Supreme Court of India
Kailash Vijayvargiya vs Rajlakshmi Chaudhuri on 4 May, 2023
Author: M.R. Shah
Bench: M.R. Shah, C.T. Ravikumar

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1581 OF 2021

Kailash Vijayvargiya …Appellant

Versus

Rajlakshmi Chaudhuri and others …Respondents

WITH

CRIMINAL APPEAL NO. 1582 OF 2021
CRIMINAL APPEAL NO. 1583 OF 2021

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 01.10.2021 passed by the High Court of Calcutta in Criminal Revision Application No. 92/2021, by which the High Court has Signature Not Verified allowed the said revision application preferred by Digitally signed by R Natarajan Date: 2023.05.04 16:38:36 IST Reason:

respondent no.1 herein – original complainant (victim) and has quashed and set aside order dated 12.11.2020 passed by the learned Chief Judicial Magistrate, Alipore (for short, 'learned CJM') rejecting the petition filed by respondent no.1 herein – original complainant under Section 156(3) of the Code of Criminal Procedure,1973 (Code/Cr.PC) original respondent nos. 2 to 4 (alleged accused) have preferred the present appeals.

2. The facts leading the present appeals in a nutshell are as under:

That respondent no.1 herein – original complainant lodged a complaint under Section 156(3) Cr.P.C. in the Court of learned CJM, making allegations against the appellants herein alleging that she was raped by all the three appellants on 29.11.2018 at about 5:00 p.m. at the residence of original accused no.3 – Kailash Vijayvargiya, when she was invited to discuss another Crime No. 1 of 2018 registered against their colleagues filed by her. That it was prayed to direct the Officer in Charge of Bhowanipore Police Station to start investigation into the matter after treating the complaint as an FIR.

2.1 It was the case on behalf of the complainant in the complaint before the learned CJM that she was a member of the State Committee of the Bhartiya Janata Party in the State of West Bengal. As a person involved in active politics, she has acquaintance with the leaders of the State at national level. On the allegation of rape, she filed a written complaint before the Officer in Charge, Behala (Woman) Police Station against one Amalendu Chattopadhyay. The said complaint was registered as Case No. 01/2018 dated 31/08/2018 under Sections 417/376/406/313/120B IPC. The investigation of the said case resulted in filing of the charge sheet against the above-named Amalendu Chattopadhyay. It was further alleged that since the filing of the charge sheet, she was pressurised by the appellants, namely, Pradeep Joshi, Jishnu Basu and Kailash Vijayvargiya, national level leaders of the said party to withdraw the case against Amalendu Chattopadhyay. On the pretext of having a discussion over the said matter, the appellants asked her to come at the residential apartment of accused – Kailash Vijayvargiya. It was further alleged in the complaint that she tried to inform the matter to the Officer in Charge of the Bhowanipore Police Station but the police suggested her to meet them in response to such call.

That she went to the residential apartment of the accused – Kailash Vijayvargiya on 29.11.2018 at about 5:00 p.m. The other accused were present in the said apartment from before. It was further alleged that the appellants committed rape upon her against her will one by one. Therefore, it was alleged that she became the victim of libido of the leaders of the said political party occupying position at national level. It was further alleged in the complaint that after the incident she was threatened with dire consequences. She was threatened by the appellants that in the event she takes any legal steps against them, her son would also be killed. It was further alleged that subsequently also she was subjected to physical assault and mental torture and she lodged complaints against the accused before different police stations, such as, Sarsuna P.S. Case No. 131/2019 under Sections 341/506(ii)/34 IPC and Bolpur P.S. Case No. 89/2020 under Sections 341/323/325/506/34 IPC. It was further alleged and so stated in the complaint that over the incident dated 29.11.2018, she tried to make the complaint with the local police station but police refused to accept such complaint from her. She also informed the matter to the higher authorities of the police but they also failed to take any action against the accused by registering an FIR. It appears that the respondent informed the Officer in Charge of Behala Police Station on 14.08.2020 about the alleged rape by the accused persons allegedly on 9.8.2018.

2.2 She filed a complaint before the DCP (South Division), 34, Park Street, Kolkata on 5.10.2020. According to her, she filed a written complaint before the concerned police station, i.e., P.S. Bhowanipore on 27.10.2020. She filed another complaint to the Deputy Commissioner of Police on 04.11.2020. According to the complainant, despite the aforesaid complaints to the various authorities making specific allegations against the accused persons having committed a rape upon her on 29.11.2018, FIR has not been lodged and no investigation has been carried out and therefore she filed an application in the Court of the learned CJM, Alipore under Section 156(3) Cr.P.C. on 12.11.2020 and requested to direct the concerned police officer to register an FIR and investigate into the matter.

2.3 That the learned CJM, by a detailed order dated 12.11.2020 and after giving cogent reasons, dismissed the said application under Section 156(3) Cr.P.C.

2.4 Feeling aggrieved and dissatisfied with the order passed by the learned CJM, dismissing the application under Section 156(3) Cr.P.C. filed by the complainant, the complainant preferred Revision Application before the High Court being Criminal Revision Application No. 92/2021. By the impugned judgment and order, the High Court has allowed the said revision application and has quashed and set aside order dated 12.11.2020 passed by the learned CJM, dismissing the application under Section 156(3) Cr.P.C., mainly relying upon the decision of this Court in the case of Lalita Kumari v. Government of Uttar Pradesh and others, reported in (2014) 2 SCC 1 and holding that as held by this Court in the case of Lalita Kumari (supra), the police authority in case of preliminary inquiry prior to the registration of a case concerning cognizable offence, has no jurisdiction to verify the veracity of the allegations and therefore a Magistrate cannot verify the truth and veracity of the allegations contained in the application under Section 156(3) Cr.P.C. and therefore the learned CJM acted contrary to the law laid down by this Court in the case of Lalita Kumari (supra), while entering into the truth and veracity of the allegations. It has been further held that the learned CJM ought not to have dismissed the application under Section 156(3) Cr.P.C. on the ground that there was a delay of two years in lodging the complaint, which aspect can be considered only at the time of trial.

2.5 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, quashing and setting aside the order passed by the learned CJM dated 12.11.2020 dismissing the application under Section 156(3) Cr.P.C. and remanding the matter to the learned CJM to reconsider the application filed by the complainant under Section 156(3) Cr.P.C. in light of the observations made in the impugned judgment and order and pass a reasoned order, the original respondents – alleged accused have preferred the present appeals.

3. S/Shri Mahesh Jethmalani, Maninder Singh and P.S. Patwalia, learned Senior Advocates have appeared on behalf of the respective appellants. Shri R. Basant, learned Senior Advocate has appeared on behalf of the State of West Bengal and Shri Bikash Ranjan Bhattacharya, learned Senior Advocate has appeared on behalf of the original complainant.

3.1 Learned Senior Advocate Shri Mahesh Jethmalani appearing on behalf of one of the appellants-accused has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a grave error in quashing and setting aside the well-reasoned order passed by the learned CJM dismissing the complaint under Section 156(3) Cr.P.C.

3.2 It is submitted that the High Court ought to have appreciated that the learned CJM dismissed the application under section 156(3) Cr.P.C. upon verifying the truth and veracity of the allegations made in the application, more particularly considering the fact that there was a delay of almost two years after the date of the alleged incident which has not been explained. It is submitted that therefore the learned CJM was well within its jurisdiction to verify the truth and veracity of the allegations made in the application when such serious allegations were made after a period of almost two years after the date of the alleged incident and that in between though number of other complaints were filed against the accused and others, at no point of time, any allegation of rape on 29.11.2018 was made.

