

Before Manjari Nehru Kaul, J.
SIMARJEET SINGH BAINS—*Petitioner*
versus
STATE OF PUNJAB—*Respondents*
CRM-M No.26627 of 2021

July 23, 2021

Code of Criminal Procedure Code, 1973— S. 156(3)— Registration of complaint—Whether exercise of powers under Section 156(3) Cr.P.C. by Magistrate during pendency of petition under Section 482 Cr.P.C. before High Court would amount to act of judicial impropriety? Held, in the absence of existence of any such infirmity it cannot be said that order suffers from act of judicial impropriety— No concealment on part of complainant about pendency of criminal miscellaneous petition in High Court— Power under section 156(3) Cr.P.C. is statutory power conferred upon Magistrate— If Magistrate does not take appropriate decision it would be act of abdication of powers.

Held that the power under Section 156(3) Cr.P.C. is a statutory power conferred upon the Magistrate giving rise to a statutory remedy in favour of a person aggrieved. It would rather be an act of abdication of his powers by a Magistrate in case he does not take an appropriate decision and fails to exercise his jurisdiction in the event of an aggrieved person approaching him.

(Para 29)

R.S.Rai, Sr. Advocate with
 Gautam Dutt, Advocate
for the petitioner.

Luvinder Sofat, AAG, Punjab.

R.S.Cheema, Sr. Advocate with
 Anshika, Advocate
for respondent No.2.

MANJARI NEHRU KAUL, J.

(1) The petitioner is seeking quashing of the order dated 07.06.2021 (Annexure **P5**) passed by the Additional Sessions Judge, Ludhiana, (hereinafter referred to as 'ASJ, Ludhiana') whereby revision

petition of the complainant/respondent No.2 against the order dated 24.12.2020 (Annexure **P3**), treating her application under Section 156(3) Cr.P.C. as a complaint was set aside and the case remanded back to the Magistrate/trial court for a fresh decision. In addition, a prayer has also been made to set aside the order dated 07.07.2021 (Annexure **P6**) passed by the Additional Chief Judicial Magistrate, Ludhiana, (hereinafter referred to as 'ACJM, Ludhiana') whereby the SHO of Police Station Division No.6, Ludhiana, was directed to register a criminal case and to investigate it on the grounds that the said order was illegal having been passed contrary to the settled tenets of criminal jurisprudence and without any application of judicial mind.

(2) On being put to notice, the State of Punjab filed its status report by way of a short affidavit of Shri Randhir Singh, PPS, Assistant Commissioner of Police, Industrial Area-B, Ludhiana. Respondent No.2- complainant was represented by a counsel and chose not to file any reply.

(3) Before advertizing to the case in hand it would be apt to give a brief run up of the sequence of events which led the petitioner to file the instant petition.

(4) The petitioner (who has been arraigned as accused) is a member of the Legislative Assembly, Punjab in addition to being President of a political party in the name and style of 'Lok Insaaf Party'. His brother too is a member of the Legislative Assembly. The dispute in the instant case emanates from a complaint filed by complainant/respondent No.2 wherein she alleged that she had purchased a house measuring 75 sq. yards in the year 2018 at Ishar Nagar, Ludhiana, with the help of co-accused Sukhchain Singh for a sale consideration of Rs.18 lakhs. The co-accused Sukhchain Singh allegedly misappropriated a sum of Rs.1.25 lakhs out of the sanctioned loan of Rs.10 lakhs which was allegedly secured through him from Vijaya Bank, Focal Point, Branch Ludhiana, as expenses for securing the said loan. Owing to the demise of her husband, the financial condition of the complainant/respondent No.2 deteriorated to such an extent that she defaulted in the re-payment of loan. The bank also initiated action for taking possession of the house of the complainant/respondent No.2. It was in the aforementioned background, the complainant/respondent No.2 through co-accused Sukhchain Singh approached the petitioner-accused for help. Thereafter, the complainant/respondent No.2 was called by the petitioner on various occasions on the pretext of availing some

telephone facilities from the company where she was working at that point in time. Due to her precarious financial condition the complainant/respondent No.2 fell for the way out suggested by the co-accused Sukhchain Singh and the petitioner. It was further alleged that taking advantage of the vulnerable situation of the complainant /respondent No.2, the petitioner aided by his accomplices raped and violated her modesty on numerous occasions despite her resistance. She was also allegedly threatened with dire consequences if she disclosed the above facts to anyone. The allegations in detail are contained in the complaint dated 16.11.2020 (Annexure **P10**) made by the complainant/respondent No.2 to the Commissioner of Police, Ludhiana, which was also followed with reminders on 21.11.2020 and 01.12.2020 as well as in the application filed under Section 156(3) dated 03.12.2021 (Annexure P1). However, since the authorities concerned failed to act on her complaint, she approached this Court by way of CRM-M-39489-2020 invoking its inherent jurisdiction under Section 482 Cr.P.C. *inter alia* praying for the following relief:-

