HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

SINGLE BENCH:

JUSTICE SHEEL NAGU
****
Misc. Criminal Case No. 44485 Of 2020

Om Prakash Sharma Vs. State of M.P. and another

****
Shri Purushottam Rai, learned counsel for the petitioner.
Smt. Kalpana Parmar, learned Panel Lawyer for respondents/State.
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Whether approved for reporting : Yes

Law laid down:

(1) The guidelines laid down for the Magistrates for adjudication of application u/S.156(3) Cr.P.C. complaining about delayed/improper investigation filed along with complaint u/S.200 Cr.P.C.

(2) The complaint u/S.200 Cr.P.C. filed along with 156(3) application need not be kept pending owing to bar contained in Sec.210 Cr.P.C. for more than 60/90 days or any other longer period statutorily provided on expiry of which the police fails to file the final report u/S.173(1) Cr.P.C.

(3) On failure of police to file final report u/S.173(1) Cr.P.C. within 60/90 days or any other longer period statutorily provided, the Magistrate to prevent the complaint u/S.200 Cr.P.C. from suffering a state of stalemate, should proceed by invoking powers contained in Chapter XV and XVI Cr.P.C.

If during pendency of proceedings under Chapter XV and XVI Cr.P.C., invoked as above, Police files the final report then the final report and the complaint case both should proceed as if both have arisen out of police report.

Significant Paras: 15 to 20

O R D E R
(25.03.2021)

1. Inherent powers of this Court u/S.482 Cr.P.C. are invoked praying for the following relief(s):

> *"It is, therefore, most humbly prayed that the criminal petition filed by the petitioner may kindly be allowed and directed to the respondents for protection of the property, and the life of the petitioner and also directed to respondents for registration of the cases of the petitioner and fair investigation in the supervision of the learned lower court as per law. Any other relief, which this Hon'ble Court may kindly deem fit and considers necessary in the facts and circumstances of the case may kindly also be granted."*

1.1 The question before this Court primarily relates to the extent and nature of power of a Magistrate u/S.156(3) Cr.P.C. while considering grievance either of non-registration of cognizable offence or improper/delayed investigation.

1.2 Other question is of nature and extent of jurisdiction available to Magistrate when an application u/S.156(3) Cr.P.C. is filed along with a complaint u/S.200 Cr.P.C.

2. The present case reveals abject apathy and dereliction of duty on the part of Police in failing to register cognizable offence of theft in regard to which information was furnished as early as on 18.11.2019 (vide Annexure P-2) and despite the learned Magistrate passing order dated 23.12.2019 u/S.156(3) Cr.P.C., calling for report from Police Station Picchore, District Gwalior (M.P.). Pertinently while doing so the Magistrate kept the complaint filed by petitioner u/S.200 Cr.P.C. in a state of suspended animation (unregistered).

3. The petitioner/complainant herein after unsuccessfully knocking

the doors of the Police and as well as Superintendent of Police, Gwalior (M.P.) u/S.154(1) and 154(3) Cr.P.C. respectively, approached the learned Magistrate u/S.156(3) Cr.P.C. by filing application on 23.12.2019 which was subjected to various hearings i.e. 13.01.2020, 05.02.2020, 26.02.2020 and 16.03.2020. On each occasion the police sought and was granted time to submit report in regard to the contents of application u/S.156(3). Thereafter, the matter could not be listed on the next date i.e. 30.03.2020 due to lockdown owing to Covid-19 pandemic. The Magistrate thereafter took up the matter on 10.07.2020 to be again adjourned due to non-resumption of physical hearing in courts. The proceedings u/S.156(3) in the case are now informed to have resumed, but to no avail since FIR has not yet been lodged by the police.

3.1 Pertinently, in this case, Sec.156(3) application and the complaint u/S.200 Cr.P.C. were filed simultaneously by the complainant/petitioner alleging the same offence of theft (Sec.379 IPC). From the record, it appears that the said complaint u/S.200 Cr.P.C. remained unregistered or in a state of suspended animation.