3.3 It is submitted that while passing the impugned judgment and order and quashing and setting aside the order passed by the learned CJM, the High Court has wrongly relied upon and/or considered and/or applied the decision of this Court in the case of Lalita Kumari (supra).

3.4 It is submitted that the High Court has materially erred in observing that while considering the application under Section 156(3) Cr.P.C., Magistrate has no jurisdiction at all to verify the truth and veracity of the allegations.

3.5 It is submitted that the observations made by the High Court in the impugned judgment and order that while considering the application under Section 156(3) Cr.P.C., Magistrate has no jurisdiction to even prima facie verify the truth and veracity of the allegations made in the application are just contrary to the law laid down by this Court in the case of Priyanka Srivastava v. State of Uttar Pradesh, reported in (2015) 6 SCC 287. It is submitted that the same is also contrary to the decision of the co-ordinate Bench of the Calcutta High Court in the case of Mukul Roy v. The State of West Bengal, 2018 SCC Online Cal. 4861, expressly following the judgment in Priyanka Srivastava (supra).

3.6 Learned Senior Advocate appearing on behalf of the appellants have also heavily relied upon the decisions of this Court in the cases of Maksud Saiyed v. State of Gujarat, reported in (2008) 5 SCC 668; Anil Kumar v. M.K. Aiyappa, reported in (2013) 10 SCC 705; and Ramdev Food Products Private Limited v. State of Gujarat, reported in (2015) 6 SCC 439 and decision of this Court in the case of Suresh Kankra v. State of U.P. & another (Criminal Appeal No. 52/2022, decided on 07.01.2022), in support of their submission that the Magistrate was well within its jurisdiction to verify the truth and veracity of the allegations made in the application, more particularly when such a serious allegation of rape was made after a period of two years after the date of the alleged incident.

3.7 It is further submitted that the learned Single Judge of the High Court is not right and/or justified in taking a contrary view than the view taken by the co-ordinate Bench in the case of Mukul Roy (supra). It is submitted that if the learned Single Judge of the High Court was of the opinion that the view taken in the case of Mukul Roy (supra) is not a correct law, in that case, propriety demands that the learned Single Judge ought to have referred the matter to the larger Bench, rather than taking a contrary view.

3.8 It is submitted that even otherwise the learned Single Judge ought to have appreciated that the decision of the High Court in the case of Mukul Roy (supra) was expressly following the judgment of this Hon'ble Court in the case of Priyanka Srivastava (supra). It is submitted that therefore also, the learned Single Judge ought not to have taken a contrary view.

3.9 It is further submitted by the learned Senior Advocates appearing on behalf of the appellants that in the present case even the SHO after receiving the complaint in the month of October, 2020 conducted a preliminary enquiry as per the law laid down by this Court in the case of Lalita Kumari (supra) and thereafter refused to register the FIR.

3.10 Learned Senior Advocates appearing on behalf of the respective appellants have taken us to the number of emails and messages sent to one of the appellants – Kailash Vijayvargiya from 30.11.2018, i.e., the next day after the alleged incident up till March, 2020. It is submitted that if he had committed the rape on 29.11.2018, as alleged, in that case, subsequently there was no reason for her to send emails and messages to the appellant – Kailash Vijayvargiya.

3.11 It is further submitted that in between 29.11.2018 and October, 2020, the complainant filed various complaints before various police stations against the very accused. The first complaint was filed on 12.12.2019 (Sarsuna case). The said complaint categorically mentions that she met the appellant, however, complaint does not make any mention of the alleged incident of rape. It is submitted that in the said FIR, the only allegations were that she was called by the top-level leaders for 4 times in the last year, November 2018 and each time they locked her for 4 to 5 hours and pressurised her to withdraw the case. It is submitted that the said FIR was registered as FIR No. 131/2019. It is submitted that the said case has been closed now, as a closure report dated 16.06.2020 was filed in the aforesaid case.

3.12 It is submitted that thereafter one another complaint dated 6.2.2020 was filed, however, there was no mention of any particular date of the alleged rape incident. It is submitted that thereafter one another complaint was filed on 12.03.2020 wherein she did not mention about the alleged rape incident at all. It is submitted that after a period of two years of alleged incident of rape, the complainant filed a complaint dated 27.10.2020 in which for the first time she stated that in order to pressurise her to withdraw the 2018 case against Amalendu Chattopadhyay, the appellants called her at the apartment of appellant no.1 – Kailash Vijayvargiya and raped her on 29.11.2018. It is submitted that therefore the learned CJM rightly observed that as there was an unexplained and inordinate delay of two years in making the complaint against the alleged offence, it casts doubt regarding the truth and veracity of the allegations contained in the application under Section 156(3) Cr.P.C.

3.13 It is further submitted by the learned Senior Advocates appearing for the respective appellants that while passing order dated 12.11.2020, the learned CJM made some pertinent observations to highlight that there was an inordinate delay in making the first police complaint against the alleged offence and that there existed sufficient inconsistencies to raise doubts regarding the truth and veracity of the allegations contained in the application under Section 156(3). It is submitted that firstly, the learned CJM observed that according to the complainant the alleged offence took place on 29.11.2018, however, attempt to initiate criminal proceedings was made for the first time only on 27.10.2020 – the date when a complaint was lodged at the Bhowanipore Police Station. This was after a gap of about two years from the date of the alleged offence.

3.14 It is submitted that thereafter the learned CJM further noted that the complainant in her application under Section 156(3) has stated that she made several complaints before various police stations against the accused persons and their men for the physical attacks carried out on her, however, no such complaint finds mention of the alleged offence of rape. Therefore, the learned CJM noted that possibility of false implication cannot be ruled out, especially when the same complainant made several other complaints against the same accused in that period in which no

allegation of rape on 29.11.2018 was made.

3.15 It is further submitted that the learned CJM also further observed that the complainant in her complaint to Behala Police Station dated 14.08.2020 had accused one of the appellants – Kailash Vijayvargiya of raping her at Hotel Peerless Inn on 09.08.2018, however, the learned CJM did not find any mention of such incident in her application under Section 156(3) Cr.P.C.. The learned CJM further observed that Behala Police Station Case No. 01/2018 against Amalendu Chattopadhyay and others was filed on 31.08.2018, that was much after the alleged rape by Kailash Vijayvargiya at Hotel Peerless Inn, however, even that complaint made to the Behala Police Station finds no mention of such incident. Therefore, considering the unexplained delay of about two years in making the complaint along with several inconsistencies in the allegations, the learned CJM concluded that allegations appear to be unbelievable and therefore rightly rejected Section 156(3) application of the complainant.

3.16 It is further submitted by the learned Senior Advocates appearing on behalf of the appellants that in the instant case, the learned CJM found the explanation for delay by the complainant wholly unsatisfactory. It is submitted that it is no doubt true that delay is not always fatal in the case of rape, particularly if adequately explained, however, there must be at least some credibility in the explanation for delay. It is submitted that in the first information report for rape, a delay of almost 2 years after the date of the alleged incident is a factor that of necessity would itself put any judicial mind on guard regarding the veracity of the complainant's allegations. It is submitted that the learned CJM however did not dismiss the application under Section 156(3) Cr.P.C. solely on the ground of delay, but examined her conduct since the date of the alleged rape till the filing of Section 156(3) application and found that her conduct contradicted her explanation for delay. That she was not a timid victim inasmuch as she was an experienced social/political worker; had a history of filing FIRs including for rape; had earlier filed FIRs against the accused in the instant case for other offences and indeed had invoked police powers against several powerful people. It is submitted that therefore complainant is not a person who could be easily intimidated or silenced into inaction for an act of rape committed on her. It is submitted that therefore the learned CJM committed no error in dismissing the application under Section 156(3) which ought not to have set aside by the High Court on wrong application of law holding that at the stage of considering the application under Section 156(3) Cr.P.C., the Magistrate has no jurisdiction at all to consider the truth and veracity of the allegations in the complaint/application. It is submitted that the High Court has wrongly applied the ratio in Lalita Kumari (supra), which lays down the guidelines for the police and the investigating officer and not applicable to a Magistrate exercising the jurisdiction under Section 156(3) Cr.P.C.