- i) To protect the life and liberty of the petitioner as she apprehends danger to her life at the hands of respondent No.5 who is a sitting M.L.A. of Punjab.
- ii) To register the FIR under Section 376, 120-B IPC against respondent No.5 in view of the mandate of the Constitution Bench of the Hon'ble Supreme Court in Lalita Kumari v. Govt. of UP 2014 (1) SCC (Criminal) 524.
- iii) To direct the respondent No.2 to 4 not to harass the petitioner by calling her repeatedly to Police Lines Ludhiana/Office of respondent No.3 and 4 in complete violation of Section 160 of Cr.P.C.
- iv) To direct the respondent No.3 to file status report of the action taken on the complaint (Annexure P1) filed by the petitioner against respondent No.5, in the interest of justice, equity and fair play.”

(5) Notice in the aforesaid criminal miscellaneous petition was issued by a Coordinate Bench of this court on 27.11.2020. However, the aforesaid petition could not be taken up on the subsequent date of hearing owing to restricted hearing on account of the outbreak of the pandemic.

(6) The complainant/respondent No.2 also approached the Judicial Magistrate 1st Class, Ludhiana (hereinafter referred to as 'JMJC,

Ludhiana') under Section 156(3) Cr.P.C. on 03.12.2020 for issuance of a direction to the Commissioner of Police, Ludhiana to register an FIR under Sections 376, 354, 354-A, 506 and 120-B IPC against the petitioner and his six accomplices vide Annexure P1. Pursuant to the filing of the complaint under Section 156(3) Cr.P.C., the JMIC, Ludhiana, called for a status report from the police wherein it was acknowledged that the complainant/respondent No.2 had earlier also submitted a complaint dated 16.11.2020 in the office of the Commissioner of Police, Ludhiana, which in turn had been entrusted to the Joint Commissioner of Police, Ludhiana, for enquiry. The status report is annexed as Annexure P2 with the petition. Upon receipt of the status report, the JMIC, Ludhiana, passed an order dated 24.12.2020 (Annexure P3) wherein he observed that in the absence of any bias on the part of the investigating agency there was no occasion to direct registration of FIR as had been prayed for, by the complainant/respondent No.2 and he instead ordered to treat the said application as a complaint and fixed the case for recording of preliminary evidence. The order of the JMIC, Ludhiana, was challenged by complainant/respondent No.2 by filing a revision petition (Annexure P4) before the court of ASJ, Ludhiana, who set aside the impugned order dated 24.12.2020 passed by the JMIC, Ludhiana, vide judgment dated 07.06.2021 (Annexure P5) and remanded it back to the JMIC, Ludhiana, for deciding it afresh in accordance with law. The impugned order was primarily set aside by the ASJ, Ludhiana, on the ground that the decision of the Magistrate was based on a premise that there was no bias on the part of the investigating agency, even though it was not alleged so by the complainant/respondent No.2. The ASJ, Ludhiana, went on to hold that the reasoning given by the Magistrate was alien to the point in issue and the material on record was not considered in the light of the mandate of Section 156 (3) Cr.P.C. as well as the settled law.

(7) Be that as it may, during the pendency of the aforesaid criminal miscellaneous petition before this court and pursuant to the order of remand dated 07.06.2021 (Annexure P5) by the ASJ, Ludhiana, the ACJM, Ludhiana, passed a fresh order on 07.07.2021 (Annexure P6) wherein directions were issued to the SHO, Police Station Division No.6, Ludhiana, to register a criminal case and to investigate the same. The court concerned noticed the allegations raised by respondent No.2/complainant as also the factum of the pending criminal miscellaneous petition i.e. CRM-M-39489-2020 before this court. Thereafter, upon consideration of the facts in its entirety the

ACJM, Ludhiana, observed that the allegations being specific of repeated sexual assault, harassment, destruction of evidence and criminal intimidation, a *prima facie* case disclosing the commission of cognizable offence was made out mandating the registration of a criminal case by the police. Resultantly, case FIR No. 180 dated 10.07.2021 under Sections 376, 354,, 354-A, 506, 120-B IPC was registered at Police Station Division No.6, Ludhiana against the petitioner and six others. The investigation is underway in the said case.

