

HIGH COURT OF MADHYA PRADESH AT JABALPUR

M.Cr.C. No. 13734/2017

Lakhpat Singh

Vs.

State of Madhya Pradesh & Ors.

[Single Bench : Hon'ble Smt. Anjali Palo, Judge]

Shri Anil Lala, learned counsel for the applicant.

Shri Pradeep Gupta, Panel Lawyer for respondent No. 1 / State.

Shri Arvind Kumar Chouksey, counsel for the respondents No. 2 and 3.

ORDER
(13/07/2018)

This petition has been filed by the petitioner/accused under Section 482 of Cr.P.C. for quashing the FIR registered at crime No. 42/2016 on 18.01.2016 by respondent No. 1 at Police Station Panna.

2. The petitioner has stated that, a written complaint has been lodged by the respondents against the petitioner before the Court of Judicial Magistrate First Class, Panna for committing offence punishable under Sections 409, 420, 468 and 471 of the IPC. The offences alleged in the complaint are exclusively triable by the Sessions Court but the Judicial Magistrate First Class under Section 156(3) of Cr.P.C. directed the respondent No.1 to inquire the matter. Police registered FIR vide order dated 12.01.2016 against the petitioner.

3. The petitioner prays to quash the FIR registered at Crime No.42/2016 on the grounds that the cognizance of the offence is taken by an incompetent Court. For the offences exclusively triable by the Sessions Court, the Magistrate cannot direct the police under Section 156(3) of Cr.P.C. for investigation.

4. The learned counsel for the petitioner has place reliance on the case of **Nanjiram S/o Mohan Lal Lodha Vs. State of MP, 2008 (4) MPLJ 581**, a Coordinate Bench of this Court has held that if the offence is exclusively triable by the Court of Session, Magistrate has no jurisdiction to direct investigation by police officers in exercise of powers under Section 156 (3) of the Code, Magistrate has to make enquiry himself under Section 202.

5. Learned counsel for the respondents vehemently opposed the contentions of the learned counsel for the petitioner.

6. Arguments of both the learned counsel for the parties heard. Perused the record.

7. Before reaching to any conclusion it is pertinent to look into the provisions of Section 156 of Cr.P.C :

(I) 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.

8. In view of the above, it is apparently clear that it was obligatory on the part of the Magistrate to summon witness who have been cited by the complainant under Section 202 of Cr.P.C. On the other hand, the Magistrate can order for investigation under Section 156(3) of Cr.P.C. at the pre-cognizance stage even when the complainant lodges offence of the session triable case. Further, the question arise in the present case is that “*whether the learned Magistrate can take cognizance of the instant matter*”. In paragraph ‘E’ of the petition, the petitioner himself narrated that “since the genesis of the FIR itself is contrary and no further proceeding has been done, neither the investigation is concluded nor any charge-sheet is filed but under the garb of institution of the criminal prosecution, petitioner is harassed by the police which shows that case is at pre-cognizance stage.

9. The standard required by the Magistrate while taking cognizance is well settled by the Supreme Court in catena of judgement. In case of **Subramanian Swamy Vs. Manmohan Singh, (2012) 3 SCC 64**, the Hon’ble Supreme Court has explained the meaning of the word ‘cognizance’ holding that :

“In legal parlance cognizance is taking judicial notice by the Court of law, possession jurisdiction, on a cause or matter presented before it so as to decide whether there is any basis for initiating proceedings

and determination of the cause of matter judicially.”

10. The Hon’ble Supreme Court in case of **Rajendra Rajoria Vs. Jagat Narayan Thapak & Ors., (2018) SCC Online SC 159** further held that the Magistrate while taking cognizance has to satisfy himself about the satisfactory ground to proceed with the complaint.

