Seema Devi vs State Of U.P. & 3 Others on 24 September, 2018

Equivalent citations: AIRONLINE 2018 ALL 4316

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Court No. - 15 A.F.R.

Case :- CRIMINAL APPEAL No. - 1647 of 2018

Appellant :- Seema Devi

Respondent :- State Of U.P. & 3 Others

Counsel for Appellant :- Akash Dikshit

Counsel for Respondent :- Govt. Advocate

Hon'ble Virendra Kumar-II, J.

1. Heard Shri Akash Dikshit, learned counsel for appellant and the learned AGA for the State.

2. This appeal has been preferred assailing the impugned order dated 13.07.2018 passed by learned Special Judge, S.C./S.T. (P.A.) Act, District Hardoi in Misc. Case No. 134 of 2018, by which the complaint instituted by the appellant under Section 156(3) Cr.P.C. has been dismissed at pre-cognizance stage.

3. It is submitted by the learned counsel for appellant that the appellant/ complainant lodged the FIR of Case Crime No. 328 of 2017 at Police Station Sandila against the opposite parties. The opposite parties were released on bail by the concerned court and after five days on 22.04.2018 at about 2:45 p.m. the opposite parties entered into the house of complainant/ appellant and abused her by indicating her caste and community. They also threatened her that acid shall be thrown on her. Her father was also abused and threatened.

4. It is further submitted that the learned trial court has relied upon the case law, Anil Kumar and others Vs. M. K. Aiyappa and another : 2014(1) JIC 601 (S.C.), in which Hon'ble Supreme Court has held that a complaint cannot be instituted under the provisions of Section 156(3) Cr.P.C. against a

public servant without obtaining sanction for prosecution against him. Whereas no sanction for prosecution was required on the basis of facts narrated in the complaint instituted by the complainant because the incident dated 22.04.2018 was not committed by the accused persons in discharge of their official duty. Learned trial court has observed that opposite party No.1-Rajiv Kumar Agrawal is Mandi Inspector, opposite party No.2-Abdul Wahid is driver on contract and opposite party No.3-Ashok Kumar Saxena is Secretary of Krishi Utpadan Mandi Samiti, Sandila, Hardoi. The learned trial court has not considered this fact that the incident committed by the opposite parties was in their private capacity and not in official capacity, therefore, the impugned order dated 13.07.2018 is not tenable in law and is liable to be quashed.

5. Learned AGA has opposed the appeal by submitting that earlier the complainant instituted another complaint under the provisions of Section 156(3) Cr.P.C. and on the basis of aforesaid complaint under the orders of court of Special Judge, S.C./S.T. Act, Hardoi the FIR was registered as Case Crime No. 328 of 2017 at Police Station Sandila, District Hardoi for the offences punishable under Sections 323, 354A, 504, 506 IPC and Section 3(2)(v), 3(1)R of S.C./S.T. Act regarding the alleged incident dated 22.03.2017 occurred at about 16:30 hours. The complainant was appointed on 05.06.2015 on the post of Computer Operator through outsourcing in the office of Secretary, Krishi Utpadan Mandi Samiti, Sandila, Hardoi. The complainant levelled allegations against Ashok Kumar Saxena, Secretary of Krishi Utpadan Mandi Samiti, Sandila, Hardoi regarding sexual exploitation and harassment of the complainant by the opposite party at her work place.

6. It is further submitted that on perusal of the impugned order dated 13.07.2018, it reveals that both the parties were challaned under the provisions of Section 107, 116 Cr.P.C. by the police personnel of Police Station Sandila to maintain peace and law and order. The complainant approached the District Magistrate, Hardoi, who called report in this regard from the Police Station Sandila, therefore, the learned trial court at the pre-cognizance stage has not exercised its discretion in favour of the complainant for getting FIR registered on the basis of complaint instituted by the appellant in correct perspective.

7. I have perused the record made available by the complainant.

8. The opposite parties have been enlarged on bail vide order dated 17.04.2018 passed in Bail Application No. 97 of 2018 relating to Special Trial No. 74 of 2018, arising out of Case Crime No. 328 of 2017, under Sections 323, 354A, 504, 506, 342, 120B IPC and Section 3(2)5A, 3(1)R of S.C./S.T. Act, Police Station Sandila, District Hardoi. It is mentioned in this bail order by the learned Special Judge, S.C./S.T. Act, Hardoi that the complaint dated 26.05.2017 of sexual harassment was forwarded to the State Mahila Ayog, U.P., Lucknow, which was inquired into by the Circle Officer of Police Station Sandila and contentions of complainant were found false. Shri Ashok Kumar Saxena forwarded the reports dated 16.08.2016, 18.10.2016, 26.12.2016 and 22.04.2017 regarding work and conduct of the complainant and she was directed to mend his way of working and conduct. The outsourcing company B.S.N. Infotech Private Limited, Lucknow appointed Shri Gaurav Singh as Computer Operator in place of the complainant on the basis of reports submitted by Shri Ashok Kumar Saxena.

9. In the above mentioned circumstances, the learned trial court was competent to test the veracity of the complaint in light of the dispute between both the parties. Likewise,the learned trial court ought to have analyze the above mentioned facts and circumstances and contentions of the complainant and to take decision,whether the incident dated 22.04.2018 was ever committed by the opposite parties in discharge of their official duties or these complaints made by the complainant were result of offshoot of the action taken by Shri Ashok Kumar Saxena, Secretary, Krishi Utpadan Mandi Samiti, Sandila regarding work and conduct of the complainant. The learned trial court has not exercised its discretion at pre-cognizance stage in favour of the complainant. Moreover, the following expositions of law of Hon'ble Supreme Court and this Court regarding provisions under Section 156(3) Cr.P.C. are as follows:

> A primary duty to register First Information Report (F.I.R) regarding cognizable offence is of the Station House Officer of the concerned Police Station, if the Police Officer/Incharge does not register the F.I.R. then the Magistrate having jurisdiction to hear criminal case of the police station concerned has been empowered to issue directions under section 156(3) Cr.P.C to register and investigate the fact and circumstances narrated in the complaint. the relevant provisions defining the complaint and the procedure adopted by the concerned Magistrate is provided under the various provision of the Cr.P.C. At a post cognizance stage, the Magistrate is empowered to take cognizance on the complaint and may adopt procedure provided under section 200, 202 of Cr.P.C. The relevant provisions are as follows:-
>
> Jurisdiction of the Magistrate Court u/s 156(3) of Cr.P.C.
>
> Relevant Provision of Cr.P.C.regarding written complaint instituted in the magistrate court.
>
> Provision of Sec. 2(d) of Cr.P.C defines complaint and Section 154 of Cr.P.C provides procedure for recording of First Information Report at Police Station Section 2(d) of Cr.P.C.-
>
> "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.
>
> Explanation.--A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;
>
> Section 154 in the Code of Criminal Procedure, 1973
>
> 154. Information in cognizable cases.--

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

Section 156 in the Code of Criminal Procedure, 1973

156. 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.

Section 190 in the Code of Criminal Procedure, 1973

190. Cognizance of offences by Magistrates.--

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence--

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

Following are the case law decided by the Hon'ble Supreme Court on Section 156(3) of Cr.P.C Hon'ble Supreme Court held in the case of R. R. Chari Vs. State of U.P., reported in AIR 1951 SC 207 as under:

It is clear from the wording of the section that the initiation of the proceedings against a person commences on the cognizance of the offence by the Magistrate under one of the three contingencies mentioned in the section. The first contingency evidently is in respect of non-cognizable offences as defined in the Criminal Procedure Code on the complaint of an aggrieved person. The second is on a police report, which evidently is the case of a cognizable offence when the police have completed their investigation and come to the Magistrate for the issue of a process. The third is when the Magistrate himself takes notice of an offence and issues the process. It is important to remember that in respect of any cognizable offence, the police, at the initial stage when they are investigating the matter, can arrest a person without obtaining an order from the Magistrate. Under Section 167(b) of the Criminal Procedure Code the police have of course to put up the person so arrested before a Magistrate within 24 hours and obtain an order of remand to police custody for the purpose of further investigation, if they so desire. But they have the power to arrest a person for the purpose of investigation without approaching the Magistrate first. Therefore in cases of cognizable offence before proceedings are initiated and while the matter is under investigation by the police the suspected person is liable to be arrested by the police without an order by the Magistrate. It may also be noticed that the Magistrate who makes the order of remand may be one who has no jurisdiction to try the case.

In our opinion having regard to the wording of Section 3 of the Act the assumption that the Magistrate can issue a warrant only after taking cognizance of an offence under Section 190 of the Criminal Procedure Code is unsound. The proviso to Section 3 of the Act expressly covers the case of a Magistrate issuing a warrant for the arrest of a person in the course of investigation only and on the footing that it is a cognizable offence.

"What is taking cognizance has not been defined in the Criminal Procedure Code and I have no desire to attempt to define it. It seems to me clear however that before it can be said that any Magistrate has taken cognizance of any offence under Section

> 190(1)(a) of the Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter--proceeding under Section 200 and thereafter sending it for inquiry and report under Section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind e.g. ordering investigation under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence".

