

PETITIONER:
MADHU BALA

Vs.

RESPONDENT:
SURESH KUMAR

DATE OF JUDGMENT: 23/07/1997

BENCH:
M.K. MUKHERJEE, S. SAGHIR AHMAD

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

M.K. MUKHERJEE, J.

Special leave granted. Heard the learned counsel for the parties.

On February 18, 1988 the appellant filed a complaint against the three respondents, who are her husband, father-in-law and mother-in-law respectively, before the Chief Magistrate, Kurukshetra alleging commission of offences under Sections 498A and 406 of the Indian Penal Code [I P C for short] by them. On that complaint, the learned Magistrate passed an order under Section 156(3) of the Code of Criminal Procedure (code for short) directing the police to register a case and investigate into the same. Pursuant to the said direction Thanesar Police Station registered a case being FIR No. 61 of 1988 and on completion of investigation submitted charge sheet (police report) against the three respondents under Section 198A and 406 I P C. The learned Magistrate took cognizance upon the said charge-sheet and thereafter framed charge against the three respondents under Section 406 I P C only as, according to the learned Magistrate, the offence under Section 198A I P C was allegedly committed in the district of Karnal. Against the framing of the charge the respondents moved the Sessions Judge in revision, but without success.

Thereafter on January 29, 1994 the appellant filed another complaint against the respondents under Section 498A IPC before the Chief Judicial Magistrate, Karnal and on this complaint the learned magistrate passed a similar order under Section 156(3) of the Code for registration of a case and investigation. In compliance with the orders FIR No. 111 of 1994 was registered by the Karnal Police Station and on completion of investigation charge-sheet was submitted against the three respondents under Section 498A I.P.C.; On that charge sheet the learned Magistrate took cognizance of the above offence and later on framed charge against them in accordance with Section 240 of the Code.

While the above two cases were being tried the respondents filed petitions under Section 482 of the Code before the Punjab & Haryana High Court for quashing of their proceedings on the ground that the orders passed by the

Chief Judicial Magistrates of Kurukshetra and Karnal directing registration of cases in purported exercise of their power under Section 156 (3) of the Code were patently wrong and consequently all actions taken pursuant thereto were illegal. The contention so raised found favour with the High Court; and by the impugned judgment it quashed the orders of the Chief Judicial Magistrates of Kurukshetra and Karnal dated February 18, 1988 and January 29, 1994 respectively, pursuant to which cases were registered by the police on the complaints of the appellant, and the entire proceedings of the two cases arising therefrom. According to the High Court, under Section 156(3) of the Code a Magistrate can only direct investigation by the police but he has no power to direct registration of a case'. In drawing the above conclusion, it relied upon the judgments of this Court in Gopal Das Sindhi & Ors. vs. State of Assam (AIR 1961 SC 986) and Tula Ram & Ors. vs. Koshore Singh (AIR 1977 SC 2401) and some judgments of the Punjab and Haryana High Court which according to it, followed the above two decisions of this court.

In our considered view, the impugned judgment is wholly unsustainable as it has not only failed to consider the basic provisions of the Code but also failed to notice that the judgments in Gopal Das (supra) and Tula Ram (supra) have no relevance whatsoever to the interpretation or purport of Section 156(3) of the Code. The earlier judgments of the Punjab & Haryana High Court, which have been followed in the instant case also suffer from the above two infirmities.

Coming first to the relevant provisions of the Code, Section 2 (d) defines 'complaint' to mean any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code that some person, whether known or unknown has committed an offence, but does not include a police report. Under Section 2 (c) cognizable offence means an offence for which, and cognizable case means a case in which a police officer may in accordance with the First Schedule (of the Code) or under any other law for the time being in force, arrest without warrant. Under Section 2(r) police report means a report forwarded by a police officer to a Magistrate under sub-section (2) of Section 173 of the Code. Chapter XIII of the Code comprising Sections 154 to 176 relates to information to the police and their powers to investigate. Section 154 provides, inter alia that the officer in charge of police station shall reduce into writing every information relating to the commission of a cognizable offence given to him orally and every such information if given in writing shall be signed by the person giving it and the substance thereof shall be entered in book to be kept by such officer in such form as the State Government may prescribe in this behalf. Section 156 of the Code with which we are primarily concerned in these appeals reads as under:

"(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."