11. In case of **Devarapalli Lakshminarayana Reddy & Ors. Vs. V.Narayan Reddy & Ors., (1976) 3 SCC 252**, the Supreme Court has held as under :

“When the Magistrate receives a complaint, he is not bound to take cognizance if the facts alleged in the complaint, disclose the commission of an offence. This is clear from the use of the words "may take cognizance" which in the context in which they occur cannot be equated with must take cognizance". The word "may" gives a 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 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.

Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding under s. 200 and the succeeding sections in Chapter XV of the Code of 1973, he is said to have taken cognizance of the offence within the meaning of s. 190(1)(a). If, instead of proceeding under Chapter XV, he has in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police under s. 156(3), he cannot be said to have taken cognizance of any offence.”

12. Power of direct investigation under Section 156(3) Cr.P.C. distinguished from the power under Section 202(1) of Cr.P.C. Governing parameters for it is considered by the Supreme Court in case of **Ramdev Food Products Private Limited Vs. State of Gujarat, (2015) 6 SCC 439** wherein it has been held as under :

“Direction under Section 156(3) is issued where the Magistrate does not take cognizance and does not find it necessary to postpone instance of process and finds a case made out to proceed forthwith. Meaning thereby, where on account of accountability of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation under Section 156(3) of Cr.P.C.”

13. In case of Ramdev (supra), the Hon’ble Supreme Court further held that the power of Magistrate to direct investigation under Section 156(3) of Cr.P.C. is available for limited purpose.

14. In the present case, the petitioner claimed that no offence as alleged by the complainant is made out against him, hence, the cognizance taken by the Magistrate against him and the FIR registered against him is liable to be quashed. It is settled that in the present case, no cognizance has been taken by the Magistrate against the petitioner. Again, this Court follow the principle laid down by the Hon’ble Supreme Court in the case of **Manju Surana Vs. Sunil Arora & Ors. (2018) 5 SCC 557**, the Hon’ble Supreme Court has held that there is an established law that direction under Section 156 (3) of Cr.P.C., does not amount to taking cognizance. Similarly, this Court rely upon the case referred by the learned counsel for the respondent i.e. **Rameshbhai Pandurao Hedau Vs.**

State of Gujarat, 2010 (AIR) (SCW) 2353. In this case, the Hon'ble Supreme Court has held that :

“The law is well-settled that an investigation ordered by the Magistrate under Chapter XII is at the pre-cognizance stage and the inquiry and/or investigation ordered under Section 202 is at the post-cognizance stage. What we have to consider is whether the Magistrate committed any error in refusing the appellant's prayer for an investigation by the police under Section 156(3) of the Code and resorting to Section 202 of the Code instead, since both the two courses were available to him.”

15. Hence, in the light of the above principles and discussions, it is clear that the learned Trial Court has issued direction under Section 156(3) of Cr.P.C. at precognizance stage even though, the offence is exclusively triable by the Session Court, at this stage, the Magistrate can direct the police to enquire the matter under Section 156(3) of Cr.P.C in the aforesaid proceeding in accordance with law.

16. Therefore, this petition deserves to be and is hereby dismissed at motion stage.

**(Smt. Anjali Palo)
Judge**

HON'BLE HIGH COURT OF MADHYA PRADESH

1. **Case No.** : M.Cr.C.No. 13734/2017
2. **Parties Name** : Lakhpat Singh vs.
State of Madhya Pradesh & Ors.
3. **Date of Order** : 13.07.2018
4. **Bench** : Single Bench
5. **Judgement delivered by:** Hon'ble Smt. Justice Anjuli Palo, J
6. **Whether approved for reporting** : Yes
7. **Name of counsels for parties** : Shri Anil Lala, counsel for the applicant.
Shri Pradeep Gupta, Panel Lawyer for respondent No. 1/State
Shri Arvind Kumar Chouksey, counsel for respondents No. 2 & 3
8. **Law laid down** : At the pre-cognizance stage Magistrate can direct the police under Section 156(3) of Cr.P.C.
9. **Significant paragraph nos.:** 8 to 14