In the case of Gopal Das Sindhi Vs. State of Assam, reported as AIR 1961 SC 986, Hon'ble Supreme Court observed as under -

When the complaint was received by Mr Thomas on August 3, 1957, his order, which we have already quoted, clearly indicates that he did not take cognizance of the offences mentioned in the complaint but had sent the complaint under Section 156(3) of the Code to the Officer Incharge of Police Station Gauhati for investigation. Section 156(3) states "Any Magistrate empowered under Section 190 may order such investigation as above-mentioned". Mr Thomas was certainly a Magistrate empowered to take cognizance under Section 190 and he was empowered to take cognizance of an offence upon receiving a complaint. He, however, decided not to take cognizance but to send the complaint to the police for investigation as Sections 147, 342 and 448 were cognizable offences. It was, however, urged that once a complaint was filed the Magistrate was bound to take cognizance and proceed under Chapter XVI of the Code. It is clear, however, that Chapter XVI would come into play only if the Magistrate had taken cognizance of an offence on the complaint filed before him, because Section 200 states that a Magistrate taking cognizance of an offence on complaint shall at once examine the complainant and the witnesses present, if any, upon oath and the substance of the examination shall be reduced to writing and shall be signed by the complainant and the witnesses and also by the Magistrate. 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 Section 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 Section 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 offence 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. If he does so, then he would have to proceed in the manner provided by Chapter XVI of the Code. Numerous cases were cited before us in support of the submissions made on behalf of the appellants. Certain submissions were also made as to what is meant by "taking cognizance". It is unnecessary to refer to the cases cited. The following

observations of Mr Justice Das Gupta in the case of Superintendent and Remembrancer of Legal Affairs, West Bengal v.Abani Kumar Banerjee [AIR 1950 Cal 437] :

> "What is taking cognizance has not been defined in the Code of Criminal Procedure and I have no desire to attempt to define it. It seems to me clear, however, that before it can be said that any Magistrate has taken cognizance of any offence under Section 190(1)(a) of the Cr PC, he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter --proceeding under Section 200 and thereafter sending it for inquiry and report under Section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g., ordering investigation under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence."

were approved by this Court in R.R. Chari v. State of Uttar Pradesh[1951 SCR 312] . It would be clear from the observations of Mr Justice Das Gupta that when a Magistrate applies his mind not for the purpose of proceeding under the various sections of Chapter XVI but for taking action of some other kind, e.g. ordering investigation under Section 156(3) or issuing a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of any offence. The observations of Mr Justice Das Gupta above-referred to were also approved by this Court in the case of Narayandas Bhagwandas Madhavdas v. State of West Bengal [1960 (I) SCR 93] .

It will be clear, therefore, that in the present case neither the Additional District Magistrate nor Mr Thomas applied his mind to the complaint filed on August 3, 1957, with a view to taking cognizance of an offence. The Additional District Magistrate passed on the complaint to Mr Thomas to deal with it. Mr Thomas seeing that cognizable offences were mentioned in the complaint did not apply his mind to it with a view to taking cognizance of any offence; on the contrary in his opinion it was a matter to be investigated by the police under Section 156(3) of the Code. The action of Mr Thomas comes within the observations of Mr Justice Das Gupta. In the circumstances, we do not think that the first contention on behalf of the appellants has any substance.

In the case of Jamuna Singh Vs. Bhadai Shah, reported in AIR 1964 SC 1541 Hon'ble Supreme Court observed as under:-

> (i) when on a petition of complaint being filed before him a Magistrate applies his mind for proceeding under the various provisions of Chapter 16 of the Code of Criminal Procedure, he must he held to have taken cognizance of the offences mentioned in the complaint. When however he applies his mind not for such purpose but for purposes of ordering investigation under Section 156(3) or issues a search warrant for the purpose of investigation he cannot be said to have taken cognizance of any offence. It was so held by this Court in R.R. Chari v. State of U.P.[(1951) SCR 312] and again in Gopal Dass v. State of Assam [AIR 1961 SC 986] . In the present case,it is clear here from the very fact that he took action under s. 200 of the Code of

> Criminal Procedure, that he had taken cognizance of the offences mentioned in the complaint, it was open to him to order investigation only under s. 202 of the Code of Criminal Procedure and not under s. 156(3) of the Code. It would be proper in these circumstances to hold that though the Magistrate used the words "for instituting a case" in this order of November 22, 1956 he was actually taking action under s. 202 of the Code of Criminal Procedure, that being the only section under which he was in law entitled to Act.

Cognizance having already been taken by the Magistrate before he made the order there was no scope of cognisance being taken afresh of the same offence after the police officer's report was received. There is thus no escape from the conclusion that the case was instituted on Bhadai Sah's complaint on November 22, 1956, and not on the police report submitted later by the Police Sub-Inspector, Baikunthpur. The contention that the appeal did not lie under Section 417(3) of the Code of Criminal Procedure must therefore be rejected.

(ii) The order of the Magistrate asking the police to institute a case and to send a report should properly and reasonably be read as one made under Section 202 of the Code of Criminal Procedure. So, the argument that the learned Magistrate acted without jurisdiction cannot be accepted. At most it might be said that in so far as the learned Magistrate asked the police to institute a case he acted irregularly. There is absolutely no reason, however, to think that that irregularity has resulted in any failure of justice.

An examination of these provisions makes it clear that when a Magistrate takes cognizance of an offence upon receiving a complaint of facts which constitute such offence, a case is instituted in the Magistrate's Court and such a case is one instituted on a complaint. Again, when a Magistrate takes cognizance of any offence upon a report in writing of such fact's made by any police officer it is a case instituted in the Magistrate's Court on a police report.

It is well settled now that when on a petition of complaint being filed before him a Magistrate applies his mind for proceeding under the various provisions of Chapter 16 of the Code of Criminal Procedure, he must he held to have taken cognizance of the offences mentioned in the complaint. When however he applies his mind not for such purpose but for purposes of ordering investigation under Section 156(3) or issues a search warrant for the purpose of investigation he cannot be said to have taken cognizance of any offence.

(i) Tula Ram v. Kishore Singh, (1977) 4 SCC 459

(ii) H.S. Bains, Director, Small Saving-cum-Dy. Secy. Finance v. State (Union Territory of Chandigarh), (1980) 4 SCC 631

(iii) Mohd. yusuf v. Smt. Afaq Jahan and Anr., 2006(54)ACC Page 530 and also decided by the Hon'ble Allahabad High Court following cases:

(i). Ramhit and others Vs. State of U.P. and others 1997 (34) ACC Page 683 : Cri. Misc. Appln. No. 4775/1996 decided on 13th December, 1996 : Awadh Bihari Vs. IXth A.D.J. Allahabad (Cr. Misc. W.P. No. 776/1997) 1997 ACC 775 (decided on : 01/0/1997)

(ii). Vinai Pandey son of late Takeshwar Pandey vs. State of U.P. through its Home Secretary Govt. of U.P. (27.02.2004-All HC) 2005 Cri. L. J. 3225 : Cri. Misc. W.P. No. 7916/2003

(iii) Ajay Malviya vs. State of U.P. and others (decided on 06.07.2000 ALL HC) : (1997) 4 SCC 459.

(2) The following legal proposition emerge on a careful consideration of the facts and circumstances of this cases:

(i) That a Magistrate can order investigation under Section 156(3) only at the pre-cognizance stage, that is to say, before taking cognizance under Sections 190, 200 and 204 and where a Magistrate decides to take cognizance under the provisions of Chapter 14 he is not entitled in law to order any investigation under Section 156(3) though in cases not falling within the proviso to Section 202 he can order an investigation by the police which would be in the nature of an enquiry as contemplated by Section 202 of the Code.

(ii) Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives:

(a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightaway issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.

(b) The Magistrate can postpone the issue of process and direct an enquiry by himself.

(c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.

(iii) In case the Magistrate after considering the statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceeding he can dismiss the complaint.

(iv) Where a Magistrate orders investigation by the police before taking cognizance under Section 156(3) of the Code and receives the report thereupon he can act on the

> report and discharge the accused or straightaway issue process against the accused or apply his mind to the complaint filed before him and take action under Section 190.

It seems to me clear however that before it can be said that any Magistrate has taken cognizance of any offence under Section 190(1)(a) of the Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter -- proceeding under Section 200 and thereafter sending it for inquiry and report under Section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g. ordering investigation under Section 156(3), or issuing a search warrant"

> Section 156(3) appears in Chapter 12 which deals with information to the police and the powers of the police to investigate a crime. This section is therefore placed in a Chapter different from Chapter 14 which deals with initiation of proceedings against an accused person. It is, therefore, clear that Sections 190 and 156(3) are mutually exclusive and work in totally different spheres. In other words, the position is that even if a Magistrate receives a complaint under Section 190 he can act under Section 156(3) provided that he does not take cognizance. The position, therefore, is that while Chapter 14 deals with post cognizance stage Chapter 12 so far as the Magistrate is concerned deals with pre-cognizance stage, that is to say once a Magistrate starts acting under Section 190 and the provisions following he cannot resort to Section 156(3). Mr Mukherjee vehemently contended before us that in view of this essential distinction once the Magistrate chooses to act under Section 156(3) of the Code it was not open to him to revive the complaint, take cognizance and issue process against the accused. Counsel argued that the Magistrate in such a case has two alternatives and two alternatives only -- either he could direct re-investigation if he was not satisfied with the final report of the police or he could straightaway issue process to the accused under Section 204. In the instant case the Magistrate has done neither but has chosen to proceed under Section 190(1)(a) and Section 200 of the Code and thereafter issued process against the accused under Section 204. Attractive though the argument appears to be we are however unable to accept the same. In the first place, the argument is based on a fallacy that when a Magistrate orders investigation under Section 156(3) the complaint disappears and goes out of existence. The provisions of Section 202 of the present Code debar a Magistrate from directing investigation on a complaint where the offence charged is triable exclusively by the Court of Session. On the allegations of the complainant the offence complained of was clearly triable exclusively by the Court of Session and therefore it is obvious that the Magistrate was completely debarred from directing the complaint filed before him to be investigated by the police under Section 202 of the Code.
>
> But the Magistrate's powers under Section 156(3) of the Code to order investigation by the police have not been touched or affected by Section 202 because these powers are exercised even before cognizance is taken. In other words. Section 202 would

apply only to cases where the Magistrate has taken cognizance and chooses to enquire into the complaint either himself or through any other agency. But there may be circumstances as in the present case where the Magistrate before taking cognizance of the case himself chooses to order a pure and simple investigation under Section 156(3) of the Code.

The question is, having done so, is he debarred from proceeding with the complaint according to the provisions of Sections 190, 200 and 204 of the Code after receipt of the final report by the police?

From a combined reading of the above provisions it is abundantly clear that when a written complaint disclosing a cognizable offence is made before a Magistrate, he may take cognizance upon the same under Section 190 (1)(a) of the Code and proceed with the same in accordance with provisions of Chapter XV. The other option available to the Magistrate in such a case is to send the complaint to the appropriate Police Station under Section 156 (3) for investigation. once such a direction is given under Sub-section (3) of Section 156 the police is required to investigate into that complaint under Sub-section (1) thereof and on completion of investigation to submit a 'police report' in accordance with Section 173 (2) on which a Magistrate may take cognizance under Section 190 (1)(b) but not under section 190 (1)(a). Since a complaint filed before a Magistrate cannot be a police report in view of the definition of complaint referred to earlier and since the investigation of a 'cognizable case' by the police under Section 156 (1) has to culminate in a police report the complaint as soon as an order under Section 156 (3) is passed thereon -transforms itself to a report given in writing within the meaning of Section 154 of the Code, which is known as the First Information Report (FIR). As under Section 156 (1) the police can only investigate a cognizable 'case', it has to formally registered a case on that report.

