

Annexure P-3 that the sample taken in the present case was from batch No. 4. In these premises if the complaint had been filed soon after the report of the Insecticide Analyst was received and notice thereof would have been given to the petitioner, the petitioner must have controverted the report of the Insecticide Analyst by getting the second sample analysed from Central Insecticides Laboratory. As the petitioner was deprived of his valuable right of getting the sample re-analysed the complaint against him is liable to be quashed.

(9) As a result, I accept this petition, quash the complaint Annexure P-3 and all subsequent proceedings arising therefrom against the petitioner.

J.S.T.

Before Hon'ble H. S. Bedi & S. C. Malte, JJ.

GANESH DASS & OTHERS,—Petitioners.

versus

STATE OF HARYANA & ANOTHER,—Respondents.

*Crl. M. No. 4615 of 1994 &
Crl. M. No. 3545/M of 1992*

10th August, 1995

Code of Criminal Procedure, 1973—S. 156(3)—Scope and powers of Magistrate—Magistrate not empowered to direct police to register First Information Report—Function of police under Section 154 cannot be usurped by Magistrate under section 156(3).

Held, that in view of the propositions laid down by their Lordships of the Supreme Court in the case of *Tula Ram* and in view of catena of decisions which take the view contrary to the views expressed in the case of *Baru Ram*, we are of the considered opinion that the Magistrate while passing order under section 156(3) Cr.P.C. is not empowered to direct the police to register the First Information Report. The registration of the F.I.R. pertains to the sphere of powers of investigation by the police, and the registration of the First Information Report is done in exercise of powers by the police under Section 154 Cr.P.C. That function of the police need not, and cannot be usurped by the Magistrate while passing an order under Section 156(3) Cr.P.C.

(Para 12)

S. C. Kapoor, Sr. Advocate with Ashish Kapoor, Advocate, for
the *Petitioner*.

Atul Lakhanpal, Advocate, for the *Respondent*.

JUDGMENT

S. C. Malte, J.

This matter has been referred to the Division Bench for determining the legal position in view of the conflicting views in respect of interpretation of Section 156(3) of the Code of Criminal Procedure which empowers the Magistrate to direct the police to undertake the investigation. The question arose in the following circumstances :—

(2) A complaint was filed before the Judicial Magistrate 1st Class, Sirsa, under Sections 498-A, 406 and 506 IPC. On receipt of the said complaint, the Judicial Magistrate passed the following order :—

“Heard. Complainant be and is sent to the S.H.O. concerned for registration or investigations and registration of F.I.R. U/S 156(3) Cr. P.C.”

Pursuant to the aforesaid direction, an FIR was registered at Police Station Rania, District Sirsa. The papers indicate that the investigation by the police commenced. Meanwhile, the present petition was filed for quashing the FIR on the ground that under Section 156(3) Cr.P.C. the Magistrate cannot direct the police to register a case; and the only power of the Magistrate is to send the complaint to the police for investigation. When the matter came up before the single Bench presided over by V. K. Jhanji, J., the counsel for both the sides cited case law. One set of case law cited by the counsel was in support of the contention that the Magistrate has no power to direct registration of the case. On the other hand, the counsel for the respondents cited certain cases of this High Court which lay down the position that there was nothing illegal if the Magistrate sends the complaint to the police for registration of the FIR. In set of these conflicting views expressed in the reported rulings, the matter was referred to this Division Bench. The limited question, therefore, would be as regards the scope and powers of the Magistrate while ordering investigation under Section 156(3) Cr.P.C.

(3) Before we proceed to consider different rulings on the issue, it would be convenient to take a resume of the legal provisions. Section 156 Cr.P.C. consists of three clauses. First clause pertains to the powers of the police officer to investigate a cognizable case without an order from the Magistrate. The second clause provides that the proceedings of the police officer in such case shall not be questioned on the ground that such officer was not empowered under that Section to investigate. We are mainly concerned with the third clause which may be reproduced as follows :—

156 (1)

(2)

(3) Any Magistrate empowered under Section 190 may order such an investigation as above mentioned.”

(4) It may also be mentioned that Section 156 is in Chapter XII of the Code of Criminal Procedure which pertains to “Information to the Police and Their Powers to Investigate”.

