge of the police station to
G register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.

Though the learned Single Judge of the Punjab and Haryana High Court in *Suresh Kumar v. State of Haryana* (supra) made reference to two decisions
H rendered by this Court [*Gopal Das Sindhi and Ors. v. State of Assam and*

Anr., AIR (1961) SC 986 and *Tula Ram and Ors. v. Kishore Singh*, AIR (1977) SC 2401 learned Single Judge fell into error in formulating a legal position which is quite contrary to the dictum laid down by this Court in the afore-cited decisions. In *Gopal Das Sindhi v. State of Assam* (supra) a three Judge Bench of this Court considered the validity of the course adopted by a judicial magistrate of the 1st class in ordering the police "to register a case, investigate and if warranted, submit charge-sheet". Learned Judges repelled the contention that the magistrate ought to have examined the complainant on oath under Section 200 of the Code. Dealing with the said contention their Lordships stated thus:

"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 cannot read the provisions of S.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, under 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 offences 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."

In *Tula Ram v. Kishore Singh*, (supra) a two Judge Bench of this Court, after referring to the earlier decision, reiterated the same legal position. It is unfortunate that when this Court laid down the legal position so explicitly in the above two decisions which reached the notice of the learned Judge of the Punjab and Haryana High Court he had formulated a position contrary to it by stating that "the Magistrate has no power within the contemplation of Section 156(3) of the Code, to ask for registration of the case." It appears that the judicial officers under Punjab and Haryana High Court who were, till then, following the correct position, were asked by the learned Judge to follow the erroneous position formulated by him in the aforesaid judgment.

In the present case the High Court of Madhya Pradesh had rightly upheld the course adopted by the Magistrate. Hence we dismiss this appeal.