The proper order would be as follows:-

'to register a case at the police station treating the complaint as the First Information Report and investigate into the same.' In the case of Suresh Chand Jain v. State of M.P., reported as (2001) 2 SCC 628 the Apex court observed as under-

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.

But a Magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the Code.

The position is thus clear. 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.

In the case of Aleeque Padamsee Vs. Union of India, reported as (2007) 6 SCC 171, Hon'ble Supreme Court after considering provision of Section 154, 156, 190 and 200 to 203 Cr.P.C, has held that:

The writ petitions are finally disposed of with the following directions:

(1) If any person is aggrieved by the inaction of the police officials in registering the FIR, the modalities contained in Section 190 read with Section 200 of the Code are to be adopted and observed.

(2) It is open to any person aggrieved by the inaction of the police officials to adopt the remedy in terms of the aforesaid provisions.

(3) So far as non-grant of sanction aspect is concerned, it is for the Government concerned to deal with the prayer. The Government concerned would do well to deal with the matter within three months from the date of receipt of this order.

(4) We make it clear that we have not expressed any opinion on the merits of the case.

In the case of Anju Chaudhary v. State of U.P., reported as (2013) 6 SCC 384, Hon'ble Supreme Court observed as under-

7. The complaint application under Section 156 CrPC was filed by Parvaz on 16-11-2007, nearly 10 months after the date of occurrence. This application, which was heard by the learned Chief Judicial Magistrate, was rejected vide order dated 29-7-2008. The learned Magistrate expressed the opinion

that since Crime Case No. 145 of 2007 had already been registered, as noticed above, there was no propriety to register an FIR again.

7.11 .....As such, there was no legal bar in this case to get the first information report registered on the basis of the application moved by the applicant revisionist under Section 156(3) CrPC and its investigation by the police, because all the allegations made in the said application and in the FIR registered at Case Crime No. 145 of 2007 are not the same.

7.14. On the plain construction of the language and scheme of Sections 154, 156 and 190 of the Code, it cannot be construed or suggested that there can be more than one FIR about an occurrence. However, the opening words of Section 154 suggest that every information relating to commission of a cognizable offence shall be reduced into writing by the officer-in-charge of a police station. This implies that there has to be the first information report about an incident which constitutes a cognizable offence. The purpose of registering an FIR is to set the machinery of criminal investigation into motion, which culminates with filing of the police report in terms of Section 173(2) of the Code. It will, thus, be appropriate to follow the settled principle that there cannot be two FIRs registered for the same offence.

It is further held that however, where the incident is separate; offences are similar or different, or even where the subsequent crime is of such magnitude that it does not fall within the ambit and scope of the FIR recorded first, then a second FIR could be registered. The most important aspect is to examine the inbuilt safeguards provided by the legislature in the very language of Section 154 of the Code. These safeguards can be safely deduced from the principle akin to double jeopardy, rule of fair investigation and further to prevent abuse of power by the investigating authority of the police. Therefore, second FIR for the same incident cannot be registered. Of course, the investigating agency has no determinative right. It is only a right to investigate in accordance with the provisions of the Code.

The filing of report upon completion of investigation, either for cancellation or alleging commission of an offence, is a matter which once filed before the court of competent jurisdiction attains a kind of finality as far as police is concerned, may be in a given case, subject to the right of further investigation but wherever the investigation has been completed and a person is found to be prima facie guilty of committing an offence or otherwise, re-examination by the investigating agency on its own should not be permitted merely by registering another FIR with regard to the same offence. If such protection is not given to a suspect, then possibility of abuse of investigating powers by the police cannot be ruled out. It is with this intention in mind that such interpretation should be given to Section 154 of the Code, as it would not only further the object of law but even that of just and fair investigation. More so, in the backdrop of the settled canons of criminal jurisprudence, reinvestigation or de novo investigation is beyond the competence of not only the investigating agency but even that of the learned Magistrate.

33. Hon'ble Supreme Court has futher observed that While examining the abovestated principles in conjunction with the scheme of the Code, particularly Sections 154 and 156(3) of the Code, it is clear that the law does not contemplate grant of any personal hearing to a suspect who attains the status

of an accused only when a case is registered for committing a particular offence or the report under Section 173 of the Code is filed terming the suspect an accused that his rights are affected in terms of the Code. Absence of specific provision requiring grant of hearing to a suspect and the fact that the very purpose and object of fair investigation is bound to be adversely affected if hearing is insisted upon at that stage, clearly supports the view that hearing is not any right of any suspect at that stage.

34. Even in the cases where report under Section 173(2) of the Code is filed in the court and investigation records the name of a person in column (2), or even does not name the person as an accused at all, the court in exercise of its powers vested under Section 319 can summon the person as an accused and even at that stage of summoning, no hearing is contemplated under the law.

35. Of course, situation will be different where the complaint or an application is directed against a particular person for specific offence and the court under Section 156 dismisses such an application. In that case, the higher court may have to grant hearing to the suspect before it directs registration of a case against the suspect for a specific offence. We must hasten to clarify that there is no absolute indefeasible right vested in a suspect and this would have to be examined in the facts and circumstances of a given case. But one aspect is clear that at the stage of registration of a FIR or passing a direction under Section 156(3), the law does not contemplate grant of any hearing to a suspect.

Power of the Magistrate under Section 156(3) Cr.P.C.

37. Investigation into commission of a crime can be commenced by two different modes: first, where the police officer registers an FIR in relation to commission of a cognizable offence and commences investigation in terms of Chapter XII of the Code; the other is when a Magistrate competent to take cognizance in terms of Section 190 may order an investigation into commission of a crime as per the provisions of that Chapter XIV. Section 156 primarily deals with the powers of a police officer to investigate a cognizable case. While dealing with the application or passing an order under Section 156(3), the Magistrate does not take cognizance of an offence. When the Magistrate had applied his mind only for ordering an investigation under Section 156(3) of the Code or issued a warrant for the said purpose, he is not said to have taken cognizance. It is an order in the nature of a pre-emptory reminder or intimation to the police to exercise its primary duty and power of investigation in terms of Section 151 of the Code. Such an investigation embraces the continuity of the process which begins with collection of evidence under Section 156 and ends with the final report either under Section 159 or submission of charge-sheet under Section 173 of the Code. (Refer to Mona Panwar v. High Court of Judicature of Allahabad [(2011) 3 SCC 496 : (2011) 1 SCC (Cri) 1181]. In Dilawar Singh v. State of Delhi [(2007) 12 SCC 641 : (2008) 3 SCC (Cri) 330 : (2007) 9 SCR 695] , this Court as well stated the principle that investigation beginning in furtherance of an order under Section 156(3) is not anyway different from the kind of investigation commenced in terms of Section 156(1). They both terminate with filing of a report under Section 173 of the Code. The Court signified the point that when a Magistrate orders investigation under Chapter XII he does so before taking cognizance of an offence. The Court in para 18 of the judgment held as under:

> 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 complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.
>
> 43..... This Court in the case of Mohan Baitha v.State of Bihar, (2001) 4 SCC 340, held that the expression 'same transaction' from its very nature is incapable of exact definition
>
> 44. It is not possible to enunciate any formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. Such things are to be gathered from the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action, commonality of purpose or design.

In the case of Lalita Kumari v. State of U.P.,reported as (2012) 4 SCC 1, Hon'ble Apex Court has held as under:

> "94.We deem it appropriate to give a brief ratio of these cases."

94.1. In the case of State of Haryana vs. Bhajan Lal reported as 1992 SCC(Cri.) 426, this Court observed as under(SCC p.355 para 33):

> "33. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information."

94.2. In Ramesh Kumari vs. State (NCT of Delhi) reported as (2006) 2 SCC 677:(SCC p. 681, para 5) "5. ... the provision of Section 154 of the Code is mandatory and the officer concerned is duty-bound to register the case on the basis of such an information disclosing cognizable offence."

94.3. In Parkash Singh Badal vs, State of Punjab reported as (2007) 1 SCC 1 this Court observed as under: (SCC p. 41, para 68) "68. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information."

94.4 In Aleeque Padamsee vs. Union of India reported as (2007) 6 SCC 171 this Court observed as under: (SCC p. 175, para 7) "7. ... The correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to their notice show that cognizable offence has been made out."

95.There is another set of cases where this Court has taken a contrary view.

95.1. In Rajinder Singh Katoch vs. Chandigarh Admin., reported as (2007) 10 SCC 69 : this Court observed as under: (SCC p. 71, para 11) "11. We are not oblivious to the decision of this Court in Ramesh Kumari v. State (NCT of Delhi) [(2006) 2 SCC 677 : (2006) 1 SCC (Cri) 678] wherein such a statutory duty has been found in the police officer. But, as indicated hereinbefore, in an appropriate case, the police officers also have a duty to make a preliminary enquiry so as to find out as to whether allegations made had any substance or not."

95.2 In State of u.p vs. Bhagwant Kishore Joshi reported as AIR 1964 SC 221: Mudholkar, J. in his concurring judgment has observed as under: (AIR p. 227, para 18) "18. ... I am of opinion that it is open to a police officer to make preliminary enquiries before registering an offence and making a full-scale investigation into it."

95.3. In P. Sirajuddin vs, State of Madras reported as (1970) 1 SCC 595, this Court quoted the observations of the High Court as under: (SCC p. 600, para 12) "(a) "substantial information and evidence had been gathered before the so-called first information report was registered';"

> 95.4. In Sevi and Another vs, State of Tamilbadu reported as 1981 Supp SCC 43, this Court observed as under: (SCC p. 44, para 3) "3. ... If he was not satisfied with the information given by PW 10 that any cognizable offence had been committed he was quite right in making an entry in the general diary and proceeding to the village to verify the information without registering any FIR."

