

## **Suresh Chand Jain vs State Of Madhya Pradesh & Another on 10 January, 2001**

**Equivalent citations: AIR 2001 SUPREME COURT 571, 2001 AIR SCW 189, 2002 CRILR(SC&MP) 221, 2001 (2) SRJ 100, 2001 (1) UJ (SC) 420, (2002) 1 TAC 794, (2001) 1 CGLJ 451, (2001) 57 DRJ 567, (2001) 3 ACJ 2033, (2001) 89 DLT 504, 2001 (3) COM LJ 78 SC, 2001 (2) SCC 628, 2001 (1) SCALE 93, 2001 CALCRILR 186, 2001 ALL MR(CRI) 775, 2001 SCC(CRI) 377, (2001) 2 JT 81 (SC), 2002 CRILR(SC MAH GUJ) 221, (2001) ILR (KANT) (1) 2341, (2001) 1 ALLCRIR 586, (2001) 1 ALLCRILR 389, 2001 CHANDLR(CIV&CRI) 186, (2001) SC CR R 635, (2001) 1 CAL LJ 595, (2002) 4 ALLCRILR 354, (2001) 3 RECCRIR 455, (2001) 1 CHANDCRIC 83, (2001) 1 EASTCRIC 206, (2001) 1 GUJ LH 594, (2001) 1 JAB LJ 395, (2001) 1 KER LT 623, (2001) 1 ORISSA LR 470, (2001) 2 RAJ LW 317, (2001) 1 RECCRIR 335, (2001) 1 SCJ 605, (2001) 1 CURCRIR 54, (2001) 1 SUPREME 129, (2001) 1 SCALE 93, (2001) 1 UC 202, (2001) 42 ALLCRIC 459, (2001) 2 BLJ 167, (2001) 1 CRIMES 171, 2001 (1) ANDHLT(CRI) 284 SC**

**Bench: K.T.Thomas, R.P.Sethi**

CASE NO.:

Appeal (crl.) 43 of 2001

{Arising out of Special Leave Petition (crl.) 2225 of 2000 }

PETITIONER:

SURESH CHAND JAIN

Vs.

RESPONDENT:

STATE OF MADHYA PRADESH & ANOTHER

DATE OF JUDGMENT: 10/01/2001

BENCH:

K.T.Thomas, R.P.Sethi

JUDGMENT:

Appellant challenged the said order in a revision before the Sessions Court and when the revision was dismissed he moved the High Court under Section 482 of the Code of Criminal Procedure (for short the Code). Learned Single Judge of the High Court of Madhya Pradesh took the view that in a private complaint case under Section 156(3) of the Code the magistrate is empowered to order investigation; the allegation made in the complaint needs to be investigated in public interest.

The former decision of the Rajasthan High Court need not vex our mind as the consideration focussed therein was on the scope of Section 202(1) of the Code and the learned Single Judge observed therein that a magistrate cannot make any order regarding police investigation without examining the complainant on oath. If the facts in that case remained one under Section 202(1) of the Code then the observation cannot be faulted with. That apart, as the point involved in this case is different we do not think it necessary to examine the said decision. But the other decision rendered by a Single Judge of the Punjab and Haryana High Court (Suresh Kumar vs. State of Haryana) has gone a step further as he held that the magistrate has no power within the contemplation of Section 156(3) of the Code to ask for registration of the case, but could only refer the complaint to the police for investigation at the pre-cognizance stage to make the enquiry in the matter enabling the magistrate to apply his mind with regard to the correctness of the complaint. In that decision

learned Single Judge, at the end of the judgment, made a direction as follows: Before parting with the judgment, it is observed that often it is found that the Judicial Magistrates working under the control of this Court many a time upon the complaints preferred before them, allegedly showing that a cognizable offence has been committed by the accused, direct the police to register and conduct the investigation in such cases under Section 156(3) of the Cr.P.C. After the reports are received from the police the Magistrates deal with those cases as police challans and conduct the proceedings in the matters against the provisions of law as discussed above. Hence the Registry is directed to send a copy of this judgment to all the Judicial Magistrates in the States of Punjab, Haryana and Union Territory, Chandigarh, for information and guidance.

