

remarks recorded by the reporting and reviewing authorities as the final word in the matter of recording of reports is that of Accepting Authority.

(13) In terms of the judgment of the Hon'ble Supreme Court in **Bahadur Singh's case** (*supra*), as followed by this Court in CWP No. 12427-CAT of 2003, we are of the opinion that it is only the adverse entries in the Annual Confidential Report, which are required to be communicated.

(14) Consequently, the present writ petition is allowed. The impugned order passed by the Tribunal is set aside. As a consequence thereof the original application filed by the applicant stands dismissed.

R.N.R.

Before Augustine George Masih, J.

NEELAM & OTHERS,—Petitioners

versus

STATE OF HARYANA AND OTHERS,—Respondents

CrI. Misc. No. 31895-M of 2006

2nd September, 2008

Code of Criminal Procedure, 1973—Ss. 156(3) & 202—Indian Penal Code, 1860—Ss. 306, 34—Death of husband of petitioner No. 1—Father-in-law of petitioner No. 1 filing complaint in Court of SDJM—SDJM ordering investigation of matter u/s 202 Cr. P.C.— Whether on receipt of complaint, Magistrate could, on taking cognizance of an offence complained of, direct registration of FIR u/s 156(3) Cr.P.C.— Held, no—Whether in a case where it appears to Magistrate that offence complained of is exclusively triable by the Court of Session, the Magistrate could have directed registration of FIR u/s 156(3) Cr.P.C.—Held, no—Order of Magistrate directing police to register a case against accused u/s 306/34 IPC held to be illegal being not in accordance with law and provisions of Cr.P.C.—Petition allowed, order of SDJM, FIR and all consequential proceedings arising therefrom quashed.

Held, that when a complaint is received by or presented before a Magistrate, he should either send the complaint at the outset to the officer incharge of the Police Station directing him to treat it as an First Information Report under Section 154 and proceed under Chapter XII to investigate under Section 156 and submit a final report under Section 173 of the said Chapter or take cognizance of it under Section 202 observing with pre-emptory requirement of the Section and proceed under Chapter XV of the Code of Criminal Procedure. A Magistrate when decides to proceed under Chapter XV, has no jurisdiction to direct the police to investigate under Chapter XII and if he does so, he would be acting wholly without jurisdiction.

(Para 21)

Further held, that once the Magistrate comes to a conclusion that the offence alleged is exclusively triable by the Court of Sessions, he has to proceed in accordance with Section 202(2) of the Code of Criminal Procedure and cannot order for investigation by the police under Section 156(3).

(Para 25)

Further held, that a perusal of order, dated 5th April, 2006 would clearly show that the Sub-Divisional Judicial Magistrate, Safidon, on going through the complaint, the report of the DSP, Safidon, and the report/opinion of the handwriting, finger prints and document expert, came to the conclusion that the allegations levelled in the complaint were under Section 306/506/120-B/34 IPC of which Section 306 IPC is exclusively triable by the Court of Sessions. Having said so, the Magistrate could not have proceeded in any other manner in the matter, except for proceeding under Section 202(2) of the Code of Criminal Procedure, which provides for calling upon the complainant to produce all his witnesses and examine them on oath. The matter, thereafter, came up for hearing before the Sub- Divisional Judicial Magistrate, Safidon on 29th April, 2006, when the Magistrate instead of proceeding under Section 202(2) went a step further and issued directions to the SHO, Police Station, Safidon to register a case against the accused under Sections 306/34 IPC under Section 156(3) of the Code of Criminal

Procedure. This order fails the test of law and is held illegal being not in accordance with law and the provisions of the Code of Criminal Procedure.

(Paras 28 to 30)

K.S. Dhaliwal, Advocate, *for the petitioners.*

K.D. Sachdeva, DAG, Punjab, *for respondent No. 1.*

Arihant Jain, Advocate, *for respondent No. 2.*

AUGUSTINE GEORGE MASIH, J.

(1) This petition under Section 482 of the Code of Criminal Procedure has been filed by the petitioners for quashing of the order, dated 31st January, 2006 and order, dated 29th April, 2006 passed by the Sub-Divisional Judicial Magistrate, Safidon and for quashing of FIR No. 203, dated 4th May, 2006 registered under Sections 306, 34 IPC at Police Station Safidon, District Jind, in compliance with order, dated 29th April, 2006 passed by the Sub-Divisional Judicial Magistrate, Safidon.

