

(Delivered by Hon'ble Ram Manohar
Narayan Mishra, J.)

3. Brief facts of the case are that the applicant who is the victim has moved application under Section 156(3) Cr.P.C. stating therein that the incident occurred on 24.06.2022 at 01:00 pm. When she moved towards office after finishing her teaching work in Civilian School run by Basic Education Department, Kota in Block Mursan, District Hathras, suddenly opposite party Laxmi Narayan Sharma who was working as Head Master in Primary School Nagla Mallu, Block Mursan, District Hathras emerged there and asked her to stop, when she reached in the veranda of the school he abused her in filthy language and asked for her husband Jitendra Sharma in abusive language, then she stopped her to abuse them, he again abused her and acted in obscene manner

with her. He tried to grab her breast and tried to molest her, which resulted in outraging her modesty. On hearing her shierks her husband Jitendra Sharma reached on the spot and then the opposite party escaped from there after threatening him with life. The opposite party used to threaten her every now and then, when she happened to be on way to school. Her report was not lodged at police station, she reported the matter by registered post to police, but no action was taken. She moved an application under Section 156(3) Cr.P.C. before the Magistrate concerned i.e. Chief Judicial Magistrate, Hathras.

4. However, learned C.J.M. placing reliance on preliminary inquiry report filed by Station House Officer concerned, dismissed the application with observation that application had been moved due to personal animosity of the applicant and her husband with the opposite party only with a view to exert unnecessary pressure on him. No cognizable offence is made out on the basis of evidence on record. Feeling aggrieved by the order the applicant/revisionist has preferred the present revision.

5. Learned counsel for the revisionist submits that the impugned order passed by learned Magistrate is illegal and contrary to law. The impugned order is based on conjectures and surmises and wrong observation has been made by learned Magistrate by rejecting the application under Section 256(3) Cr.P.C. that no cognizable offence is made out. In fact it is clear case of outraging modestly of a woman and criminal intimidation etc. is also made out on the facts of the case, but same has not been taken care of by learned C.J.M.. No preliminary inquiry is called for, where a sexual offence having been

alleged against the proposed accused. Inspite of a cognizable offence is made out, the learned C.J.M. has dismissed the application on the basis of preliminary inquiry report submitted by the police, in which no statement of witnesses was recorded.

6. Learned counsel for the revisionist has placed reliance on a judgment of Supreme Court in **‘XYZ’ Vs. State of Madhya Pradesh and others reported in 2022 (0) SC 740** and observations made in paragraph Nos. 15, 16, 20, 25, 26, 27, 28, 29, 30 and 31 and submitted that on the facts of the case a cognizable offence in the nature of sexual offence is made out, which has been committed against a women. There is no other option before the Magistrate but to direct registration of an FIR, where an application under Section 156(3) Cr.P.C. has been filed victim on her behalf, other facts are not relevant at the stage of registration of FIR, such as whether the information falsely given, whether the information in genuine, whether the information is credible etc. These are the issue that had to be verified during the investigation of the FIR. In a nutshell veracity of such type of allegations made against the accused at this stage cannot be gone by deciding the application under Section 156(3) Cr.P.C. Moreover if the allegations are found to be false during investigation the police is well within its right to file a case of lodging false FIR and given false information to the police.

7. Learned counsel for the revisionist also submitted that where a clear allegations of sexual violence are made against the accused. No preliminary inquiry is called for as this is not covered in the cases cited in the Constitution Bench

judgment of Hon'ble Apex Court in **Priyanka Srivastava and another Vs. State of U.P. 2015 (6) SCC 287** in that case the borrower had moved an application under Section 156(3) Cr.P.C. with a prayer to lodge FIR against the officials who had initiated recovery proceedings against the complainant in exercise of powers under Section SARFAESI Act. The alleged offence in the present case is neither leads to commercial dispute nor matrimonial discord.

