HIGH COURT OF MADHYA PRADESH

BENCH GWALIOR

SINGLE BENCH:

HON'BLE SHRI JUSTICE G.S. AHLUWALIA

Misc. Criminal Case No.10475/2017

.....Applicants:	**Dinesh Singh Raghuvanshi & Anr.**
	Versus
.....Respondents :	**State of M.P. & Anr.**

Shri Amit Lahoti, Counsel for the applicants.

Shri Devendra Chaubey, Public Prosecutor for the respondent/State.

Date of hearing : 05/04/2018

Date of Judgment : 11/04/2018

Whether approved for reporting : Yes

O R D E R

(11/04/2018)

This application under Section 482 of Cr.P.C. has been filed for quashment of the FIR registered at Police Station Cantt. District Guna for offence punishable under Sections 420, 465, 467, 468, 469, 470, 471, 506 Part-2, 34 of IPC and under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

The necessary facts for the disposal of the present application in short are that one Halkeram (who has not been made a respondent in the present case) had filed a criminal complaint against the applicants, for offence punishable under Sections 420, 465, 467, 468, 469, 470, 471, 506 Part-2, 34 of IPC and under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, on the allegations, that he is a reputed member of the society and is an agriculturist by profession but in order to malign and

misappropriate the Panchayat funds, the applicants prepared a false muster roll showing him to be a labourer and misappropriated a huge amount by showing the disbursement of salary/labour charges in the name of Halkeram/complainant. The applicant No.1 is working as Panchayat Secretary in Gram Panchayat Raijhai, Police Station Cantt, District Guna, whereas the applicant No.2 is working as Postman in Post Office Dhamnar, P.S. Myana, District Guna. It was alleged that in connivance with the applicant No.2, the applicant opened a forged account in the Post Office, in the name of the complainant, and deposited a huge amount under the head of labour charges/salary and withdrew the same. About 6 to 7 years back, job card under the Rojgar Guarantee Yojana was issued in the name of the complainant, whereas the complainant is well reputed resident of the locality having 48 Bighas of irrigated agricultural land and the complainant is also having a tractor. Neither the complainant nor his wife has ever worked as labourer under the Rojgar Guarantee Yojana nor has ever received any salary/labour charges either in cash or through bank or Post Office. The complainant has also never opened any account in the Post Office but inspite of that, in the Post Office, Dhamnar, the applicants had opened a forged Account in the name of the complainant and by preparing the forged muster roll, a huge amount was deposited in the forged, Post Office account from the year 2008 to 2012 and thereafter, misappropriated the Government money, whereas the job card of the complainant is completely blank. The complainant got the information while he downloaded the job card from the internet. The Magistrate passed an order under Section 156(3) of Cr.P.C. and directed for registration of FIR.

The said order was challenged by the applicants by filing a petition under Section 482 of Cr.P.C. which was registered as M.Cr.C.No.3685/2014. The said application was allowed by a

common order dated 24.8.2015 with the following observations:

> "11. If the impugned order is examined on the anvil of principles laid down in said cases, it will be clear that the court below has not applied its mind on this aspect at all. There is no finding that complainant has approached the SHO and higher authorities, as per section 154 CrPC. The court below has not applied its mind whether any such application under section 154(3) and (4) is filed by the complainant. Thus, the order impugned is not in consonance with the judgment passed by this Court in *Ramyash Tiwari and Priyanka Srivastava (supra).*
> 12. I am constrained to hold that the court below has passed the order dated 24.7.2014 without application of mind. Consequently, this order dated 24.7.2014 and other similar impugned orders in connected matters are set aside. The matter is remitted back to the court below to rehear the complainant on his application under section 156(3) CrPC and pass necessary orders in accordance with law. It is made clear that this Court has not expressed any view on merits."

The order passed by the Magistrate was set aside and the matter was remitted back to the Court below to rehear the complainant on his application under Section 156(3) of Cr.P.C. and pass necessary orders in accordance with law. However, in the meanwhile, the police had already registered the FIR against the applicants in Crime No.238/2014 at Police Station Cantt, District Guna.