3.17 It is submitted that the High Court has observed that as held by this Court in the case of Lalita Kumari (supra), when the police officer at the stage of registering the FIR has no jurisdiction to verify the veracity and truth of the allegations, how a Magistrate in exercise of powers under Section 156(3) can verify the veracity of the allegations in the complaint. It is submitted that the directions issued by this Court in the case of Lalita Kumari (supra) shall be confined to the police and shall not be applicable to a Magistrate exercising the jurisdiction under Section 156(3) Cr.P.C.

3.18 It is further submitted that even the subsequent conduct on the part of the complainant creates serious doubts about her credibility. It is submitted that the complainant having realised the serious doubt that her delayed complaint casts upon the veracity of her allegations completely, before this Court in the counter affidavit, she has stated on oath and has come out with a case now that she had in fact lodged a complaint with the police against the alleged rape incident on 29.11.2018 by lodging complaint on the very next day at 11:00 a.m.at the Behala Police Station. It is submitted that that was not her case even in the application under Section 156(3) and/or even in the complaints before the concerned police officers. It is submitted that even the learned Senior Advocate for the State of West Bengal has informed the Court that there was no such record of the complaint being filed. It is submitted that thus the complainant has made a false statement before this Court on oath only to get out of delay and to get out the fact that till October, 2020, no complaint was given by her in respect of the alleged incident of rape on 29.11.2018.

3.19 Making above submissions, it is submitted that the present case is a glaring example of abuse of process and abuse of law. It is submitted that accusation of rape is prima facie false and manufactured with an intent to extort or blackmail the accused on the pretext of these false allegations. It is submitted that such a serious allegation of rape after a period of about two years from the date of alleged incident have been made to tarnish the image of the appellants and to take a political revenge and to finish the political career of the appellants. Therefore, it is prayed to allow the present appeals and quash and set aside the impugned judgment and order passed by the High Court. It is submitted that during the pendency of the present proceedings, despite the fact that the present appeals were pending before this Court, the learned CJM has passed an order dated 08.10.2021 directing the Officer in Charge of Bhowanipore Police Station for treating the application as an FIR and pursuant to the order of the learned CJM, FIR No. 221/2021 has been registered against the appellants. It is submitted that the said FIR is lodged consequent to the impugned judgment and order passed by the High Court. It is submitted that therefore if the impugned judgment and order passed by the High Court is set aside, in that case, all subsequent consequential orders and subsequent registration of the FIR also deserve to be quashed and set aside.

4. Shri R. Basant, learned Senior Advocate appearing on behalf of the State of West Bengal has vehemently submitted that the Magistrate is not authorised to inquire into the credibility of the complainant and the acceptability of the allegations at the stage of application under Section 156(3) Cr.P.C.

4.1 It is submitted that the Constitution Bench judgment in the case of Lalita Kumari (supra) holds that a police officer cannot refuse to register an FIR if it discloses commission of a cognizable offence. It is submitted that the preliminary enquiry contemplated in Lalita Kumari (supra) by a police officer is only to ascertain whether a cognizable offence is revealed or not. It is submitted that if the police officer wrongly or incorrectly refuses to register an FIR, the complainant has no option in law but to file a complaint under Section 156(3) Cr.P.C.

4.2 It is submitted that though the judgment in Priyanka Srivastava (supra) empowers the Magistrate to consider the credibility of the complainant and the acceptability of the allegations also at the stage of application under Section 156(3) Cr.P.C., in view of the prior decisions of this Court in

the cases of Srinivas Gundluri and others v. SEPCO Electric Power Construction Corporation, reported in (2010) 8 SCC 206; and Anju Chaudhary v. State of U.P., reported in (2013) 6 SCC 384, the plea that the veracity and/or credibility of the complainant and the acceptability of the allegations raised can be gone into by the Magistrate at Section 156(3) stage does not appear to be correct.

4.3 It is submitted that the Magistrate is approached by the complainant alleging that the police officer has not registered the FIR. Hence, there cannot be a mismatch between the duty of the police officer under section 154(1) and the contours of the jurisdiction of the Magistrate under Section 156(3) at the pre-cognizance stage. It is submitted that if so understood, the test of veracity enabled in Priyanka Srivastava (supra) can only be to ascertain whether a cognizable offence is in fact made out or not. It cannot receive an interpretation, divorced of the context and the dictum in Lalita Kumari (supra). If so, there will be a mismatch between Section 154(1) and Section 156(3) Cr.P.C. It is submitted that the decision of this Court in the case of Priyanka Srivastava (supra) cannot lead to a conclusion that the Magistrate can delve into the credibility of the complainant/witnesses and the acceptability of the allegations made by her. It is submitted that Priyanka Srivastava (supra) was not intended to confer such a jurisdiction.

4.4 It is further submitted that if the Magistrates were given powers to dismiss the complaint as soon as he chooses not to make a reference under Section 156(3), it would virtually be quashing the complaint by arriving at a premature conclusion without any evidence on record that the complainant cannot be believed. It is submitted that this would in effect amount to the Magistrate arrogating to himself the inherent powers conferred on the High Court under Section 482 Cr.P.C. It is submitted that at the stage of Section 156(3), the Magistrate will not have any material which would enable him to take a decision on the credibility of the complainant or the acceptability of the allegations in the complaint.

4.5 It is further submitted that firstly the learned CJM could have exercised the discretion to direct the concerned police officer to register an FIR as the complaint reveals the commission of a cognizable offence. It is submitted that the police officer having not chosen to register an FIR, the Magistrate if he is satisfied certainly has to refer the complaint to the police station under Section 156(3) to register an FIR. It is submitted that alternatively if the learned Magistrate chooses not to refer the complaint to the police under Section 156(3), in any case, he could not have dismissed the complaint and must have proceeded to the stage of Section 200/202 Cr.P.C. and take an appropriate decision under Section 203 or 204 Cr.P.C. It is submitted that the petition made by the complainant dated 27.10.2020 inter alia praying for action by the Magistrate to direct investigation, amounts to a "complaint" under Section 2(d) Cr.P.C. It is submitted that therefore the Magistrate has the discretion to decide whatever action needs to be taken in the given facts of the case, under Section 156(3) or Section 200/202 Cr.P.C.

4.6 It is submitted that therefore, resort to Section 156(3) is also "taking action under the Code" and therefore the complaint does not cease to be a complaint because the complainant has inter alia requested for action under Section 156(3) also. It is submitted that the jurisdiction of the Magistrate under Section 156(3) and Sections 200/202 Cr.P.C does not depend upon the

prayer/choice/preference of the complainant. Formal requirements of filing a list of witnesses and documents under Section 204 Cr.P.C. relate to a post-cognizance stage and the filing or non-filing of such list cannot affect the status of the petition as a complaint under Section 2(d) Cr.P.C. It is submitted that when presented with such a complaint, the Magistrate certainly has a discretion to make a pre-cognizance reference under Section 156(3) or alternatively take a post-cognizance action under Sections200/202 Cr.P.C. If a petition answers the definition of a complaint under Section 2(d), all these courses are open and available to the Magistrate. It is submitted that therefore when the Magistrate does not choose to proceed under Section 156(3), the Magistrate cannot dismiss the complaint merely because he finds the resort to Section 156(3) not advisable. It is submitted that the Magistrate must still continue under Sections 200/202 Cr.P.C. and pass orders dismissing the complaint under Section 203 Cr.P.C. or issue a process under Section 204 Cr.P.C.