4. The aforesaid act on the part of police authorities of failing to register the offence is in violation of the law laid down in the case of **"Suresh Chand Jain Vs. State of Madhya Pradesh and another [AIR 2001 SC 571]"** whereby it is held:

> *"10. The position is thus clear. Any judicial Magistrate, before, taking 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 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 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."

4.1 Similar view was taken by Apex Court in **"Sakiri Vasu Vs. State of Uttar Pradesh And Others [(2008) 2 SCC 409]"** whereby while analyzing the sweep & extent of power vested in a Magistrate u/S.156(3) Cr.P.C., the Apex Court held in para 11 and 17 as under:

"11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156 (3) Cr.P.C. before the learned Magistrate concerned. If such an application under Section 156 (3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

17. In our opinion Section 156(3) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) CrPC, though briefly worded, in our

opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation."

5. The aforesaid decisions of the Apex Court in **Suresh Chand Jain & Sakiri Vasu (supra)** have held the field till date which is evident from perusal of following subsequent verdict of Apex Court rendered after relying upon **Sakiri Vasu** with approval. The relevant extract in **"Sudhir Bhaskarrao Tambe v/s Hemant Yashwant Dhage And Ors. [(2016) 6 SCC 277]"** is reproduced below:

"2. This Court has held in Sakiri Vasu v. State of U.P. [(2008) 2 SCC 409], that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156 (3) CrPC. If such an application under Section 156 (3) CrPC is made and the Magistrate is, prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in Sakiri Vasu case [(2008) 2 SCC 409] because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.

3. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156 (3) CrPC and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation."

6. In the instant case, as informed by learned counsel for petitioner,

no offence has yet been registered by the police. It is also informed that the concerned police station has not yet given any report to the learned Magistrate despite repeated reminders. It is also not denied that the learned Magistrate has not proceeded to record statement of the complainant u/S.200 Cr.P.C. Therefore, in sum and substance, the entire matter hangs fire and is in a state of suspended animation leaving the petitioner-complainant high and dry with no hope of justice coming his way.

6.1 For sake of convenience & ready reference, relevant Sections 154, 156, 190 and 200 Cr.P.C. are reproduced below:

> **"154. <u>Information in cognizable cases</u>.-**
>
> (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:
>
> Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376 DB, section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman police officer:
>
> Provided further that-
>
> (a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB, section 376B, section

376C, section 376D, section 376DA, section 376 DB, section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be videographed;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

156. Police officer's power to investigate cognizable case.

(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.

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.

200. Examination of complainant.- A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, 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 re- examine them.

7. Chapter XII of Cr.P.C. (Information to Police and it's power to

investigate) begins with Section 154. If the police finds that the information received relates to commission of cognizable offence then the same has to be entered into the document known as First Information Report (FIR) u/S.154 Cr.P.C. with supply of the copy of FIR to the informant. Section 154(3) Cr.P.C. provides remedy to the informant to approach the Superintendent of Police in case of refusal by the police station to register FIR u/S.154(1).

7.1 Next comes Section 155 Cr.P.C. which relates to information received regarding non-cognizable offence and investigation thereof which need not be dealt with since the present case does not relate to non-cognizable offence.

7.2 Thereafter is the crucial and relevant Section 156 Cr.P.C. which in sub-section (1) vests power in the officer-in-charge of police station to investigate into cognizable offence in regard to which FIR has been lodged u/S.154.

7.3 Section 156(2) Cr.P.C. protects a *bona fide* registration of cognizable offence and the consequential investigation from being sacrificed at the alter of want of territorial jurisdiction of the investigating officer.

7.4 Adverting to the relevant Sec.156(3), it is seen that the same empowers the Magistrate, who is competent u/S.190, to intervene and take remedial steps to iron out the creases *qua* investigation, arising out of non-registration of offence u/S.154 or improper investigation.

8. A bare perusal of Chapter XII of Cr.P.C., which relates to

investigation of offence, reveals that authority to conduct investigation is exclusively vested with the police. However, the Magistrate is vested with limited role which is of supervisory nature to be sparingly exercised on occasions where police either fails to register an FIR or conducts investigation in improper manner.