It is the contention of the applicants that the complainant filed an application seeking permission to withdraw the complaint. The said application was rejected by the Magistrate by order dated 16.4.2014 i.e. prior to the quashment of the order dated 7.4.2014, by which the Magistrate had directed the police to register the FIR and file the final report.

It is submitted by the counsel for the applicants that once

the High Court has quashed the order dated 7.4.2014 passed by the Magistrate, then the FIR also loses its effect as it was lodged by way of consequence of order dated 7.4.2014. Once the original proceedings are quashed, then all consequential proceedings which were undertaken would also lose its effect because it is well settled legal proposition that if an order is bad from its inception, then subsequent development cannot validate any action which was not lawful at its inception.

It is submitted that subsequently also, the complainant filed an application for withdrawal of the complaint and accordingly, the complaint has been dismissed as withdrawn by order dated 5.1.2016 passed by the Magistrate. However, the police has refused to scrap the FIR and police is in the process of filing the charge sheet and, therefore, the FIR may be quashed.

Per contra, it is submitted by the counsel for the respondents/State that it is true that the order dated 7.4.2014 passed by the Magistrate was set aside by this Court by order dated 24.8.2015 passed in M.Cr.C.No.3685/2014 but this Court never held that the allegations made in the complaint do not make out any cognizable offence. On the contrary, in the light of the judgment passed by the Supreme Court in the case of **Priyanka Srivastava and anr. v. State of U.P. and Ors**. reported in (**2015) 6 SCC 287** it was held that before passing an order under Section 156(3) of Cr.P.C., the Magistrate had not applied its mind and, therefore, on this technical issue the order dated 7.4.2014 was set aside and the matter was remitted back to the trial Magistrate to rehear the complainant on his application under Section 156(3) of Cr.P.C. Thus, it is clear that there is no order, considering the allegations made in the complaint. It is submitted that an information regarding commission of a cognizable offence can be made to a police by anybody. The principle of locus standi does not apply in

criminal cases. Even the police can register the offence if it receives an information from anybody with regard to commission of cognizable offence. The information can be in any form. It can be on the written complaint of the complainant or on the oral complaint of the complainant or even on the basis of the information received from an informant as well as in compliance of order passed under Section 156(3) of Cr.P.C. In the present case, the order under Section 156(3) of Cr.P.C. was passed by the Magistrate on 7.4.2014 and the copy of the complaint was forwarded to the police for compliance of the said order. Thus, the allegations made in the complaint can be considered as an information to the police about the commission of a cognizable offence. Once the police gets an information about the commission of cognizable offence, then in the light of the judgment passed by the Supreme Court in the case of **Lalita Kumari v. State of U.P.** reported in **(2014) 2 SCC 1**, the police is under obligation to register the FIR. Here in the present case, the allegations were made against the applicants that they had not only prepared the forged muster roll but they also opened a forged account in the Post Office and deposited the huge amount and fraudulently withdrew that amount. It is a case of misappropriation of Government as well as Panchayat money. It is an offence against the society and, therefore, the police is well within its right to continue with the investigation on the basis of the FIR registered by it considering the allegations made in the complaint.

It is further submitted that while passing the order dated 24.8.2015 in M.Cr.C.No.3685/2014, this Court consciously did not quash the FIR which clearly shows that the police is not under obligation to automatically throw the FIR in the dustbin only on the ground that the order dated 7.4.2014 passed by the Magistrate under Section 156(3) of Cr.P.C. was set aside

on technical ground.

Heard the learned counsel for the parties.

The moot question for consideration is that whether the FIR which was lodged initially in compliance of order under Section 156(3) of Cr.P.C. would also lose its effect when the order passed by the Magistrate under Section 156(3) of Cr.P.C. is set aside on technical ground of non-application of mind.

In the present case, the order passed by the Magistrate under Section 156(3) of Cr.P.C. was set aside on the ground of non-application of mind and the matter was remitted back to the Magistrate for passing an order afresh. In the meanwhile, the police had also registered the FIR on the basis of the allegations made in the complaint, although the complaint was forwarded to the Magistrate in compliance of order passed under Section 156(3) of Cr.P.C. The Supreme Court in the case of **Lalita Kumari (supra)** has held as under:-

> **"119.** Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie

discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.

