HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

SINGLE BENCH

BEFORE JUSTICE S.K.AWASTHI

Misc. Cri. Case No.5289/2014

Keshri Singh and others

Versus

State of Madhya Pradesh
and another

Shri Shishir Saxena, learned counsel for the applicants.
Shri R.D.Agarwal, learned Panel Lawyer, for the respondent No.1/State.
Shri Deependra Raghuvanshi, learned counsel for the respondent No.2.

O R D E R
(04.11.2016)

This application under Section 482 of the Code of Criminal Procedure, 1973 (for brevity, the 'CrPC'), has been filed by the applicants for assailing the order dated 28.4.2014, passed by the First Sessions Judge, Guna in Criminal Revision No. 97/2013, whereby the order dated 20.3.2013 passed in Criminal Case No.501/2013 by Judicial Magistrate First Class (JMFC) Guna for taking cognizance on the private complaint filed by the respondent No.2 has been affirmed.

2. The facts of the case which are relevant for deciding the present application are that the respondent No.2 made an information to the Police

Station Cant, District Guna regarding the alleging commission of offence punishable under Sections 147, 148, 149, 447, 323, 294, 506-B of Indian Penal Code, 1860 (for brevity, the 'IPC'), however the police did not act in furtherance to the complaint prompting the present applicants to take recourse to the remedy of filing complaint under Section 200 of the Code of Criminal Procedure, 1973 (for brevity, the 'CrPC') before the competent court of JMFC, Guna.

3. The complaint was presented on 28.6.2011 before the Chief Judicial Magistrate, Guna. Thereafter the statement of the complainant as well as other witnesses called by the complainant were recorded to enable the concerned Magistrate to consider taking cognizance on the complaint. After recording the statement, Chief Judicial Magistrate Guna vide its order dated 20.3.2013 issued process against the present applicants upon finding prima facie case for the offence punishable under Sections 147, 148, 294, 323 IPC and in alternative Sections 323/149 and Section 506 Part-II of IPC.

4. Feeling aggrieved by such cognizance by Chief Judicial Magistrate, Guna, a revision application was filed before the Court of Additional Sessions Judge, Guna which was registered as Criminal

Revision No.97/2013 and the final order dated 28.4.2014 was passed, whereby the revision application has been dismissed on the ground that the contentions raised are in nature of defence to be offered by the present applicants, which cannot be considered at this stage and will be available to the present applicants during the course of trial.

5. The order dated 28.4.2014 is subject matter of challenge before this Court in the instant application.

6. The contention of the present applicants is that the respondent No.2 in his complaint did not disclose the fact regarding the FIR, which was already registered against the complainant as well as his family members for assaulting the present applicants. In this manner there is clear suppression of material fact which is ground enough to set aside the order of Chief Judicial Magistrate, District Guna of taking cognizance against the present applicants. Another submission which has been canvassed by the applicants is that the Chief Judicial Magistrate ought to have referred the complaint filed by the complainant to the concerned police station in terms of Section 156 (3) of CrPC and by not following this procedure before taking cognizance the Chief Judicial Magistrate has committed grave error in law

and, therefore, the present application deserves to be allowed. While canvassing these contentions, learned counsel for the applicants has relied on the judgment of Apex Court in the case of ***State of Haryana and others Vs. Bhajanlal and others, 1992 Supp SCC (Cri) 426***, to contend that the instant case falls within the parameters laid down by the Hon'ble Apex Court for quashing of the criminal proceedings.

7. Learned Panel Lawyer for the State contends that the impugned order does not suffer from any illegality and, therefore, may not be interfered.

8. Learned counsel for the respondent No.2 contended that the Chief Judicial Magistrate Guna has not committed any error in law in taking cognizance against the present applicants as there exists prima facie case against them. Hence, the impugned orders be maintained.

9. Having considered the rival contentions of all the parties to the case, it is appropriate to first deal with the contentions of learned counsel for the applicants. The first attack of the applicant is on the jurisdiction of the Court of CJM, Guna to bye-pass the proceedings under Section 156(3) of CrPC and directly take cognizance of the complaint. According to the applicants, the CJM Guna could not have directly taken the cognizance and, rather it ought to

have referred the complaint to the police for investigation and only after receiving the report from the police any further proceeding could have been drawn.

