(2022)01ILR A582
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 13.12.2021

BEFORE

THE HON'BLE AJAI KUMAR SRIVASTAVA-I, J.

Criminal Revision No. 2632 of 2021

**Dhruv Karan Singh ...Revisionist**

**Versus**

**State of U.P. & Ors. ...Opposite Parties**

**Counsel for the Revisionist:**
Sri Saurabh Singh

**Counsel for the Opposite Parties:**
A.G.A.

**A. Criminal Law-Code of Criminal Procedure, 1973-Section 397/401 & 156(3) -revisionist moved application u/s 156(3) which was treated as complaint-revisionist contended that the application filed u/s 156(3) was to allow with a direction to the Station House Officer concerned for registration of FIR regarding the matter-application filed u/s 156(3) Cr.P.C. can be treated as complaint u/s 200 Cr.P.C. and no separate complaint is required to be filed-Magistrate has to always apply his mind on the allegations-application which constitute cognizable offence but makes a defective prayer, such application will not cease to be a complaint nor can the Magistrate refuse to treat it as a complaint even though there be no prayer seeking trial of the known or unknown accused-Thus, application filed u/s 156(3) as a complaint cannot be said to be illegal.(Para 1 to 13)**

**The revision is dismissed.** (E-6)

**List of Cases cited:**

1. Sukhwasi Vs St. of U.P. (2008) Cri LJ 452

2. Lalita Kumari Vs Govt. of U.P. & anr. (2014) 2 SCC 1

3. Smt. Neeb Devi Vs St. of U.P. & ors.(2010) Cri LJ 2354

4. Yogendra Singh Vs St. of U.P. (2005) 51 ACC 890 : (2005 All LJ 1518 (Alld),

5. Mathuri @ Vishveswaranand Vs Swami Sachchidanand Harishakshi (2001) Suppl ACC 957 SC

(Delivered by Hon'ble Ajai Kumar Srivastava-I, J.)

1. Heard learned counsel for the revisionist, learned A.G.A for the State and perused the record.

2. The instant criminal revision is directed against the judgment and order dated 27.08.2021 passed by learned Additional Civil Judge (J.D.), Court No.7/Judicial Magistrate, Agra in Misc. Application No.1317 of 2021, under Section 156 (3) Cr.P.C. "Dhrub Karan Singh vs. Vipin Tiwari and others", Police Station Nai Ki Mandi, District Agra, whereby the learned Additional Civil Judge (J.D.), Court No.7/Judicial Magistrate, Agra has treated the aforesaid Misc. Application No.1317 of 2021 as the complaint case without considering the records, which is illegal and arbitrary.

3. B rief facts are that the revisionist has moved an application under Section 156 (3) Cr.P.C. for registration and investigation of the case which was heard and disposed of by Additional Civil Judge (J.D.), Court No.7/Judicial Magistrate, Agra vide impugned order dated 27.08.2021, whereby the learned Magistrate has directed that the application filed under Section 156 (3) Cr.P.C. to be treated as

complaint by placing reliance on the law laid down by Division Bench of this Court in **Sukhwasi vs. State of Uttar Pradesh; 2008 Cri LJ 452.**

4. Foremost submission of learned counsel for the revisionist is that the impugned order is not sustainable in the eyes of law, insofar as the same is against the law laid down by the Hon'ble Apex Court in the case of **Lalita Kumari vs. Government of Uttar Pradesh and another, reported in 2014 (2) SCC 1.** He, thus, submitted that the only option available to the learned Magistrate was to allow the application filed under Section 156 (3) Cr.P.C. with a direction to the Station House Officer concerned for registration of F.I.R. regarding the matter. The learned Magistrate was not competent to direct that the application filed under Section 156 (3) Cr.P.C. be treated as complaint. The impugned order is thus, patently illegal which would cause miscarriage of justice, therefore, the same is liable to be quashed.

