118 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-12329-2018(O&M)
Date of decision:12.03.2019

M/s Sujan Multiports Ltd. .....Petitioner

versus

State of Haryana and others .....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Rajiv Kataria, Advocate with

Ms. Richudeep Bajaj, Advocate for the petitioner.

Rajbir Sehrawat, J(Oral)

The most simple language always provides widest playground to fertile minds to assign it variety of meanings. This process of linguistic interpolation always runs the risk of finding such frontiers of such a language or assigning it such a meaning; which framer of such a language might not have contemplated in his wildest dreams. In the field of judicial interpretations as well, although the golden rule is to read the language as it is; and if the language of statute is clear, then to assign it the meaning which it conveys in plain and simple terms, however, the statute being a linguistic tool; the more simple language contained in it, is also amenable to the linguistic violence, sometimes by way of interpretation and sometimes even to keep at bay some unintend consequences of something else, which may not have even a remote connection to the language of the said statutory provision. The language of Section 156(3) Cr.P.C., though is as simple as it could have been, yet seems to have fallen pray to the fear of 'unknown' in its applied interpretations. That 'unknown' is the fear arising out of a demon of the Indian system of administration of criminal justice, called the 'FIR'. This fear is so pervasive that it starts showing its effect even before the 'FIR' comes into being, and continues to haunt a person even after he is acquitted of the charge leveled in 'FIR'.

This is a petition challenging judgment dated 21.10.2017(Annexure P-6) passed by the Additional Sessions Judge, Gurugram whereby he has upheld the Order dated 15.05.2017(Annexure P-4) passed by the Judicial Magistrate Ist Class, Gurugram, declining to send the complaint of the petitioner to the police; for investigation and instead, ordering recording of preliminary evidence in the complaint.

The brief allegations as involved in the case are that the private respondents were alleged to be employed with the petitioner in various capacities. However, suddenly they submitted mass resignation to exit from employment of the petitioner company. This raised suspicion in the mind of the petitioner. Accordingly the records of the company were scrutinized by the petitioner company. In that process, it was found that certain files or e-mails have been deleted by the private respondents; from the computers of the petitioner company. After doing this damage, the private respondents were alleged to have join the business rival of the petitioner company. It was further alleged that although with efforts certain deleted files have been recovered by the petitioner, however, all the files; which are perceived to have been deleted by the private respondents; could not be retrieved by the petitioner company. Hence the petitioner had approached the police for registration of the case. The police did not register the FIR. Hence the petitioner filed complaint before the Magistrate alongwith an application under Section 156(3) Cr.P.C, with a prayer that the police be directed to register an FIR and to investigate the same.

The concerned Magistrate, instead of directing the police to register the FIR and to investigate the matter, ordered that the complaint be registered and the reliminary evidence be taken. The Order dated 15.05.2017 passed by the Magistrate to this effect is as under:-

> "*Complaint received by way of assignment. Learned counsel for the complainant has submitted that the*

> *present case may kindly be referred under section 156(3) Cr.P.C and the matter be sent to the concerned Police Station for investigation. Heard. Contends of the complaint perused. Keeping in view the allegations spelled out in the complaint and documents attached thereof; this case is not a fit case for registration of case under section 156(3) Cr.P.C. Hence, request of referring the complainant under section 156(3) Cr.P.C is declined.*
>
> *2. It be checked and registered. In preliminary evidence, no CW is present today. An adjournment sought for preliminary evidence. Heard. Keeping in view the submission made for preliminary evidence, adjournment sought is granted. Now, to come upon 05.07.2017 for preliminary evidence of the complainant."*

Aggrieved against the abovesaid Order, the petitioner approached the Court of Sessions Judge, Gurugram by way of revision. However, that revision petition filed by the petitioner company was also dismissed. Hence the present petition under Section 482 Cr.P.C has been preferred by the petitioner company, challenging the order passed by the Revisional Court, as well as, the order passed by the Magistrate.