8.1 The legislature while vesting the power of investigation solely in the hands of police, was conscious of it's possible misuse. As such, Sec.156(3) was engrafted in Chapter XII conferring supervisory power upon Magistrate, with a view to ensure free, fair and expeditious investigation. These limited powers available to the Magistrate are to cater to the following eventualities:

1. Failure of police to register an FIR u/S.154(1) and (3) Cr.P.C.;
2. Failure of Police to conduct free, fair and expeditious investigation.

9. Scheme of Chapter XII Cr.P.C. elicits that object behind vesting this limited supervisory power upon the Magistrate is to ensure that the information regarding commission of cognizable offence received from any source does not go uninvestigated. Rationale behind this object is not far to see. A cognizable offence is serious enough to not only adversely affect the victim but also the society at large and therefore it is the sovereign function of the State through the police to ensure that any cognizable offence whenever and wherever committed does not go unregistered & uninvestigated by police, untried by the competent court

and unpunished if found proved.

9.1 Thus, it is incumbent upon the Magistrate u/S.156(3) Cr.P.C. to not only direct for registration of cognizable offence wherever it is found to be not registered by the Police but also to ensure that the investigation conducted by the police is fair, expeditious and without any element of prejudice towards anyone, with the sole object of reaching the truth. The role of the Magistrate u/S.156(3) Cr.P.C. is thus of great significance. Prompt and appropriate exercise of power u/S.156(3) Cr.P.C. can, not only bring succor to the victim but also to the society at large by bringing the delinquent to the book and in the process instilling enough fear in the mind of the miscreant so as to dissuade him from indulging in delinquency again.

10. In the case at hand, as explained above, several opportunities were sought by the police and granted by the learned Magistrate to submit report by the concerned police station in response to Sec.156(3) Cr.P.C. application.

11. It is settled law that whenever a Magistrate acting upon an application u/S.156(3) Cr.P.C. seeks report from the concerned Police Station, it necessarily means that if the contents of Section 156(3) Cr.P.C. application reveal commission of cognizable offence and no such offence is yet registered, then the Police is obliged to register the offence and thereafter submit a report.

11.1 The use of expression “may” in Sec.156(3) reveals the intention of legislature to vest discretionary power upon Magistrate to either

direct for an investigation or to refuse from doing so.

11.2 Pertinently if the contents of application u/S.156(3) reveal commission of cognizable offence, then whether the Magistrate directs for registration of cognizable offence, or merely seeks report from the concerned Police Station, it is the duty of Police to register cognizable offence informed about in the application. The very fact that the Magistrate has sought report from the police is an indication that the Magistrate has found the case to be worth investigating. Since the process of investigation is a necessary consequence to registration of cognizable offence u/S.154(1) it goes without saying that the calling of report by the Magistrate is nothing but an enquiry into the quality of investigation with presumption that cognizable offence has been registered or if not registered then the direction to register a cognizable offence ought to be treated to be implicit in the order of the Magistrate calling for report.

11.3 Pertinently, if the provision is understood in any other manner and the police is allowed to linger upon and keep seeking adjournments for filing report without registration of offence then the very object behind Chapter XII Cr.P.C. of prompt registration of cognizable offence on receipt of information of its commission and the mandate of law laid down by Apex Court in Constitution Bench decision in "**Lalita Kumari Vs. Government of Uttar Pradesh And Others [(2014) 2 SCC 1]"**, would stand defeated.

12. Reverting to the factual scenario, it is seen that the police who

ought to have registered the offence immediately on receipt of intimation by the Magistrate between 23.12.2019 to 13.01.2020, kept seeking adjournment after adjournment.

13. The learned Magistrate too, ought not to have granted so many adjournments to the police for submitting report without first ensuring that the police has registered cognizable offence as informed in the application u/S.156(3) Cr.P.C.

14. At this juncture, it is relevant to point out that experience has revealed that on being asked by Magistrate to submit report u/S.156(3), the Police takes it's own convenient time and more often than not seeks and is granted various opportunities to file report. This causes delay and uncertainty. The rule of law does not appreciate delay or uncertainty as it ultimately leads to arbitrariness in the functioning of the State and its functionaries which directly offends Art.14 of Constitution of India.