8. Per contra, Sri Saghir Ahmad learned Senior counsel for the respondent No.2 submitted that Hon'ble Supreme Court in **Priyanka Srivastava Vs. State of U.P.** (supra) has laid down certain guidelines to avoid abuse of process of the law by moving an application under Section 156(3) Cr.P.C. with malafide intention and only to settle scores with a person against whom he/she is having some personal animosity. He vehemently contended that on one hand in the light of Hon'ble Supreme Court judgment in **Lalita Kumari Vs. Government of Uttar Pradesh (2014) 2 SCC 1** held it mandatory for a police officer to lodge an FIR in exercise of powers under Section 154 (1) Cr.P.C. where the information discloses commission of cognizable offence, on the other hand the Magistrate having jurisdiction is not bound to direct registration of the case and registration by police in each and every case where a cognizable offence is made out on the face of the application, and Magistrate is expected to apply his judicial mind towards the allegations made in the application so that abuse of judicial process could be avoided. This reflects in judgment of Supreme Court in **Priyanka Srivastava and another Vs. State of U.P.** (supra) and

in **Kailash Vijayvargiya vs Rajlakshmi Chaudhuri** that such power cannot be exercised in routine manner. In the present case learned C.J.M. has dismissed the application 156(3) Cr.P.C. after directing a preliminary inquiry by Station House Officer concerned, in the preliminary report the local police has given complete set of facts which suggest that no such type of occurrence as alleged, in fact has taken place and the application has been moved with malafide intention to settle scores.

9. Learned Senior Counsel placed reliance on a judgment of **Kailash Vijayvargiya vs Rajlakshmi Chaudhuri** (supra) the paragraph Nos. 22, 23, 24, 27, 28, 38 of said judgment are reproduced as under:-

22. *One would grant that the jurisdiction of the Court when asked to invoke power under Section 156(3) is wider as held in Priyanka Srivastava (supra), yet there are limits within which the Magistrate must act. When the Magistrate is satisfied that the allegations made disclose commission of a cognizable offence, he must stay his hands, direct registration of an FIR and leave it to the investigative agency to unearth the facts and ascertain the truth of the allegations. Magistrate in terms of the ratio in Lalita Kumari (supra) can for good reasons direct preliminary enquiry. We would now refer to the power of the Magistrate to take cognizance, postpone issue of process and follow the procedure under Section 202 of the Code.*

Difference in the power of Police to register and investigate an FIR under Section 154(1) read with 157 of the Code, and the Magistrate's direction to register an FIR under Section 156(3) of the Code.

Power of the Magistrate to direct registration of an FIR under Section 156(3) in contrast with post-cognizance stage power under Section 202 of the Code.

23. The operandi for registration of information in a cognizable offence and eventual investigation is not limited to Police, and as observed above, sub-section (3) to Section 156, subject to legal stipulations, gives the ameliorating power to a Magistrate empowered under Section 190 to order an investigation in a cognizable offence. Two different powers vested with two distinct authorities, namely the Police and the Magistrate, who discharge distinct functions and roles under the Code as indicated above are not entirely imbricating.

24. The power of Magistrate to direct investigation falls under two limbs of the Code: one is pre-cognizance stage under Section 156(3), and another on cognizance under Chapter XIV ('Conditions Requisite for Initiation of Proceedings'; Sections 190-199) read with Chapter XV ('Complaints to Magistrates'; Sections 200-210). These two powers are different and there also lies a procedural distinction between the two.

27. In this Court in Priyanka Srivastava (supra) referred to the nature of power exercised by the Magistrate under Section 156(3) of the Code and after referring to several earlier judgments held that the direction for registration of an FIR should not be issued in a routine manner. The Magistrate is required to apply his mind and exercise his discretion in a judicious manner. If the Magistrate finds that the allegations made before him disclose commission of a cognizable offence, he can forward the complaint to

the Police for investigation under Section 156 and thereby save valuable time of the Magistrate from being wasted in inquiry as it is primarily the duty of the Police to investigate. However, the Magistrate also has the power to take cognizance and take recourse to procedure under Section 202 of the Code and postpone the issue of process where the Magistrate is yet to determine existence of sufficient ground to proceed. In a third category of cases, the Court may not take cognizance or direct registration of an FIR, but direct preliminary inquiry in terms of the dictum in Lalita Kumari's case (supra).

