



**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE**

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

MISC. CRIMINAL CASE No. 212 of 2025

LALSINGH AHIRWAR AND OTHERS

Versus

CHANDRAPAL SINGH CHAUHAN AND OTHERS

Appearance:

Shri Shyam Kishore Mishra – Advocate for applicants.

Shri Yogesh Parashar – Public Prosecutor for respondent/State.

Reserved on : 09/01/2025

Pronounced on : 21/01/2025

ORDER

This application, under Section 482 of Cr.P.C., has been filed against the order dated 13.12.2024 passed by III Additional Sessions Judge, Datia (M.P.) in Criminal Revision No.58/2024 by which the order dated 27.05.2024 passed by JMFC, Datia (M.P.) in U.N.C.R./184/2023 has been set aside.

2. Facts, necessary for disposal of present application, in short, are that respondent No.1- Chandrapal Singh Chouhan filed a complaint for registration of offence under Sections 302, 342, 201 and 120B/34 IPC. An application under Section 156(3) of Cr.P.C. was also filed. It appears that before taking cognizance,



Magistrate called the report from police and Police submitted a report that Marg Enquiry is pending and accordingly, the JMFC, Datia, by order dated 27.05.2024 rejected the application filed under Section 156(3) of Cr.P.C. and also held that in the light of Section 210 of Cr.P.C. it would not be appropriate to proceed further in the matter and accordingly directed the Police to submit enquiry report.

3. Being aggrieved by the said order, respondent No.1 preferred revision which has been allowed by order dated 13.12.2024 and the Police has been directed to register the FIR.

4. Challenging the order passed by the Revisional Court, it is submitted by counsel for applicants that once the Trial Court had refused to entertain the complaint in the light of Section 210 of Cr.P.C. and had refused to pass an order under Section 156(3) of Cr.P.C. in the light of the fact that Marg enquiry is pending, therefore the Revisional Court should not have interfered with the said order.

5. Considered the submissions made by counsel for applicants.

6. Section 210 of Cr.P.C. reads as under:

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 the 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.

From plain reading of this Section, it is clear that, word “investigation” has been used in Section 210 Cr.P.C. The word “Enquiry” is not mentioned in the same, therefore, ”Marg Enquiry” which is pending with the police will not invite application of Section 210 of Cr.P.C. Thus, the Magistrate was wrong in holding that in view of pendency of “Marg Enquiry”, it would not be appropriate to proceed further with complaint by recording statements of witnesses under Section 200 and 202 of Cr.P.C.

7. So far as rejection of application under Section 156(3) of Cr.P.C. is concerned, it appears that Trial Magistrate lost sight of the fact that under Section 156(3) of Cr.P.C. word “investigation” is mentioned. Investigation starts from registration of FIR under Section 154 of Cr.P.C. Therefore, whenever an order under Section 156(3) of Cr.P.C. is issued then it is for the purposes of investigation and investigation cannot start without registration of FIR under Section 154 of Cr.P.C. The Supreme Court in the case of **Mohd. Yousuf v. Smt. Afaq Jahan & Anr.** reported in **AIR 2006 SC 705** has held as under:-

“11. The clear position therefore is that 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.”

Thus, it is clear that whether any specific direction for registration of FIR is issued or not, once the order under Section 156(3) of Cr.P.C. is issued then the Police has to register the FIR. An order under Section 156(3) of Cr.P.C. is passed at pre-cognizance stage. If after recording the statements of witnesses, if the Magistrate thinks it appropriate to seek enquiry report from the Police then he can do that but in that situation registration of FIR is not required. In the present case, the Trial Court has wrongly applied the provisions of Section 210 of Cr.P.C.

8. Even according to the order passed by Magistrate, it is clear that FSL report is yet to be received. After registering an FIR, if the Police comes to a conclusion that no offence is made out, then it has the power to file closure report. Therefore, registration of FIR does not mean that guilt of a person has been *prima facie* found.

9. Under these circumstances, the Revisional Court did not commit any mistake by allowing the revision filed by respondent No.1 thereby directing the Police to register the FIR in exercise of power under Section 156(3) of Cr.P.C.

10. Accordingly, no case is made out warranting interference. Application fails and is hereby *dismissed*.

(G.S. Ahluwalia)
Judge