(5) Besides the judgments which were referred by the learned single Judge in his order of reference, few more judgments have been cited before us in the course of argument. The problem arose when it was noticed that the law laid down in case of *Baru Ram and others v. State of Haryana* (1), could not be reconciled with the conflicting view expressed in case reported in *Smt. Champa Rani v. State of Punjab* (2). It, therefore, seems obvious that these two cases should be examined with the help of other ruling also.

(6) In case of *Baru Ram* (Supra), the submission was that the magistrate while passing order under Section 156(3) Cr.P.C. was not empowered to direct the police to register a case on the basis of the complaint that was filed before him. While considering that submission, the Single Bench of this Court placed reliance on a case of *Devarapalli etc. v. Narayana Reddy* (3). In that case the short question before their Lordships of the Supreme Court was as to whether a Magistrate who receives a complaint disclosing an offence exclusively triable by the Court of Sessions is debarred from

(1) 1990 (1) R.C.R. 105=1990 (1) CC Cases 118.

(2) 1990 (3) RCR 577.

(3) 1976 SCC (CrL.) 380=A.I.R. 1976 S.C. 1672.

sending the same to the police for investigation under Section 156(3) of the Code. While dealing with that aspect, their Lordships observed that the provision is conducive to justice and saves the valuable time of the Magistrate. The powers of the Magistrate to forward the complaint to the police for investigation was, therefore, endorsed by their Lordships. Their Lordships then compared it with the provisions of Section 202 Cr.P.C. and observed that the provisions of Section 156(3) and 202 of the Code of Criminal Procedure operate in distinct spheres at different stages. It would, therefore, appear that in the said case before the Supreme Court, the question involved and answered was not directly concerned with the question now before us. The other two authorities referred to in the case of *Baru Ram* (supra) are the cases reported in 1988 (2) R.C.R. 600 *Rattan Amol Singh v. State of Punjab* and *Messrs India Carat Pvt. Ltd. v. State of Karnataka* (4). While dealing with those cases, it was observed by the single Bench of this Court that these cases have no bearing over the question involved before it. He further relied upon a case reported in 1986 (1) C.L.R. 67 *Hari Singh v. The State of Punjab and another* case reported in (5), *Jagdish Rai v. State of Punjab* to arrive at a conclusion that the Magistrate can order the registration of the case and investigation by the police by passing order under Section 156(3) Cr.P.C. In case of *Hari Singh* (supra), the single Bench of this Court concluded that Magistrate would be competent to pass order under Section 156(3) and direct the police to register the case and investigate. In support of that conclusion, reliance was placed in a case of *Gopal Das Sindhi v. State of Assam* (6). In that case, the order passed by the Magistrate was :—

“To register a case, investigate and if warranted submit charge-sheet by 23rd August, 1957.”

While challenging that order, one of the planks of the submission was that the Magistrate exceeded his jurisdiction while passing the said order. While dealing with that submission, their Lordships of the Supreme Court observed that while passing the said order, the Magistrate had not taken the cognizance of the offence and he was justified in sending the complaint under Section

- (4) 1989 (1) R.C.R. 395.
- (5) 1988 (1) R.C.R. 202.
- (6) 1961 S.C. 986.

156(3) to the police for investigation. In that case though the above mentioned order passed by the Magistrate had not been interfered, that ruling has not directly dealt with the question as to whether the Magistrate was justified in directing the registration of the case. It would appear that even on plain reading of Section 156(3) there is no controversy that the Magistrate can pass order under Section 156(3) and direct the police to investigate in the complaint. The controversy, however, centres on the question, whether the Magistrate while directing the investigation can also direct the registration of the case, and thereby direct the registration of the FIR by the police. It would, therefore, appear that the case reported in AIR 1961 S.C. 986, as such, does not directly deal with the issue before us. In view of that it would appear that the observations made by the single Bench of this court in case of *Hari Singh* (supra), had not correctly taken into consideration the ratio arrived at in AIR 1961 S.C. 986. In *Baru Ram's* case the learned single Judge made a reference to the case of *Jagdish Rai* referred above. In the case of *Jagdish Rai*, the single Bench of this Court had observed that the direction of the Magistrate for registration of the case on the complaint was somewhat irregular. However, His Lordship found that investigation following registration of the FIR in that case was not illegal. It would, therefore, appear that, that case also did not provide a very sound ground to conclude that the Magistrate can order registration of the FIR while passing order under Section 156(3).

