

IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

MISC. CRIMINAL CASE No. 36340 of 2023

**BETWEEN:-**

ARUN KUMAR GUPTA S/O SHRI GOPINATH GUPTA,  
AGED ABOUT 76 YEARS, OCCUPATION: AGRICULTURE  
BRAHMAN MOHALLA, GAROTH, DISTRICT MANDSAUR  
(MADHYA PRADESH)

.....APPLICANT

(BY SHRI HITESH SHARMA, ADVOCATE )

**AND**

ARVIND KUMAR S/O LATE SHRI DATTATREY GUPTA,  
AGED ABOUT 76 YEARS, OCCUPATION: AGRICULTURE  
273, SECTOR 9-A, SAKET NAGAR, BHOPAL (MADHYA  
PRADESH)

.....RESPONDENTS

(BY SHRI TEHJEEB KHAN, ADVOCATE)

.....  
*Heard on :27.02.2024*  
*Delivered on: 19.03.2024*  
.....

*This application was heard and reserved and the Court has pronounced the following:*

**ORDER**

This present petition has been preferred on behalf of the petitioner under Section 482 of Cr.P.C. being aggrieved by the order dated 31.07.2021 passed by JMFC, Garoth, Mandsaur in connection with Complainant Case No.0/2019 under Section 196, 199, 406, 420,467, 468, 471 and 120-B of IPC whereby the Judicial Magistrate First Class has sent the matter to the concerned police station for investigation under Section 202 of Cr.P.C.

2. Succinctly stated brief facts leading to the present petition are that a

complainant has been lodged under Section 200 before the trial Court against the petitioner. A civil suit between the petitioner and respondent is already pending before the concerned Court. The allegations against the petitioner has been leveled that he has filed false and fabricated affidavit before the Civil Judge in the civil suit. Even after various directions, the complainant has not filed original copy of the affidavit and only filed the photocopy of the same. The learned trial Court without considering the material available on record and without considering the appropriate provisions of law, wrongly sent the matter for investigation under Section 202 of Cr.P.C. to the concerned trial Court without having powers vide the impugned judgement. Hence, the present petition.

3. Learned counsel for the petitioner submits that the petitioner is an old age person and suffering from multiple disease. It is further submitted that the complaint filed by the respondent under Section 200 of Cr.P.C and so also passing of the impugned order under Section 202 of Cr.P.C. is illegal, perverse and bad in law. It is also submitted that the learned trial Court has passed the impugned order by ignoring the settled principle of law that the offence and charges leveled against the petitioner are not triable by Judicial Magistrate First Class and the same can only be tried by Court of Sessions. It is also submitted that the learned trial Court has wrongly sent the matter for further investigation solely on the basis of documents placed before the Court. Hence, the impugned order is liable to set aside being illegal.

4. In support of his contention, counsel for the petitioner relying upon the judgment dated **03.12.2004** passed in ***Kamlesh Pathak vs. State of M.P., (M.Cr.C. No.2798/2004)***. Relevant paragraphs no.12 of the judgment passed in the case of ***Kamlesh Pathak (Supra)***:

12. Thus, after perusing the aforesaid case laws and the language of proviso to [Section 202](#) it clearly appears that the Magistrate has no power to issue direction under [Section 156\(3\)](#), Cr.P.C. in cases where offence is triable by exclusively by Sessions Court and if directions are issued that would be without jurisdiction. In case a complaint is made to the Magistrate of an offence which is exclusively triable by Sessions Court it is incumbent on him to call upon the complainant to produce witnesses on which he relies and after recording their statements the Magistrate may decide whether cognizance of offence is to be taken or not. In the present case the Court has not followed the Said procedure and has directed investigation by police under [Section 156\(3\)](#), Cr.P.C.

5. On the other hand, counsel for the respondent has opposed the prayer by supporting the impugned order. It is submitted that the learned trial Court has rightly passed the impugned order and sent the matter for further investigation correctly to the concerned police station. It is also submitted that the documents which has been placed alongwith the complainant are sufficient to take cognizance against the petitioner. Hence, prays for dismissal of the petition.

6. I have heard the counsel for the parties and perused the record.

7. Prior to considering the matter in hand, it would be appropriate to consider the provisions of Section 200 and 202 of Cr.P.C. first, which reads as under:-

**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.*

## **202. Postponement of issue of process.**

*(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192 may, if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction] [Inserted by Act 25 of 2005, Section 19 (w.e.f. 23-6-2006).] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding :*

*Provided that no such direction for investigation shall be made, -*

**(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or**

*(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.*

*(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath :*

*Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.*

*(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Court on an officer-in-charge of a police station except the power to arrest without warrant."*

8. From the bare perusal of provisions of Section 202(1)(a) of Cr.P.C. it is crystal clear that no such direction shall be made "**where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session"** In the case in hand, it is crystal clear that the complaint was lodged under Sections 196, 199, 406, 420, 467, 468, 471 and 120-B of IPC, thus, the offence is triable by Court of Sessions and hence, no cognizance of direction can be made by Judicial Magistrate First Class.

9. So far as the law enunciated in the case of ***Kamlesh Pathak (Supra)*** is concerned, it is held that "Magistrate has no power to issue direction under **Section 156(3), Cr.P.C.** in cases where offence is exclusively triable by Sessions Court and if directions are issued that would be without jurisdiction."

10. However, on this aspect, the Full Bench of Supreme Court in the case of **Devarapally Lakshminarayana Reddy v. V. Narayana Reddy,**

**AIR 1976 SUPREME COURT 1672**, has held that in view of first proviso to Section 202 (1) of the Criminal P. C. a Magistrate who receives a complaint disclosing offences exclusively triable by the Court of Session, is not debarred from sending the same to the police for investigation under Section 156 (3) of the Code. The power to order police investigation under Section 156 (3) is different from the power to direct investigation conferred by Section 202 (1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156 (3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190 (1) (a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Sect. 156 (3). It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1) of Cr.P.C.

11. Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or chargesheet under Section 173. On the other hand, Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under Section 202 to direct, within the limits circumscribed by that section, an investigation *"for the purpose of deciding whether or not there is*

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*sufficient ground for proceeding."*

12. Therefore, the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him. The same view has been reiterated by Hon'ble Apex Court in another case of **Rameshbhai Pandurao Hedau v. State of Gujarat, AIR 2010 SUPREME COURT 1877**, as well.

13. Actually, the power to direct an investigation to the police authorities is available to the Magistrate under Section 156(3) of Cr.P.C. but not under Section 202 of Cr.P.C when the case is exclusively triable by Session Judge. As such, in the case exclusively triable by Session Judge, a Magistrate cannot order for police investigation under Section 202 of the Cr.P.C. In this case at hand, since the offences are pertaining to Section 467, 468 and 471 of IPC which are exclusively triable by Session Judge, the learned Magistrate has wrongly passed the order for police investigation under Section 202 of Cr.P.C.

14. In view of the foregoing elaborate discussions, the present petition filed under Section 482 of Cr.P.C, is allowed and the impugned order passed by learned trial Court under Section 202 of Cr.P.C., which is suffering from illegality and perversity is hereby set aside.

15. Consequently, the matter is remitted back to the learned trial Court concerned for consideration afresh after giving proper opportunity to adduce evidence to the respondent/complainant in accordance with law under Section 202 of Cr.P.C.

16. A copy of this order be sent to the learned trial Court concerned for information.

Certified copy, as per Rules.

**(PREM NARAYAN SINGH)  
JUDGE**

amit