96. It is quite evident from the ratio laid down in the aforementioned cases that different Benches of this Court have taken divergent views in different cases. In this case also after this Court's notice, the Union of India, the States and the Union Territories have also taken or expressed divergent views about the interpretation of Section 154 CrPC.

97. We have carefully analysed various judgments delivered by this Court in the last several decades. We clearly discern divergent judicial opinions of this Court on the main issue: whether under Section 154 CrPC, a police officer is bound to register an FIR when a cognizable offence is made out or he (police officer) has an option, discretion or latitude of conducting some kind of preliminary

enquiry before registering the FIR.

98. The learned counsel appearing for the Union of India and different States have expressed totally divergent views even before this Court. This Court also carved out a special category in the case of medical doctors in the aforementioned cases of Santosh Kumar [(2006) 6 SCC 1 : (2006) 3 SCC (Cri) 1] and Suresh Gupta [(2004) 6 SCC 422 : 2004 SCC (Cri) 1785] where preliminary enquiry had been postulated before registering an FIR. Some counsel also submitted that the CBI Manual also envisages some kind of preliminary enquiry before registering the FIR.

99. The issue which has arisen for consideration in these cases is of great public importance. In view of the divergent opinions in a large number of cases decided by this Court, it has become extremely important to have a clear enunciation of law and adjudication by a larger Bench of this Court for the benefit of all concerned--the courts, the investigating agencies and the citizens.

The Constitutional Bench of Supreme Court held in the case of Lalita Kumari v. Govt. of U.P., (2014) 2 SCC 1 has observed as follows-

115. Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint.

118. Similarly, in CBI v. Tapan Kumar Singh, (2003) 6 SCC 175 : 2003 SCC (Cri) 1305 , this Court has validated a preliminary inquiry prior to registering an FIR only on the ground that at the time the first information is received, the same does not disclose a cognizable offence.

119. Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.

Conclusion/Directions

120. In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7.While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

In the case of Priyanka Srivastava v. State of U.P., reported as (2015) 6 SCC 287, Hon'ble Supreme Court held as under:

> 1- The present appeal projects and frescoes a scenario which is not only disturbing but also has the potentiality to create a stir compelling one to ponder in a perturbed state how some unscrupulous, unprincipled and deviant litigants can ingeniously and innovatively design in a nonchalant manner to knock at the doors of the court, as if, it is a laboratory where multifarious experiments can take place and such skilful persons can adroitly abuse the process of the court at their own will and desire by painting a canvas of agony by assiduous assertions made in the application though the real intention is to harass the statutory authorities, without any remote remorse, with the inventive design primarily to create a mental pressure on the said officials as individuals, for they would not like to be dragged to a court of law to face in criminal cases, and further pressurise in such a fashion so that financial institution which they represent would ultimately be constrained to accept the request for "one-time settlement" with the fond hope that the obstinate defaulters who had borrowed money from it would withdraw the cases instituted against them. The facts, as we proceed to adumbrate, would graphically reveal how such persons, pretentiously aggrieved but potentially dangerous, adopt the self-convincing mastery methods to achieve so. That is the sad and unfortunate factual score forming the fulcrum of the case at hand, and, we painfully recount.
>
> 3. .....it is further observed that the respondent 3, possibly nurturing the idea of self-centric Solomon's wisdom, filed Criminal Complaint Case No. 1058 of 2008, under Section 200 CrPC against V.N. Sahay, Sandesh Tiwari and V.K. Khanna, the then Vice-President, Assistant President and the Managing Director, respectively for offences punishable under Sections 163, 193 and 506 of the Penal Code, 1860 (IPC). It was alleged in the application that the said accused persons had intentionally taken steps to cause injury to him. The learned Magistrate vide order dated 4-10-2008, dismissed the criminal complaint and declined to take cognizance after recording the statement of the complainant under Section 200 CrPC and examining the witnesses under Section 202 CrPC.

5..... The order passed against the said accused persons at that time was an adverse order inasmuch as the matter was remitted. It was incumbent to hear the respondents though they had not become accused persons. A three-Judge Bench in Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel [(2012) 10 SCC 517 : (2013) 1 SCC (Cri) 218] has opined that in a case arising out of a complaint petition, when it travels to the superior court and an adverse order is passed, an opportunity of hearing has to be given. The relevant passages are reproduced hereunder: (SCC pp. 540-41 & 544, paras 46, 48 & 53) 6.46. ..... If the Magistrate finds that there is no sufficient ground for proceeding with the complaint and dismisses the complaint under Section 203 of the Code, the question is whether a person accused of crime in the complaint can claim right of hearing in a revision application preferred by the complainant against the order of the dismissal of the complaint. Parliament being alive to the legal position that the accused/suspects are not entitled to be heard at any stage of the proceedings until issuance of process under Section 204, yet in Section 401(2) of the Code provided that no order in exercise of the power of the revision shall be made by the Sessions Judge or the High Court, as the case may be, to the prejudice of the accused or the other person unless he had an opportunity of being heard either personally or by pleader in his own defence.

6.48. .....the dismissal of complaint by the Magistrate under Section 203 of the Code either at the stage of Section 200 itself or on completion of inquiry by the Magistrate under Section 202 or on receipt of the report from the police or from any person to whom the direction was issued by the Magistrate to investigate into the allegations in the complaint, the effect of such dismissal is termination of complaint proceedings. On a plain reading of sub-section (2) of Section 401, it cannot be said that the person against whom the allegations of having committed the offence have been made in the complaint and the complaint has been dismissed by the Magistrate under Section 203, has no right to be heard because no process has been issued. The dismissal of complaint by the Magistrate under Section 203--although it is at preliminary stage--nevertheless results in termination of proceedings in a complaint against the persons who are alleged to have committed the crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or the Sessions Judge, by virtue of Section 401(2) of the Code, the suspects get the right of hearing before the Revisional Court although such order was passed without their participation. The right given to "accused' or "the other person' under Section 401(2) of being heard before the Revisional Court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Sections 200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of the complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of the express provision contained in Section 401(2) of the Code. The stage is not important whether it is pre-process stage or post-process stage.

> 6.53. .....In other word, where the complaint has been dismissed by the Magistrate under Section 203, upon challenge to the legality of the said order being laid by the complainant in a revision petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition. This is a plain requirement of Section 401(2) of the Code. If the Revisional Court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in the complaint to have committed the crime have, however, no right to participate in the proceedings nor are they entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process."
>
> 14. The labyrinth maladroitly created by Respondent 3 does not end here. It appears that he had the indefatigable spirit to indulge himself in the abuse of the process of the court. Respondent 3 had filed an application under Section 156(3) CrPC before the learned Additional Chief Judicial Magistrate on 30-10-2011, against the present appellants, who are the Vice-President and the valuer respectively. In the body of the petition, as we find in Paras 19 and 20, it has been stated thus:
>
> "That the aforesaid case was referred to the Deputy Inspector General of Police, Varanasi through speed post but no proceeding had been initiated till today in that regard.
>
> That the aforesaid act done by the aforesaid accused prima facie comes in the ambit of Sections 465, 467, 471, 386, 504, 34 and 120-B IPC and in this way cognizable offence is made out and proved well."

15. ..... "It has been stated clearly in the application by the applicant that it is the statement of the applicant that he had already given 3 post-dated cheques to the financial bank for payment and despite the availability of the post-dated cheques in the financial society, even a single share in the loan account has not been got paid. The opposite parties deliberately due to conspiracy and prejudice against applicant have not deposited previously mentioned post-dated cheques for payment and these people are doing a conspiracy to grab the valuable property of the applicant. Under a criminal conspiracy, illegally and on false and fabricated grounds a petition has been filed before the District Collector (Finance and Revenue), Varanasi, which comes under the ambit of cognizable offence. Keeping in view the facts of the case, commission of cognizable offence appears to be made out and it shall be justifiable to get done the investigation of the same by the police."

Hon'ble Supreme Court has futher observed as follows:-

> 19. We have narrated the facts in detail as the present case, as we find, exemplifies in enormous magnitude to take recourse to Section 156(3) CrPC, as if, it is a routine procedure. That apart, the proceedings initiated and the action taken by the authorities under the Sarfaesi Act are assailable under the said Act before the higher

forum and if, a borrower is allowed to take recourse to criminal law in the manner it has been taken, it needs no special emphasis to state, has the inherent potentiality to affect the marrows of economic health of the nation. It is clearly noticeable that the statutory remedies have cleverly been bypassed and prosecution route has been undertaken for instilling fear amongst the individual authorities compelling them to concede to the request for one-time settlement which the financial institution possibly might not have acceded. That apart, despite agreeing for withdrawal of the complaint, no steps were taken in that regard at least to show the bona fides. On the contrary, there is a contest with a perverse sadistic attitude. Whether the complainant could have withdrawn the prosecution or not, is another matter. Fact remains, no efforts were made.

20. The learned Magistrate, as we find, while exercising the power under Section 156(3) CrPC has narrated the allegations and, thereafter, without any application of mind, has passed an order to register an FIR for the offences mentioned in the application. The duty cast on the learned Magistrate, while exercising power under Section 156(3) CrPC, cannot be marginalised. To understand the real purport of the same, we think it apt to reproduce the said provision:

"156.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 abovementioned."

21.Dealing with the nature of power exercised by the Magistrate under Section 156(3) CrPC, a three-Judge Bench in Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy [(1976) 3 SCC 252 : 1976 SCC (Cri) 380] , had to express thus: (SCC p. 258, para 17) "17. ... 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). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173."

22. In Anil Kumar v. M.K. Aiyappa [(2013) 10 SCC 705 : (2014) 1 SCC (Cri) 35] , the two-Judge Bench had to say this: (SCC p. 711, para 11) "11. The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed [Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held

that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation."

23. In Dilawar Singh v. State of Delhi [(2007) 12 SCC 641 : (2008) 3 SCC (Cri) 330] , this Court ruled thus: (SCC p. 647, para 18) "18. ...''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 complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.'

24. In CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd. [(2005) 7 SCC 467 : 2005 SCC (Cri) 1697] , the Court while dealing with the power of the Magistrate taking cognizance of the offences, has opined that having considered the complaint, the Magistrate may consider it appropriate to send the complaint to the police for investigation under Section 156(3) of the Code of Criminal Procedure. And again: (Madhao v. State of Maharashtra [Madhao v. State of Maharashtra, (2013) 5 SCC 615 : (2013) 4 SCC (Cri) 141] , SCC pp. 620-21, para 18) "18. When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The Magistrate has discretion 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 itself. As said earlier, 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). However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156(3)."