Before proceeding further, it deserve to be noticed that, as reproduced above, the Magistrate had duly recorded in the order that keeping in view the nature of allegations in the complaint; and the documents attached therewith, it was not found to be a case requiring registration of an FIR and investigation by Police. Accordingly, the recording of preliminary evidence has been ordered. Still further, the judgment passed by the Revisional Court has considered the argument raised by the petitioner and held; that although the Magistrate has the power to sent the complaint to the concerned SHO for the investigation of the case, however, the Magistrate is not bound

to send the same to Police; only on application in this regard being moved by the complainant. Still further, it has been recorded by the Revisional Court that the apprehension of the complainant that he would not be able to collect the evidence; if the case is not sent to the police for registration of the case; is meritless. The Magistrate is always empowered, including under Section 202 of Cr.P.C to direct the Police to conduct the investigation of the case and to collect the evidence if need be. Even the petitioner could summon the record which he desires to bring on record of the trial. Accordingly the revision was dismissed.

While arguing the case, learned counsel for the petitioner has submitted that the order passed by the Magistrate is totally non-speaking. The Magistrate is not to act only as a post office, he has to pass a reasoned order reflecting application of mind. Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court rendered in ***Anil Kumar and others vs. M.K.Aiyappa and another; 2013(10) Supreme Court Cases 705,*** judgment of the Rajasthan High Court rendered in ***Sant Lal vs.State of Rajasthan and others;2008(62)ACI 814*** and the judgment of the Allahabad High Court rendered in ***(Smt.) Saheena Bano versus State of U.P. & others;2005(53) ACrC 939.***

Referring to these judgments, in nut-shell the argument of learned counsel for the petitioner is; that before declining to send a case for registration of the FIR, the Magistrate is required to record reasons which reflect application of mind by him; in the direction of the order passed by him and that once the cognizable offence is disclosed in complaint then the Magistrate is bound to refer the matter to Police for Registration of FIR. It is further submitted that if the reasons are not recorded by Magistrate or the reasons are not appropriate then revision against such order is maintainable. In the present case, even the revisional Court has not given any cogent reasons for not ordering registration of FIR.

Having heard the learned counsel for the petitioner and perusing the impugned order as well as the paper book, this Court does not find substance in the argument of the learned counsel for the petitioner. To appreciate the legal position in this regard, it is appropriate to have reference to provision of Section 156(3) Cr.P.C before proceeding further. Provision of Section 156 Cr.P.C is reproduced as under:-

> "***156. Police officer's power to investigate cognizable case.***—
>
> (1) *Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.*
>
> (2) *No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.*
>
> *(3) Any Magistrate empowered under Section 190 may order such an investigation as above mentioned."*

A perusal of the provision of Section 156(3) Cr.P.C shows that a Magistrate is empowered to direct the Station House Officer of the Police Station concerned to investigate the case; qua which the said Magistrate is competent to take cognizance under Section 190 Cr.P.C. At this stage, it is also useful to have reference of Section 190 Cr.P.C which is as under:-

> "***190. Cognizance of offences by Magistrates.***

> *(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub- section (2), may take cognizance of any offence-*
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> > *(a) upon receiving a complaint of facts which constitute such offence;*
> >
> > *(b) upon a police report of such facts;*
> >
> > *(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.*
>
> *(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub- section (1) of such offences as are within his competence to inquire into or try."*

A perusal of Section 190 Cr.P.C shows that a Magistrate has a wide power to take cognizance of an offence either on police report or on receipt of the complaint constituting such an offence, or upon information received from any person or even on his own knowledge as well; that such as offence has been committed.

When a complaint is moved before the Magistrate, the complainant just moves the court of the Magistrate for its consideration. Thereafter, it is for the Magistrate to decide the course of action, whether to proceed further as per the provisions of Sections 200 to 204 Cr.P.C and further, by taking cognizance of the offence or before entering into the question of cognizance; to ask the police to

investigate the matter. Therefore, the decision of application under Section 156(3) Cr.P.C is, in the first instance, a pre-cognizance stage. This has been so held even by the Hon'ble Supreme Court in the Anil Kumar's case(supra). Even if a Magistrate takes a cognizance of the offence and proceeds as a complaint case then also; before proceedings further, the Magistrate is required to gather evidence by way of preliminary evidence. If the Magistrate thinks fit that instead of asking the complainant to produce more evidence, the facts and circumstances of the case are such that it would be appropriate to deploy the police for collecting the evidence qua the offence alleged in the complaint, then the Magistrate can direct the police as well; to collect the evidence. Still further the police may give some reasons and file a report under Section 157 Cr.P.C saying that they do not intend to investigate the case. However, in that situation also the Magistrate has a power under Section 159 Cr.P.C to order an investigation of a case. Therefore, the Magistrate is the Master of the jurisdiction of investigation; under whose control, the police or any other person specially authorised to investigate, shall function. Needless to say that in case the Magistrate takes the cognizance of the offence and proceeds under Sections 200 to 204 Cr.P.C then it would be tried as a '*complaint case'*, however, if at the stage prior to cognizance, the police is asked, under Section 156(3) Cr.P.C, to investigate and to file a report; then Magistrate would be taking the cognizance on the police report, therefore, it would be tried as a case '*on police report'*. However, it is purely the discretion of the Magistrate to decide the course of action, keeping in view the facts and circumstances of the case; whether to order an investigation and to seek a report from the police or not.