(2) It has been stated by the petitioners that petitioner No. 1 was married with one Sunil Kumar s/o Kitab Singh on 10th November, 2002. Two children out of their wedlock were born. Petitioner No. 1 left the matrimonial house of her husband, Sunil Kumar on 26th November, 2005 along with her children with the consent of her husband. On the night of 29th November, 2005, petitioner No. 1 was informed by her in-laws that her husband is no more. On reaching Safidon, Kitab Singh-respondent No. 2, who is father of her husband, informed the petitioner No. 1 that Sunil Kumar, husband of petitioner No. 1 had committed suicide. But later on she came to know that her husband was killed by Kitab Singh and other family members. She filed a complaint, dated 14th December, 2005 to S.P., Jind but before that she was thrown out of her matrimonial house on 11th December, 2005. The application of petitioner No. 1 was marked to the S.H.O., Police Station, Safidon for inquiry. On 8th January, 2006, Shri Manbir Singh, S.H.O., Police Station, Safidon called both the parties and recorded statement of Kitab

Singh-respondent No. 2. After recording of the statement, no further action has been taken thereon.

(3) In the meantime, in order to save his skin, Kitab Singh-respondent No. 2 filed a complaint against the petitioners by fabricating a false suicide note in the court of Sub-Divisional Judicial Magistrate, Safidon, dated 30th January, 2006. The court took cognizance of this complaint and after recording the statement of Kitab Singh-complainant sent the complaint under Section 202 of the Code of Criminal Procedure for enquiry to the D.S.P., Safidon *vide* order, dated 31st January, 2006. On receipt of enquiry report of the D.S.P., Safidon, the court sent the complaint to the S.H.O., Police Station, Safidon under Section 156 (3) of the Code of Criminal Procedure for registration of the case *vide* order, dated 29th April, 2006, in compliance whereof FIR No. 203, dated 4th May, 2006, under Sections 306, 34 IPC was registered at Police Station, Safidon.

(4) It is these two orders passed by the Subm Divisional Judicial Magistrate, Safidon i.e. 31st January, 2006 and 29th April, 2006 along with the FIR, which have been challenged.

(5) The contention of the petitioners is that once the Sub-Divisional Judicial Magistrate, Safidon, has taken cognizance of the alleged offences in the complaint and ordered for investigating the matter under Section 202 of the Code of Criminal Procedure, the Magistrate is not competent to send the complaint for registration of the FIR under Section 156 (3) of the Code of Criminal Procedure to the Police. The powers under Section 156 (3) can only be exercised by the Judicial Magistrate at the pre-cognizance stage. Once cognizance has been taken, the Magistrate does not have the authority to send the complaint for registration of the case under Section 156 (3) of the Code of Criminal Procedure. It has further been stated that the Magistrate is not competent to send a complaint for enquiry under Section 202 of the Code of Criminal Procedure, if the offence complained of is exclusively triable by the Sessions Court. The offence in the present complaint being under Section 306/34 IPC, which is exclusively triable by the Sessions Court, the Magistrate could not have proceeded to order the investigation in the case and in no condition could he order the

registration of an FIR under Section 156 (3) of the Code of Criminal Procedure.

(6) On notice having been issued, reply on behalf of State as well as Kitab Singh-respondent No. 2 (complainant) has been filed. The reply of the State as well as respondent No. 2 are on identical grounds, wherein it has been contended that the Sub-Divisional Judicial Matistrate, Safidon had, at no stage before passing order, dated 29th April, 2006, taken cognizance of the alleged offences in the complaint. It is only *vide* order dated 29th April, 2006 that cognizance was taken and, therefore, the Magistgrate was comptent to direct registration of the FIR under Section 156 (3) of the Code of Criminal Procedure. It has been further contended that the complaint before the Sub-Divisional Judicial Magistrate was filed for issuance of a direction to the police to register FIR under Section 156 (3) of the Code of Criminal Procedure and the Magistrate has acted in granting the prayer as made in the complaint *vide* order, dated 29th April, 2006.

(7) On the basis of the pleadings, the questions which arise for consideration and decision are :

QUESTION I Whether on receipt of the complaint, the Magistrate could, on taking cognizance of an offence complaint of, direct registration of FIR under Section 156 (3) of the Code of Criminal Procedure ?