25. Recently, in Ramdev Food Products (P) Ltd. v. State of Gujarat [(2015) 6 SCC 439] , while dealing with the exercise of power under Section 156(3) CrPC by the learned Magistrate, a three-Judge Bench has held that: (SCC p. 456, para 22)"

> 22.1. The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When 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, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued.
>
> 22.2. The cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed'."

In case of Lalita Kumari Vs. State of U.P. reported as (2014) 2 SCC 1, the Hon'ble Supreme Court held as under:(SCC pp.35-36, 41, 58-59 & 61 paras 49, 72, 111 & 115, 120)

111. .....The Code gives to the police to close a matter both before and after investigation. A police officer can foreclose an FIR before an investigation under Section 157 of the Code, if it appears to him that there is no sufficient ground to investigate when he has "reason to suspect the commission of an offence". Therefore, the requirements of launching an investigation under Section 157 of the Code are higher than the requirement under Section 154 of the Code. The police officer can also, in a given case, investigate the matter and then file a final report under Section 173 of the Code seeking closure of the matter. Therefore, the police is not liable to launch an investigation in every FIR which is mandatorily registered on receiving information relating to commission of a cognizable offence.

xxx xxx xxx xxx

115. Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crims with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint."

120.6.....

e) Cases where there is abnormal delay/ laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry"

We have referred to the aforesaid pronouncement for the purpose that on certain circumstances the police is also required to hold a preliminary enquiry whether any cognizable offence is made out or not.

Hon'ble Supreme Court has further held that:

27. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order.

29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same.

30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications 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.

31. We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with

> law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.

Direction has been given by the Hon'ble Supreme Court in paragraph 35 as follows-

35. A copy of the order passed by us be sent to the learned Chief Justices of all the High Courts by the Registry of this Court so that the High Courts would circulate the same amongst the learned Sessions Judges who, in turn, shall circulate it among the learned Magistrates so that they can remain more vigilant and diligent while exercising the power under Section 156(3) CrPC.

CASES WHICH IS DECIDED BY ALLAHABAD HIGH COURT Ram Babu Gupta v. State of U.P., 2001 SCC OnLine All 264 (decided on April 27,2001)(full bench of High Court of Judicature at Allahabad) 15-"The position is thus clear. 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 First Information Report. There is nothing illegal in doing so. After all registration of an First Information Report 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 First Information Report should be registered, it is the duty of the officer-in-charge of the police station to register the First Information Report 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.

18.It is futher held that Coming to the second question noted above it is to be at once stated that a provision empowering a court to act in a particular manner and a provision creating a right for an aggrieved person to approach a Court or authority, must be understood distinctively and should not be mixed up. While Sections 154, 155 sub-section (1) and (2) of 156, Cr.P.C. confer right on an aggrieved person to reach the police, 156(3) empowers a Magistrate to act in a particular manner in a given situation. Therefore, it is not possible to hold that where a bare application is moved before Court only praying for exercise of powers under Section 156(3) Cr.P.C., it will remain an application only and would not be in the nature of a complaint. It has been noted above that the Magistrate has to always apply his mind on the allegations in the complaint where he may use his powers under Section 156(3) Cr.P.C. In this connection it may be immediately added that where in an application, a complainant states facts which constitute cognizable offence but makes a defective prayer, such an application will not cease to be a complaint nor can the Magistrate refuse to treat it as a complaint

even though there be no prayer seeking trial of the known or unknown accused. The Magistrate has to deal with such facts as constitute cognizable offence and for all practical purposes even such an application would be a complaint.

In paragraph 45, Hon'ble Full Bench has also held that-

45. It is clear from the scheme of Chapter XII of the Code that it is obligatory upon the police to investigate cognizable offence and book the offender, if any. Therefore where the police fails in its duty to register and investigate a cognizable offence, the aggrieved person may complain to the concerned Magistrate. Where the Magistrate receives a complaint or an application which otherwise fulfils the requirements of a complaint--envisaged by Section 2(d) of Cr.P.C. and the facts alleged therein disclose commission of an offence, he is not always bound to take cognizance. This is clear from the use of the words "may take cognizance' which in the context in which they occur in Section 190 of the Code cannot be equated with "must take cognizance'. The word "may' gives a discretion to the Magistrate in the matter. Two courses are open to him. He may either take cognizance under Section 190 or may forward the complaint to the police under Section 156(3) Cr.P.C. for investigation. Once he takes cognizance he is required to embark upon the procedure embodied in Chapter XV. On the other hand, if on a reading of complaint he finds that the allegations therein clearly disclose commission of a cognizable offence and forwarding of complaint under Section 156(3) Cr.P.C. to the police for investigation will be conducive to justice and valuable time of Magistrate will be saved in inquiring into the matter which was the primary duty of police to investigate, he will be justified in adopting that course as an alternative to take cognizance of the offence himself.

An order under Section 156(3) Cr.P.C. is in the nature of a reminder or intimation to the police to exercise their full powers of investigation under Section 156(1) Cr.P.C. such an investigation begins with the collection of evidence and ends with a report or charge-sheet under Section 173. It is obvious that power to order 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 power under Section 156(3) is exercisable at a pre-cognizance stage while the other at post-cognizance stage. Once the Magistrate has taken cognizance of the offence, it is not within his competence to revert back to pre-cognizance stage and invoke Section 156(3) Cr.P.C. A great care is, therefore, to be taken by the Magistrate while deciding the course to be adopted. That discretion has to be exercised cautiously with application of judicial mind and not in a routine and mechanical manner.

Prem Narain Gupta v. State of U.P., 1997 SCC OnLine All 618 decided on September 4,1997.

Criminal Procedure Code,1973-section 156(3)-power under- Magistrate may direct the police to register and investigate a case- If a congnizable offence is disclosed- allegation thus made must be specific and not general in nature- prior to direction, no enquiry report is needed.

Paragraph no. 7 Under section 156(3) Cr.P.C., a magistrate may direct the police to register and investigate a case if a cognizable offence is disclosed from the averment made in the application. The

allegation must be spacific and not in general in nature.

In the case of Bundhu Shah Vs.1st A.D.J. Siddhartha Nagar and others, reported as (1997) 35 ACC 580- In the case, Hon'ble Allahabad High Court held that under section 156(3) Cr.P.C., a magistrate may direct the police to register and investigate a case if a cognizable offence is disclosed from the averment made in the application. The allegation must be spacific and not in general in nature.

Prem Wati v. State of U.P., 1998 SCC OnLine All 416:

> 3. The point raised regarding competence of the complaint is, however, worth consideration. It was contended that when an application is filed for action under Section 156(3) Cr. P.C. it was at best a complaint and when the Magistrate directed submission of a police report, it could legally be interpreted that an investigation as thought of under Section 202 Cr. P.C. was really directed. When the Magistrate declined to take action upon receipt of the police report, the order should be read as one under Section 203 Cr. P.C. and, as such, the second complaint was barred. The contention of the learned counsel that the application for action under Section 156(3) must be read as a complaint is not acceptable because the simple prayer therein was not for proceeding under Section 200 Cr. P.C. and, in fact, the court did not proceed under Section 200 as he did not examine the complainant at all. The direction for submission of a police report cannot, therefore, be read as directing an investigation under Section 202 Cr. P.C. and, in fact, the order of the Magistrate makes it clear that he had declined to take action under Section 156(3) only and there is no reference to his refusal to summon the accused persons or dismissing the complaint.

Gulab Chand Upadhyaya v. State of U.P., 2002 SCC OnLine All 1221 :

> 1. The writ petitioner moved an application dated 23-8-2000 under Section 156(3) Cr. P.C. before the Judicial Magistrate alleging that the respondents 4 to 6 herein had threatened and assaulted him, his wife and his brother, and had also damaged his property. It was alleged that the police had refused to register the FIR. It was prayed that a direction be issued by the Magistrate to the police to register the FIR and investigate the case.
>
> 2. The Magistrate by his order dated 3-1-2001 directed that the application under Section 156(3) be registered in the Court as a criminal complaint and fixed 5-1-2001 for recording the statement of the complainant under Section 200 Cr. P.C.
>
> 3. Instead of giving evidence, as required by the Magistrate, the petitioner preferred a criminal revision against the order dated 3-1-2001, which has been dismissed by the District Judge by judgment dated 11-5-2001.
>
> 4. Thus this writ petition under Article 226 of the Constitution of India has been filed with the submission that the Magistrate was not right in directing the procedure of a

complaint case to be adopted, and that he should have directed the police to register and investigate the case.

SECTION156(3) Cr.P.C-

5. Although it may not be strictly necessary for a complainant to approach the police before filing an application under Section 156(3) Cr. P.C. (see para 7 of the Constitution Bench decision of the Supreme Court reported in (1984) 2 SCC 500 : AIR 1984 SC 718, A.R. Antulay v. R.S. Nayak), but as a matter of convenience and expedition, normally every genuine complainant first attempts to lodge an FIR at the police station. Thus most applications invoking Section 156(3) contain the averment that the police have (wrongly) refused to register the FIR of the cognizable offence. Section 154(1) makes it obligatory for officers in charge of police stations to register FIRs of cognizable offences. If the officer in charge of police station refused to do so the complainant has the remedy under Section 154(3) Cr. P.C. to send the substance of the FIR to the Superintendent of Police by post who has the power to investigate the offence himself or depute a subordinate officer to investigate. Experience shows that very few complainants avail of this right under Section 154(3) Cr. P.C. apparently due to lack of knowledge.

6. If even the Superintendent of Police also fails to act, in such a situation a complainant, if he wishes to pursue the matter further, adopts one of the following two alternatives. Either he seeks a direction under Section 156(3) Cr. P.C. or he files complaint under Chapter XV Cr. P.C. before the Magistrate.

7. The causes for non-registration of FIR at police stations in cognizable case can vary widely. The overworked police may be indifferent to the common man's woes, the accused may be influential, registering of FIRs may be refused to keep the crime statistics of that police station low. Also, in some cases the police may be aware of the true state of affairs and may refuse to register false or pre-emptive FIRs.