5. While opposing the present appeals, Shri Bikash Ranjan Bhattacharya, learned Senior Advocate appearing on behalf of the original complainant has vehemently submitted that in the present case the complaint filed by the complainant discloses commission of a cognizable offence. It is submitted that therefore it was the duty of the concerned police officer to register an FIR and investigate into the matter. It is submitted that however as the concerned police officer failed to register an FIR and investigate into the matter, the Magistrate in exercise of powers under Section 156(3) has to direct registration of an FIR and direct the concerned police officer to investigate into the allegations made in the FIR.

5.1 It is submitted that at the stage of registering an FIR, neither the police officer nor even the Magistrate at the stage of 156(3) have any jurisdiction and/or authority to hold a detailed enquiry/preliminary enquiry. It is submitted that the failure of the police to comply with Sections 156(1) and 156(2) Cr.P.C. requires the Magistrate to pass an order directing such an investigation. It is submitted that the purpose and object is to prima facie ensure that the ingredients of any cognizable offence are satisfied.

5.2 It is submitted that as mandated by the Constitution Bench judgment of this Court in the case of Lalita Kumari (supra), the moment a complaint discloses the ingredients of any cognizable offence, the registration of an FIR becomes mandatory and any investigation consequent thereto is to prima facie satisfy that an offence so alleged is apparently cognizable. It is submitted that at that stage, the only requirement is to satisfy whether the allegations made in the FIR disclose commission of a cognizable offence or not and not beyond that.

5.3 It is further submitted by the learned Senior Counsel appearing on behalf of the original complainant that as held by this Court in the case of Lalita Kumari (supra), reasonableness or credibility of information is not a condition precedent for registration of an FIR. It is further observed and held that use of word “shall” in Section 154 Cr.P.C. is a mandate to register the FIR and the rule of literal construction would apply. It is submitted that as per the decision of this Court in the case of Lalita Kumari (supra), only in exceptional cases, before registering the FIR, the preliminary enquiry by the concerned police officer is held to be permissible. It is submitted that, however, when the offence alleged is against the woman and when there are serious allegations of rape made, there is no question of holding any further preliminary enquiry at the stage of Section

156(3) application.

5.4 It is submitted that in the case of Priyanka Srivastava (supra), in paragraphs 29 & 30, it was observed that Magistrates were issuing process directing lodging of FIR in a stereotype and routine manner and therefore this Court observed and held that "to curb litigants from filing frivolous petitions, there should be prior applications under Sections 154(1) and 154(3) and that the petition under Section 156(3) should be supported by an affidavit". It is submitted that the observations in paragraph 30, viz, in appropriate cases, the Magistrate could verify the truth and also verify the veracity of the allegations has to be read with the observations in earlier paragraphs wherein it was held that a Magistrate should take note of the allegations in entirety; the date of the incident and whether any cognizable case is remotely made out. It is submitted that therefore reliance placed by the learned Senior Advocates on behalf of the appellants on Priyanka Srivastava (supra) to contend that the judgment is an authority for the proposition that a Magistrate may verify the veracity of the allegations and thereby conduct a mini trial is wholly misplaced. It is submitted that at that stage the preliminary judicial act is to ensure whether any cognizable offence is remotely made out/disclosed. It is submitted that therefore decisions of this Court in the cases of Lalita Kumari (supra) and Priyanka Srivastava (supra) have to be harmoniously construed and read.

5.5 It is further submitted that noting the rise of crime against women, the Criminal Amendment Act (13 of 2013) was promulgated amending Section 154(1) Cr.P.C, Section 173(1A) Cr.P.C and Section 166A, IPC. It is submitted that the procedural requirement to compulsorily register an FIR was already existing in Section 154 Cr.P.C. but required the judicial interpretation in Lalita Kumari (supra) to be a mandate. The insertion of section 166A to the IPC has made the non-registration of complaint as FIR containing a cognizable offence, liable to penal consequences against the public servant (police). It is submitted that therefore it is the duty of the police to register the FIR on the basis of the complaint disclosing commission of a cognizable offence and non-registration of a complaint as FIR is now offence.

5.6 It is submitted that even in complaint cases, it is only the prima facie satisfaction which is to be recorded and the scope of enquiry under Section 202 Cr.P.C. is restricted only to finding out the truth of the allegations in order to determine whether process should be issued or not and the inquiry even at that stage does not partake the character of a full-dress trial which can take place only after process is issued. Reliance is placed on paragraphs 40 & 41 of the decision of this Court in the case of Anju Chaudhary (supra).

5.7 It is further submitted by the learned Senior Counsel appearing on behalf of the complainant that in the present case the primary reason for not entertaining the petition under Section 156(3) was delay. It is submitted that as held by this Court in the case of Assistant Collector of Customs, Bombay v. L.R. Melwani, reported in AIR 1970 SC 962, the Court before which the complaint was filed could not have thrown out the same on the sole ground that there has been delay in filing it. It is observed that the question of delay in filing a complaint may be a circumstance to be taken into consideration in arriving at the final verdict. But by itself it affords no ground for dismissing the complaint. It is submitted that in the present case the complainant had given cogent and specific reasons for the delay giving open threats to her. It is submitted that further, section 468 Cr.P.C. does

not law down the period of limitation for offences punishable with imprisonment exceeding three years. It is submitted that therefore on the ground of delay, the application of the complainant could not have been dismissed.

5.8 It is submitted that in the present case, the learned CJM also ought not to have opined at the stage of 156(3) Cr.P.C. that the allegations appear to be unbelievable. It is submitted that the application of judicial mind at this stage is limited only to the extent of causing investigation to find out whether the offence alleged is cognizable or not and the ingredients prima facie satisfied.

5.9 Summing up the submissions, learned Senior Counsel appearing on behalf of the original complainant has submitted that on reading the decisions of this Court in the cases of Lalita Kumari (supra) and Priyanka Srivastava (Supra) harmoniously and the limited scope of enquiry at the stage of Section 156(3) application, the learned CJM erred in rejecting the application under Section 156(3) and therefore the High Court has rightly directed to register the complaint as FIR and investigate into the matter.

5.10 Making above submissions, it is prayed to dismiss the present appeals.

6. We have heard learned counsel appearing on behalf of the respective parties at length.

6.1 The present proceedings arise out of a complaint filed by the original complainant under Section 156(3) Cr.P.C. The learned CJM, by a detailed order and giving cogent reasons, dismissed the said application/complaint under Section 156(3) Cr.P.C and refused to direct the police to register an FIR. It is not even disputed by the State that prior to filing of the application/complaint by the complainant under Section 156(3) Cr.P.C., complaints were made to the police authorities, namely, Officer in Charge of Bahela Police Station, DCP (South Division) and the SHO. The SHO conducted a preliminary enquiry as mandated by a Constitution Bench of this Court in the case of Lalita Kumari (supra) and upon finding that there was a delay of about two years in filing the complaint, refused to register the FIR. That thereafter, the original complainant filed a complaint/application before the learned CJM under Section 156(3) Cr.P.C. and on a careful consideration of the allegations in the complaint/application under Section 156(3) Cr.P.C., by a detailed reasoned order, the learned CJM dismissed the said application under Section 156(3) Cr.P.C.