10. The contention is contrary to the established position of law with respect to the discretion available to the Magistrate while taking cognizance on the complaint submitted under Section 200 CrPC. In this regard, the reference to the judgment pronounced by this Court in the case of **Shyamlal vs. Lau Kush Ram Lakhan Pandey, 1999 (1) MPLJ 260,** is necessary. The relevant para reads as under:-

> *"3. On a perusal of the order sheet it is noticed that the learned trial Judge upon receipt of the complaint and the application filed under Section 94 of the Code opined that the allegations disclosed a cognizable offence and accordingly directed the matter to be investigated by a responsible officer to be nominated by the S.P. concerned. This order, in effect, amounts to an order under Section 156(3) of the Code. Section 156 of the Code reads as under :-*
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> > *"156 (1) Any officer incharge 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."

From the aforesaid provision, it is quite clear that the power of investigation vests with the police in regard to any cognizable offence without the order of a Magistrate. Under sub-section (3) of the Code the Magistrate who has been empowered under under Section 190 of the Code may direct the police to investigate a case. Pursuant to the direction given by the competent Magistrate Police investigates and submits a report to the Magistrate who is required to deal with the matter. It is to be noted here that the Magistrate under Section 190 of the Code occurring in Chapter XV has also the authority to direct an investigation to be made by the Police Officer. It is to be borne in mind that there is a distinction between the scope of power of the Magistrate while directing investigation under Sections 156 (3) and 202 of the Code. Investigation under Section 156(3) is directed at the pre-cognizance stage whereas the direction under Section 202 of the code relates to a stage after taking cognizance but before issuance of process. The Apex Court in the case of Tularam and Ors. v. Kishore Singh, AIR 1977 SC 2401, has laid down the law as follows :-

"1. That a Magistrate can order investigation under Section 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 under Section 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 202 and record the evidence of the complainant or his witnesses.

(b) 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 under Section 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 filed before him and take action under Section 190 as described above."

11. The aforesaid issue again came up for consideration before Their Lordships of the Apex Court in the case of **H.S.Bains, Director, Small Saving-Cum-Deputy Secretary Finance, Punjab, Chandigarh vs. State (Union Territory of Chandigarh), (1980) 4 SCC 631,** wherein Their

Lordships in paragraph 6 observed as under:-

> *"6. It is seen from the provisions to which we have referred in the preceding paragraphs that on receipt of a complaint a Magistrate has several courses open to him. He may take cognizance of the offence and proceed to record the statements of the complainant and the witnesses present under Sec. 200. Thereafter, if in his opinion there is no sufficient ground for proceeding he may dismiss the complaint under Sec. 203. If in his opinion there is sufficient ground for proceeding he may issue process under Sec. 204. However, if he thinks fit, he may postpone the issue of process and either enquire into the case himself or direct an investigation to be made by a Police Officer or such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. He may then issue process if in his opinion there is sufficient ground for proceeding or dismiss the complaint if there is no sufficient ground for proceeding. On the other hand, in the first instance, on receipt of a complaint, the Magistrate may, instead of taking cognizance of the offence, order an investigation under Sec. 156(3). The police will then investigate and submit a report under Sec. 173(1). On receiving the police report the Magistrate may take cognizance of the offence under Sec. 190(1)(b) and straightaway issue process. This he may do irrespective of the view expressed by the police in their report whether an offence has been made out or not. The Police report under Sec. 173 will contain the facts discovered or unearthed by the police and the conclusion drawn by the police therefrom. The Magistrate is not bound by the conclusions drawn by the Police and he may decide to issue process even if the Police recommend that there is no sufficient ground for proceeding further. The Magistrate after receiving the Police report, may, without issuing process or dropping the proceeding decide to take cognizance of the offence on the basis of the complaint originally submitted to him and proceed to record the statements upon oath of the complainant and the witnesses present under Sec. 200 Criminal Procedure Code and thereafter decide whether to dismiss the complaint or issue process. The mere fact that he had earlier ordered*

an investigation under Sec. 156(3) and received a report under Sec. 173 will not have the effect of total effacement of the complaint and therefore the Magistrate will not be barred from proceeding under Sections 200, 203 and 204. Thus, a Magistrate who on receipt of a complaint, orders an investigation under Sec. 156(3) and receives a police report under Sec. 173(1), may, thereafter, do one of three things: (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence under Sec. 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report: (3) he may take cognizance of the offence under Sec. 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Sec. 200 If he adopts the third alternative, he may hold or direct an inquiry under Sec. 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be."

From the aforesaid decisions, it is luminously clear that the competent court after receipt of the report may drop the action by holding that there is no sufficient ground for proceeding further or he may take cognizance on the basis of original complaint and proceed to examine the complainant and his witnesses under Section 200, CrPC.