8. In some of such cases the complainants may genuinely require the assistance of the Court by way of a direction to the police to register and investiage the case.

9. It is also possible that in some cases the complainant, with a poor or false case, knows that there is little or no possibility of securing a conviction. Therefore instead of filing a criminal complaint under Chapter XV of Cr. P.C. the complainant seeks the direction under Section 156(3) so that the accused may be arrested by the police and thereby harassed and humiliated.

SUGGESTION TO MAGISTRATES

11. Of late a manifold increase in the applications under Section 156(3) Cr. P.C. can be noticed. And almost all orders for investigation passed under that section are challenged by the accused by way of revisions or applications under Section 482 Cr. P.C. or sometimes even writ petitions.

12. In the decision dated 6-12-2001 in Criminal Misc. Application No. 6193 of 2001 "Masuriyadih v. Addl. District Judge & others', (reported in 2002 Current Bail Cases 36) a single Judge of this Court suggested as follows:

> "Orders under Section 156(3) merely mean that an alleged cognizable offence should be investigated. It should not normally be open to the accused to say before the revisional or High Court that the allegation about a cognizable offence should not even be investigated. Thus interference by superior Courts with an order of a Magistrate U/s 156(3) should normally be confined to cases in which there are some very exceptional circumstances.
>
> However, the major problem faced by the accused persons in such cases is the apprehension of arrest pending investigation by the police, and more importantly the apprehension about misuse by the police of this power of arrest. It is this apprehension which is causing the accused to file revisions and thereafter applications U/s 482 Cr. P.C. or writ petitions. Much of this litigation in superior Courts can be curtailed if every Magistrate while passing an order under Section 156(3) Cr. P.C. also examines, having regard to the peculiar facts and circumstances of each case, the advisability of including in his order an incidental direction as to whether the power of arrest by the police (U/s 41 Cr. P.C. ?) for the purpose of investigation should be controlled by saying that the police will not make arrest for the purpose of investigation without first obtaining a warrant for the arrest from the Magistrate,
>
> 17. Apart from the reasons given above, it is also clear that under Section 156(3) Cr. P.C. the Magistrate need not allow the application of the complainant in toto. For example if there are 5 offences alleged, it is legally permissible for the Magistrate to order investigation into say 3 offences only, holding that the other offences are not made out. Again if there are say 5 accused, the Magistrate can validly direct registration and investigation against 3 only saying that no offence is made out against the remaining 2 accused. Thus a limited investigation can also be ordered by the Magistrate. Therefore he can also limit the investigation by controlling the power of arrest which is a part of investigation. Lastly, keeping in view the circumstances obtaining in the present times, and the abolishing of anticipatory bail in Uttar Pradesh, the advantages of taking this view far outweigh the disadvantages, and will also reduce the burden on higher Courts. Therefore it was rightly concluded in Masuriyadin's case (supra) that the restriction could be placed by the Magistrate upon the power of arrest of police.
>
> A FURTHER QUESTION
>
> 19. However there is no logical reason why the Magistrate cannot himself make a brief inquiry (akin to Section 159 Cr. P.C.) to satisfy himself about the allegations before ordering registration and investigation of the offence. There appears to be no

reason why the trained judicial mind of the Magistrate should not be put to use for curbing frivolous applications under Section 156(3) at the very threshold. However at this stage the Magistrate is not holding trial. Therefore, if he finds the story of the complainant unconvincing, the Magistrate may examine the complainant and/or one or two key witnesses or ask for their affidavits, or ask for a copy of the injury report, or make such other inquiry as the circumstances of the case may require, to lend assurance to the case of the complainant before issuing a direction under Section 156(3) Cr. P.C. GUIDE TO DISCRETION OF MAGISTRATE

21. In these circumstances, the question arises that when a Magistrate is approached by a complainant with an application praying for a direction to the police under Section 156(3) to register and investigate an alleged cognizable offence, why should he (A) grant the relief of registration of a case and its investigation by the police under Section 156(3) Cr. P.C. and when should he (B) treat the application as a complaint and follow the procedure of Chapter XV of Cr. P.C.

22. The scheme of Cr. P.C. and the prevailing circumstances require that the option to direct the registration of the case and its investigation by the police should be exercised where some "investigation" is required, which is of a nature that is not possible for the private complainant, and which can only be done by the police upon whom statute has conferred the powers essential for investigation, for example (1) where the full details of the accused are not known to the complainant and the same can be determined only as a result of investigation, or (2) where recovery of abducted person or stolen property is required to be made by conducting raids or searches of suspected places or persons, or (3) where for the purpose of launching a successful prosecution of the accused evidence is required to be collected and preserved. To illustrate by example cases may be visualised where for production before Court at the trial (a) sample of blood soaked soil is to be taken and kept sealed for fixing the place of incident; or (b) recovery of case property is to be made and kept sealed; or (c) recovery under Section 27 of the Evidence Act; or (d) preparation of inquest report; or (e) witnesses are not known and have to be found out or discovered through the process of investigation.

23. But where the complainant is in possession of the complete details of all the accused as well as the witnesses who have to be examined and neither recovery is needed nor any such material evidence is required to be collected which can be done only by the police, no "investigation" would normally be required and the procedure of complaint case should be adopted. The facts of the present case given below serve as an example. It must be kept in mind that adding unnecessary cases to the diary of the police would impair their efficiency in respect of cases genuinely requiring investigation. Besides even after taking cognizance and proceeding under Chapter XV the Magistrate can still under Section 202(1) Cr. P.C. order investigation, even thought of a limited nature (see para 7 of JT (2001) 2 (SC) 81 : ((2001) 2 SCC 628 : AIR 2001 SC 571) In the case of Chandrika Singh v. State of U.P., reported as 2007

SCC OnLine All 1022, the Allahabad High Court has held as under-

17. In view of this observations of Hon'ble Apex Court on receipt of an application u/S. 156(3) Cr.P.C. the Magistrate may pass an order out right for taking cognizance in the offencc and then proceed in view of the procedure laid down in Chapter XV Cr.P.C. But if the Magistrate is not intending to take cognizance of the offence then he may pass an order for register and investigation of the offence by the police. On receipt of an application u/S. 156(3) Cr.P.C. both the options are open to the Magistrate and if the Magistrate in its discretion adopted any of the course then it cannot be said that the Magistrate has illegally applied his discretion.

24. In Vinay Pandey v. State of U.P. Reported in U.P. Cr.R. Page 670 (sic) the same law has been followed and it has also been held that in an application u/S. 156(3) Cr.P.C. it is not mandatory for the Magistrate to allow every application, Learned Counsel for the revisionist also cited, (1980) 4 SCC 631 : AIR 1980 SC Page 1883 H.S. Bains v. State. It has been held by Hon'ble the Apex Court that "Criminal P.C. (2 of 1974), Ss. 156(3), 173(1), 190(1)(b), 200, 203 and 204 -- Complaint case -- Magistrate directing investigation u/S. 156(3) -- Police Report stating that no case was made out -- Still Magistrate can take cognizance and issue process." This judgment also does not lay down that in application u/S. 156(3) Cr.P.C. the Magistrate is bound to pass an order for register the case and investigation. In this case the police after investigation submitted a report to the effect that no case is made out. Hon'ble Apex Court held that in such circumstances also the Magistrate can take cognizance and issue process as provided under Chapter XV Cr.P.C.

It will also be material to decide that whether an application u/S. 156(3) Cr.P.C. can be treated as a complaint for the purpose of a procedure as provided under Chapter XV or the revisionist is at liberty to allege that if an application u/S. 156(3) is moved then the Magistrate must pass an order for registration of the case and investigation when a cognizable offence is made out and specially when no prayer has been made in the application u/S. 156(3) Cr.P.C. to treat the application as a complaint and it has not been filed in the format of the complaint then the application u/S. 156(3) Cr.P.C. cannot be treated as complaint. I disagree with this position. As has been stated above that an application u/S. 156(3) Cr.P.C. can be treated as a complaint as has been held by Hon'ble Apex Court in Mohd. Yousuf v. Afaq Jahan, (2006 (2) ALJ 8). But in this context another Full Bench decision of this Court is also relevant. The Pull Bench of this court in Ram Babu Gupta v. State of U.P. reported in U.P. Cr.R. at Page 600 (sic): (2001 All LJ 1587) has laid down "Criminal Procedure Code, 1973 -- sections 156(3), 156(2), 156(1), 190 and 202 -- Powers of Court -- The Magistrate may direct the police to register a case and investigate -- Or he may treat the same as a complaint and proceed in matter contemplated in Chapter XV of Code -- He should apply his judicial mind -- Law discussed -- Magistrate if takes cognizance, he proceeds to follow the procedure provided in Chapter XV of Code -- Magistrate may either take cognizance under section 190 or may forward the complaint to police under section 156(3) for investigation."

26. This controversy must come to an end that an application u/S. 156(3) Cr.P.C. can only be treated as an application for passing an order for registration of the case and investigation and cannot be treated as complaint case. The Magistrate is not bound in each and every case to pass an order to register a case and investigate if cognizable offence is made out. The Magistrate is fully competent to

use his judicial discretion in the matter. This is wrong notion that if an application has been moved u/S. 156(3) Cr.P.C. that the only order can be passed for registration in the matter. The Magistrate has got discretion u/S. 190 Cr.P.C. to take the cognizance directly or to pass an order that the police to investigate and then take cognizance on submissions of a report u/S. 173 Cr.P.C. The Magistrate is also expected to act under some guidelines and it should not be let at the arbitrary discretion of the Magistrate to pass an order or not to pass an order to register the case and investigation u/S. 156(3) Cr.P.C. Gulab Chand Upadhyaya v. State of U.P., (2002 All LJ 1225) Hon'ble Single Judge of this court laid down the guidelines for the guidance of Magistrate while deciding the application moved u/S. 156(3) Cr.P.C. and these guidelines cannot be said against any provision of law or check on the judicial discretion of the Magistrate Even Hon'ble Apex Court also held that the Magistrate has got a discretion to pass an order to register the case and investigation u/S. 156(3) Cr.P.C. Or to treat an application as a complaint case.