6.2 That while dismissing the application/complaint, the learned CJM verified the truth and veracity of the allegations, regard being had to the nature of the allegations of the case, considering the binding decision of the High Court of Calcutta in the case of Mukul Roy (supra). The learned CJM also considered the decision of this Court in the case of Priyanka Srivastava (supra). The order passed by the learned CJM was challenged before the High Court and by the impugned judgment and order, not agreeing with the view taken by the co-ordinate Bench of the High Court in the case of Mukul Roy (supra) and even not following the decision of this Court in the case of Priyanka Srivastava (supra), and following the decision of Constitution Bench of this Court in the case of Lalita Kumari (supra), the High Court has quashed and set aside the order passed by the learned CJM and has directed to re-consider the application under Section 156(3) Cr.P.C., in light of the observations made in the impugned judgment and order. While quashing and setting aside the order

passed by the learned CJM, the High Court was of the opinion that at the stage of considering the application under Section 156(3) Cr.P.C., it was not open for the learned CJM to verify the truth and veracity of the allegations. The High Court was of the opinion that in view of the decision of this Court in the case of Lalita Kumari (supra), what was required to be considered was, whether the allegations in the complaint/application disclose prima facie commission of a cognizable offence or not and if so, the Magistrate has to pass an order directing the concerned police officer to register an FIR. That thereafter, pursuant to the impugned judgment and order passed by the High Court and on remand, the learned CJM has straightway directed to register the application/complaint as an FIR.

Therefore, as such, the subsequent order passed by the learned CJM is a consequential order passed by the High Court on quashing and setting aside the order passed by the learned CJM dismissing the application/complaint.

7. It is the contention on behalf of the appellants – original accused that at the stage of deciding the application under Section 156(3) Cr.P.C., it is open for the Magistrate to verify the truth and veracity of the allegations, regard being had to the nature of the allegations of the case, and at that stage, the Magistrate has to apply the judicial mind. Reliance is placed on the decisions of this Court in the case of Priyanka Srivastava (supra); Maksud Saiyed (supra); Anil Kumar (supra); and Krishna Lal Chawla v. State of Uttar Pradesh, reported in (2021) 5 SCC 435, as also, on the decision of the Calcutta High Court in the case of Mukul Roy (supra). It is the case on behalf of the appellants that the High Court has materially erred in relying upon and/or following the decision of this Court in the case of Lalita Kumari (supra), while holding that at the stage of considering the application under Section 156(3) Cr.P.C., the Magistrate has no jurisdiction to verify the truth and veracity of the allegations. It is submitted that however the said decision shall not be applicable in a case where the Magistrate exercises the powers under Section 156(3) Cr.P.C. It is submitted that in the case of Lalita Kumari (supra), this Court was considering the powers of the police officer under Section 154 Cr.P.C. and to register the FIR. It is submitted that the powers exercised by the Magistrate at the stage of Section 156(3) Cr.P.C shall not be and/or cannot be equated with the powers to be exercised by the police officer under Section 154 Cr.P.C.

8. On the other hand, it is the case on behalf of the original complainant as well as the State that as mandated by this Court in the case of Lalita Kumari (supra), at the stage of registering the FIR, neither the Magistrate nor the police officer has any jurisdiction to verify the truth and veracity of the allegations and/or consider the truthfulness of the allegations. According to the respondents, what is required to be considered at that stage is, whether the allegations in the complaint/application disclose commission of any cognizable offence or not. Therefore, the main issue posed for the consideration of this Court is, whether in the facts and circumstances of the case, the learned CJM was justified in verifying the truth and veracity of the allegations at the stage of deciding the application under Section 156(3) Cr.P.C. and whether at that stage the Magistrate is required to apply judicial mind or not?

9. Article 21 of the Constitution protects lives and personal liberties of both the victim and those accused of having committed an offence. For this reason, the procedure established by law should be

construed in the manner that the text of the statute ensures right to seek investigation to redress injustice and uncover crime by recourse to expeditious, fair and impartial procedure. Concomitantly, the law in application should protect blameless against those informants who levels false allegations and abuse the law causing distress, humiliation and damage to reputation.

Relevant legal provisions of Chapter XII of the Code of Criminal Procedure, 1973.

10. The Code vide Chapter XII, ranging from Section 154 to Section 176, deals with information to the Police and their power to investigate. Section 154 deals with the information relating to the commission of a cognizable offence and fiats the procedure to be adopted when prima facie commission of a cognizable offence is made out. Section 156 authorises a police officer in-charge of a Police station to investigate any cognizable offence without the order of a Magistrate. Sub-section (3) of Section 156 provides for any Magistrate empowered under Section 190 to order an investigation as mentioned in Section 156(1). In cases where a cognizable offence is suspected to have been committed, the officer in-charge of the Police station, after sending a report to the Magistrate empowered to take cognizance of such offence, is entitled under Section 157 to investigate the facts and circumstances of the case and also to take steps for discovery and arrest of the offender. Clauses (a) and (b) of the proviso to sub-section (1) to Section 157 give discretion to the officer in-charge not to investigate a case, when information of such offence is given against any person by name and the case is not of serious nature; or when it appears to the officer in-charge of the Police station that there is no sufficient ground for entering the investigation. In each of the cases mentioned in clauses

(a) and (b) to the proviso to sub-section (1) to Section 157, the officer in-charge of the Police station has to file a report giving reasons for not complying with the requirements of sub-section (1) and in a case covered by clause (b) to the proviso, also notify the informant that he will not investigate the case or cause it to be investigated.

Section 159 gives power to a Magistrate, on receiving such report of the officer in-charge, to either direct an investigation or if he thinks fit, proceed to hold a preliminary inquiry himself or through a Magistrate subordinate to him, or otherwise dispose of the case in the manner provided by the Code.

11. Sections 160 to 164 deal with the power of the Police to require attendance of witnesses, examination of witnesses, use of such statements in evidence, inducement for recording statement and recording of statements. Section 165 deals with the power of a Police officer to conduct search during investigation in the circumstances mentioned therein.

12. The power under the Code to investigate generally consists of following steps: (a) proceeding to the spot; (b) ascertainment of facts and circumstances of the case; (c) discovery and arrest of the suspected offender; (d) collection of evidence relating to commission of offence, which may consist of examination of various persons, including the person accused, and reduction of the statement into writing if the officer thinks fit; (e) the search of places of seizure of things considered necessary for investigation and to be produced for trial; and (f) formation of opinion as to whether on the material collected there is a case to place the accused before the Magistrate for trial and if so, taking

the necessary steps by filing a chargesheet under Section 173.

13. Section 173 provides that the investigation is to be completed without unnecessary delay and makes it obligatory on the officer in-charge of the Police station to send a report to the Magistrate concerned containing the necessary particulars in the manner provided therein.

Mandatory nature of Section 154(1) of the Code.

14. The question, whether the Police is bound to register a First Information Report (FIR) for a cognizable offence under Section 154 on receiving the information as such or has some latitude for conducting preliminary inquiry before registration of FIR, had led to the decision of the Constitutional Bench in Lalita Kumari (supra). In this case, one of the arguments raised was that when an innocent person is falsely implicated, he suffers mental tension, loss of reputation and his personal liberty is seriously impaired and, therefore, Section 154 of the Code should be read and interpreted in conformity with the mandate of Article 21 of the Constitution. Harmonizing the delicate balance to be maintained between the rights of the victim and the accused, it was opined, there are sufficient safeguards provided in the Code itself to protect liberty of an individual against registration of a false case. However, as Section 154 has been drafted keeping in mind the interest of the victim, and their right to have access to fair and independent investigation, the mandatory registration of FIRs under Section 154 will not contravene Article 21 of the Constitution. Drawing on several earlier judgments and the language of Section 154 of the Code, it was held that the Police is bound to proceed to conduct investigation, even without receiving information about commission of a cognizable offence if the officer in-charge otherwise suspects the commission of such an offence. The legislative intent is to ensure that no information of commission of a cognizable offence is ignored and not acted upon, which would otherwise result in unjustified protection of the alleged offender/accused. Every cognizable offence must be promptly investigated in accordance with the law. This being the legal position, there is no reason that there should be any discretion or option left with the Police to register or not to register an FIR when information is given about commission of a cognizable offence. This interpretation in a way keeps a check on the power of the Police, which is required to protect the liberty of individuals and society rights inherent in a democracy. It is the first step which provides access for justice to a victim and upholds the rule of law, facilitates swift investigation and sometimes even prevents commission of crime and checks manipulation in criminal cases.