The matter does not end here. As is evident from provision of Section 202 Cr.P.C even during the trial of the complaint case, if at any stage, the Magistrate thinks it fit, he can again direct the police to conduct the investigation qua any aspect.

In case of a trial on police report, the Magistrate has the power to order investigation on any aspect at any time; under Section 173(8) Cr.P.C.

The next question is whether the Magistrate is required to record any reason for passing an order under Section 156(3) Cr.P.C or not.

It is well settled law that requirement of recording reasons is not the same thing as acting by application of mind or acting fairly. Recording of reasons for a particular decision is a function of provision under which the order is required to be passed. The recording of reasons is required only if provisions so requires. The legal proposition has been amply clarified by the judgment of the Hon'ble Supreme Court rendered in case of ***National institute of Mental Health and Neuroscience vs. Dr. K.Kalyana;1992 AIR SC 1806***. There are so many provisions in Cr.P.C which require the Magistrate or the Court to record reasons for arriving at a decision. Under some provisions even for passing orders before taking cognizance and even during investigation; the Court is required to record reasons. The examples for this can be found in Section 167 Cr.P.C. However, the provision of Section 156(3) Cr.P.C does not cast any duty upon the Magistrate to record the reasons, and this omission in language of Section 156(3) Cr.P.C is deliberate and for good reasons. The Magistrate can apply his mind to the facts disclosed in the complaint and documents attached therewith for limited purpose to see if cognizable offence is disclosed, and if it is so disclosed; whether an investigation by police is required. But he need not put-out his thinking on order sheet. The Hon'ble Supreme Court in the case of **Anil Kumar**(supra), has observed that the Magistrate would be required to dilate upon the matter in such a manner which reflects upon the application of mind. However, in considered opinion of this Court, such application of mind can be reflected even by a terse and telling language; giving indication of application of mind, though not directly recording reasons. In such a situation, of course, the Magistrate; while acting under Section 156(3) Cr.P.C; may be required to record a few line; which might

reflect upon application of mind, however, he is not required to record the detailed reasons for passing the order; either way.

Otherwise also, recording of reasons at the stage of exercise of powers under Section 156(3) Cr.P.C can lead to further undesirable and absurd consequences and complications, and can; sometimes; lead to direct confrontation with other provisions contained in Cr.P.C. If the Magistrate is required to record the reasons to justify his order in such terms, by recording all the reasons, that the order can be analysed in revision and appeal, then it would, definitely, be dilating upon the merits of the case. Once the Magistrate enters into the merit of the case at the state of Section 156(3) Cr.P.C that would tantamount to taking the case in the realm of Section 200 Cr.P.C and may tantamount to taking cognizance. If while deciding the issue of sending case to police under Section 156(3) Cr.P.C the Magistrate records detailed or explicit reasons, than this would also adversely affect the consideration of case by the Magistrate either in case of possible protest petition against cancellation report or in case of consideration under Section 203 Cr.P.C or under Section 204 Cr.P.C or even at the stage of framing of charge. By any means, since it has to be pre-cognizance stage, as held by the Hon'ble Supreme Court, application of mind for the purpose of recording any finding of any kind; is not even germane and jurisprudentially sustainable.