In the case of Sukhwasi v. State of Uttar Pradesh, reported as 2007 SCC OnLine All 1088, the Allahabad High Court has held as under-

1- The following question, has been referred, for consideration;"Whether the Magistrate is bound to pass an order on each and every application under Section 156(3) Cr.P.C. containing allegations of commission of a cognizable offence for registration of the F.I.R. and its investigation by the police even if those allegations, prima-facie, do not appear to be genuine and do not appeal to reason, or he can exercise judicial discretion in the matter and can pass order for treating it as ''complaint' or to reject it in suitable cases"?

3-...In the case of ''Ram Babu Gupta' (2001 (43) ACC 201) : (2001 All LJ 1587), it was held by the Full Bench of this Court that the Magistrate is supposed to exercise its discretion while acting on an application under Section 156(3) Cr. P.C, and he is not supposed to pass an order in a routine manner, and he has to apply his mind. This naturally means that the Magistrate has an option of refusing for registration of the first information report. This will appear from the following observations made in para-17 of ''supra' Full Bench judgment;

> "In view of the aforesaid discussion on the legal provisions and decisions of the Supreme Court as on date, it is hereby held that on receiving a complaint, the Magistrate has to apply his mind to the allegations in the complaint upon which he may not at once proceed to take cognizance and may order it to go to the police station for being registered and investigated. The Magistrate's order must indicate application ....of mind. If the Magistrate takes cognizance, he proceeds to follow the procedure provided in Chapter-XV of Cr.P.C. The first question stands answered thus."

4. It will further become clear from the following observations made in para-40 of the judgment:

> "While resorting to the first mode in as much as directing the police for investigation he should not pass order in a routine manner. He should apply his judicial mind and on a glimpse of the complaint, if he is prima facie of the view that allegations made

> therein constituted commission of a cognizable offence requiring thorough investigation, he may direct the police to perform their statutory duties as envisaged in law."

That Is the Magistrate still bound to order registration of a First Information Report because the application discloses a cognizable offence? It is obvious that the answer has to be in negative and it cannot, therefore, be said that the Magistrate is bound to order registration of a First Information Report in all cases, where a cognizable offence is disclosed.

12. The next point, which remains for consideration is, the question whether the Magistrate can treat an application under Section 156(3) Cr.P.C. as a complaint?

13. It is clear from the judgment of the Supreme Court in the case Suresh Chandra Jain v. State of Madhya Pradesh, 2001 (42) ACC 459 : ((2001) 2 SCC 628 : AIR 2001 SC 571), that a Magistrate has the authority to treat an application under Section 156(3) Cr.P.C. as a complaint. This will become clear from the reference in the said report to the case of Gopal Das Sindhi v. State of Assam, AIR 1961 SC 986, in which the following observations were made: (Para 7) "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 filing of the complaint. We cannot read the provisions of Section 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 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."

14. It becomes clear from the said underlined portion that the Magistrate has the authority to treat an application under Section 156(3) Cr.P.C. as a complaint. Hon'ble Mr. Justice Vinod Prasad has also referred to the case of Suresh Chand Jain ((2001) 2 SCC 628 : AIR 2001 SC 571), "supra' and has extracted the following portion therefrom in order to take a different view: (para 7):--

> "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."

15. It has been further held by the Apex Court in the same judgment. "But the significant point to be noticed is when a Magistrate orders investigation under Chapter XII he does so before he takes cognizance."

Scope of Section 156 sub-sec. (3). Cr.P.C. 1. Prior to the Supreme Court decision in Chari's case, there was a controversy as to whether the power to direct investigation under s. 156 (3) was confined

to a case under s. 190 (1) (c) i.e., upon his own knowledge or information, but also extended to a case under s. 190 (1) (a0, i.e. when he was move by a complaint. This latter view seems to have been approved by the Supreme Court in Chari's case. In the result, as soon as a petition of compliant is filed, the Magistrate is not bound to take cognizance of the offence but that he may take "action of some other kind, e.g. , ordering investigation under s. 156(3), or issuing a search warrant for the purpose of investigation."

2. The courses open to the Magistrate on receipt of a complaint have been elaborated in a later case of the Supreme Court: Gopal Das Vs. State of Assam AIR 1961 SC 986 and Laxmi Narayan Vs. Narayana (1976) Cri.L.J. 1361 SC S. 190 (1) (a) does not mean that once a complaint is field, the Magistrate is bound to take cognizance if the fact stated in the complaint discloses the commission of an offence. The word 'may' cannot be construed as 'must'. A complaint disclosing a cognizable offence 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 the duty to investigate in cases involving cognizable offences if primarily 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, on receipt of a complaint, without police investigation. But if he does so, then he would have to proceed in the manner provided by Chap XVI of the Code.

3. The character of the subsequent proceedings would depend upon the question whether the magistrate has ordered investigation by the police (s. 202], after examining the complainant on oath under s. 200, or without examining the complaint. There was much confusion on this point, which was removed by the Supreme Court decision in Jamuna Singh's case, according to which-

(a) Whether the Magistrate has taken cognizance of an offence would depend upon the puspose for which he was applied his mind and the step taken by him in pursuance thereof.

(b) When a Magistrate applies his mind for the purpose of applying Chap. XVI, he must be held to have taken cognizance of the offence, e.g. when he examines the compliant on oath because the examination of the complainant contemplated by s. 200 is by a Magistrate taking congnizance of an offence on complaint. Hence, where the Magistrate, after examining the complainant, directs investigation by the Police, the report submitted by the Police on such investigation will fall under ss. 202-203, post. When cognizance had been taken by examining the compliant, there was no scope for cognizance being taken afresh of the same offence, after the receipt of the Police Officer's report. Therefore, the subsequent report by the Police officer, even though it purported to be a charge-sheet, should be treated as merely a consequence of the step the Magistrate has taken under s. 202, and not as a 'Police report' under ss. 156 (3), 190 (1) (b).

(c) But if the Magistrate directs Police investigation, without taking cognizance upon examining the complainant on oath, the report submitted by the Police consequent upon such investigation will fall within s. 156 (3), so as to have the effect of a 'police report' for purposes of s. 190 (1) (b).

Steps which a Magistrate may take after receipt of report of Police investigation, under s. 156.

1. A distinction must be made as between (a) the case where a Magistrate orders investigation by the Police, after taking cognizance upon a complaint, under s. 202 (1), and (b) the case where the Magistrate orders police investigation before taking cognizance upon a complaint, under s. 156 (3).

2. It is this latter contingency which is being dealt with in the present context, namely, where on receipt of complaint, the Magistrate orders Police investigation, without taking cognizance of the offence, upon the complaint. In such a case, the Police after making investigation, will submit a report under s. 173 (1), post. Upon receipt of such Police report, the Magistrate has several courses open to him:

> (a) He may straightaway issue process against the accused, disagreeing with the police report to the effect that there is no sufficient ground for proceeding further. Even though he disagree with the Police report, in this case, he would be taking cognizance under s. 190(1)(b), and then issue process.
>
> (b) Where he disagrees with Police report that no offence has been disclosed, the Magistrate may take cognizance of the offence under s. 190(1)(a), on the basis of the original complaint and proceed to examine the complainant and his witnesses under s. 200 H.S. Bains Vs. State AIR 1980 SC 1883.
>
> (c) He may agree with the Police report that there is no sufficient ground for proceeding further and drop the proceeding.

In the case of Lalita Kumari Vs. Govt. of U.P. & Ors (decided on 12 November, 2013) [2014(2) SCC 1] The Constitutional Bench of Hon'ble Supreme Court has held as above and guidelines have been given to the police officer regarding recording F.I.R. at the police station.

Public Servant In the case of Anil Kumar Vs. M.K. Aiyappa : (2013) 10 SCC 705, Hon'ble Apex Court has observed in para-11 and 21 to 23 as under:

> 11. The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed case [(2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special

Judge which, in our view, has stated no reasons for ordering investigation.

21. The learned Senior Counsel appearing for the appellants raised the contention that the requirement of sanction is only procedural in nature and hence, directory or else Section 19(3) would be rendered otiose. We find it difficult to accept that contention. Sub-section (3) of Section 19 has an object to achieve, which applies in circumstances where a Special Judge has already rendered a finding, sentence or order. In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) CrPC. The above legal position, as already indicated, has been clearly spelt out in Paras Nath Singh [(2009) 6 SCC 372 : (2009) 2 SCC (L&S) 200] and Subramanian Swamy [(2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666] cases.

22. Further, this Court in Army Headquarters v. CBI [(2012) 6 SCC 228 : (2012) 3 SCC (Cri) 88] opined as follows: (SCC p. 261, paras 82-83) "82. Thus, in view of the above, the law on the issue of sanction can be summarised to the effect that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty. In order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him. ...

83. If the law requires sanction, and the court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab initio...."

23. We are of the view that the principles laid down by this Court in the abovereferred judgments squarely apply to the facts of the present case. We, therefore, find no error in the order [M.K. Aiyappa v. State of Karnataka, WP No. 13779 of 2013, order dated 21-5-2013 (KAR)] passed by the High Court. The appeals lack merit and are accordingly dismissed.

In the case of Maksud Saiyed Vs. State of Gujarat: (2008) 5 SCC 668, Hon'ble Apex Court has observed in para 13 as under:

13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if

> given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.