5. Per contra, learned A.G.A. has supported the impugned order and has pointed out that the grievance of the revisionist has not gone unattended by the court below. The court below after taking into consideration the entire gamut of the facts and circumstances of the case has rightly decided to treat the application filed by the revisionist under Section 156 (3) Cr.P.C. as a complaint. The revisionist shall still have an opportunity to prove his case before the court below. His further submission is that in **Lalita Kumari (supra)** Hon'ble the Apex Court has not referred, discussed and overruled the law laid down by the Division Bench of this Court in **Sukhwasi (supra).** Therefore, the impugned order cannot be termed to be illegal and no miscarriage of justice would be caused by the impugned order.

6. The scope and ambit of law laid down by the Hon'ble Supreme Court in **Lalita Kumari (supra)** can be ascertained from para no.6 of the judgment, which is quoted hereinbelow :

***"6) Therefore, the only question before this Constitution Bench relates to the interpretation of Section 154 of the Code and incidentally to consider Sections 156 and 157 also."***
***(Emphasis supplied)***

7. In case of **Lalita Kumari (supra)** the controversy revolved around the registration of F.I.R in cognizable cases by the Police Officer. However, it did not dwelve upon scope and ambit of power vested in Magistrate by virtue of provision of Section 156 (3) Cr.P.C. which is, for ready reference, quoted hereinbelow :

*"156. Police officer' s power to investigate cognizable case.*

*(2) .....*

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

8. In **Sukhwasi (supra**) the Division Bench of this Court in paragraph nos.6, 7, 8 & 9 has held as under:

*"6. It will also be noticed that the law was, and has always been, that if a cognizable offence is made out, the Police are bound to register the First Information Report. In case, the Police do not register the First Information Report, there is provision under Section 154(3) Cr.P.C. to send an application to Superintendent of Police, who shall direct the registration of a First Information Report, if a cognizable offence is disclosed. There was as such, no need for an authority in this regard being given to the Magistrate. That, this has been done and such authority as given to the Magistrate indicates, that this has been done, because the Magistrate will bring to bear upon the matter a judicial and judicious approach, which will be necessarily implication be selective. That gives a clear inkling to the intention of the legislature, that the Magistrate may consider the feasibility and propriety, of passing an order of registration of the First Information Report.*

*7. The matter may be looked into from another angle, and that is, in Section 154(3) Cr.P.C. where the Superintendent of Police has been given the authority for registration of First Information Report, the word used is 'shall' Section 143(3) Cr.P.C. is as hereunder*

*"154. Information of cognizable cases ?*

*(1)*

*(2)*

*(3) Any person aggrieved by a refusal on the part of an officer in charge of a 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 an investigation to be made, by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer incharge of the police station in relation to that offence."*

*8. In Section 156 (3) Cr.P.C. the word used is 'May' Section 156(3) Cr.P.C. is as follows;*

*156. Police Officer's power to investigate cognizable case?*

*(1)*
*(2)*

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

*9. The use of the word 'shall' in Section 154(3) Cr. P.C: and the use of word 'May' in Section 156(3) Cr.P.C. should make the intention of the legislation clear. If the legislature intended to close options for the Magistrate, they could have used the word 'shall' as has been done in Section 154(3) Cr.P.C. Instead, use of the word 'May' is, therefore, very significant, and gives a very clear indication, that the Magistrate has the discretion in the matter, and can, in appropriate cases, refuse to order registration."*

9. While adverting to the issue, as to whether the learned Magistrate can treat an application file**d under Section 156 (3) Cr.P.C. as a complaint, the Division Bench in** Sukhwasi (supra) in parapraph nos.13 and 14 has held as under :

*"13. It is clear from the judgment of the Supreme Court in the case Suresh Chandra Jain v. State of Madhya Pradesh, 2001 (42) ACC 459 : ((2001) 2 SCC 628 : AIR 2001 SC 571), that a Magistrate has the authority to treat an application under Section 156(3) Cr.P.C. as a complaint. This will become clear from the reference in the said report to the case of Gopal Das Sindhi v. State of Assam, AIR 1961 SC 986, in which the following observations were made: (Para 7)*