Bare language of Section 156 Cr.P.C would also make it clear that no reasons are required to be recorded by Magistrate for ordering investigation. After an FIR has been recorded by the police, under Section 156 Cr.P.C the Police Officer can investigate a case; regarding which a local Court has jurisdiction to take cognizance. He need not record any reason for either registering an FIR or for entering into investigation. Still further Section 156(2) Cr.P.C further provides that such an investigation shall not be called in question before any Court for the reason that such police officer was not empowered to investigate the case. Since the power of the

police to investigate is flowing only from competence of court to take cognizance of a matter, therefore, Section 156(3) Cr.P.C; as a clarifactory provision of general supervisory powers of Magistrate to control and monitor the investigation; provides that a Magistrate may also order investigation of a case where he has the competence to take cognizance of that offence. This power of the Magistrate also; like power of police to investigate, is without any statutory 'ifs' and 'buts'. The only regulatory factor for this power is the competence of Magistrate to take cognizance of such offence. Needless to say that, as has been held by the Hon'ble Supreme Court in case of ***Madhu Bala vs. Suresh Kumar;1997(3)RCR(Criminal)679, Mohd. Yousuf vs. Smt. Afaq Jahan;2006(1)RCR(Criminal)451,*** and in case of ***T.C. Thangaraj vs. V. Engammal and others; 2011(3) RCR (Criminal)751,*** the Magistrate can not only order investigation in a case, but he can also order registration of FIR and even monitor the investigation in such a case. Hence, it is clear that power of police to investigate the offence suo moto, on registration of FIR, and power of the Magistrate to order investigation by registering the FIR; both are regulated by the same controlling factor, i.e., the competence of the local Court to take cognizance of the offence. In such a statutory situation, if no reasons are required to recorded by the police for registration of FIR and for investigating the same, then there is no question of the Magistrate being required to record reasons for the same. By any means, and under no provision of Cr.P.C, the power of the Magistrate can be put at a pedestal lower than the one enjoyed by the police whom the Magistrate is empowered to monitor and supervise. On the contrary, the Magistrate, statutorily, is the controlling authority over the power of the police in the matter of investigation of a case.

There is another reason to highlight as to why the Magistrate is under no obligation to record reasons for ordering investigation under Section 153(3) Cr.P.C. The Hon'ble Supreme Court has repeatedly held that even after taking cognizance when the Magistrate passes a summoning order, he is not required to record any

explicit or detailed reasons. In case of ***Nupur Talwar vs. CBI;2012(3)RCR(Cr.)595,*** the Hon'ble Supreme Court has held that despite the police, submitting a report otherwise, it is the satisfaction of the Magistrate, whether to issue any process in the case or not, and for issuing such process the Magistrate need not record any reasons. Non-recording of reasons does not vitiate the order of the Magistrate. Even if he records any reasons, the higher court is not required to appreciate 'sufficiency' of material or reasons for such order, rather it has to restrict itself to see the 'existence' of material or reasons. By holding this, in fact, the Hon'ble Supreme Court has only applied the criterion which is applied for 'judicial review' of any administrative order/executive exercise, like the proclamation issued by the President of India under Article 356 of the Constitution of India. Therefore, such an order of Magistrate has been taken at par with supervisory administrative or executive order; instead of taking it as part of a strictly judicial process.

Another aspect which has come up for consideration collaterally is certain judgments from various High Courts in which it has been observed that the jurisdiction under Section 156(3) Cr.P.C should not be invoked merely on asking of a complainant and that before passing an order under Section 156(3) Cr.P.C the Magistrate should take affidavit and document from the complainant and then try to find out the veracity of the documents and truth of allegation in the complaint and only then he should order investigation by the police. Stated to be to the same effect is another judgment from the Hon'ble Supreme Court in case of ***Mrs. Priyanka Srivastava and another vs. State of U.P. and others;2015 AIR(SC)1758***. However, a careful reading of this judgment shows that this judgment does not lay down taking of affidavits and finding truth in allegations by the Magistrates, as a pre-condition for exercising power under Section 156(3) Cr.P.C or for ordering investigation. Rather in that case, faced with a piquant situation of repeated misuse of provision of Section 156(3) Cr.P.C by an unscrupulous defaulter borrower; against secured creditors and