15. In the instant case, the learned Magistrate was faced with simultaneous filing of an application u/S.156(3) seeking registration of cognizable offence and a complaint u/S.200 Cr.P.C. The learned Magistrate proceeded first with Section 156(3) application by keeping the complaint u/S.200 in a state of suspended animation (unregistered). Police report was sought by the Magistrate on Section 156(3) application. The case kept getting adjourned on various occasions for submission of report by the police station while the complaint u/S.200 was kept in abeyance.

15.1 It is seen quite often that Magistrates are faced with such piquant situation when they simultaneously receive Section 156(3) application and Section 200 complaint. Therefore, this Court deems it appropriate to dilate upon the statutory obligation of a Magistrate in such a situation.

15.2 The scheme of Cr.P.C., in particular, Section 210, gives a clear indication that legislature gives primacy and preference to police case emanating from FIR lodged u/S.154 or pursuant to Section 156(3), over the proceedings emanating from criminal complaint u/S.200. The said Sec.210 Cr.P.C. for ready reference and convenience is reproduced below:

> "**210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.**
>
> (1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.
>
> (2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of police report as if both the cases were instituted on a police report.
>
> (3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him,

in accordance with the provisions of this Code."

15.3 Thus, a Magistrate is obliged to keep the complaint u/S.200 filed against particular accused pending, against whom (accused) same offence (as alleged in complaint) is registered by police.

15.4 To assist the Magistrates from aberrating from the right path laid down by law and to brook delay, it is essential that Magistrates act to achieve the object behind Sec.156(3) and conclude the proceeding as expeditiously as possible. This Court is, thus, compelled to lay down certain guidelines governing the exercise of their power u/S.156(3) where such applications are either filed individually or along with complaint u/S.200 Cr.P.C.:

(A) **WHERE APPLICATION U/S 156(3) CRPC ONLY ALLEGES NON-REGISTRATION OF COGNIZABLE OFFENCE**

(i) The Magistrate, on receiving an application u/S.156(3) Cr.P.C. should first ensure that the application is supported by an affidavit of the applicant detailing about exhaustion of remedy u/S.154(1) and 154(3) Cr.P.C. **[**vide **Priyanka Srivastava and another Vs. State of Uttar Pradesh and others (2015) 6 SCC 287] (Para 31)]**.

(ii) If the application u/S.156(3) passes the aforesaid test laid down in **Priyanka Shrivastava (supra)** then the Magistrate shall form an opinion as to whether the information contained in Sec.156(3) application reveals commission of any cognizable

offence or not.

(iii) In case the Magistrate is of the opinion that application does not disclose commission of any cognizable offence, then the same should be forthwith dismissed by passing a short speaking order.

(iv) In case, the Magistrate finds that Sec.156(3) application discloses commission of cognizable offence then direction may either be issued to the Police to lodge FIR or the Magistrate may, in his discretion, dismiss the application in the interest of justice for reasons to be recorded in writing. [**Vide 2008 Cri.L.J. 472 (Sukhwasi Vs. State of U.P.) & Anju Chaudhary Vs. State of Uttar Pradesh And Another (2013) 6 SCC 384**]

(B) **WHEN APPLICATION U/S 156(3) CRPC REVEALS IMPROPER / DELAYED INVESTIGATION ONLY**

(i) In case, application u/S.156(3) relates to grievance of improper or delayed investigation after lodging of FIR, the Magistrate should direct the police to submit report and thereafter pass appropriate remedial directions if the report submitted by Police discloses improper or delayed investigation. The Magistrate after passing such order can also monitor the process of investigation to ensure that it reaches to it's logical & lawful conclusion.

However, while doing so, the Magistrate should avoid stepping into the shoes of investigating authority. The Magistrate

ought to assume only supervisory role.

(ii) In case the report requisitioned from Police reveals that investigation is being done with promptitude and in accordance with law, then the application u/S.156(3) should be dismissed by passing a short speaking order.