15. To strike a balance, distinction is drawn between power of arrest of an accused person under Section 41 and registration of an FIR under Section 154 of the Code. While registration of an FIR is mandatory, the arrest of the accused on registration of the FIR is not. FIR is registered on the basis of information without any qualification like credible, reasonable or true information. Reasonableness or credibility of information is not a condition precedent for registration of the FIR. However, for making arrest in terms of Section 41(1)(b) or (g), the legal requirements and mandate is reflected in the expression ‘reasonable complaint’ or ‘credible information’.

16. Further there is a distinction between Section 154 and 157 as the latter provision postulates a higher requirement than under Section 154 of the Code. Under Section 157(1) of the Code, a Police

officer can foreclose the investigation if it appears to him that there is no sufficient ground to investigate. The requirement of Section 157(1) for the Police officer to start investigation is that he has "reason to suspect the commission of an offence". Therefore, the Police officer is not liable to launch investigation in every FIR which is mandatorily registered on receiving information relating to commission of a cognizable offence. When the Police officer forecloses investigation in terms of clauses (a) and (b) of the proviso to Section 157(1), he must submit a report to the Magistrate. Here, the Magistrate can direct the Police to investigate, or if he thinks fit, hold an inquiry. Where a Police officer, in a given case, proceeds to investigate the matter, then he files the final report under Section 173 of the Code. The noticeable feature of the scheme is that the Magistrate is kept in the picture at all stages of investigation, but he is not authorised to interfere with the actual investigation or to direct the Police how the investigation should be conducted.

17. Having said so, the Constitutional Bench in Lalita Kumari (supra), nevertheless, felt it was necessary by judicial interpretation to carve out another layer of protection vide preliminary inquiry by police. In certain instances, a preliminary inquiry may be justified owing to the genesis and novelty of crimes. The category of cases in which preliminary inquiry may be made, purely as illustration were indicated as matters relating to: (a) matrimonial/family disputes; (b) commercial offences; (c) medical negligence cases; (d) corruption cases; or (e) cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over three months delay in reporting the matter without satisfactorily explaining the reasons for the delay. The categorisation indicated being illustrative is not exhaustive of the cases that may warrant preliminary inquiry. Preliminary inquiry, when held, should be conducted without causing delay and in a time bound manner. Reasons leading to the inquiry, causes and delay are to be mandatorily and meticulously recorded in the General Dairy entry. Lalita Kumari (supra) initially held that the preliminary inquiry must be completed within 7 days, which period was felt to be unrealistic in some cases and accordingly clause (vii) of the judgment dated 12th November, 2012 was modified vide order dated 05th March 2014 in the following terms:-

> "……we modify clause (vii) of paragraph 111 of our judgment dated 12th November, 2013, in the following manner:
>
> "(vii) 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 fifteen days generally and in exceptional cases, by giving adequate reasons, six weeks' time is provided. The fact of such delay and the causes of it must be reflected in the General Diary entry."
>
> 18. Referring to the distinction between the power of the Police to investigate and the judicial powers given to the Magistrate under Chapter XII of the Code, this Court in Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117 has observed that although the Magistrate may have certain supervisory powers, nevertheless, from these considerations alone he cannot impinge upon the jurisdiction of the Police to investigate. The power of the Magistrate is conferred once a report in terms of Section 157 or a report under Section 173(3) is submitted by the Police before the

> Magistrate. Thus, the Magistrate, who has little or no scope to interfere with the investigation, is not absolutely powerless in view of the powers conferred in terms of Sections 159 and 173, and infra, Section 202 of the Code.

Inherent power of the High Court under the Code to quash the FIR.

19. At this stage, it is important to refer to judgments of this Court on exercise of inherent power of the High Court in quashing the FIR. This power is normally exercised when the allegations in the FIR or the complaint, even if they are taken at their face value and accepted in entirety, do not constitute the offence alleged. Thus, in these cases, no question of appreciating evidence arises and it would be manifestly unjust to allow the process of criminal court to be issued against the accused persons.

20. Once an offence is disclosed, an investigation into the offence must necessarily follow in the interest of justice. Investigation is required for the purpose of gathering necessary materials for establishing or proving an offence which is disclosed. Absence of proper investigation where an offence is disclosed, the offender may succeed in escaping from the consequences which would be detrimental to the cause of justice and society at large. Whether an offence is disclosed or not must necessarily depend on the facts and circumstances of each case. It depends upon consideration of the relevant material. In other words, when an offence is disclosed, the court will not normally interfere into an investigation, however, if the materials do not disclose an offence, no investigation can be permitted.

21. Referring to the legal position, this Court in State of Haryana and others v. Bhajan Lal and others, 1992 Supp (1) SCC 335, while clarifying that it is not laying down any precise formula or an exhaustive list, highlighted the cases in which the power to quash an FIR can be exercised as:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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

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

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a Police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code. (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

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

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

22. One would grant that the jurisdiction of the Court when asked to invoke power under Section 156(3) is wider as held in Priyanka Srivastava (supra), yet there are limits within which the Magistrate must act. When the Magistrate is satisfied that the allegations made disclose commission of a cognizable offence, he must stay his hands, direct registration of an FIR and leave it to the investigative agency to unearth the facts and ascertain the truth of the allegations. Magistrate in terms of the ratio in Lalita Kumari (supra) can for good reasons direct preliminary enquiry. We would now refer to the power of the Magistrate to take cognizance, postpone issue of process and follow the procedure under Section 202 of the Code.

Difference in the power of Police to register and investigate an FIR under Section 154(1) read with 157 of the Code, and the Magistrate's direction to register an FIR under Section 156(3) of the Code. Power of the Magistrate to direct registration of an FIR under Section 156(3) in contrast with post-cognizance stage power under Section 202 of the Code.

23. The operandi for registration of information in a cognizable offence and eventual investigation is not limited to Police, and as observed above, sub-section (3) to Section 156, subject to legal stipulations, gives the ameliorating power to a Magistrate empowered under Section 190 to order an investigation in a cognizable offence. Two different powers vested with two distinct authorities, namely the Police and the Magistrate, who discharge distinct functions and roles under the Code as indicated above are not entirely imbricating.

24. The power of Magistrate to direct investigation falls under two limbs of the Code: one is pre-cognizance stage under Section 156(3), and another on cognizance under Chapter XIV ('Conditions Requisite for Initiation of Proceedings'; Sections 190-199) read with Chapter XV ('Complaints to Magistrates'; Sections 200-210). These two powers are different and there also lies a procedural distinction between the two.

25. A three Judge Bench decision of this Court in Ramdev Food Products Private Limited (supra) had examined the distinction between powers of the Magistrate to direct registration of an FIR under Section 156(3) and power of the Magistrate to proceed under Section 202 of the Code. It was observed that the power under the former Section is to be exercised, on receiving a complaint or a Police report or information from any person other than the Police officer or upon his own knowledge, before he takes cognizance under Section

190. Once the Magistrate takes cognizance, the Magistrate has discretion to take recourse to his powers under Section 202, which provides for postponement of the issue of process and inquire into the case himself or direct investigation to be made by a Police officer or by such other person as he thinks fit for the purpose of deciding whether or not there are sufficient grounds for proceedings. The proviso to Section 202 states that no direction for investigation shall be made where a complaint has not been made by a Court, unless the complainant and the witnesses present (if any) are examined on oath under Section 200. When it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions, he shall call upon the complainant to produce all his witnesses and examine them on oath. However, in such cases, the Magistrate cannot issue direction for investigation of an offence.

