tional obligation to perform its duties by giving appropriate directions to safeguard the rights of the citizens. For exercising such a power and not creating a precedent we have further been persuaded to come to such conclusion on the basis of the judgment of the Supreme Court reported as '*State of Maharashtra* v. *Abdul Hamid Haji Mohammed* (5). It is also admitted that most of the accused have already been arrested, interrogated and challenged in the Designated Court. No useful purpose would be served at this belated stage to subject the petitioners to the alleged harassment of investigation after more than two and a half years of the alleged date of occurrence and about two years from the date of the registration of the F.I.R. against them.

(14) Under the circumstances the writ petitions are disposed of by holding that no case at this stage has been made out for quashing of F.I.R. No. 152 dated 11th March, 1992 registered at Police Station Sadar, Hissar, for offences under Sections 3, 4 and 6 of the TADA Act and under Section 25 of the Arms Act. It is, however, directed that in case the petitioners are required to be arrested in connection with the F.I.R. No. 152 dated 11th March, 1992 for offences under the TADA and Arms Acts they shall be set at liberty on furnishing bail bonds in the amount of Rs. 50,000 each alongwith their personal bonds to the satisfaction of the investigating or arresting officer. All the petitioners or any one of them as may be directed, shall remain present during the investigation of the F.I.R. Their presence if required shall be secured only during working hours, that is, from 10.00 A.M. to 4.00 P.M. No petitioner shall approach any prosecution witness or try to influence the investigation. None of the petitioners shall leave the country without prior permission of the Designated Court. Recoveries, if any, made consequent upon the disclosure statement of any of the accused, petitioners shall not be hit by the provisions of Section 27 of the Evidence Act. No costs.

S.C.K.

Before : *Hon'ble A. S. Nehra, J.*

CHARAN SINGH AND OTHERS,—*Petitioners.*

versus

STATE OF HARYANA AND ANOTHER,—*Respondents.*

Criminal Misc. A. No. 8965 *of* 1992

October 22, 1993

Code of Criminal Procedure (II of 1974)—*S.* 482 *and* 156—*Complaint filed—Magistrate sent it for investigation under section* 156(3)—

(5) 1993 (6) J.T. (S.C.) 589.

On basis of report filed, Magistrate ordered Station House Officer to register case against petitioner—Such action of Magistrate challenged—Whether Magistrate has power to direct S.H.O. to register a case.

Held, that Section 156 of the Code is mandatory and the police officer has to act on the information received with respect to the commission of a cognizable offence. In case he does not act on that information, sub-section (3) gives the aggrieved party a right to give in writing the information to the Superintendent of Police and on that basis, investigation has to be carried out. Whenever information of a cognizable offence is given to the police, even if the Magistrate had not ordered for registration of a case, it was the duty of the police, who was primarily concerned with the matter of investigation to register the case and proceed with the investigation. The order asking the registration of the case may at best be described to be surplussage, but will not vitiate the order of the Magistrate.
(Para 10)

Baldev Singh, Advocate, *for the Petitioners.*

Manmohan Singh, Advocate with Sewa Singh, Advocate, *for the Respondents.*

JUDGMENT

A. S. Nehra, J.

(1) Charan Singh and others have filed this petition under section 482 of the Code of Criminal Procedure (hereinafter referred to as the 'Code') for quashing the order dated 8th July, 1992 passed by the Judicial Magistrate I Class, Tohana and for quashing the F.I.R. No. 263 dated 9th July, 1992, registered at Police Station, Tohana under sections 447/448/392/406/323 and 506 of the Indian Penal Code.

(2) Briefly stated the facts of the case are that Jaswinder Singh—respondent No. 2 filed a criminal complaint against the petitioners on 27th May, 1992 on which the Magistrate passed an order that the complaint be sent to the Station House Officer, Police Station, Tohana, for investigation under section 156(3) of the Code of Criminal Procedure and that the report of the Station House Officer, Tohana, be called for 11th June, 1992. The Station House Officer, Tohana, conducted an inquiry into the matter and submitted his inquiry report on 2nd July, 1992. The learned Magistrate, on the basis of report submitted by the Station House Officer, Tohana, passed the impugned order dated 8th July, 1992, which reads as under :—

"Present :—Complainant with Shri D. K. Dhamija, Advocate. The present complaint was sent to S.H.O. concerned for

investigation under section 156(3) Cr.P.C., S.H.O. concerned has also submitted his report dated 2nd July, 1992. On perusing his report, there appears to be a *prima-facie* case in favour of complainant and, therefore, S.H.O. concerned is directed to register a case against the accused under relevant sections of offence. The intimation about registration of the case against the accused be sent to this Court immediately and accused alongwith challan. Original complaint along with relevant proceedings, taken by S.H.O. concerned during investigation is sent back to this Court."