(7) The counsel for the petitioners invited our attention to a reported case in *Vijay Kumar v. Kartar Singh* (6A). In that case the same single Judge who decided the case of *Baru Ram* has observed that there was no legal bar for the Magistrate to direct police officer concerned to register a case and conduct investigation under Section 156(3) of the Code. In support of that proposition, he also drew help from the case of *Hari Singh* 1986 (1) C.L.R. (67), which we have already discussed in the earlier part of this judgment. The case of *Vijay Kumar* (supra) also seeks support from the above mentioned *Baru Ram's* case and other cases referred to in that case. In other words, in case of *Vijay Kumar*, the proposition that Magistrate while passing order under Section 156(3) can direct the registration of F.I.R. was again reiterated.

(8) In the context of these rulings now we proceed to consider the ruling which lay down a view contrary to what has been mentioned above. The earliest ruling on the point is reported in (*Rattan Amol Singh v. State of Punjab*) (7) and another case reported in (*Kewal Ram Chauhan v. Prithipal Singh Bakshi*) (8). Subsequently, in a case of *State of Punjab v. Joginder Singh* (9), it was found that the police officer had registered a case on the basis of order passed by the Magistrate. While dealing with that point, their Lordships observed that a Magistrate was not empowered to order registration of the case. That point was however, not dealt with in detail.

(9) The counsel for the petitioners brought to our attention the case of *Naresh Kumar v. State of Haryana* (10). In that case the Single Bench of this Court referred to a case *State of Punjab v. Kashmira Singh* (11). The learned Single Judge further quoted with approval the above mentioned case of *State of Punjab v. Joginder Singh* and quashed the impugned charge framed against the accused and left the parties with liberty to prosecute their civil litigation. In the above referred case of *Kashmira Singh*, the Division Bench of this court concluded that the order of the Magistrate directing registration of the case was unjustified. Their Lordships drew support from (*Tula Ram v. Kishore Singh*) (12). At a later stage, we will refer to that case in somewhat details. Another case cited was (*Mani Ram v. State of Haryana*) (13), in which the Single Bench of this court while relying on the case of *Joginder Singh* (Supra), concluded that the Magistrate was not empowered to direct the registration of the case while ordering investigation under section 156(3) of the Code.

(10) This brings us to consider the case (*Smt. Champa Rani v. State of Punjab*) (14). In that case the single Bench of this Court considered the case of *Baru Ram* (supra) along with other cases.

(7) 1988 (1) R.C.R. 144.

(8) 1988 (2) R.C.R. 214.

(9) 1991 (3) R.C.R. 276.

(10) 1995 (1) R.C.R. 222.

(11) 1992 (2) Recent C.R. 78.

(12) A.I.R. 1977 S.C. 2401.

(13) 1995 (2) Recent C.R. 99.

(14) 1990 (3) R.C.R. 577.

While disposing of that case his Lordship observed that the case of *Baru Ram* and the other cases concurring with the view expressed in the case of *Baru Ram* was not correct in view of the provisions of Section 156 Cr.P.C. It would, therefore, appear that the decision in the case of *Champa Rani* does not reconcile with the decision given in *Baru Ram's* case.

(11) It would, therefore, appear that in majority of cases cited above, the view expressed was that while passing the order under Section 156(3) Cr.P.C., the Magistrate was not empowered to direct the police to register FIR, though he can direct the police to undertake the investigation with utmost respect we would say that in case of *Baru Ram* and other cases concurring with that view, the legal position was not correctly laid down. The cases relied on while disposing of the case of *Baru Ram* as such did not directly lay down the legal position regarding the question involved presently before us. The legal position can further be clarified with the help of observations made by their Lordships in case of *Tulu Ram v. Kishore Singh* (15). The legal position laid down by their Lordships can be briefly stated as follows :--

- (i) Order under Section 156(3) for investigation can be passed at the pre-cognizance stage ;
- (ii) Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives :
 - (a) Proceed under Section 200 Cr.P.C. and record the evidence of the complainant and his witnesses ;
 - (b) 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) The Magistrate after considering the statement of the complainant and his witnesses or as a result of investigation and of the enquiry; if ordered, not satisfied with the material, can dismiss the complaint ;
- (iv) Where a Magistrate orders investigation by the police before taking cognizance under Section 156(3) of the Code.