QUESTION II Whether in case where it appears to the Magistrate that the offence complained of is exclusively triable by the Court of Session, the Magistrate could have directed registration of FIR under Section 156 (3) of the Code of Criminal Procedure ?

(8) To resolve these issues, three orders passed by the Sub-Divisional Judicial Magistrate, Safidon during the proceedings in the case are important. But before moving on to the said orders, background facts and the proceedings in the Court is essential to understand the controversy leading to the necessity of adjudication in this case.

(9) Complaint dated 30th January, 2006 was filed in the court of Sub-Divisional Judicial Magistrate, Safidon with a prayer to send

the same to the S.H.O. Police Station, Safidon under Section 156(3) of the Code of Criminal Procedure for the registration of the criminal case. On 31st January, 2006, the complainant made a statement before the Sub-Divisional Judicial Magistrate, Safidon and stated before the Magistrate that his complaint be sent to the Deputy Superintendent of Police, Safidon under Section 202 of the Code of Criminal Procedure for investigation of the matter. On the basis of the said statement, the Magistrate sent the original complaint to the Deputy Superintendent of Police, Safidon under Section 202 of the Code of Criminal Procedure for investigating the matter and ordered a report to be submitted on 14th February, 2006. The report of the Deputy Superintendent of Police, Safidon was received on 14th February, 2006 and the case was simply adjourned to 25th February, 2006 and thereafter to 4th March, 2006, 11th March, 2006, 29th March, 2006 and 5th April, 2006.

(10) On 5th April, 2006, the complainant tendered a copy of the opinion of Handwriting, Finger prints and Document Expert and also made a statement that suicide note be got compared from F.S.L. Madhuban. The Sub-Divisional Judicial Magistrate, Safidon directed the S.H.O. Police Station, Safidon to get the documents compared from F.S.L. Madhuban within 20 days and submit his report along with F.S.L. report. It would not be out of way to mention here that in this order, the Magistrate has stated that the allegations levelled in the complaint are under Sections 306/506/120-B/34 IPC and that Section 306 IPC is exclusively triable by the Court of Sessions.

(11) The matter, thereafter, came up for hearing on 29th April, 2006, when the Sub-Divisional Judicial Magistrate, Safidon directed the S.H.O., Police Station Safidon to register a case under Sections 306/34 IPC against the accused persons.

(12) The three orders dated 31st January, 2006, 5th April, 2006 and 29th April, 2006 which need consideration of this Court, are reproduced herein under :—

Order-I

“Present : Complainant in person with Shri J.S. Malik, Adv.

.....

Complaint presented today.

Statement of complainant is recorded separately in which he has stated that the present complaint may kindly be sent under section 202 Cr. P.C. In view of statement made by complainant, the present complaint be sent to D.S.P. Safidon under section 202 CR.P.C. for investigating the matter and report be submitted on 14th February, 2006. Original complaint be sent and photo copy of same be retained in the court.

(Sd.) . . . ,
Gopal Krishan,
SDJM, Safidon,
31-1-06”

Order-II

“Present : Complainant in person.

Tendered copy of opinion of Shri Yashpal Chand Jain, Handwriting, Finger Prints and Document Expert Mark-A and also made statement that suicide note be get compared from F.S.L. Madhuban and prayed for necessary direction to SHO, P.S. Safidon.

Heard. In view of the statement made by complainant and report Mark-A and in the light of report submitted by the office of DSP, Safidon, since the allegation levelled in the complaint are under section 306/506/120-B/34 IPC and Section 306 IPC is exclusively triable by the court of Sessions. In the interest of justice, SHO, P.S. Safidon, is directed to get the necessary document from complainant and compared from FSL, Madhuban, within 20 days and submit his report along with FSL report positively on or before 29th April, 2006. Intimation be sent to SHO, P. S. Safidon.

(Sd.) . . . ,
SDJM, Safidon,
5-4-2006”

Order-III

“Present :—Complainant in person with Shri J. S. Malik,
Advocate.

ASI Ved Parkash in person.

Shri Ved Parkash, ASI, appeared and submitted report of F.S.L. Haryana, Madhuban, Sealed report is opened in the court. Keeping in view the report received from F.S.L. Madhuban and in view of the report earlier submitted by D.S.P. Safidon, a *prima facie* case under section 306/34 IPC is made out against the accused persons. S.H.O., P.S. Safidon is directed to register a case accordingly.

