

CASE NO.:

Appeal (crl.) 43 of 2001

{Arising out of Special Leave Petition (crl.) 2225 of 2000 }

PETITIONER:

SURESH CHAND JAIN

Vs.

RESPONDENT:

STATE OF MADHYA PRADESH & ANOTHER

DATE OF JUDGMENT: 10/01/2001

BENCH:

K.T.Thomas, R.P.Sethi

JUDGMENT:

THOMAS, J. Leave granted. A complaint was forwarded by a magistrate to the police for registering an FIR and for conducting investigation. One of the persons arrayed in the complaint as accused questioned the legality of the above order first in revision before the Sessions Court and then by invoking the inherent powers of the High Court. Both did not succeed. This appeal is by the same person contending that the order of the magistrate should have been upset in the interest of justice.

The complaint was filed by the second respondent (Mahesh Patidar) before the Chief Judicial Magistrate, Neemuch (M.P.) on 12.8.1999 alleging that the appellant and his wife Geeta Devi have committed offence under Section 3 of the Prized Chits and Money Circulation Scheme (Prohibition) Act and under Section 420 of the Indian Penal Code. The Chief Judicial Magistrate passed an order on 18.8.1999 which is extracted below: The complaint submitted by the complainant has been perused. This complaint has been submitted by the complainant for initiating action against the accused under Section 3 of the Prizes, Chits and Money Circulation Scheme (Prohibition) Act and Section 420 of the IPC. Both the offences are serious, therefore, the case is required to be investigated by the police station, Nemuch Cantt. under Section 156(3) Cr.P.C., therefore, the complaint submitted by the complainant be sent to the In-charge, Police Station Neemuch Cantt. with the direction to register F.I.R. and initiate investigation. The copy of the F.I.R. and initiate investigation. The copy of the F.I.R. be sent to this court immediately.

Appellant challenged the said order in a revision before the Sessions Court and when the revision was dismissed he moved the High Court under Section 482 of the Code of Criminal Procedure (for short the Code). Learned Single Judge of the High Court of Madhya Pradesh took the view that in a private complaint case under Section 156(3) of the Code the magistrate is empowered to order investigation; the allegation made in the complaint needs to be investigated in public interest.

Shri R.K. Jain, learned senior counsel contended first that a magistrate on receipt of a complaint should have examined the complainant on oath before proceeding to any other step. Learned senior counsel adopted the alternative contention that the magistrate has no power to direct the police to register an FIR. In support of the said contention learned counsel cited two decisions. One is Ram Narain vs. Lokuram {1986(37) Rajasthan Law Weekly 143} and the other was rendered by the Punjab and Haryana High Court in Suresh Kumar vs. State of Haryana {1996 (3) Recent Criminal Reports 137}.

The former decision of the Rajasthan High Court need not vex our mind as the consideration focussed therein was on the scope of Section 202(1) of the Code and the learned Single Judge observed therein that a magistrate cannot make any order regarding police investigation without examining the complainant on oath. If the facts in that case remained one under Section 202(1) of the Code then the observation cannot be faulted with. That apart, as the point involved in this case is different we do not think it necessary to examine the said decision. But the other decision rendered by a Single Judge of the Punjab and Haryana High Court (Suresh Kumar vs. State of Haryana) has gone a step further as he held that the magistrate has no power within the contemplation of Section 156(3) of the Code to ask for registration of the case, but could only refer the complaint to the police for investigation at the pre-cognizance stage to make the enquiry in the matter enabling the magistrate to apply his mind with regard to the correctness of the complaint. In that decision learned Single Judge, at the end of the judgment, made a direction as follows: Before parting with the judgment, it is observed that often it is found that the Judicial Magistrates working under the control of this Court many a time upon the complaints preferred before them, allegedly showing that a cognizable offence has been committed by the accused, direct the police to register and conduct the investigation in such cases under Section 156(3) of the Cr.P.C. After the reports are received from the police the Magistrates deal with those cases as police challans and conduct the proceedings in the matters against the provisions of law as discussed above. Hence the Registry is directed to send a copy of this judgment to all the Judicial Magistrates in the States of Punjab, Haryana and Union Territory, Chandigarh, for information and guidance.

In our opinion, the aforesaid direction given by the learned Single Judge of the Punjab and Haryana High Court in Suresh Kumar vs. State of Haryana (supra) is contrary to law and cannot be approved. Chapter XII of the Code contains provisions relating to information to the police and their powers to investigate, whereas Chapter XV, which contains Section 202, deals with provisions relating to the steps which a magistrate has to adopt while and after taking cognizance of any offence on a complaint. Provisions of the above two chapters deal with two different facets altogether though there could be a common factor i.e. complaint filed by a person. Section 156, falling within Chapter XII, deals with powers of the police officers to investigate cognizable offences. True, Section 202 which falls under Chapter XV, also refers to the power of a Magistrate to direct an investigation by a police officer. But the investigation



of the cognizable offence in a book kept by the officer-in-charge of the police station as indicated in Section 154 of the Code. Even if a magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer-in-charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.

Though the learned Single Judge of the Punjab and Haryana High Court in Suresh Kumar vs. State of Haryana (supra) made reference to two decisions rendered by this Court [Gopal Das Sindhi and ors. vs. State of Assam and anr. (AIR 1961 SC 986) and Tula Ram and ors. vs. Kishore Singh (AIR 1977 SC 2401)] learned Single Judge fell into error in formulating a legal position which is quite contrary to the dictum laid down by this Court in the afore-cited decisions. In Gopal Das Sindhi vs. State of Assam (supra) a three Judge Bench of this Court considered the validity of the course adopted by a judicial magistrate of the 1st class in ordering the police to register a case, investigate and if warranted, submit charge-sheet. Learned Judges repelled the contention that the magistrate ought to have examined the complainant on oath under Section 200 of the Code. Dealing with the said contention their Lordships stated thus: If the Magistrate had not taken cognizance of the offence on the complaint filed before him, he was not obliged to examine the complainant on oath and the witnesses present at the time of the filing of the complaint. We cannot read the provisions of S.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 S.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.

In Tula Ram vs. Kishore Singh (supra) a two Judge Bench of this Court, after referring to the earlier decision, reiterated the same legal position. It is unfortunate that when this Court laid down the legal position so explicitly in the above two decisions which reached the notice of the learned Judge of the Punjab and Haryana High Court he had formulated a position contrary to it by stating that the Magistrate has no power within the contemplation of Section 156(3) of the Code, to ask for registration of the case. It appears that the judicial officers under Punjab and Haryana High Court who were, till then, following the correct position, were asked by the learned Judge to follow the erroneous position formulated by him in the aforesaid judgment.

In the present case the High Court of Madhya Pradesh had rightly upheld the course adopted by the magistrate. Hence we dismiss this appeal.