28. In Priyanka Srivastava (supra), this Court highlighted abuse of the criminal process by the unprincipled and deviant litigants who do knock at the door of the criminal court for malevolent reasons. In the said case criminal action was initiated by those against whom the financial institutions had proceeded under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. This was notwithstanding the protection given to the officers under Section 32 of the aforesaid Act against action taken in good faith. Reiterating Lalita Kumari (supra), it was observed that an action under Section 156(3) should not be entertained without the complainant taking recourse to sub-section (1) and (3) of Section 154 and compliances of these two Sections should be clearly spelt out in the application and necessary documents filed. To check malevolence and false assertions, the Court directed that every petition/application under Section 156(3) should be supported by an affidavit so that the person making an application should be conscious of it and to see that no false allegation is made. If the affidavit is found to be false, the

complainant will be liable for prosecution in accordance with the law. Vigilance is specially required in cases pertaining to fiscal sphere, matrimonial/family disputes, commercial offences, medical negligence cases, corruption cases, or cases where there is abnormal delay/laches. Thus, the Magistrate must be attentive and proceed with perspicacity to examine the allegation made and the nature of those allegations. He should not issue directions without proper application of mind which would be contrary to the object and purpose of the statute.

38. We were informed that the Magistrate, on remand, has passed an order under Section 156(3) directing registration of the FIR. He has misread the order and directions given by the High Court. In terms of the judgments of this Court, the Magistrate is required to examine, apply his judicious mind and then exercise discretion whether or not to issue directions under Section 156(3) or whether he should take cognizance and follow the procedure under Section 202. He can also direct a preliminary inquiry by the Police in terms of the law laid down by this Court in Lalita Kumari (supra)."

10. Learned counsel for the respondent No.2 has also placed reliance in judgment of Hon'ble Supreme Court in **Manju Surana Vs. Sunil Arora and others reported in (2018) 3 SCR 696** the paragraph Nos. 33 and 51 are reads as under:

" 33. We have examined the rival contentions and do find a divergence of opinion, which ought to be settled by a larger Bench. There is no doubt that even at the stage of 156(3), while directing an investigation, there has to be an

application of mind by the Magistrate. Thus, it may not be an acceptable proposition to contend that there would be some consequences to follow were the Magistrate to act in a mechanical and mindless manner. That cannot be the test.

51. The matter is referred to a larger Bench along with SLP (CRL.) No.5838/2014 in terms of the judgment passed today."

11. Learned Senior Counsel placed before this Court the order dated 16.04.2024 passed by Supreme Court in **Shamim Khan Vs. Debashish Chakrabarty** and others which reveals that the question which was referred to a larger bench on 27.03.2018, as per the judgment in **"Manju Surana Vs. Sunil Arora and Ors."** (2018) 5 SCC 557 deserves an early decision and for that reason, Hon'ble Apex Court directed the Registry to place these matters before the Chief Justice of India for appropriate orders.

12. In **Lalita Kumari vs. Government of U.P., decided in Writ Petition (Criminal) No. 68 of 2008,** vide judgement dated 12.11.2013, Constitutional Bench of Hon'ble Supreme Court concluded and issued directions as under:-

"101) This can also be seen from the fact that Section 151 of the Code allows a police officer to arrest a person, even before the commission of a cognizable offence, in order to prevent the commission of that offence, if it cannot be prevented otherwise. Such preventive arrests can be valid for 24 hours. However, a Maharashtra State amendment to Section 151 allows the custody of a person in that State even for up to a period of 30 days (with the order of the Judicial Magistrate)

even before a cognizable offence is committed in order to prevent commission of such offence. Thus, the arrest of a person and registration of FIR are not directly and/or irreversibly linked and they are entirely different concepts operating under entirely different parameters. On the other hand, if a police officer misuses his power of arrest, he can be tried and punished under Section 166. ”

13. Thus, from perusal of the conclusion given by Hon’ble Apex Court in Lalita Kumari (supra), it is obvious that the scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are: a) Matrimonial disputes/ family disputes b) Commercial offences c) Medical negligence cases d) Corruption cases e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. However, the Hon’ble Apex Court clarified that these are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

14. In **Priyanka Srivastava and another Vs. State of U.P.** (supra) a Division Bench of Hon’ble Apex Court referred and placed reliance on a catena of judgements on issue of scope, purport and exercise of power available to a judicial magistrate having jurisdiction in the case under Section 156(3) Cr.P.C. In said case, the Hon’ble Court issued a caution to

Magisterial Courts that while exercising powers under Section 156(3) Cr.P.C., the Magistrate should ensure that the applicant has not taken undue advantage in a criminal court to settle scores while filing application under Section 156(3) Cr.P.C. Paragraph Nos.30 and 31 are relevant in this regard and these are being reproduced hereinunder:-

“.....30. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

.....31. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that on the application under Section 156(3) be

supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR. ”