(Sd.) . . . ,
Gopal Krishan,
SDJM, Safidon,
29-4-2006”

(13) Counsel for the petitioners, on the basis of the above three orders, contends that once the Sub-Divisional Judicial Magistrate, Safidon has, in his order dated 31st January, 2006, decided to proceed on the complaint of respondent No. 2 under Section 202 of the Code of Criminal Procedure, as is evident from the order dated 31st January, 2006, he could not have reverted back and taken resort to Section 156 (3) of the Code of Criminal Procedure for directing the S.H.O., Police Station Safidon to register the FIR. He further contends that a perusal of the order dated 5th April, 2006 would clearly show that the Sub-Divisional Judicial Magistrate, Safidon, was fully aware that the offence alleged to have been committed, as per the complaint, was exclusively triable by the court of Sessions. Therefore, the Magistrate did not have the option to direct the registration of the FIR but the only option left with the magistrate was to proceed under Section 202(2), wherein he was bound to call upon the complainant to produce all his witnesses and examine them on oath. The said procedure having not been followed the order dated 5th April, 2006 and the subsequent order dated 29th April, 2006 cannot be sustained and deserves to be quashed. For these submissions, he relies upon judgment of the Hon’ble Supreme Court

in the case of **Devarapalli Lakshminarayana Reddy and others versus Narayana Reddy and others (1)**, and **Tula Ram and others versus Kishore Singh (2)**.

(14) Counsel for the State and the counsel for the complainant contend that since the Sub-Divisional Judicial Magistrate, Safidon has not taken cognizance of the complaint, the assertion of the counsel for the petitioners cannot be accepted. The cognizance was taken by the Magistrate only while passing order dated 29th April, 2006 and, therefore, the order passed by the Sub-Divisional Judicial Magistrate, Safidon as well as the registration of FIR in question, in compliance with the order passed by the court, is in accordance with law.

(15) I have heard the counsel for the parties and have gone through the records of the case as well as the judgments cited at the bar. As the questions involved in this case are purely legal in nature, the allegations in the complaint and the counter allegations by the other side are not being commented upon.

(16) I now proceed to find answers to the two questions arising in the present case as formulated above.

(17) The Hon'ble Supreme Court in **Devarapalli Lakshminarayana Reddy and others versus Narayana Reddy and others (supra)** (at page 1677), held as follows :

“17. Section 156(3) occurs in Chapter XII, under the caption :

“Information to the Police and their powers to investigate”, while Section 202 is in Chapter XV which bears the heading “Of complaints to Magistrate”. The power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by Sec. 202 (1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding

(1) AIR 1976 S.C. 1672

(2) AIR 1977 S.C. 2401

the commission of a cognizable offence, the power under Sec. 156 (3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1) (a). But if he once takes such cognizance and embarks upon the procedure embodied in chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156 (3). It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156 (1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173. On the other hand, Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under Section 202 to direct, within the limits circumscribed by that section, an investigation “for the purpose of deciding whether or not there is sufficient ground for proceeding.” Thus the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him.”

(18) Similarly, in the case of **Tula Ram and others versus Kishore Singh (3)**, (at page 464), the Hon’ble Supreme Court has held as under :—

“10. Analysing the scheme of the Code on the subject in question it would appear that Section 156(3) which runs thus :

Any Magistrate empowered under Section 190 may order such an investigation as above mentioned.

Appears in Chapter 12 which deals with information to the police and the powers of the police to investigate a crime.

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

202 of the Code. But the Magistrate's powers under Section 156(3) of the Code to order investigation by the police have not been touched or affected by Section 202 because these powers are exercised even before cognizance is taken. In other words, Section 202 would apply only to cases where the Magistrate has taken cognizance and chooses to enquire into the complaint either himself or through any other agency. But there may be circumstances as in the present case where the Magistrate before taking cognizance of the case himself chooses to order a pure and simple investigation under Section 156(3) of the Code. The question is, having done so, is he debarred from proceeding with the complaint according to the provisions of Sections 190, 200 and 204 of the Code after receipt of the final report by the police ? We see absolutely no bar to such a course being adopted by the Magistrate. In the instant case, there is nothing to show that the Magistrate had taken cognizance of the complaint. Even though the complaint was filed by (*sic* before) the Magistrate, he did not pass any order indicating that he had applied his judicial mind to the facts of the case for the purpose of proceeding with the complaint. What he had done was to keep the complaint aside and order investigation even before deciding to take cognizance on the basis of the complaint. After the final report was received the Magistrate decided to take cognizance of the case on the basis of the complaint and accordingly issued notice to the complainant. Thus, it was on April 2, 1975 that the Magistrate decided for the first time to take cognizance of the complaint and directed the complainant to appear. Once cognizance was taken by the Magistrate under Section 190 of the Code it was open to him to choose any of the following alternatives :