Conclusion/Directions

120. In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(*a*) Matrimonial disputes/family disputes

(*b*) Commercial offences

(*c*) Medical negligence cases

(*d*) Corruption cases

> (*e*) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.
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> The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.
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> **120.7.** While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.
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> **120.8.** Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

Thus, where a complaint with regard to commission of cognizable offence is made to the police, then the police is under obligation to register the FIR. In the present case, the State has filed its reply. In the reply, it is mentioned as under:-

> " ...Thus, it is clear that this Hon'ble Court has not been expressed any view on the merits of the case. The present matter is related with huge misappropriation of government money and the complainant/petitioner does not have any right to withdraw their complaints without any proper reason and the investigation has already been reached at final stage and the allegations regarding misappropriation of government fund has become clear during the investigation and other relevant facts are also revealed by the Investigating Officer during the investigation. At such stage where the culprits of misappropriation of government money revealed so the investigating officer has to put this very important facts before appropriate judiciary authority in the

> interest of justice.
> 4. That, FIR of crime no.238/14 has duly been logged U/s 420, 465, 467, 468, 469, 470, 471, 506(B)/34 IPC and 3(1)(10) of SC/ST Act, against both the petitioners and investigation is going on at final stage through I.O. Smt. Shraddha Joshi (CSP, Guna).
> 5. That, the matter relates with the misappropriation of government fund and the petitioners are involved in such huge misappropriation according to the private complaint submitted by Halke Ram before learned JMFC, Guna in such complaint Halke Ram clearly stated that both the petitioners made forged job cards in his name and his wife's name Smt. Sunita Bai too. Subsequently and surprisingly, Halke Ram withdrawn the whole allegation against the petitioners during pendency of investigation by concerned police officer.
> 6. That, it is most respectfully submitted that learned JMFC, Guna has passed the order on 5.1.2016 on the early hearing application of complainant and vide order dated 5.1.2016 learned JMFC, Guna dismissed the case in short. There is no version regarding quashment of FIR and subsequent proceedings in said order."

If the reply is considered, then it is clear that the Investigating Officer after investigating the matter has come to a conclusion that a public money has been misappropriated by the applicants.

Where the allegations are of misappropriation of public money, then the matter cannot be compromised in the light of the judgments passed by the Supreme Court in the cases of **Gian Singh Vs. State of Punjab** reported in **(2012) 10 SCC 303 and Narinder Singh and ors. Vs. State of Punjab & anr.** reported in **(2014) 6 SCC 466**. Thus, the subsequent withdrawal of the complaint by the complainant will not have any adverse bearing on the FIR. After the FIR is registered, the police is under duty to file the final report i.e. either to file the

charge sheet or the closure report.

Once, this Court while deciding the application filed under Section 482 of Cr.P.C. which was registered as M.Cr.C.No.3685/2014, had decided not to quash the FIR and had merely set aside the order of the Magistrate on technical ground without making any comment on the merits of the case, then it is clear that in the light of the judgment passed by the Supreme Court in the case of **Lalita Kumari (supra)**, the FIR would not stand quashed as a natural corollary of setting aside of the order under Section 156(3) of Cr.P.C. The applicant is right in making a submission that if an order is bad in an inception, then the subsequent development cannot validate any action which was not lawful at its inception for the simple reason that the illegalities lie at the root of the order**.** However, the registration of the FIR may be a consequence of an order under Section 156(3) of Cr.P.C. but it cannot be said that the police cannot continue with the investigation on the basis of said FIR, only because of the fact that the order under Section 156(3) of Cr.P.C. was quashed on technical ground. The police can continue with the investigation by considering the complaint filed by the complainant before the Magistrate, as an independent source of information with regard to commission of cognizable offence.