15. On a bare perusal of paragraph No.31 of the judgement in Priyanka Srivastava (supra), it is obvious that Hon’ble Supreme Court has enable the Magistrate on filing application under Section 156(3) Cr.P.C. before him to take steps to verify the nature of allegations of the case and preliminary inquiry in the cases pertaining to fiscal sphere, matrimonial/family disputes, commercial offences, medical negligence cases, corruption cases, or cases where there is abnormal delay/laches in initiating criminal prosecution have been permitted as has been stated in Lalita Kumari (supra). The Hon’ble Supreme Court observed in Priyanka Srivastava (supra) that the Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of

mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. Issuing a direction stating "as per the application" to lodge an FIR creates a very unhealthy situation in the society and also reflects the erroneous approach of the learned Magistrate. It also encourages the unscrupulous and unprincipled litigants to take adventurous steps with courts to bring the financial institutions on their knees. Thus, on a conjoint reading of Lalita Kumari (supra), Priyanka Srivastava and Another vs. State of UP and others (supra) cited on behalf of the respondent and ‘XYZ’ vs. State of MP and others (supra), it can be discerned that in Priyanka Srivastava (supra), Hon’ble Apex Court expressed need of directing a preliminary investigation by a magistrate while dealing with an application under Section 156(3) Cr.P.C., in the cases which are enumerated in Lalita Kumari vs. Government of UP (supra) while lodging the FIR under Section 156(3) Cr.P.C. In cases like present one, in which informant has levelled specific allegations of sexual assault and molestation against the accused/respondent No.2 directing preliminary investigation to police into allegations made by the victim in application under Section 156(3) Cr.P.C. and placing reliance on police report submitted in favour of the proposed accused is neither desirable nor lawful.

16. The approach of learned magistrate is not in consonance with the recent pronouncements of Hon’ble Apex

Court in 'XYZ' vs. State of MP and others in year 2022. the impugned order passed by learned trial court is found to be contrary to law and deserves to be set aside.

17. Accordingly, present criminal revision is **allowed** and the impugned order dated 23.6.2023, passed by learned Chief Judicial Magistrate, Hathras in Criminal Complaint Case No.849/12/2022, is hereby set aside and the matter is remanded to learned Chief Judicial Magistrate, Hathras to decide the same afresh after giving opportunity of hearing to the revisionist/de-facto complainant in the light of law propounded by the Hon'ble Apex Court as discussed hereinabove.

(2024) 10 ILRA 315
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.10.2024

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ-A No. 3561 of 2023

Siddharth Singh ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Raghavendra Sharan Tiwari

Counsel for the Respondents:
C.S.C.

**A. Civil Law - Constitution of India, 1950-
Article 226-The petitioner's candidature
for the position of Police Constable in
Uttar Pradesh was rejected by the Deputy
Commissioner of Police, Varanasi citing a
criminal case against him despite his
subsequent acquittal-The case pertains to
allegations u/s 498A, 323, 504, 506 & 3/4
D.P. Act-this rejection was challenged -**

Held, the court criticized the mechanical approach of rejecting candidates based solely on pending or resolved criminal cases, especially in light of societal issues such as false implications in section 498A-the court emphasized that trivial incidents or social disputes should not permanently disqualify a person from public employment if they demonstrate otherwise clean antecedents-the court quashed the order of rejection and issued a mandamus directing the Deputy Commissioner of Police to reconsider the case within three weeks.(Para 1 to 21)

The writ petition is allowed. (E-6)

List of Cases cited:

1. Commr. Of Police & ors.Vs Sandeep Kumar (2011) 4 SCC 644
2. Ram Kumar Vs St. of U.P. & ors.(2011) 14 SCC 709
3. Avtar Singh Vs U.O.I. & ors.(2016) 8 SCC 471

(Delivered by Hon'ble J.J. Munir, J.)

1. This writ petition is directed against an order of the Deputy Commissioner of Police, Police Headquarters, Police Commissionerate, Varanasi dated 03.02.2023, rejecting the petitioner's case for appointment as a Constable in the Uttar Pradesh Police, on account of a criminal case lodged against him, of which he has been later on acquitted.

2. The facts giving rise to this petition would show that the petitioner staked his claim for the post of a Police Constable in the Uttar Pradesh Police. This was in the recruitment year 2013. The petitioner was selected for the post and the date for his training was scheduled as 02.12.2015. After the petitioner was selected, in the Police Verification Report Form (PVR), he