

**HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE**  
**BEFORE HON.MR. JUSTICE ALOK VERMA, JUDGE**

**M.Cr.C. No.8707/2016**

**Smt. Jyoti Hardia & another**

**Vs.**

**Anant Haritwal & another**

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Mr. Ravindra Singh Chhabra, learned counsel for the applicants.

Ms. Mini Ravindran, learned counsel for respondent No.1.

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**O R D E R**

**( Passed on this 29<sup>th</sup> day of September, 2016 )**

This application filed under Section 482 Cr.P.C. is preferred against the order dated 11-08-2016 passed by learned Judicial Magistrate First Class, Sanwer, District-Indore in an unregistered criminal case under section 156(3) Cr.P.C., whereby the learned Magistrate allowed the application filed by respondent No.1 under the aforesaid provisions of law and directed registration of FIR against the applicants.

The application reveals that applicant No.1 is the owner of land bearing survey No.308/1 situated at village Arjun Baroda, Tehsil Sanwer, District-Indore. She purchased this land from one Shравan Verma, who in his turn purchased the land from one Dhulji after obtaining permission under section 165(6) of M.P. Land Revenue Code, 1959. A diversion order was issued in respect of this land on 01.06.2010 by Sub-Divisional Officer.

Applicant No.2 which is a society and is run by Dr. Ajay Hardia (husband of applicant No.1) owns the land bearing survey No.305/3 situated at village Arjun Baroda, Teshil Sanwer, District-Indore, which was purchased from one Jagadish Mantri, who purchased the land from one Jagannath after obtaining permission under section 165(6) of M.P. Land Revenue Code, as Jagannath was said to be the member of Scheduled Tribes. The sale deed and copies of various orders passed by authorities are placed at Annexures P-1 to P-5.

The layout plan was sanctioned by Joint Director Town & Country Planning, Indore on 03.08.2010. Copy of sanctioned layout plan is placed at Annexure P-6.

Respondent No.2 constructed building of land bearing survey No.308/1 situated at Arjun Baroda. According to layout plan sanctioned by Town & Country Planning, Indore, applicant No.2

was running a Dental College & Hospital in the name and style of 'Devi Ahilya College & Hospital'. The land bearing survey No.305/3 is lying vacant.

According to applicants, one society namely "Hare Rama Hare Krishna Sikshan Samiti" runs an institute of Paramedical Science in the name and style of 'Kewalshri Institute of Paramedical Science'. Most of the members viz. Vivek Hardia, Jaya Hardia, of the society namely Hare Rama Hare Krishna Sikshan Samiti, were close relatives of Mahendra Hardia - the Ex-Dy. Health Minister and Medical Education Minister, Govt. of M.P. and Ex-Chairman of M.P. Paramedical Council, Bhopal. The said Mahendra Hardia sold a land bearing survey No.5/1/2 area measuring 0.654 hectare situated at Patwari Halka No.27, Village Shiv Nagar, Tehsil-Mhow, District-Indore. Respondent No.1, who in his turn executed an unregistered lease deed in favour of the said society showing that a building constructed on the land. However, no building exists on this land. Copy of sale deed and lease deed is placed at Annexures P-7 & P-8. According to applicants, in order to obtain permission for running an institute for Paramedical Science, fraudulently, building belonging to applicant No.2-society of survey No.308/1 village Arjun Baroda was shown to the inspection team of M.P. Paramedical Council on 18.08.2011. This report is marked as

Annexure P-8. Based on aforesaid inspection report, the permission was granted to the society.

Respondent No.1 obtained various papers under the provisions of Right to Information Act and filed a criminal complaint on 03.02.2016 before the JMFC, Sanwer against the accused persons alongwith society. The said complaint was also accompanied by an application under section 156(3) Cr.P.C. The Judicial Magistrate allowed the application filed under section 156(3) Cr.P.C. and directed the concerning Police Station to register an FIR against the accused persons.

Aggrieved by this order, the accused persons and also the Station House Officer of Police Station-Kshipra filed a revision before 17<sup>th</sup> Additional Sessions Judge, Indore. The revision was dismissed, and thereafter, an application under section 482 Cr.P.C. was filed before this court which was registered as M.Cr.C. No.2241/2016. By order dated 28.06.2016, the order dated 04.02.2016 was set-aside. The orders passed by courts are placed at Annexures P-12 to P-14.

In view of the opportunity granted by this court, the complainant again filed an application under section 156(3) Cr.P.C. complying the directions issued by Hon'ble Apex Court in case of **Priyanka Shrivastava Vs. State of U.P.** reported at **(2015) 6 SCC**

278. After hearing the argument, the learned JMFC allowed the application and again a direction was issued to register an FIR. Against this order, a revision was filed which was dismissed, as not maintainable.