16. It is matter of common knowledge that applications u/S.156(3) Cr.P.C. are kept pending for long awaiting report of Police. There are occasions, as is the case herein, where Sec.156(3) application is filed along with Sec.200 Cr.P.C. complaint but due to delay in processing Sec.156(3) application, the complaint u/S.200 Cr.P.C. is kept pending for an unreasonably long time. To brook this delay, it is further appropriate to lay down certain guidelines which are though not exhaustive in character but are enough to show the right path to be treaded.

16.1 The Magistrates while dealing with application ought to keep in mind certain relevant factors which are as under :-

1. The requirement of laying down a timeline, for deciding proceedings where application u/S.156(3) is filed along with complaint u/S.200 Cr.P.C., would arise only in those cases where 156(3) application complains of improper and/or delayed investigation but not in cases where application u/S.156(3) relates exclusively to grievance of non-registration of FIR. This is because the grievance of non-registration of offence raised in application u/S.156(3) can be disposed of within a few days of

its receipt by directing the Police to lodge FIR.

2. Turning to the grievance of improper and/or delayed investigation raised in application u/S.156(3), it is seen that:-

(a) As and when report from Police is requisitioned by Magistrate on application u/S.156(3) Cr.P.C. complaining about improper and/or delayed investigation, it is presumed that the case being dealt with by the Magistrate is one where FIR has already been lodged and process of investigation is pending. Thus, the bar contained in Sec.210(1) Cr.P.C. comes into operation, compelling the Magistrate to put on hold the enquiry/trial if commenced pursuant to complaint u/S.200 Cr.P.C.

(b) In this manner, the complaint u/S.200 Cr.P.C. suffers a state of suspended animation.

(c) It is, at this stage, that delays take place, not only due to laxity on the part of Police to submit report requisitioned by Magistrate u/S.156(3) in a pending investigation, but also due to leniency shown by the Magistrate in liberally granting time to the Police, resulting into the complaint u/S.200 Cr.P.C. suffering stalemate.

(d) Pertinently, the bar contained in Sec.210 Cr.P.C. is based on following foundational assumptions:-

1. That, primacy and preference is to be given

to police case [originating from FIR lodged u/S.154 Cr.P.C.], over proceedings originating from a complaint u/S.200 Cr.P.C.

2. The preference and primacy given to a police case is in turn based on the assumption that police being part and parcel of State performs the sovereign function of crime investigation in a fair, reasonable & expeditious manner.

3. The police while performing this sovereign function is presumed to act honestly.

(e) The presumption of police being honest and diligent during crime investigation, is rebuttable. The falling standards of morality in society have rendered the all important elements of probity either missing or suffering a considerable value-erosion. As such the presumptive element in Sec.210 Cr.P.C. of police case getting primacy and preference over complaint case, needs re-visit.

(f) The mandate of Sec.210 Cr.P.C. is such, that it prohibits complaint u/S.200 Cr.P.C. to be proceeded with, during pending investigation by police *qua* the same offence and accused.

(g) The problem arises when investigation is kept pending for unreasonably long time and is not completed

even on expiry of 60 / 90 days as prescribed in Sec.167 Cr.P.C. or for any other longer period as prescribed under certain special penal statutes.

(h) This indefinite delay, in investigation, paralyses the complaint u/S.200 Cr.P.C. dissuading the Magistrate from taking steps under Chapter XV & XVI of Cr.P.C. for cognizance. This problem deserves scrutiny from another view-point. The remedy in shape of "Complaint" under Chapter XV & XVI of Cr.P.C. is available exclusively to a victim. The concept of victim came to be statutorily recognized in Cr.P.C. since 31.12.2009. Whereas Sec.210 is part of Cr.P.C. since inception i.e. 1973. Thus, the law-makers, while engrafting Sec.210, had no occasion to take into account it's repercussions *qua* "Victims".

(i) Moreso, the remedy of complaint in Chapter XV & XVI of Cr.P.C. is a statutory avenue made available to a victim/complainant. This avenue may not have primacy or preference over police case but the same cannot be allowed to be rendered infructuous at the alter of Sec.210 Cr.P.C. specially in cases where police fails to conclude investigation within a reasonable time.