*"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 filing of the complaint. 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 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."*

*14. It becomes clear from the said underlined portion that the Magistrate has the authority to treat an application under Section 156(3) Cr.P.C. as a complaint. Hon'ble Mr. Justice Vinod Prasad has also referred to the case of Suresh Chand Jain ((2001) 2 SCC 628 : AIR 2001 SC 571), 'supra' and has extracted the following portion therefrom in order to take a different view: (para 7) :?*

*"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 envisaged in Section 202 is different from the investigation contemplated in Section 156 of the Code."*

10. It is, thus, abundantly clear that in view of law laid down by the Division Bench of this Court in **Sukhwasi (supra)**, it cannot be said that a Magistrate, while entertaining an application filed under Section 156 (3) Cr.P.C. cannot treat the same to be a complaint.

11. In the aforesaid context, assistance can also be taken from a judgment rendered by this Court in **Smt. Neeb Devi vs. State of U.P. and Ors. 2010 Cri LJ 2354,** wherein a challenge was made to an order passed by the Magistrate treating the application moved under Section 156 (3) Cr.P.C. as a complaint. In **Smt. Neeb Devi (supra)**, in paragraph nos.6, 7 & 8 it has been observed as under :

*"6. I have considered over the respective arguments. In this reference a Full Bench decision of this High Court in Ram Babu Gupta v. State of U.P., 2001 (43) ACC 50 : (2001 All LJ 1587) may be referred in which the Hon'ble High Court held as under:*

*"Coming to the second question noted above, it is to be at once stated that a provision empowering a Court to act in a particular manner and a provision creating a right for an aggrieved person to approach a Court or authority, must be understood distinctively and should not be mixed up. While sections 154, 155, sub-sections (1) and (2) of 156 Cr. P.C. confer right on an aggrieved person to reach the police, 156(3) empowers a Magistrate to act in a particular manner in a given situation. Therefore, it is not possible to hold that where a bare application is moved before Court only praying for exercise of powers under Section 156(3) Cr. P.C. it will remain an application only and would not be in the nature of a complaint. It has been noted above that the Magistrate has to always apply his mind on the allegations in the complaint where he may use his powers under Section 156(3) Cr. P.C. In this connection, it may be immediately added that where in an application, a complaint states facts which constitute cognizable offence but makes a defective prayer, such an application will not cease to be a complaint nor can the Magistrate refuse to treat it as a complaint even though there be no prayer seeking trial of the known or unknown accused. The Magistrate has to deal with such facts as constitute cognizable offence and for all practical purposes even such an application would be a complaint."*

*7. Moreover, this court in the case of **Yogendra Singh v. State of UP, 2005 (51) ACC 890 : (2005 All LJ 1518) (Alld),** has held that application filed under Section 156(3) Cr. P.C. can be treated as complaint under Section 200 Cr. P.C. and no separate complaint is required to be filed.*

*8. In the case of **Joseph Mathuri @ Vishveswaranand v. Swami Sachchidanand Harishakshi, 2001 (Suppl) ACC 957 (SC),** the application was moved by the complainant under section 156(3) Cr. P.C. before the Magistrate for directing the police to register the case against the appellant. In that matter Hon'ble Apex Court has held that there was nothing wrong if the application was directed to be treated as complaint."*

12. In view of what has been discussed above, the impugned order passed by learned Additional Civil Judge (J.D.), Court No.7/Judicial Magistrate, Agra, whereby he has treated the application filed under Section 156 (3) Cr.P.C. as a complaint, cannot be said to be illegal. No material irregularity has been committed by the learned trial Court while passing the impugned order either. Therefore, the present revision lacks merit an

13. In view of the aforesaid discussion, the present revision is **dismissed.**

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