In compliance with the order passed by the Magistrate, a case against the petitioners was registered, as indicated above.

(3) It has been alleged in the petition by the petitioners that the learned Magistrate had no power to direct the Station House Officer, Police Station, Tohana to register a case against the petitioners and therefore, the impugned order passed by the learned Magistrate is liable to be quashed.

(4) Notice of this petition was given to the respondents. Reply by way of an affidavit of Jaswinder Singh has been filed. Jaswinder Singh-respondent No. 2, in his reply, has submitted that the learned Magistrate without taking cognizance into the matter sent the complaint to the Station House Officer, Police Station Tohana, for investigation, and the impugned order dated 8th July, 1992 is nothing but a peremptory reminder to the police to exercise plenary powers of investigation under section 156(1) of the Code of Criminal Procedure in accordance with law which embraces entire continuous process beginning with recording of F.I.R. under section 154, collection of evidence under section 156 and ending with a report/charge-sheet under Section 173, Code of Criminal Procedure. It is further mentioned in the reply that even otherwise, as the offences complained of are cognizable, the Station House Officer, Police Station, Tohana has the statutory duty to register the First Information Report and proceed with the investigation even without the orders of the Magistrate and that the Station House Officer, Police Station, Tohana after completing investigation has submitted his report/charge-sheet in the Court of Judicial Magistrate, I Class, Tohana which is pending consideration. In para 6 of the reply, it has been stated that the order dated 8th July, 1992 passed by the Judicial Magistrate, I Class, Tohana and First Information Report No. 263 registered at Police Station, Tohana are legal and are not liable to

be quashed. It has been further submitted that the Magistrate is very much empowered to direct the police to register a case and investigate it under section 156(3) of the Code of Criminal Procedure when he has not taken the cognizance.

(5) Mr. Baldev Singh, the learned counsel for the petitioners, in support of his arguments, has relied upon a Judgment of the Division Bench of this Court in *State of Punjab* v. *Kashmira Singh* (1), and that of Supreme Court in *Tula Ram and others* v. *Kishore Singh* (2).

(6) Mr. Manmohan Singh, learned counsel for respondent No. 2 has contended that the impugned order passed by the Magistrate is legal and that case against the petitioners had been registered in accordance with law. In support of his arguments, he has referred to Section 154 of the Code of Criminal Procedure, which is reproduced as under :—

> "154. Information in cognizable cases : (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.
>
> (2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.
>
> (3) Any person aggrieved by a refusal on the part of an officer in charge of police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct as investigation to be made by any police officer Subordinate to him,

(1) 1992 (2) Recent Criminal Reports. 78.
(2) A.I.R. 1977 Supreme Court, 2401.

in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the Police station in relation to that offence."

In support of his arguments, he has also relied upon *Ashok Kumar and others* v. *Jaswant Rai and another* (3), and *Baru Ram and others* v. *The State of Haryana and another* (4).

Before dealing with the contention made by the counsel for the petitioners, it would be desirable to know the distinction of power of Magistrate to order police investigation under section 156(3) of the Code of Criminal Procedure from his power to direct the investigation, under section 202(1) of the Code. Dealing with this aspect of the matter, it was observed in *Bevarapalli Lakshminarayana Reddy and others* v. *V. Narayana Reddy and others* (5), by their Lordships of the Supreme Court, as under :—

"The power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by Section 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage, when the Magistrate is in seisin of the case.

Therefore, in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under section 190(1)(a). 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)."

(7) A careful perusal of the judgment of the Division Bench of this Court in *State of Punjab* v. *Kashmire Singh's case* (supra), would indicate that the complaint was filed in the Court on September 13, 1980, and the same was adjourned for evidence of the complainant to September 19, 1980, and thereafter to October 16, 1980, that on October 16, 1980, statement of Mangal Singh (PW-1) was

(3) 1992(1) Recent Criminal Reports 603.
(4) 1990 (1) Recent Criminal Reports 195.
(5) 1976 S.C.C. (Crl.) 380.