The counsel for the applicants by relying on the judgment passed by the Supreme Court in the case of **C. Albert Morris vs. K. Chandra Sekaran & Ors.** reported in **(2006) 1 SCC 228** has submitted that a right in law exists only when it has a lawful origin. The counsel for the applicant has also relied upon the judgment passed by the Supreme Court in the case of **Mangal Prasad Tamoli vs. Narvadeshwar Mishra** reported in **(2005) 3 SCC 422** and submitted that if an order at the initial stage is bad in law, then all further proceedings consequent thereto would be *non est* and have to be

necessarily set aside. However, under the facts and circumstances of the case the judgments relied upon by the Supreme Court in the cases of **C. Albert Morris (supra)** and **Mangal Prasad Tamoli (supra)** are distinguishable. In a criminal case, the police can register the FIR in compliance of the order under Section 156(3) of Cr.P.C. as well as on the basis of independent information with regard to commission of cognizable offence. Once the police has decided that the information received, in the form of complaint, discloses the commission of cognizable offence as it indicates towards the misappropriation of huge Government funds, requiring the investigation into the allegations, then it cannot be said that the origin of the investigation is not lawful.

The Supreme Court in the case of **HDFC Securities Limited Vs. State of Maharashtra** reported in **(2017) 1 SCC 640** has considered the effect of an order issued under Section 156(3) of Cr.P.C. and has held that it does not cause any injury of irreparable loss to the accused. In the case of **HDFC Securities (Supra)** it has been as under :

> "24. Per contra, the learned counsel for Respondent 2 submitted that the complaint has disclosed the commission of an offence which is cognizable in nature and in the light of *Lalita Kumari case {(2014) 2 SCC 1]*, registration of FIR becomes mandatory. We observe that it is clear from the use of the words "*may take cognizance*" in the context in which they occur, that the same cannot be equated with "must take cognizance". The word "*may*" gives discretion to the Magistrate in the matter. If on a reading of the complaint he finds that the allegations therein disclose a cognizable offence and that the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter, which was

primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence, himself. It is settled that when a Magistrate receives a complaint, he is not bound to take cognizance if the facts alleged in the complaint, do not disclose the commission of an offence.

* * * *

27. It appears to us that the appellants approached the High Court even before the stage of issuance of process. In particular, the appellants challenged the order dated 4-1-2011 passed by the learned Magistrate under Section 156(3) CrPC. The learned counsel appearing on behalf of the appellants after summarising their arguments in the matter have emphasised also in the context of the fundamental rights of the appellants under the Constitution, that the order impugned has caused grave inequities to the appellants. In the circumstances, it was submitted that the order is illegal and is an abuse of the process of law. However, it appears to us that this order under Section 156(3) CrPC requiring investigation by the police, cannot be said to have caused an injury of irreparable nature which, at this stage, requires quashing of the investigation. We must keep in our mind that the stage of cognizance would arise only after the investigation report is filed before the Magistrate. Therefore, in our opinion, at this stage the High Court has correctly assessed the facts and the law in this situation and held that filing of the petitions under Article 227 of the Constitution of India or under Section 482 CrPC, at this stage are nothing but premature. Further, in our opinion, the High Court correctly came to the conclusion that the inherent powers of the Court under Section 482 CrPC should be sparingly used."

Under the facts and circumstances of the case, this Court

is of the considered opinion that the complaint which was filed before the Magistrate, can still provide a valid basis for the police to continue with the investigation. If an order under Section 156(3) of Cr.P.C. provides a valid basis to the police to register the F.I.R., then at the same time, the allegations made in the complaint also provides a valid basis to the police to register the F.I.R. as the complaint can still be treated as an information to the police regarding the commission of cognizable offence. Merely because the order under Section 156(3) of Cr.P.C. was set aside on the technical ground and the matter was remanded back to the Court of Magistrate, it would not erase the allegations made in the complaint, as no observation was made by the High Court while setting aside the order dated 7-4-2014 passed by the Magistrate. Thus, the FIR No.238/2014 registered at Police Station Cantt, District Guna cannot be quashed merely on the ground that the order under Section 156(3) of Cr.P.C. was set aside on the ground of non-application of mind and the matter was remitted back to the Magistrate for passing an order afresh as it is already observed that even the criminal proceedings of the nature of present one, cannot be quashed on the basis of compromise as the offence is with regard to misappropriation of public funds and since, the same is against the society, therefore, the subsequent withdrawal of the complaint by the complainant and the dismissal of the complaint because of the non-prosecution of the complaint by the complainant will not have any adverse effect on the FIR which has been registered by the police.

Accordingly, this application fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
Judge
11/04/2018

(alok)