In the case at hand the trial court has observed that there are no material to proceed against the accused but while doing so it has observed that it has passed the order under Section 203 of CrPC. On a bare perusal of the provision envisaged under Section 203 of CrPC, it is apparent that the complaint under Section 203, CrPC, can only be dismissed after considering the statements on oath (if any) of the complainant and witnesses in the result of enquiry or investigation under Section 202 CrPC, as the direction by the court below to the investigating agency to cause an investigation was not one under Section 202 CrPC. The question of dismissal of the

complaint under Section 203 did not arise. At best, it can be regarded as dismissal of the proceeding for lack of sufficient materials collected during investigation in pursuance of the direction under Section 156(3) of CrPC.

12. The reproduced portion of the judgment rendered in Shyamlal's case (supra) makes it clear that the Magistrate Court has ample discretion to either first refer the case to police under Section 156(3) CrPC or to take cognizance without giving any direction under Section 156(3) CrPC. Therefore, the first contention of the applicant deserves to be repelled.

13. Now, I may advert to the second contention of the applicants that the respondent No.2 suppressed several material facts before the Court of Chief Judicial Magistrate Guna with respect to the antecedents of earlier criminal case against the respondent No.2 and his family members, therefore, it is contended that the impugned orders deserve to be set aside.

14. The contention of the applicants though looks attractive but has no tenability at this stage of cognizance by the Court of CJM, Guna. This Court in the case of **Colgate Palmolive India Ltd. vs. Satish Rohra, 2005 (4) MPLJ 380,** has held in the following manner:-

"6. I have heard the learned Counsel of both the parties and carefully perused the

evidence and the material on record. Before considering the evidence and the material on record for the limited purpose of finding out whether a prima facie case for issuance of process has been made out or not, it may be mentioned at the very outset that the various documents and the reports filed by the petitioners/Company along with the petition can not be looked into at the stage of taking cognizance or at the stage of framing of the charge. The question whether prima facie case is made out or not has to be decided purely from the point of view of the complainant without at all adverting to any defence that the accused may have. No provision in the Code of Criminal Procedure grants to the accused any right to file any material or document at the stage of taking cognizance or even at the stage of framing of the charge in order to thwart it. That right is granted only at the stage of trial. At this preliminary stage the material produced by the complainant alone is to be considered."

15. In no ambiguous manner this Court has laid down that at the stage of taking cognizance the complaint and documents filed along with the complaint are to be perused but the material brought on record by the accused cannot be looked into at the stage of cognizance.

16. The law laid down in **Colgate Palmolive (supra)** is squarely applicable to the facts of the present case and the material brought on record against the respondent No.2 cannot be gone into at this stage. Further, it is observed that the Court of First Additional Sessions Judge Guna in its order dated 28.4.2014 has reserved this right to the

applicants to bring their documents at the appropriate stage of the trial. Needless to observe that this liberty will be available to the applicants at the stage of trial and the outcome of this case will not affect the same.

17. At this stage, the reliance placed by learned counsel for the applicants on the judgment of **Bhajanlal (supra)**, in my considered opinion, is of no help to the applicants, as according to the ratio of the indulgence under Section 482 CrPC can be shown in cases whereupon uncontroverted reading of the FIR or complaint the ingredients of the offence levied are not made out or the prosecution has been lodged with ulterior motive. However in the instant case the material brought on record by the applicants does not reveal beyond doubt any ulterior motive and the questions raised regarding the complaint of respondent No.2 are disputed questions of fact which cannot be gone into while exercising powers under Section 482 CrPC.

18. Further the Hon'ble Apex Court in the case of **Rajiv Thapar vs. Madan Lal Kapoor (2013) 3 SCC 330,** has cautioned the High Court while exercising the power under Section 482 CrPC in the following manner:-

> *"22. The issue being examined in the instant case is the jurisdiction of the High*

Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/ complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false.

In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice."

19. Having carefully examined the law laid down by the Hon'ble Apex Court in the case of **Rajiv Thapar (supra)** and consideration of material brought on record by the applicants, it is clear that the interference under Section 482 CrPC is not warranted. Further detailed discussion on the material furnished by the applicants will prejudice their defence before the trial court. Accordingly, this application is dismissed with direction to the trial court to give consideration to the material brought on record by the applicants without being influenced by the observations made in this order.

20. Consequently, this application is disposed of with the aforesaid observations.

Let a copy of the order be sent to the trial court for information.

(S.K.Awasthi)
Judge.

(yogesh)