16.2(a) At this juncture, another issue that needs addressing is as to what should be deemed to be the "reasonable time" for conclusion of investigation. Indisputably, Cr.P.C. does not lay down any time-frame

for conclusion of investigation except stipulating in Sec.173(1) that every investigation under Chapter XII shall be completed without unnecessary delay. Non-prescription of a time-frame for conclusion of investigation is understandable. With innumerable variable factors involved in the process of investigation which is complex in nature the law has left the field open for police to initiate, conduct and conclude investigation in an unfettered environment with the ultimate object of reaching the truth without fear, favour, affection or ill-will.

(b) Pertinently, there are very few investigations which are conducted & concluded without fear, favour, affection or ill-will. Therefore, this Court cannot turn a blind-eye towards this stark reality by conveniently hiding behind technicalities of law.

(c) This Court is thus impelled to tread on an unchartered path to secure the ends of justice for protecting the interests of the complainant/victim.

17. Crime investigation is one of the primary duties of police. Though, in recent times, energy and time of police officers appear to be diverted more towards the ancillary duty of maintainance of law & order and VIP duty. Since crime investigation is more arduous than the said ancillary duties, the police tends to tread the convenient path. This dangerous tendency developing in the police is at the cost of quality of crime investigation. More so, the police reforms as directed by the Apex Court in the case of **"Prakash Singh & Ors. Vs. Union of India & Ors. [(2006) 8 SCC 1]"** decided fifteen (15) years back are still to

see the light of the day.

18. The law-makers while enacting Cr.P.C. appear to be aware of the possibility of omission/commission committed by the Police during investigation. Therefore, the provision of Section 167 Cr.P.C. was engrafted where bail can be claimed as of right in case of failure of police to complete investigation and submit charge-sheet within 60/90 days or any longer period prescribed. The law-makers realizing the importance of personal liberty guaranteed as fundamental right u/Art.21 of the Constitution, incorporated Section 167 Cr.P.C.

18.1 Section 167 Cr.P.C. further gives an indication that law-makers were of the view that investigation in cognizable offences attracting punishment of seven years' imprisonment or more would in normal course be completed by the police within an outer limit of 60 / 90 days or any longer period of time statutorily provided.

18.2 Thus, if not in express terms but impliedly, it can be gathered that the law-makers prescribed a maximum period of 60 / 90 days within which the police is expected to complete the investigation, starting from the stage of Sec.154 to Sec.169 or Sec.173 Cr.P.C.

19. This Court, thus, needs to visualize that for how long the Magistrate can keep the complaint u/S.200 Cr.P.C. in a state of suspended animation, when the investigation is getting delayed and charge-sheet is not filed even on expiry of the period of 60 / 90 days or any longer period statutorily provided.

19.1 The answer to this question lies in meaningful interpretation of

Section 210 Cr.P.C.

19.2 Sub-section (1) of Section 210 Cr.P.C. obliges the Magistrate to stay the proceedings of enquiry/trial initiated pursuant to complaint u/S.200 Cr.PC., whenever the Magistrate comes to know that police investigation *qua* the same offence and the same accused is pending. The provision also makes it obligatory on the Magistrate to call for a report from the police in such a situation.

19.3 Sub-section (2) of Section 210 Cr.P.C. deals with the contingency that pursuant to the situation contemplated by Section 210(1) if charge-sheet is filed u/S.173 by the Police and cognizance of offence alleged is taken by the Magistrate against the person who is also accused in the complaint u/S.200 Cr.P.C., then both the cases i.e. complaint u/S.200 and the charge-sheet filed by Police shall be adjudicated simultaneously by treating both as cases instituted on police report.

19.4 Sub-section (3) of Section 210 Cr.P.C. lastly provides that in case the charge-sheet filed u/S.173 Cr.P.C. is not against a person who is an accused in the complaint case or if the Magistrate does not take cognizance of the offence in charge-sheet filed by the police, then the Magistrate shall proceed with the enquiry/trial originating from complaint filed u/S.200 Cr.P.C.

19.5 The common thread which runs through all the three sub-sections of Section 210 is the foundational presumption that the investigation shall be conducted expeditiously without any unnecessary delay, so that the fate of the proceedings originating from complaint u/S.200 do not

hang fire for indefinite period of time. Though this common thread is not expressly provided but can be presumed to exist in the minds of the law-makers from conjunctive reading of Section 210 and Section 167 Cr.P.C.