According to applicants, driven by vengeance against the applicant, respondent No.1, who never had any privity to the transaction, filed various complaints before the Joint Director Town & Country Planning, Indore and Sub-Divisional Officer, Sanwer. The authorities were acting under the political influence of the accused persons, and therefore, they issued notices to the applicants. Thereafter, the applicants filed a writ petition before this court as W.P. No.4587/2016, in which, a direction was issued by this court directing the respondents not to take any coercive action against the applicants.

Respondent No.1 is an employee working in Hare Rama Hare Krishna Sikhsan Samiti. He filed a criminal complaint alongwith application under section 156(3) Cr.P.C. before the learned JMFC, Sanwer. The application was allowed and direction was issued to register the FIR against the applicants.

Aggrieved by this order, the application is filed on following grounds :-

- (i) The criminal complaint filed by respondent No.1 is

actuated with malice and malice is apparent from the documents filed by the applicants.

(ii) The dispute is purely of civil nature. Respondent No.1 is deliberately giving it colour and texture of criminal case.

(iii) Respondent No.1 had no privity to the transaction and permission obtained under section 165(6) of M.P. Land Revenue Code.

(iv) No prima-facie case is made-out for issuing direction under section 156(3) Cr.P.C., and therefore, the impugned order passed under section 156(3) Cr.P.C. is bad in law.

(v) The Magistrate failed to comply with the directions issued by this court in M.Cr.C. No.1554/2016 **Ramyash Tiwari Vs. State of M.P.** reported at **ILR (2014) M.P. 1404.**

(vi) Directions issued by this court in case of **Ramyash Tiwari (supra)** and also a direction issued in W.P. No.4587/2016 was not brought in the knowledge of learned Magistrate. According to the applicants, had these facts were brought in knowledge of the learned Magistrate, he would have dismissed the application.

(vii) No written reply has been filed by respondents No.1 and 2.

In background of these facts, counsel for the applicants places reliance on judgement of Co-ordinate Bench of this court in case of **Ramyash Tiwari Vs. State of M.P.** reported at **ILR (2014) M.P. 1404**. In para-9 of the judgement, Co-ordinate Bench of this court issued certain directions for guidelines of Judicial Magistrate working in the State of Madhya Pradesh. The directions issued are reproduced below :-

**“9. For the guidance of all the Subordinate Judicial Magistrate in the State of Madhya Pradesh, the Registrar General of this Court is directed to circulate the guidelines as mentioned below for dealing with the cases under section 156(3) Cr.P.C., the directions are as follows :-**

- (i) Whenever a Magistrate is called upon to pass orders under section 156(3) of the Code, at the outset, the Magistrate should ensure that before coming to the Court, the Complainant did approach the police officer in charge of the Police Station having jurisdiction over the area for recording the information available with him disclosing the commission of a cognizable offence by the person/persons arrayed as an accused in the Complaint. It should also be examined what action was taken by the SHO, or even by the senior officer of the Police, when approached by the Complainant under section 154(3) of the Code.**
- (ii) The Magistrate should then form his own opinion whether the facts mentioned in the complaint disclose commission of cognizable offences by the accused persons arrayed in the Complaint which can be tried in his jurisdiction. He should also satisfy himself about the need for investigation by the Police in the matter. A preliminary enquiry as this is permissible even by an SHO and if no such enquiry has been done by**

the SHO, then it is all the more necessary for the Magistrate to consider all these factors. For that purpose, the Magistrate must apply his mind and such application of mind should be reflected in the Order passed by him. Upon a preliminary satisfaction, unless there are exceptional circumstances to be recorded in writing, a status report by the police is to be called for before passing final orders.

(iii) The Magistrate, when approached with a Complaint under section 200 of the Code, should variably proceed under Chapter XV by taking cognizance of the Complaint, recording evidence and then deciding the question of issuance of process to the accused. In that case also, the Magistrate is fully entitled to postpone the process if it is felt that there is a necessity to call for a police report under section 202 of the Code.

(iv) Of course, it is open to the Magistrate to proceed under Chapter XII of the Code when an application under section 156(3) of the Code is also filed alongwith a Complaint under section 200 of the Code if the Magistrate decides not to take cognizance of the Complaint. However, in that case, the Magistrate, before passing any order to proceed under Chapter XII, should not only satisfy himself about the pre-requisites as aforesaid, but, additionally, he should also be satisfied that it is necessary to direct Police investigation in the matter for collection of evidence which is neither in the possession of the complainant nor can be produced by the witnesses on being summoned by the Court at the instance of complainant, and the matter is such which calls for investigation by a State agency. The Magistrate must pass an order giving cogent reasons as to why he intends to proceed under Chapter XII instead of Chapter XV of the Code.”