On completion of investigation undertaken under section 156(1) the officer in charge of the Police Station is required under Section 173(2) to forward to a Magistrate empowered to take cognizance of the offence on a police report a report in the form prescribed by the State Government containing all the particulars mentioned therein. Chapter XIV of the Code lays down the conditions requisite for initiation of proceedings by the Magistrate. Under sub-section (1) of Section 190 appearing that Chapter any Magistrate of the first class and any Magistrate of the second class specially empowered may take cognizance of any Magistrate of the first class and any Magistrate of the second class specially empowered may take cognizance of any offence (a) upon receiving a complaint of facts which constitutes such offence; (b) upon a police report of such facts; or (c) upon information received from any person other than a police officer, or upon his own knowledge that such offence has been committed. Chapter XV prescribes the procedure the Magistrate has to initially follow if it takes cognizance of an offence on a complaint under section 190(1)(a).

From a combined reading of the above provisions it is abundantly clear that when a written complaint disclosing a cognizable offence is made before a Magistrate, he may take cognizance upon the same under Section 190(1)(a) of the Code and proceed with the same in accordance with the provisions of Chapter XV. The other option available to the Magistrate in such a case is to send the complaint to the appropriate Police Station under Section 156(3) for investigation. Once such a direction is given under sub section (3) of Section 156 the police is required to investigate into that complaint under sub-section (1) thereof and on completion of investigation to submit a police report in accordance with Section 173(2) on which a Magistrate may take cognizance under Section 190(1)(b) but not under 190(1)(a). Since a complaint filed before a Magistrate cannot be police report in view of the definition of complaint referred to earlier and since Section 156(1) has to culminate in a police report the complaint - as soon as an order under Section 156 (3) is passed thereon - transforms itself to a report given in writing within the meaning of Section 154 of the Code, which is known as the First information Report (F I R). As under Section 156 (1) the police can only investigate a cognizable case it has to formally register a case on that report.

The mode and manner of registration of such cases are laid down in the Rules framed by the different State Governments under the Indian Police Act, 1861. As in the instant case we are concerned with Punjab Police Rules, 1934 (Which are applicable to Punjab, Haryana, Himachal Pradesh and Delhi) framed under the said Act we may now refer to the relevant provisions of those Rules.

Chapter XXIV of the said Rules lays down the procedure an officer-in-charge of a Police Station has to follow on receipt of information of commission of crime. Under Rules 24.1 appearing in the Chapter every information covered by Section 154 of the Code must be entered in the First information Report Register and substance thereof in the daily diary. Rule 24.5 says that the First information

Report Register shall be a printer book in Form 24.5(1) consisting of 200 pages and shall be completely filled before a new one is commenced. It further requires that the cases shall bear an annual serial number in each police station for each calendar year. The other requirements of the said Rules need not be detailed as they have no relevance to the point at issue.

From the foregoing discussion it is evident that whenever a magistrate directs an investigation on a 'complaint' the police has to register a cognizable case on that complaint treating the same as the FIR and comply with the requirements of the above Rules. It, therefore, passes our comprehension as to how the direction of a Magistrate asking the police to 'register a case' makes an order of investigation under Section 156(3) legally unsustainable. Indeed, even if Magistrate does not pass a direction to register a case, still in view of the provisions of Section 156(1) of the Code which empowers the Police to Investigate into a cognizable 'case' and the Rules framed under the Indian Police Act, 1861 it (the Police) is duty bound to formally register a case and then investigate into the same. The provisions of the Code, therefore, does not in any way stand in the way of a Magistrate to direct the police to register a case at the police station and then investigate into the same. In our opinion when an order for investigation under Section 156(3) of the Code is to be made the proper direction to the Police would be to register a case at the police station treating the complaint as the First Information Report and investigate into the same.