- (1) Postpone the issue of process and enquire into the case himself ; or
- (2) direct an investigation to be made by the police officer ;
or

- (3) any other person.

In the instant case as the allegations made against the accused made out a case exclusively triable by the Court of Session the Magistrate was clearly debarred from ordering any investigation, but he was not debarred from making any enquiry himself into the truth of the complaint. This is what exactly the Magistrate purported to have done in the instant case. The Magistrate issued notice to the complainant to appear before him, recorded the statement of the complainant and his witnesses and after perusing the same he acted under Section 204 of the Code by issuing process to the accused appellants as he was satisfied that there were sufficient grounds for proceeding against the accused.”

(19) A perusal of the above judgments of the Hon’ble Supreme Court would clearly spell out the law with regard to the powers of the Magistrate, which are different and distinct when exercised under Chapter XII and Chapter XV to the Code of Criminal Procedure.

In the light of the above, the questions are answered as follows :—

Question-I

“Whether on receipt of the complaint, the Magistrate could, on taking cognizance of an offence complained of, direct registration of FIR under Section 156 (3) of the Code of Criminal Procedure ?

(20) Whenever a complaint is received by a Magistrate of which he is authorized to take cognizance and if he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding, may either enquire into the case himself or direct an investigation to be made by a police officer or by such other person, as he thinks fit. This is mandated under Section 202 of the Code of Criminal Procedure. However, if on receipt of the complaint, the Magistrate, without examining the complainant, directs the police to

investigate, then the order is under Section 156(3) of the Code of Criminal Procedure, meaning thereby, there is no actual application of mind and is in the nature of a preemptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1) and no cognizance of the offence has been taken. However, if the investigation is directed under Section 202 of the Code of Criminal Procedure, then the same can be done on taking cognizance of the offence alleged. The investigation under Section 156(3) results in submission of a final report under Section 173 of the Code of Criminal Procedure, which forms the subject matter for consideration by the Magistrate under Section 190(1) (b) of the Code of Criminal Procedure. However, submission of a report after investigation under Section 202 of the Code of Criminal Procedure, which can be called for only after taking cognizance of the offence, furnishes material for consideration by the Magistrate either to summon the accused by passing an order under Section 204 or refusing to issue process by an order of dismissal of the complaint under Section 203. The words used by the legislature in Section 156(3) qualifying the powers of the Magistrate read “.....May order such an investigation.....” whereas in Section 202 “.....or direct an investigation.....”, brings out the difference in the very nature of the powers exercised by the Magistrate which are distinct and requiring qualitative difference in application of mind while exercising such powers. It is always desirable that the Magistrate taking cognizance of offence on complaint should keep in mind the difference between an order under Section 156(3) and a direction under Section 202 and not make a hybrid composite order under both the Sections.

Answer to Question I :

(21) When a complaint is received by or presented before a Magistrate, he should either send the complaint at the outset to the officer incharge of the Police Station directing him to treat it as an First Information Report under Section 154 and proceed under Chapter XII to investigate under Section 156 and submit a final report under Section 173 of the said Chapter or take cognizance of it under Section 202 observing with preemptory requirement of the Section and proceed under Chapter XV of the Code of Criminal Procedure. A Magistrate when decides to proceed under Chapter XV, has no jurisdiction to direct

the police to investigate under Chapter XII and if he does so, he would be acting wholly without jurisdiction.

Question-II

Whether in a case where it appears to the Magistrate that the offence complained of is exclusively triable by the Court of Sessions, the Magistrate could have directed registration of FIR under Section 156(3) of the Code of Criminal Procedure ?

(22) In this regard, provisions of Section 202(2), are itself very clear and are thus reproduced herein below :

“202(2) In an enquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath :

Provided that if 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.”