(15) A.I.R. 1977 S.C. 2401.

and receives the report thereupon he can act on the report and discharge the accused, or straightway issue process against the accused, or apply his mind to the complaint filed before him and take action under Section 190 of the Code.

(12) In view of the propositions laid down by their Lordships of the Supreme Court in the case of *Tula Ram* (supra) and in view of catena of decisions which take the view contrary to the views expressed in the case of *Baru Ram*, we are of the considered opinion that the Magistrate while passing order under Section 156(3) Cr.P.C. is not empowered to direct the Police to register the First Information Report. The registration of the FIR pertains to the sphere of powers of investigation by the police, and the registration of the First Information Report is done in exercise of powers by the police under section 154 Cr.P.C. That function of the police need not, and cannot be usurped by the Magistrate while passing an order under Section 156(3) Cr.P.C. Even plain reading of Section 156(3) Cr.P.C. indicates that the Magistrate is empowered to direct the investigation by the police, and there is no mention regarding the powers to direct registration of the FIR. Occasion to order investigation may arise in two circumstances, namely, firstly before the Magistrate takes cognizance of the case, and, secondly, when he decides to proceed under Section 202 Cr.P.C. The former is the stage before taking cognizance, and is covered by the provisions of Section 156(3). The latter is after taking cognizance by the Magistrate, but the Magistrate directs investigation under Section 202 Cr.P.C. because he thinks it fit to postpone issue of process until he gets enough material, either by enquiry or investigation, to satisfy himself as to whether he should proceed further and issue summons to the accused to appear before him; or whether he should dismiss the complaint as being without substance. Those would be the powers under Sections 203 and 204 of the Code. These two provisions under Sections 156 and 202 Cr.P.C. function on two different floors. The direction under Section 156(3) may arise in a complaint which pertained to cognizable case or a non-cognizable case. The Magistrate asks the police to undertake the investigation because that helps him to save his time. Investigation by the police in non-cognizable case would otherwise be not possible unless the Magistrate issue such direction. All these provisions in Chapter XII of the Code pertains to "information to the Police and Their Power to Investigate". In some cases where the complaint is filed in the Court, the Magistrate

before taking cognizance of the case can direct the police to undertake investigation in the complaint. In that case the police officer would be performing all those powers of investigation which he would be entitled to while investigating a cognizable case as per the provisions given in Chapter XII of the Code. All these provisions, however, do not contemplate any direction by the Magistrate to the police to register FIR. With these observations, we return the reference to the single Bench.

J.S.T.

Before Hon'ble G. S. Singhvi & T. H. B. Chalapathi, JJ.
DALIP SINGH & OTHERS,—Petitioners.

versus

THE FINANCIAL COMMISSIONER-CUM-SECRETARY TO
GOVERNMENT, HARYANA & OTHERS,—Respondents.

C.W.P. No. 5781 of 1994

26th July, 1995

Displaced Persons (Compensation & Rehabilitation) Act, 1954—Ss. 8-A, 22, 24 & 33—Displaced Persons (Rehabilitation and Compensation) Rules, 1955—Rls. 90(15), 92—Constitution of India, 1950—Arts. 226/227—Cancellation of allotment due to non payment of mortgage amount—Allotment set aside by Chief Settlement Commissioner—Earlier sale of property by auction to be deemed void—Order of restoration of property after lapse of 8 years is proper—Power of Chief Settlement Commissioner under section 24(1) is not subject to provisions of Rule 92—Original order passed by the Managing Officer is liable to be declared void ab initio—Direction to refund the proportionate amount cannot be termed as illegal or arbitrary and in fact advances justice between the parties—Right of displaced persons to custodian property, stated.

Held. that a plain reading of Section 8-A and in particular sub-section (2) thereof shows that the Parliament intended to make a provision for recovery of the mortgage amount in respect of the properties abandoned by the displaced persons in the West Pakistan which on the date of their migration to India were subject to mortgage in favour of a person who is not resident of India. This provision nowhere speaks of automatic cancellation of allotment made in favour of a displaced person on account of non-payment of the mortgage amount.

(Para 10)