recorded : that thereafter, the case was adjourned to various dates including March 12, 1981, May 7, 1981 and finally to May 28, 1981 but no evidence could be produced by Budh Singh complainant; and that the Additional Chief Judicial Magistrate, on May 21, 1981, forwarded the complaint to the Station House Officer, Police Station Chamkaur Sahib for registration of the case and investigation under section 156 (3) of the Code. Dealing with this aspect of this case, it was held by the Division Bench of this Court, that such an order is clearly not envisaged under section 156(3) of the Code. *State of Punjab* v. *Kashmira Singh's case* (supra) obviously relates to a case where the Magistrate had already taken cognizance of the offence and the trial Magistrate in the said case, had already recorded some evidence, therefore, the Magistrate could not legally invoke his power under section 156 (3) of the Code in the case. Whereas in the instant case, the Magistrate has exercised his power under section 156 (3) of the Code at the pre-cognizance stage. Thus, the aforesaid authority is clearly distinguishable and not applicable to the facts of the case in hand.

(8) The Hon'ble Supreme Court has held in *Tula Ram and others* v. *Kishore Singh's case* (supra) as under :—

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

(9) The judgment in *Baru Ram and others* v. *The State of Haryana and another's case* (supra) relied upon by the learned counsel for the respondent Nos. 2, is fully applicable to the facts of the present case. It has been held by this Court in that case that the Additional Chief Judicial Magistrate, Kurukshetra had not taken cognizance of the offence disclosed in the complaint as contemplated under section 190 (1) (a) of the Code and, as such, he was legally empowered to direct investigation under section 156 (3) of the Code after registration of the case.

Section 156(3) of the Code under which the Magistrate has acted, provides as follows :—

"156 (3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned."

In *Gopal Dass Sindhi and others* v. *State of Assam and another* (6), their Lordships held that provisions of Section 190 of the Code do not mean that once a complaint is filed, a Magistrate is bound to take cognizance if the facts stated in the complaint disclose the commission of an offence. Their lordships have held as under :—

"We cannot read the provisions of Section 190 to mean that once a complaint is filed, a Magistrate is bound to take cognizance if the facts stated in the complaint disclose the commission of any offence. We are unable to construe the word 'may' in section 190 to mean 'must'. The reason is obvious. A complaint disclosing cognizable offences may well justify a Magistrate in sending the complaint under Section 156 (3) to the police for investigation. There is no reason why the time of the Magistrate should be wasted when primarily the duty to investigate in cases involving cognizable offences is with the police. On the other hand, there may be occasions when the Magistrate may exercise his discretion and take cognizance of a cognizable offence. If he does so then he would have to proceed in the manner provided by Chapter XVI of the Code."

After referring to the observations of Mr. Justice Dass Gupta in case of *Superintendent and Remembrancer of Legal Affairs, West Bengal* v. *Abani Kumar Banerjee* (7), it has been further observed:—

"It would be clear from the observations of Mr. Justice Dass Gupta that when a Magistrate applies his mind not for the purpose of proceedings under the various sections of Chapter XVI but for taking action of some other kind, e.g., ordering investigation under section 156 (3) or issuing

(6) A.I.R. 1961 S.C. 986.

(7) A.I.R. 1950 Cal. 437.

a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of any offence."

No fault can, thus, be found with the order of the Magistrate when instead of taking cognizance himself, he forwards the complaint to the police for investigation under section 156 (3) of the Code.

(10) Section 156 of the Code is mandatory and the police officer has to act on the information received with respect to the commission of a cognizable offence. In case he does not act on that information, sub-section (3) gives the aggrieved party a right to give in writing the information to the Superintendent of Police and on that basis, investigation has to be carried out. Whenever information of a cognizable offence is given to the police, a case has to be registered. Adjudged from that angle, even if the Magistrate had not ordered for registration of a case, it was the duty of the police, who was primarily concerned with the matter of investigation to register the case and proceed with the investigation. The order asking the registration of the case may at best be described to be surplusage, but will not vitiate the order of the Magistrate.

(11) In view of the above discussion, I find no illegality in the order dated 8th July, 1992 passed by the Judicial Magistrate I Class, Tohana and therefore, the First Information Report No. 263 dated 9th July, 1992 is not liable to be quashed. There is no merit in this petition and the same is hereby dismissed.

J.S.T.

Before : Hon'ble R. P. Sethi & H. S. Bedi, JJ.

BHUPINDER SINGH,—*Petitioner.*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 9857 of 1993

December 6, 1993

Constitution of India, 1950—Art. 226/227—Punjab Gram Panchayat Act, 1952—Appeal—Right of appeal is a creation of statute—Parties cannot confer a right of appeal upon themselves by agreement or acquiescence.