statutory authorities, and even that by concealing the entire sequence and events/results of earlier litigations, the Hon'ble Supreme Court has observed that the Magistrate would be well advised to take affidavit from such persons and can even verify the veracity of allegation to come to a conclusion if any cognizable case is even remotely revealed in the complaint. These observations had emerged from the fact that the complainant in that case had not come to the Court with clean hands and there was a specific bar created by Section 32 of SARFESI ACT against taking cognizance of any suit, prosecution or any other proceedings against secured creditor or any other officer or manager working in that regard. Despite such statutory bar, the Magistrate had entertained repeated applications under Section 156(3) Cr.P.C. against statutory authorities and had ordered registration of FIRs without full knowledge of series of litigations in which the complainant had already failed on similar grounds. Therefore, the Hon'ble Supreme Court had observed that; in case a complaint is filed against statutory authorities for passing statutory orders; than the Magistrate has to take extra precaution in exercising powers under Section 156(3) Cr.P.C; lest this provision should be turned into a routine tool of harassment by the unscrupulous defaulters against the high and responsible officers of the statutory authorities. However, in this judgment itself, the Hon'ble Supreme Court has held that it was conscious of the fact that there cannot be separate set of law for high-up; because nobody is above the law. Therefore, the Hon'ble Supreme Court has clarified that a principled and really grieved citizen; with clean hands; must have free access to invoke the power of the Magistrate under Section 156(3) Cr.P.C. While it protects the ordinary citizen, but when pervert litigation takes the route of Section 156(3) Cr.P.C, efforts should be made to scuttle an curb the same. Hence, this judgment of the Hon'ble Supreme Court does not lay down, as a precedent, that taking of affidavits and finding the veracity and truth of allegations by a Magistrate is a '*sine qua non*' for passing order under Section 156(3) Cr.P.C. This has been left to the discretion of the Magistrate, if considered appropriate in a particular case; but only as an advisory. That discretion is

always there otherwise also. Still further insisting upon affidavits at the stage of Section 156(3) Cr.P.C may not be otherwise desirable; because an affidavit is a sworn statement, which if submitted before the Magistrate, may not be possible for him to ignore at that time; even if it turns out to be false later on.

Still further, all such judgments as mentioned above have not emanated from the interpretation of language of Section 156(3) Cr.P.C. Rather, as mentioned above, this category of judgments has emanated from an inherent fear of a scare of Indian system of administration of criminal justice, called the 'FIR'. These judgments are pitched against possible misuse of provision by getting the *'FIR'* registered. However, possible misuse of a provision is nowhere recognised as a criterion or a valid tool for interpretation of statutes. Therefore, all such judgments, though deserve all the respect as a decision on a lis in those particular cases, yet cannot be raised to the status of precedent qua exercise of power by a Magistrate under Section 156(3) Cr.P.C. Such judgments can, at the best, serve as a advisory to the Magistrate to be careful while dealing with a matter under Section 156(3) Cr.P.C, and nothing more. In fact, actuated by possible misuse of this provision, incorporating more conditions in language of Section 156(3) Cr.P.C by judicial interpretation is not even the remedy for the fear of the demon called 'FIR'. The remedy lies in extending the scope of other rights of citizen/persons; against whom FIR has been registered. Remedy lies in purposive and liberal interpretation of the provisions regarding anticipatory bail, bail, discharge and acquittal. Remedy lies in shedding off the tendency to follow a person till his grave once an FIR is registered against him. Remedy lies in removing the legal and judicial disqualifications and disadvantage; which are stuck to such a person; despite the fact that such person might have been found innocent during investigation, might have been discharged by the Court or even might have been acquitted by a Court. Remedy lies in giving restrictive interpretation to the police powers vis-a-vis rights of individual and the remedy lies in training the Courts not to write in their

judgments of acquittal that the accused is acquitted '*by giving benefit of doubt'*. Further, the remedy lies in treating the scare called '*FIR'* with the contempt it deserves an not to exalt it as the only or even the main controller of the social aberrations and the social behaviour. It has to be treated nothing more than an information of an alleged offence. The system of administration of criminal justice deserve to mature itself to that degree.

The next question which is under consideration of this Court is whether a revision lies under Section 397/401 Cr.P.C against an order passed by the Magistrate under Section 156(3) Cr.P.C. This Court finds the answer to be, generally, in negative. A Constitution Bench judgment of the Hon'ble Supreme Court rendered in a case reported as ***Pranab Kumar Mitra vs. The State of West Bengal and another***;***1959 supp(1) SCR 63*** has held that to file revision is not any right of a party. It is only a discretion of the Court which is vested with power of revision. Further, the revisional power is not to be invoked merely because some error is alleged in the order of the Court below. This judgment has been duly followed by the Hon'ble Supreme Court in recent judgments rendered in ***Girish Kumar Suneja vs. C.B.I;2017(3) RCR(CR.) 665*** and ***Bir Singh vs. Mukesh Kumar;2019(2)RCR(CR.)1.*** In the later judgments, the Hon'ble Supreme Court has gone to the extent of holding that power of revision can be exercised only if there is any jurisdictional error in the order of the Court below and it is not to be exercised merely because order of the Court below is wrong. By any stretch of interpretation of language and scope of Section 156(3) Cr.P.C it cannot be said that when the Magistrate passes an order under Section 156(3) Cr.P.C, it suffers from jurisdiction error, unless he is prohibited from taking cognizance of the offence by some other provision of law.