Counsel for respondent places reliance on judgements of Hon'ble Apex Court in case of (i) **State of Maharashtra & others Vs. Ishwar Piraji Kalpatri** reported at (1996) 1 SCC 542, (ii) **M. Narayandas Vs. State of Karnataka & others** reported at (2003) 11 SCC 251, (iii) **Renu Kumari Vs. Sanjay Kumar & others**

reported at (2008) 12 SCC 346, (iv) **State of Andhra Pradesh Vs. Aravapally Venkanna and another** reported at (2009) 13 SCC 443 and argued that malafides and malices at this stage cannot be seen and the only aspect to be taken into consideration is whether the complaint reveals commission of a cognizable offence which could be made out from the facts stated in the application. She also places reliance on judgement of Hon'ble Apex Court in case of **Mohd. Yousuf Vs. Afaq Jahan** reported at (2006) 1 SCC 627 and **State of Haryana Vs. Bhajanlal and others** reported at 1992 SUPP (1) SCC 335. She also cited judgement of Hon'ble Apex court in case of **State of M.P. Vs. Awadh Kishore Gupta & others** reported at (2004) 1 SCC 691. In case of **Arapali Ventanna (supra)** quoting the case of **R.P. Kapur Vs. State of Punjab** reported at AIR 1960 SC 866, the Hon'ble Apex Court chalked out in some categories of cases where inherent power can and should be exercised for quashing proceedings in following terms :-

**6. In R.P. Kapur Vs. State of Punjab this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings:(AIR p.869, para 6)**

- (i) Where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;**
- (ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;**
- (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the**

evidence adduced clearly or manifestly fails to prove the charge.

Further, the Hon'ble Apex Court quoting case of **Bhajanlal (supra)** observed that following illustrative categories were indicated by the Hon'ble Apex Court where power can be exercised :-

7.....The scope of exercise of power under section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana Vs. Bhajan Lal. A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of rare cases. The illustrative categories indicated by this Court are as follows:(SCC pp. 378-79, para 102)

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under section 156(1) of the Code except under an order of a Magistrate within the purview of section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable

on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance of the accused and with a view to spite him due to private and personal grudge.'

In case of Priyanka Shrivastava (supra), the Hon'ble Apex

Court made following observations :-

**“30. In our considered opinion, a stage has come in this country where section 156(3) Cr.P.C. applicants are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.”**

Accordingly, after going through judgements cited by both the counsel, the following position emerges :-

- (i) that the allegations made in the complaint should indicate commission of cognizable offence if they are taken at their face value and accepted in their entirety.
- (ii) the complainant should first approach the concerning Police Station to lodge an FIR under section 154 Cr.P.C. and also higher officers of police for lodging of FIR and file an affidavit in this regard (**Priyanka Shrivastava (supra)**).
- (iii) the Magistrate should call status report from the concerning Police Station and the Superintendent of Police and other senior officers of the police to whom, the application was filed by the complainant in respect of status of action taken by them (**Ramyash Tiwari (supra)**).

Only after having satisfied in respect of above aspects, the orders should be passed on an application under section 156(3) Cr.P.C. directing the concerning Police Station to file FIR.

In the present case, the learned Magistrate observed that the applicant tried to lodge an FIR, thereafter, he filed various complaints before I.G. Police and Superintendent of Police, Indore. He also filed an affidavit for this purpose. However, no status report was called by the Magistrate in compliance of directions issued by

this court in case of **Ramyash Tiwari (supra)**. This apart, the application under section 156(3) Cr.P.C. was filed for registration of offence under sections 420, 406, 467, 468, 120-B of IPC and section 13(i)(d) of Prevention of Corruption Act. Accused Nos.3, 4 & 5 are public servant. The Magistrate did not apply his mind as to whether he had jurisdiction in view of the fact that the applicants also allege an offence under Prevention of Corruption Act, where jurisdiction to take cognizance is given to Special Court constituted under the Act.

After going through the impugned order, I find that the order was passed without following directions issued by this court in case of **Ramyash Tiwari (supra)**. Accordingly, the impugned order is set-aside and the matter is remanded back to the court of learned Magistrate for disposal of the application afresh with following directions :-

- (i) the Magistrate shall hear both the parties and should specifically apply his mind to see whether any cognizable offence is made out from the allegations levelled in the complaint taking them on their face value and entirely correct, and if yes, under what provision of law.
- (ii) the Magistrate should ensure compliance of directions

issued by Hon'ble Apex Court in case of **Priyanka Shrivastava (supra)** and also the directions issued by this court in case of **Ramyash Tiwari (supra)**.

(iii)the Magistrate should also pass a suitable order whether the court of Magistrate has jurisdiction in this case.

With aforesaid observations and directions, the application stands disposed of.

**(Alok Verma)**  
**Judge**

Chitranjan