Thus, the Magistrate has the power, when a written complaint is made, to issue direction under Section 156(3), but this power is to be exercised before the Magistrate takes cognizance of the offence under Section

190. However, in both cases, whether under Section 156(3) or under Section 202 of the Code, the person accused as the perpetrator, when the proceedings are pending before the Magistrate, remains unrepresented. Under Section 203, the Magistrate, after considering the statement of the complainant and witnesses (if any) on oath and the result of an inquiry (if any) under Section 202, can dismiss the complaint if he is of the opinion that there is no sufficient ground for proceeding and in every such case briefly record his reasons. If the Magistrate after taking cognizance of the offence, is of the opinion that there are sufficient grounds for proceeding he will issue the process to the accused for appearance as per the procedure and mode specified under Section 204 of the Code. Process to the accused under Section 204 falls under Chapter XVI of the Code and is issued post the cognizance and inquiry/investigation/evidence recorded in a private complaint in terms of Section 202 of the Code.

26. In Ramdev Food Products Private Limited (supra), examining whether discretion of the Magistrate to call for a report under Section 202 instead of directing investigation under Section 156(3) is controlled by any defined parameters, it was held thus:

> “22. Thus, we answer the first question by holding that: 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 the issuance 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". Category of cases falling under para 120.6 in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] may fall under Section 202.

22.3. Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case." Explaining the nature of cases to be dealt with under Section 202 of the Code, the judgment observes, are those cases where the material available is not clear to proceed further. The Magistrate, though in seisin of the matter having taken cognizance, has to decide whether there is any ground to proceed further. Further, Section 202 not only refers to an inquiry but also to an investigation. Thus, in such cases, the Police cannot on its own exercise the power of arrest in course of making its report in pursuance of the direction under Section 202 of the Code.

27. In this Court in Priyanka Srivastava (supra) referred to the nature of power exercised by the Magistrate under Section 156(3) of the Code and after referring to several earlier judgments held that the direction for registration of an FIR should not be issued in a routine manner. The Magistrate is required to apply his mind and exercise his discretion in a judicious manner. If the Magistrate finds that the allegations made before him disclose commission of a cognizable offence, he can forward the complaint to the Police for investigation under Section 156 and thereby save valuable time of the Magistrate from being wasted in inquiry as it is primarily the duty of the Police to investigate. However, the Magistrate also has the power to take cognizance and take recourse to procedure under Section 202 of the Code and postpone the issue of process where the Magistrate is yet to determine existence of sufficient ground to proceed. In a third category of cases, the Court may not take cognizance or direct registration of an FIR, but direct preliminary inquiry in terms of the dictum in Lalita Kumari's case (supra).

28. In Priyanka Srivastava (supra), this Court highlighted abuse of the criminal process by the unprincipled and deviant litigants who do knock at the door of the criminal court for malevolent reasons. In the said case criminal action was initiated by those against whom the financial institutions had proceeded under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. This was notwithstanding the protection given to the officers under Section 32 of the aforesaid Act against action taken in good faith. Reiterating Lalita Kumari (supra), it was observed that an action under Section 156(3) should not be entertained without the complainant taking recourse to sub-section (1) and (3) of Section 154 and compliances of these two Sections should be clearly spelt out in the application and necessary documents filed. To check malevolence and false assertions, the Court directed that every petition/application under Section 156(3) should be supported by an affidavit so that the person making an application should be conscious of it and to see that no false allegation is made. If the affidavit is found to be false, the complainant will be liable for prosecution in accordance with the law. Vigilance is specially required in cases pertaining to fiscal sphere, matrimonial/family disputes, commercial offences, medical negligence cases, corruption cases, or cases where there is abnormal delay/laches. Thus, the

Magistrate must be attentive and proceed with perspicacity to examine the allegation made and the nature of those allegations. He should not issue directions without proper application of mind which would be contrary to the object and purpose of the statute.

29. As to the scope of power of the Magistrate to direct an FIR under Section 156(3), this court in Mohd. Yusuf v. Afaq Jahan (Smt) and another, (2006) 1 SCC 627 opined that:

> "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."

30. In Anju Chaudhary (supra), this court analysing the power of the Magistrate under Section 156(3) observed:

> "41. Thus, the Magistrate exercises a very limited power under Section 156(3) and so is its discretion. It does not travel into the arena of merit of the case if such case was fit to proceed further. This distinction has to be kept in mind by the court in different kinds of cases...."

31. In HDFC Securities Ltd. v. State of Maharashtra, (2017) 1 SCC 640, this court while interpreting the words "may take cognizance" and Section 156(3), held:

> "24. Per contra, the learned counsel for Respondent 2 submitted that the complaint has disclosed the commission of an offence which is cognizable in nature and in the light of Lalita Kumari case [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , registration of FIR becomes mandatory. We observe that it is clear from the use of the words "may take cognizance" in the context in which they occur, that the same cannot be equated with "must take cognizance". The word "may" give discretion to the Magistrate in the matter. If on a reading of the complaint he finds that the allegations therein disclose a cognizable offence and that the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter, which was primarily the duty of the police to investigate, he will be

> justified in adopting that course as an alternative to taking cognizance of the offence, himself. It is settled that when a Magistrate receives a complaint, he is not bound to take cognizance if the facts alleged in the complaint, do not disclose the commission of an offence."

32. However, the position is different at the post- cognizance stage. Under Section 202, the Magistrate can analyse the veracity of the complaint made and appreciate whether there are grounds to proceed further. In Chandra Deo Singh v. Prokash Chandra Bose alias Chabi Bose and Another, AIR 1963 SC 1430, this Court referred to the objective of Section 202, to observe:

> "8. .....to enable the Magistrate to form an opinion as to whether process should be issued or not and to remove from his mind any hesitation that he may have felt upon the mere perusal of the complaint and the consideration of the complainant's evidence on oath. The courts have also pointed out in these cases that what the Magistrate has to see is whether there is evidence in support of the allegations of the complainant and not whether the evidence is sufficient to warrant a conviction. The learned Judges in some of these cases have been at pains to observe that an enquiry under Section 202 is not to be likened to a trial which can only take place after process is issued, and that there can be only one trial. No doubt, as stated in sub-section (1) of Section 202 itself, the object of the enquiry is to ascertain the truth or falsehood of the complaint, but the Magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant."

33. Counsel for the accused, on the other hand, have highlighted the complainant's conduct, which it is submitted, is contradictory to her explanation for the delay. She was/is not a timid person and an experienced social and political worker of standing. She has been continuously filing FIRs. In an FIR filed on 31 st August 2018, she had made allegations of rape against a third person who is a political worker in the same organisation. In a complaint filed on 12 th December 2019, she had alleged that the accused had met her on four occasions in the last year and each time they had locked "me for 4 to 5 hours and pressurized me for withdrawing the case". The police after investigation on this complaint dated 12 th December 2019 had filed an FIR No. 131 of 2019 dated 20th December 2019 and filed closure report dated 16 th June 2020. As a matter of fact, the case has been closed. The complainant subsequently filed another complaint dated 6th February 2020, wherein there is no mention of that particular case of the alleged rape incident. Even in the complaint filed on 12th March 2020 by the complainant, there was again no mention of the alleged rape. The complainant's assertion in the counter affidavit that she had filed a police complaint in respect of the rape incident on 29th November 2018 by lodging a complaint the very next day at 11:00 a.m. at Behala (Women) Police Station has been denied by the State of West Bengal, who have informed this Court that there is no such record of the complaint being filed. The accused filed an application on 4th October 2021 under the Right to Information Act, 2005 and have received on 22 nd October 2021 copies of preliminary inquiries done by Police Station Bhawanipore dated 30 th October 2020 and 5 th

November 2020. The preliminary inquiries conclude that in the communications made to the police between 2018 to 2020, there is no allegation that rape took place on 29 th November 2018. As per the report the complainant had failed to give any logical and satisfactory account for the delay in lodging the complaint. The accused assert that the complaint is an abuse of the process of law and has been filed to put pressure on the accused in view of the rape case filed by her against the third person.