Otherwise also, provision of revision is contained in Section 397 Cr.P.C. It authorises revision in case of illegality or impropriety of the order of the Court below or irregularity of procedure. It also prohibits revision against interim order,

despite any alleged illegality or impropriety in the same. It would be beneficial to have a reference to the Section 397 Cr.P.C at this stage:-

> "***Calling for records to exercise powers of revision:--***
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> ***(1)*** *The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.*
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> ***(2)*** *The powers of revision conferred by sub-section(1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceedings.*
>
> ***(3)*** *If an application under the section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."*

A constructive reading of this provision, in light of the abovesaid judgments of the Hon'ble Supreme Court, would make it clear that the '*impropriety*'

mentioned in the Section has the reference to the jurisdictional error or procedural impropriety. An order of Court below, which is otherwise legally passed; cannot be re-appreciated by revisional court on the ground of '*impropriety',* if there is no lack of jurisdiction or any overwhelming disregard for procedure. *'Legality'* of an order of Court below can also be re-appreciated in revision only if it is a '*final'* order and not merely an *'interim'* or *'interlocutory'* order. Whereas all intermediatory orders passed by the Court during the trial may not be the interim orders, but if such an intermediatory orders does not finally decide a right of an accused, it has to be treated only as an interlocutory or interim order. No person has a right not to be accused of an offence, although he has constitutional and statutory rights to defend the same and also to be protected against self incrimination and repeated prosecution. Hence, the order of the Magistrate under Section 156(3) Cr.P.C, which only leads to registration of FIR against a person, cannot be taken as an '*final'* order, finally determining any rights of a person. At the best, it can be taken as an '*interim'* or '*interlocutory'* order, if at all it is to be taken as an order passed in '*judicial proceedings';* as defined under Section 2 of Cr.P.C. Otherwise, this order is more in the nature of administrative direction; flowing from the controlling and supervisory powers of the Magistrate; over the Police authorities in the matter of investigation of offences. Otherwise also, if no reasons are required to be recorded by the Magistrate then there would not be anything to be appreciated by the Revision Court.

Therefore, unless the Magistrate himself is prohibited from or not authorised to take cognizance of the offence, his order passed under Section 156(3) Cr.P.C is not amenable to challenge in revision. Revision can be maintained only on one ground; that the Magistrate himself was not competent to take cognizance of the offences qua which he has ordered investigation under Section 156(3) Cr.P.C.

However, this not to say that person affected by Order of Magistrate would be remediless. He can still approach the High Court for quashing of the FIR,

like any other FIR, on the grounds for which an FIR can be quashed. But in such petition as well, the challenge has to be to the FIR on merits and not to the order of the Magistrate.

In the present case, the order passed by the Magistrate duly reflects application of his mind to the facts of the present case. The Magistrate has duly recorded that, in the facts and circumstances of the case, it is not a fit case for ordering the Registration of the FIR, instead, it would be sufficient if the petitioner is made to lead the preliminary evidence. This duly reflects application of mind by the Magistrate to the facts of the present case. Merely because detailed reasons are not recorded in the order; would not render such an order as arbitrary or perverse.

So far as the judgment cited by learned counsel for the petitioner is concerned, this Court finds that the judgment of the Hon'ble Supreme Court rendered in Anil Kumar's case(Supra) is clearly distinguishable; on the facts of the present case. In that case, the Magistrate had ordered registration of the case against a public servant; despite there being a statutory bar of taking a cognizance against a public servant, and even in absence of sanctions from the competent authority. Hence the Hon'ble Supreme Court had held that since the Magistrate had not applied his mind to the fact that he was not empowered to take cognizance under Section 190 Cr.P.C in view of the prohibition provided under Section 19 of Prevention of Corruption Act, therefore, he could not have ordered registration of the case in absence of sanction from the Competent authority. This is altogether a factually different milieu; then the present one. In the present case, the Magistrate has not passed any order for registration of the FIR and even the Complainant is not prejudiced because his complaint has not been dismissed by the Magistrate. It is only that; at this stage, the Magistrate has not found it to be a case where the investigation by police is required.