Adverting now to the two cases of this Court on which reliance has been placed by the High Court we find that in the case of Gopal Das (supra) the facts were that on receipt of a complaint of commission of offences under Section 147, 323, 342 and 448 of the Indian Penal Code, the Additional District Magistrate made the following endorsement: "To Shri C. Thomas, Magistrate 1st class, for disposal." On receiving the complaint Mr. Thomas directed the officer in-charge of the Gauhati Police Station to register a case, investigate and if warranted submit a charge sheet. After investigation police submitted a charge sheet under Section 448 of the Indian Penal Code and on receipt thereof the Additional District Magistrate forwarded to Shri R. Goswami, Magistrate for disposal. Shri Goswami framed a charge under Section 448 of the Indian Penal Code against the accused therein and aggrieved thereby the accused first approached the revisional Court and, having failed there, the High Court under Article 227 of the Constitution of India. Since the petition before the High Court was also displeased they moved this Court. The contention that was raised before this Court was that Mr. Thomas acted without Jurisdiction in directing the police to register a case to investigate it and thereafter to submit a charge sheet, if warranted. The steps of reasoning for the above contention was that since the Additional District Magistrate had transferred the case to Mr. Thomas for disposal under Section 192 of the Code it must be said that the former had already taken cognizance thereupon under Section 190(1)(a) of the Code. Therefore, he (Mr. Thomas) could not pass any order under Section 156(3) of the Code as it related to a pre-cognizance stage; and he could deal with the same only in accordance with Chapter XVI. In negating this contention this Court held that the order of the Additional District Magistrate transferring the a case to Mr. Thomas on the face of it did not show that the former had taken cognizance of any offence in the complaint. According to this Court the order was by way of an

administrative action, presumably because Mr. Thomas was the Magistrate before whom ordinarily complaints were to be filed. The case of Gopal Dass (supra) has, therefore, no manner of application in the facts of the instant case. It is interesting to note that the order that was passed under Section 156(3) therein also contained a direction to the Police to register a case.

In Tula Ram's (supra) the only question that was raised before this Court was whether or not a Magistrate after receiving a complaint and after directing investigation under Section 156(3) of the Code and on receipt of the 'Police report' from the police can issue notice to the complainant, records his statement the statements of other witnesses and then issue process under Section 204 of the Code. From the question itself it is apparent that the said case related to a stage after police report under Section 173(2) of the Code was submitted pursuant to an order under Section 156(3) of the Code and not to the nature of the order that can be passed thereunder [Section 156(3)]. The cases of the Punjab & Haryana High Court referred to by the learned Judge in the impugned judgement need not be discussed in details for they only lay down the proposition that under Section 156(3) a Magistrate can only direct investigation but cannot direct registration of a case for no such power is given to him under that section. We repeat and reiterate that such a power inheres in Section 156(3), for investigation directed thereunder can only be in the complaint filed before the Magistrate on which a case has to be formally registered in the Police Station treating the same as the F.I.R. If the reasoning of the Punjab and Haryana High Court is taken to its logical conclusion it would mean that if a Magistrate issues a direction to submit a report under Section 173(2) of the Code after completion of investigation while passing an order under Section 156(3) it would be equally bad for the said Section only 'directs investigation' and nothing more. Needless to say, such a conclusion would be fallacious, for while with the registration of a case by the police on the complaint, the investigation directed under Section 156(3) commences, with the submission of the 'Police report' under Section 173(2) it culminates.

On the conclusions as above we set aside the impugned judgment and orders of the High Court and direct the concerned Magistrates to proceed with the cases in accordance of law. The appeals are accordingly allowed.