In our opinion, the aforesaid direction given by the learned Single Judge of the Punjab and Haryana High Court in Suresh Kumar vs. State of Haryana (supra) is contrary to law and cannot be approved. Chapter XII of the Code contains provisions relating to information to the police and their powers to investigate, whereas Chapter XV, which contains Section 202, deals with provisions relating to the steps which a magistrate has to adopt while and after taking cognizance of any offence on a complaint. Provisions of the above two chapters deal with two different facets altogether though there could be a common factor i.e. complaint filed by a person. Section 156, falling within Chapter XII, deals with powers of the police officers to investigate cognizable offences. True, Section 202 which falls under Chapter XV, also refers to the power of a Magistrate to direct an investigation by a police officer. But the investigation envisaged in Section 202 is different from the investigation contemplated in Section 156 of the Code. Section 156 of the Code reads thus: 156. Police officers power to investigate cognizable cases.- (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.

The investigation referred to therein is the same investigation the various steps to be adopted for it have been elaborated in Chapter XII of the Code. Such investigation would start with making the entry in a book to be kept by the officer-in-charge of a police station, of the substance of the information relating to the commission of a cognizable offence. The investigation started thereafter can end up only with the report filed by the police as indicated in Section 173 of the Code. The investigation contemplated in that Chapter can be commenced by the police even without the order of a magistrate. But that does not mean that when a magistrate orders an investigation under Section 156(3) it would be a different kind of investigation. Such investigation must also end up only with the report contemplated in Section 173 of the Code. But the significant point to be noticed is, when a magistrate orders investigation under Chapter XII he does so before he takes cognizance of the offence.

Though the learned Single Judge of the Punjab and Haryana High Court in *Suresh Kumar vs. State of Haryana* (supra) made reference to two decisions rendered by this Court [*Gopal Das Sindhi and ors. vs. State of Assam* and *anr.* (AIR 1961 SC 986) and *Tula Ram and ors. vs. Kishore Singh* (AIR 1977 SC 2401)] learned Single Judge fell into error in formulating a legal position which is quite contrary to the dictum laid down by this Court in the afore-cited decisions. In *Gopal Das Sindhi vs. State of Assam* (supra) a three Judge Bench of this Court considered the validity of the course adopted by a judicial magistrate of the 1st class in ordering the police to register a case, investigate and if warranted, submit charge-sheet. Learned Judges repelled the contention that the magistrate ought to have examined the complainant on oath under Section 200 of the Code. Dealing with the said contention their Lordships stated thus: If the Magistrate had not taken cognizance of the offence on the complaint filed before him, he was not obliged to examine the complainant on oath and the witnesses present at the time of the filing of the complaint. We cannot read the provisions of S.190 to mean that once a complaint is filed, a Magistrate is bound to take cognizance if the facts stated in the complaint disclose the commission of any offence. We are unable to construe the word may in section 190 to mean must. The reason is obvious. A complaint disclosing cognizable offences may well justify a Magistrate in sending the complaint, under S.156(3) to the police for investigation. There is no reason why the time of the Magistrate should be wasted when primarily the duty to investigate in cases involving cognizable offences is with the police. On the other hand, there may be occasions when the Magistrate may exercise his discretion and take cognizance of a cognizable offence.

In Tula Ram vs. Kishore Singh (supra) a two Judge Bench of this Court, after referring to the earlier decision, reiterated the same legal position. It is unfortunate that when this Court laid down the legal position so explicitly in the above two decisions which reached the notice of the learned Judge of the Punjab and Haryana High Court he had formulated a position contrary to it by stating that the Magistrate has no power within the contemplation of Section 156(3) of the Code, to ask for registration of the case. It appears that the judicial officers under Punjab and Haryana High Court who were, till then, following the correct position, were asked by the learned Judge to follow the erroneous position formulated by him in the aforesaid judgment.

In the present case the High Court of Madhya Pradesh had rightly upheld the course adopted by the magistrate. Hence we dismiss this appeal.