(23) A perusal of the above would clearly show that the Magistrate has no option but to call upon the complainant to produce all his witnesses and examine them on oath where it appears to the Magistrate that the offence complained of is exclusively triable by the Court of Sessions. This issue has also been dealt with by the Hon'ble Supreme Court in the case of **Tula Ram and others versus Kishore Singh** (*supra*). It has clearly been held therein that the Magistrate was clearly barred from ordering any investigation but he was not debarred from making any enquiry himself into the truth of the complaint.

(24) However, during the enquiry or at any stage where it appears to the Magistrate that the offence is triable exclusively by the Court of Sessions, direction of investigation by the police officer is not permissible and he is required to hold an enquiry by himself. At this stage, proviso comes into play which mandates that he shall call upon the complainant to produce all his witnesses and examine them on oath. The obvious reason is that in a private complaint, which is required to be committed to the court of Sessions for trial, the interest

of the accused will be safeguarded as the accused would not be taken by surprise at the time of trial and it would reveal the version of the complainant and the witnesses whose list is required to be filed by the complainant under Section 204(2) before the issuance of process. This would be necessary as the Magistrate is mandated under Section 208(1) to furnish without delay to the accused, free of cost, copy of the statements recorded under Section 200 or Section 202, of all person examined by the Magistrate.

Answer to Question-II :

(25) Once the Magistrate comes to a conclusion that the offence alleged is exclusively triable by the Court of Sessions, he has to proceed in accordance with Section 202(2) of the Code of Criminal Procedure and cannot order for investigation by the Police under Section 156(3).

(26) Now is the time to revert back to the orders under question passed by the Sub-Divisional Judicial Magistrate, Safidon in the instant case to test their veracity on the touchstone of law.

(27) The first order is dated 31st January, 2006. It starts with the presentation of the complaint and thereafter, proceeds to say that the statement of the complainant has been recorded and on the statement of the complainant, the original complaint is sent to the D.S.P., Safidon, under Section 202 of the Code of Criminal Procedure for investigating the matter and to report. This shows the application of mind by the Magistrate to the complaint and the statement of the complainant and thereafter, the investigation was directed under Section 202. Having taken cognizance of the offence under Chapter XV, the Magistrate was bound to proceed further in accordance with the provisions contained in this chapter.

(28) A perusal of the order dated 5th April, 2006 would clearly show that the Sub-Divisional Judicial Magistrate, Safidon, on going through the complaint, the report of the D.S.P., Safidon, and the report/opinion of the handwriting, finger prints and document expert, came to the conclusion that the allegations levelled in the complaint were under Sections 306/506/120-B/34 IPC of which Section 306 IPC is exclusively triable by the Court of Sessions. Having said so, the Magistrate could

not have proceeded in any other manner in the matter, except for proceeding under Section 202(2) of the Code of Criminal Procedure, which provides for calling upon the complainant to produce all his witnesses and examine them on oath.

(29) The matter, thereafter, came up for hearing before the Sub-Divisional Judicial Magistrate, Safidon on 29th April, 2006, when the Magistrate instead of proceeding under Section 202(2) went a step further and issued direction to the SHO, Police Station, Safidon to register a case against the accused under Section 306/34 IPC under Section 156(3) of the Code of Criminal Procedure. The order is hit by the answers to questions I and II as given above where it has been held that :

“A Magistrate when decides to proceed under Chapter XV, has no jurisdiction to direct the Police to investigate under Chapter XII and if he does so, he would be acting wholly without jurisdiction.

Once the Magistrate comes to a conclusion that the offence alleged is exclusively triable by the Court of Sessions, he has to proceed in accordance with Section 202(2) of the Code of Criminal Procedure and cannot order for investigation by the police under Section 156(3).”

(30) This order fails the test of law as laid down above and is held illegal being not in accordance with law and the provisions of the Code of Criminal Procedure.

(31) This petition is, accordingly, partly allowed. The order dated 29th April, 2006 passed by the Sub-Divisional Judicial Magistrate, Safidon, FIR No. 203 dated 4th May, 2006, under Section 306/34 IPC, Police Station Safidon, District Jind registered in compliance with the order dated 29th April, 2006 and all consequential proceedings arising therefrom are hereby quashed. A direction is issued to the Sub-Divisional Judicial Magistrate, Safidon, to proceed with the complaint in accordance with Section 202(2) of the Code of Criminal Procedure and take further action, in accordance with law.

R.N.R.