19.6 Thus, if a complaint u/S.200 Cr.P.C. is kept pending in a state of suspended animation awaiting the police to file charge-sheet but the police fails to complete investigation expeditiously and keeps it pending for months or years together then the said presumption lying at the foundation of Sec.210 is shaken. Leading to the complainant u/S.200 Cr.P.C., being relegated to a state of uncertainty and procrastination with justice nowhere in sight for victim.

19.7 The complainant who has filed the complaint u/S.200 Cr.P.C. is often the victim of the crime. Pursuant to the amendment in the Cr.P.C. with effect from ***2009 (vide Act No. 5 of 2009)*** victim is conferred with statutory recognition as one of the important stakeholders in the process of criminal justice system. Victim has been given precious rights under amended Cr.P.C. and therefore these rights cannot be made to suffer due to uncertainty and arbitrariness stemming from inaction of the police to complete investigation within reasonable period of time. The right of a victim to seek justice cannot be sacrificed at the alter of omissions, commissions and inaction of the investigating agency. The victim has an independent precious right under the Cr.P.C. not only to prefer a complaint u/S.200 Cr.P.C. but also to insist expeditious enquiry and trial pursuant to said complaint u/S.200 Cr.P.C.

19.8 This avenue u/S.200 Cr.P.C. available to the victim/complainant to seek justice gets blocked and frustrated due to indolence of the police.

20. To resolve this situation, following guiding principles are laid down in cases of simultaneous filing of Sec.156(3) application and Sec.200 complaint:-

(i) As regards Sec.156(3) Cr.P.C. application (alleging only non-registration of FIR), the procedure as per para 15.(4)(A) be followed.

(ii) The Police *qua* Sec.156(3) Cr.P.C. application (alleging improper/delayed investigation simpliciter or along with non-registration of FIR) should not be granted more than 60/90 days or any longer period of time statutorily prescribed.

(iii) If the Police submits the report within 60/90 days or any longer period of time statutorily prescribed, then the Magistrate may pass appropriate directions in accordance with law to either dismiss/dispose of 156(3) application with/without directions by passing a speaking order or to supervise and monitor the investigating process if need arises.

(iv) However, in case the Police fails to submit report within 60/90 days or any longer period of time statutorily prescribed, then the Magistrate shall proceed with the complaint u/S.200 Cr.P.C. in accordance with Chapter XV & XVI Cr.P.C., notwithstanding the bar in Sec.210 Cr.P.C.

(v) While so proceeding under Chapter XV & XVI Cr.P.C., the Magistrate shall keep in mind that as and when police report u/S.173 Cr.P.C. is filed [even after 60/90 days or any longer period of time statutorily prescribed] and cognizance of offence in police report is taken, then the Magistrate shall club the complaint case with the charge-sheet (final report) filed by police and proceed to adjudicate both the cases together treating them to have arisen from police report.

21. Accordingly, in the conspectus of above discussion, this Court has no option but to invoke its inherent powers to direct as follows:

(i) The learned Magistrate seized with the application u/S.156(3) and complaint u/S.200 Cr.P.C is directed to proceed in accordance with the above directions in accordance with law.

(ii) Since the petitioner/complainant has been made to run from pillar to post since last more than one year, the State deserves to be saddled with cost of **Rs.10,000/- (Rupees Ten Thousand Only)** which shall be paid to the petitioner/complainant through digital transfer in his bank account within 30 days of petitioner furnishing necessary bank details to Superintendent of Police of the concerned district.

(iii) The State with an object to reinforce the justice dispensation system is directed to deposit five sets of books (in Hindi language) to the Legal Aid Section of the Registry of this Court within 15 days to be distributed to freshers in the Bar.

Each set of books shall contain the following books published by reputed publishers:-

1. Criminal Major Acts (in hindi language)
2. CPC (in hindi language)
3. Constitution of India (in hindi language)

(Sheel Nagu)
Judge

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PAWAN DHARKAR
Digitally signed by PAWAN DHARKAR
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