Although the learned counsel for the petitioner has also cited two judgments rendered in Sahina Bano's case(supra) and Sant Lal' case(supra), however, this Court finds itself not in agreement with these judgments because both these judgments appear to have travel beyond the scope of Section 156(3) Cr.P.C. If these judgments are followed then the degree of satisfaction of court which is required for framing of the charge would be introduced at the stage of passing of an order under Section 156(3) Cr.P.C itself. By any means Section 156(3) Cr.P.C can not be interpreted in such a manner; as to include in its import a requirement to appreciate the facts of the case as to whether any offence is 'made out' against the accused or not. Needless to say that requirement to see whether an offence is '*disclosed or not'* and to see whether any offence is '*made out or not'* are altogether two different levels of appreciation of facts and operate at two different stages of criminal proceedings. These two cannot be confused or mingled together casually.

There is another aspect involved in this case. As is evident from the record, the Magistrate had passed the Order of taking cognizance of offences and starting the evidence of petitioner. The petitioner had challenged the same by way of revision petition before the Court of Sessions Judge. After dismissal of the same, challenging the correctness, *legality* and *propriety* of the said order, the present petition has been filed. However, this Court has already held in ***CRM-M-30350-2018*** titled as ***Sudesh and others versus State of Haryana and another*** that; in such a situation; filing of a petition under Section 482 Cr.P.C would tantamount to second revision and the same is barred specifically by the provision of Section 397(3) Cr.P.C. While dealing with this question, the Court has held as under:-

> "*So far as the present petition is concerned, this petition has been filed for invoking power of the High Court under Section 482 Cr.P.C. A bare perusal of Section 482 Cr.P.C shows that the power under Section 482 Cr.P.C can be invoked for three*

purposes, namely, for giving effect to the orders passed under this Court, for preventing the abuse of the process of the Court and to meet the ends of justice. In the present case, the prayer of the petitioners is not for giving any effect to any order passed by the Court. Therefore, the first eventuality prescribed under Section 482 Cr.P.C is not at all attracted. Still further, by any means, an order passed by a Court of competent jurisdiction and continuation thereof; cannot be branded as an abuse of the process of Court; unless it is alleged and shown to the High Court that the Courts below had acted for irrelevant reasons or for extraneous considerations. Needless to say that sufficiency of reasons is not to be gone into after the revisional Court. It is not even the allegation of the petitioners in this case that orders are passed by Court below; for irrelevant or extraneous considerations. So far as the third ingredient of Section 482 Cr.P.C is concerned, this Court is not supposed to go into `legality' and `propriety' of the order passed by the trial Court. Section 397(3) of Cr.P.C prohibits second revision by a party. Under Section 397(1), the Revisional Court is authorised to see `legality' and `propriety' of the order passed by the Court. Since second revision by the same party is prohibited under Section 397(3), therefore, any argument on `legality' or `propriety' of an order passed by the Court below, ordinarily, is not to be appreciated in proceedings under Section 482 Cr.P.C, unless it is shown, at the macro level, that such an order has resulted from considerations which were totally alien to the process of the Court or have produced incomprehensibly absurd result and,

> *therefore, have resulted in defeating the ends of justice itself. What cannot be done directly, cannot be done indirectly as well. In the present case, except to argue for re-appreciation of the material before the trial Court, there is not even a submission or an allegation regarding any aberration in the process adopted by the Courts for passing the impugned orders. Therefore, power under Section 482 Cr.P.C cannot be exercised by this Court to re-appreciate the same material, which was available before the Courts below and which have been duly appreciated by the Courts below."*

In the facts and circumstances of the case, this Court does not find any process; alien to the process of law; being adopted by the Courts below in dealing with the matter. By way of the present petition, the petitioner only tried to get adjudicated upon correctness, validity and propriety of the order passed by the courts below. Hence this is nothing but a second revision petition; in the garb of invoking the powers of the High Court under Section 482 Cr.P.C. Hence, the present petition is otherwise also not maintainable.

In view of the above, finding no merit in the present case, the same is dismissed.

12th March, 2019 **[RAJBIRSEHRAWAT]**
Shivani Kaushik **JUDGE**

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No