34. At the same time, it is noticeable that the complainant/informant has made several allegations of rape, sexual harassment, etc. against persons with whom she had been acquainted and working. The complainant/ informant has pleaded threat and harassment at the hands of the persons named as perpetrators, who are people of influence and power as the ground and reason for delay. She pleads that period of limitation prescribed in section 468 of the Code does not apply to an offence punishable with imprisonment exceeding three years. On the question of delay, reliance is placed on the constitutional bench decision of this Court in the L.R. Melwani (supra). It is submitted that this Court on several occasions has sustained conviction relying solely upon the testimony of the prosecution/victim, when there is no doubt about her credibility and trustworthiness. While examining the question of delay in making the complaint, the courts must remain alive to the fact that it is difficult for a woman to come forward and make a statement alleging rape or sexual assault.

35. Every criminal case, it is stated, is a voyage of discovery in which truth is the quest. Right from the inception of the judicial system, it has been accepted that discovery, vindication and establishment of truth are the primary purposes underlying the existence of the courts of justice. However, the supremacy of truth is easier to assert than to define. Often this task becomes difficult when contradictory factual positions are asserted duly supported and affirmed on oath. In adversarial systems, the process of ascertaining truth requires compliance of procedures and rules of evidence, and limit the role of the adjudicator, in acting as an investigator to verify veracity of the allegations and counter-allegations till evidence and material is laid and examined as per codified procedural law. Yet it is believed that clash of adversaries is best calculated to getting out the facts. In a well-designed system, judicial findings of formal legal truth should coincide with the substantive truth. This can happen when the facts as asserted by the contestants are skilfully explored in accordance with the procedure prescribed by law. Abuse of law must be checked, if possible, at the very threshold, albeit when it is possible and also as per the procedure prescribed by law. V.R. Krishna Iyer, J. aptly summarize the procedure on the quest for truth and justice in Jasraj Inder Singh v. Hemraj Multanchand, (1977) 2 SCC 155:

> “8. To pick out a single true item which had been inextricably got enmeshed in the skein of entries and cross-entries was to tear up the fabric of the whole truth. In a finer sense, harmony is the beautiful totality of a whole sequence of notes and the concord of sweet sounds is ill-tuned into disjointed discord if a note or two is unmusically cut and played. Truth, like song, is whole and half-truth can be noise; Justice is truth, is beauty and the strategy of healing injustice is discovery of the whole truth and harmonising human relations. Law's finest hour is not in meditating on abstractions but in being the delivery agent of full fairness. This divagation is justified by the need to remind ourselves that the grammar of justice according to law

is not little litigative solution of isolated problems but resolving the conflict in its wider bearings."

36. The State of West Bengal has drawn our attention to the judgment of this Court in Gopal Das Sindhi and Others v. State of Assam and Another, AIR 1961 SC 986 to the effect that even when a private complaint is filed, the Magistrate is not bound to take cognizance under Section 190 as the word used therein is 'may', which should not be construed as 'must' for obvious reasons. The Magistrate may well exercise discretion in sending such complaint under Section 156(3) to the police for investigation. However, when a Magistrate chooses not to proceed under Section 156(3), he cannot simply dismiss the complaint if he finds that resorting to Section 156(3) is not advisable. Reference in this regard can also be made to Suresh Chand Jain v. State of M.P. and another, (2001) 2 SCC 628 which distinguishes between the power of the police to investigate under Section 156, the direction of the Magistrate for investigation under Section 156(3) and post-summoning inquiry and investigation after cognizance under Section 190 and Section 202 of the Code. When a Magistrate orders investigation under Section 156(3), he does so before cognizance of the offence. If he takes cognizance, he needs to follow the procedure envisaged in Chapter XV (see Afaq Jahan (supra).

The decision in Mona Panwar v. High Court of Judicature of Allahabad through its Registrar and Others, (2011) 3 SCC 496 is rather succinct. This Court held that when a complaint is presented before a Magistrate, he has two options. One is to pass an order contemplated by Section 156(3). The second one is to direct examination of the complainant on oath and the witness present, and proceed further in the manner provided by Section 202. An order under Section 156(3) is in the nature of a peremptory reminder or intimation to the police to exercise its plenary power of investigation under Section 156(1). However, once the Magistrate has taken cognizance under Section 190 of the Code, he cannot ask for an investigation by the Police. After cognizance has been taken, if the Magistrate wants any investigation, it will be under Section 202, whose purpose is to ascertain whether there is prima facie case against the person accused of the offence and to prevent issue of process in a false or vexatious complaint intended to harass the person named. Such examination is provided, therefore, to find out whether there is or not sufficient ground for proceeding further.

37. We do not intend to go into the question of the merits of the allegations, and what procedure the Magistrate should follow as this is an aspect which the Magistrate must first consider and decide judiciously and as per the law. What is impermissible and contrary to law is an adjudication on merits of the allegations and determination of the facts as baseless, without further scrutiny and examination. Therefore, the High Court was correct in remitting the matter to the judicial magistrate for further examination.

38. We were informed that the Magistrate, on remand, has passed an order under Section 156(3) directing registration of the FIR. He has misread the order and directions given by the High Court. In terms of the judgments of this Court, the Magistrate is required to examine, apply his judicious mind and then exercise discretion whether or not to issue directions under Section 156(3) or whether he should take cognizance and follow the procedure under Section 202. He can also direct a preliminary inquiry by the Police in terms of the law laid down by this Court in Lalita Kumari

(supra).

39. We would refrain and not comment on the allegations made as this may affect the case put up by either side. The accused do not have any right to appear before the Magistrate before summons are issued. However, the law gives them a right to appear before the revisionary court in proceedings, when the complainant challenges the order rejecting an application under Section 156(3) of the Code. The appellants, therefore, had appeared before the High Court and contested the proceedings. They have filed several papers and documents before the High Court and this Court. To be fair to them, the copies of the papers and documents filed before the High Court and this Court would also be forwarded and kept on record of the Magistrate who would, thereupon, examine and consider the matter. However, the complainant/informant would be entitled to question the genuineness and the contents of the said documents.

40. In view of the above and for the reasons stated above, while affirming the impugned judgment and order passed by the High Court remanding the matter back to the learned Magistrate, we set aside the subsequent order passed by the Magistrate on remand, pursuant to the impugned judgment and order passed by the High Court and remit the matter back to the learned Magistrate to examine and apply his judicial mind and then exercise discretion whether or not to issue directions under section 156(3) or whether he can take cognizance and follow the procedure under section 202. He can also direct the preliminary enquiry by the police in terms of the law laid down by this Court in the case of Lalita Kumari (supra). Copies of the papers and documents filed before the High Court and this Court could also be forwarded and brought on record of the Magistrate, who would thereupon examine and consider the matter. As observed hereinabove, the complainant/informant would be entitled to question the genuineness of the contents of the said documents.

41. The present appeals stand disposed of in terms of the above.

.....J.

[M.R. SHAH]

NEW DELHI; .....J.
MAY 04, 2023. [SANJIV KHANNA]