In the case of Subramanian Swamy v. CBI : (2014) 8 SCC 682, a Constitutional Bench of Hon'ble Apex Court has observed in para 87 and 96 to 99 as under:-

> 87. Section 156 CrPC enables any officer in charge of a police station to investigate a cognizable offence. Insofar as non-cognizable offence is concerned, a police officer by virtue of Section 155 CrPC can investigate it after obtaining appropriate order from the Magistrate having power to try such case or commit the case for trial regardless of the status of the officer concerned. The scheme of Section 155 and Section 156 CrPC indicates that the local police may investigate a senior government officer without previous approval of the Central Government. However, CBI cannot do so in view of Section 6-A. This anomaly in fact occurred inCentre for PIL [Centre for PIL v. Union of India, (2011) 4 SCC 1 : (2011) 1 SCC (L&S) 609] . That was a matter in which investigations were conducted by the local police in respect of senior government official without any previous approval and a challan filed in the court of Special Judge dealing with offences under the PC Act, 1988. Dealing with such anomaly in Centre for PIL [Centre for PIL v. Union of India, (2011) 4 SCC 1 : (2011) 1 SCC (L&S) 609] , Madan B. Lokur, J. in Manohar Lal Sharma [Manohar Lal Sharma v. Principal Secy., (2014) 2 SCC 532 : (2014) 4 SCC (Cri) 1] observed: (SCC p. 572, para 87)
>
> 96. Various provisions under different statutes were referred to by Mr L. Nageswara Rao where permission of the Government is required before taking cognizance or for institution of an offence. Section 197 CrPC was also referred to, which provides for protection to Judges and public servants from prosecution except with the previous sanction by the competent authority. It may be immediately stated that there is no similarity between the impugned provision in Section 6-A of the DSPE Act and Section 197 CrPC. Moreover, where challenge is laid to the constitutionality of a legislation on the bedrock or touchstone of classification, it has to be determined in each case by applying well-settled two tests: (i) that classification is founded on intelligible differentia, and (ii) that differentia has a rational relation with the object sought to be achieved by the legislation. Each case has to be examined independently in the context of Article 14 and not by applying any general rule.
>
> 97. A feeble attempt was made by Mr K.V. Viswanathan, learned Additional Solicitor General that Section 6-A must at least be saved for the purposes of Sections 13(1)(d)(ii) and (iii) of the PC Act, 1988. In our opinion, Section 6-A does not satisfy the well-settled tests in the context of Article 14 and is not capable of severance for

the purposes of Sections 13(1)(d)(ii) and (iii).

98. Having considered the impugned provision contained in Section 6-A and for the reasons indicated above, we do not think that it is necessary to consider the other objections challenging the impugned provision in the context of Article 14.

99. In view of our foregoing discussion, we hold that Section 6-A(1), which requires approval of the Central Government to conduct any inquiry or investigation into any offence alleged to have been committed under the PC Act, 1988 where such allegation relates to: (a) the employees of the Central Government of the level of Joint Secretary and above, and (b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, government companies, societies and local authorities owned or controlled by the Government, is invalid and violative of Article 14 of the Constitution. As a necessary corollary, the provision contained in Section 26(c) of Act 45 of 2003 to that extent is also declared invalid.

In the case of Manju Surana v. Sunil Arora: (2018) 5 SCC 557, Hon'ble Apex Court has observed in para 25, 26, 27, 30, 31, 32 and 43 as under:

25. Despite the aforesaid catena of judgments, a different path has been traversed in two judgments of this Court where the offences alleged are under the PC Act read with IPC.

26. In Anil Kumar v. M.K. Aiyappa [Anil Kumar v. M.K. Aiyappa, (2013) 10 SCC 705 : (2014) 1 SCC (Cri) 35] (two-Judge Bench), the Court proceeded to examine whether the Magistrate, while exercising his powers under Section 156(3) CrPC, could act in a mechanical or casual manner and go on with the complaint after getting the report. In that context, a reference was made to an earlier judgment in Maksud Saiyed v. State of Gujarat [Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] case, where it was observed that there was a requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) CrPC. Thereafter the Bench proceeded to draw a conclusion that a Special Judge/Magistrate cannot refer the matter under Section 156(3) CrPC against a public servant without a valid sanction order.

27. The Bench further proceeded to examine whether the order directing investigation under Section 156(3) CrPC would amount to taking cognizance of the offence since a contention was raised that the expression "cognizance" appearing in Section 19(1) of the PC Act would have to be construed as post-cognizance stage and not pre-cognizance stage and therefore, the requirement of sanction does not arise prior to taking cognizance of the offences of the PC Act. Insofar as the expression "cognizance", which appears in Section 197 CrPC was concerned, a reference was made to the judgment in State of U.P. v. Paras Nath Singh [State of U.P. v. Paras Nath Singh, (2009) 6 SCC 372 : (2009) 2 SCC (L&S) 200] . In that case it was

observed that the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 CrPC and so far as the public servant was concerned this was clearly barred by Section 197 CrPC unless the sanction was obtained from the appropriate authority. After referring to certain other judgments on the issue of purport and meaning of the word "cognizance", it was concluded that "cognizance" has a wider connotation and is not merely confined to the stage of taking cognizance of the offence.

30. In L. Narayana Swamy v. State of Karnataka [L. Narayana Swamy v. State of Karnataka, (2016) 9 SCC 598 : (2016) 3 SCC (Cri) 696 : (2016) 2 SCC (L&S) 837] (two-Judge Bench), the judgment in Anil Kumar v. M.K. Aiyappa [Anil Kumar v. M.K. Aiyappa, (2013) 10 SCC 705 : (2014) 1 SCC (Cri) 35] was followed. After discussing various other pronouncements, it was concluded that even while directing an inquiry under Section 156(3) CrPC, the Magistrate applies his judicial mind to the complaint and therefore, it would amount to taking cognizance of the matter.

31. Mr Tushar Mehta, learned Additional Solicitor General sought to canvas the view taken in the last two judgments referred to aforesaid to submit that application of mind was necessary to exercise power under Section 156(3) CrPC and that credibility of information was to be weighed before ordering investigation [Ramdev Food Products (P) Ltd. v. State of Gujarat [Ramdev Food Products (P) Ltd. v. State of Gujarat, (2015) 6 SCC 439 : (2015) 3 SCC (Cri) 192]]. It was, thus, submitted that allegations against a public servant under the PC Act offences are technical in nature and would require a higher evaluation standard and thus the Magistrates ought to apply their mind before ordering investigation against public servant. The consequences of starting investigation under Section 156(3) CrPC, it was submitted, would result in the police registering an FIR (Suresh Chand Jain v. State of M.P. [Suresh Chand Jain v. State of M.P., (2001) 2 SCC 628 : 2001 SCC (Cri) 377] and Mohd. Yousuf v. Afaq Jahan [Mohd. Yousuf v. Afaq Jahan, (2006) 1 SCC 627 : (2006) 1 SCC (Cri) 460]). Thus, a situation may arise where a Magistrate may exercise his power under Section 156(3) CrPC in a routine manner resulting in an FIR being registered against a public servant, who may have no role in the allegation made.

32. We have examined the rival contentions and do find a divergence of opinion, which ought to be settled by a larger Bench. There is no doubt that even at the stage of Section 156(3), while directing an investigation, there has to be an application of mind by the Magistrate. Thus, it may not be an acceptable proposition to contend that there would be some consequences to follow, were the Magistrate to act in a mechanical and mindless manner. That cannot be the test.

43. We have given a thought to the respective pleas of the parties. No doubt the process under Section 156(3) CrPC is only one of investigation. The larger question, of whether any such direction can be issued without prior sanction has been referred to a larger Bench. Were the appellant to succeed and were the matter to go back to

> the Magistrate and the Magistrate after application of mind forms an opinion to direct investigation by the police, it would be always open to the Magistrate to include the name of Respondent 1 if such material is found against him.

On the perusal of the above-mentioned provisions of section 156(3) Cr.P.C. and precedent of Hon'ble Supreme Court and Allahabad High Court. It is well settled proposition of law that the concerned Magistrate has on institution of written complaint regarding commission of cognizable offence has the following two options:-

> (i) At the pre-cognizance stage- he may direct to concerned police station to register F.I.R. on the basis of facts narrated in the complaint if commission of congnizable offence disclosed prima facie and Investigating officer would conduct the investigation. Thus the Magistrate exercises a very limited power under section 156(3) Cr.P.C. and so is it's discretion. It does not travel into the arena of merit of the case, if such case was fit to proceed further.
>
> (ii) At the post cognizance- after taking cognizance, he may adopt procedure of complaint cases provided under Section 200 and 202 Cr.P.C. If the Magistrate is not satisfied with the conclusions arrived at by the Investigating Officer in report submitted under section 173 Cr.P.C. then the Magistrate may take cognizance upon original complaint sent to S.H.O. at pre-cognizance stage and proceed further to examine the complaint under section 200 Cr.P.C. and his witnesses under section 202 Cr.P.C.

Rejection of complaint at the pre-cognizance stage under section 156(3) Cr.P.C. does not debar institution of second regular complaint. It would be post-cognizance stage, if the Magistrate takes cognizance on the original complaint or after rejection at pre-cognizance stage, if second complaint is filed by the complainant. In genuine cases, if averments of the complainant are true and trustworthy or these are found so after preliminary inquiry, then the Magistrate under section 156(3) Cr.P.C. may direct the S.H.O. to register F.I.R. and conduct investigation on the basis of averments of the complaint.

The Magistrate may dismiss the complaint under section 156(3) Cr.P.C. if by way of instituting complaint, defence version is created to absolve the complainant from the case registered earlier or on the basis of allegations made in the complainant, if dispute is purely of civil nature or the Magistrate considers that the complaint is false and frivolous. The Magistrate has to power to test the truth and veracity of the allegations levelled against the proposed accused persons and if there is no substance in the averments of the complainant then at pre-cognizance stage, the complaint may be dismissed under section 156(3) Cr.P.C.

Likewise, in the facts and circumstances of a particular case, Magistrate may take cognizance on the basis of the complaint instituted before him and may adopt the procedure provided under sections 200, 202 of Cr.P.C. and if there is no substance in the prima-facie evidence adduced by the complainant, the complaint may be dismissed under section 203 Cr.P.C.

In the present scenario of the society, several false and frivolous complaints are being filed by the unscrupulous litigants. Therefore heavy duties have been cast upon the concerned Magistrate to exercise above mentioned discretion consciously, expeditiously and judiciously on the basis of the facts and circumstances of each case to ensure that faith of the litigants in the Justice Delivery System of India should be maintained at interest of justice should not be defeated.

10. On the basis of above discussions, this appeal is liable to be dismissed.

11. Dismissed accordingly.

12. The complainant/ appellant may institute regular complaint before the trial court. The learned trial court after taking cognizance on the basis of regular complaint, may proceed according to the procedure provided under Chapter XV in view of the provisions of Section 200 and 202 Cr.P.C. If trial court would found that the incident dated 22.04.2018 was not committed by the opposite parties in discharge of their official duty, then there would be no necessity for obtaining sanction for prosecution. The trial court may not be influenced by the view taken by it, while passing the impugned order dated 13.07.2018 at the pre-cognizance stage. He has to consider the prima facie evidence adduced by the complainant in support of the regular complaint, if instituted before the trial court and may pass orders according to law.

Order Date :- 24.9.2018 Mustaqeem