(8) The status report filed by the State of Punjab is in fact a reiteration of the facts already noticed above and therefore need not be gone into in detail.

(9) The senior counsel for the petitioner vehemently argued that the orders passed by the courts below displayed judicial impropriety. In support he made a reference to the averments made in the complaint (Annexure P1) wherein the complainant/respondent No.2 had categorically disclosed the filing of CRM-M-39489-2020 in the High Court. Learned senior counsel submitted that notice of motion in the said criminal miscellaneous petition was issued on 27.11.2020 whereas the complaint under Section 156(3) Cr.P.C. was filed by complainant/respondent No.2 thereafter on 03.12.2020. In order to reinforce his arguments, the learned senior counsel elucidated a hypothetical situation that where a person approaches the High Court by way of a petition under Section 438 Cr.P.C. and/or under Section 439 Cr.P.C. wherein if after issuance of notice of motion by the High Court the said person also approaches the trial court/court of Sessions invoking the same jurisdiction i.e. under Section 438 /439 Cr.P.C. as the case may be, such an act would, without a doubt, tantamount to judicial impropriety and an overreach displaying forum hunting. A question was, thus posed by the learned senior counsel as to whether the court of sessions could grant the same relief once a person had invoked the parallel remedy? It was also argued by the learned senior counsel that the High Court Rules & Orders mandate that a note is required to be given that no such or similar petition has been filed in the High Court or in the Supreme Court. In support of his arguments the learned senior counsel has placed much reliance upon the judgment of the Supreme Court in the matter of *Ramdev Food Products Private Limited* versus *State of Gujarat*¹ and specifically laid stress on the paragraphs 2, 6, 11, 19, 20, 21, 22 and 30, which are extracted as

¹ 2015 (3) SCALE 622

under:-

“2. The High Court declined to interfere with the Order dated 16th August, 2005, of the Judicial Magistrate, First Class, Sanand on a complaint filed by the appellant against fourteen accused for alleged commission of offences under Sections 409, 420, 406, 467, 468, 471 read with Section 120-B and 114 of the Indian Penal Code directing the Police Sub- Inspector, Sanand, to give a report to the Court within thirty days under Section 202(1) of the Code of Criminal Procedure, 1973 (for short "the Code") instead of directing investigation under Section 156(3) of the Code, as sought by the appellant.

6. We have heard learned counsel for the parties. When the matter came up for hearing on 11th April, 2007, this Court framed the question as follows:

“”The question involved in the instant Special Leave Petition is as to the extent of power that may be exercised by a police officer while making an inquiry under Section 202(1) of the Code of Criminal Procedure particularly, whether he has power to arrest in course of the inquiry entrusted to him by the Magistrate. Reliance is placed on Sub-Section 3 of Section 202 to contend that the power to arrest without warrant cannot be exercised by a person not being a police officer. Impliedly it is contended that so far as the police officer is concerned that constraint is not there.”

However, in the light of submissions made during the hearing, we frame following questions for consideration:

“”(i) Whether discretion of the Magistrate to call for a report under Section 202 instead of directing investigation 156(3) is controlled by any defined parameters?

(ii) Whether in the course of investigation in pursuance of a direction under Section 202, the Police Officer is entitled to arrest an accused?

iii) Whether in the present case, the Magistrate erred in seeking report under Section 202 instead of directing investigation under Section 156(3)?”

11. On the other hand, contention on behalf of the alleged accused is that both the powers of the Magistrate - (i)

directing investigation under Section 156(3); and (ii) direction under Section 202 to seek a report from police after investigation to enable the Magistrate to decide whether to proceed further and issue process are qualitatively different and are in different chapters of the Code. Thus, as per scheme of the Code, power of police in pursuance of directions under the said two provisions is not the same.

The Magistrate has discretion either to direct registration of a case under Section 156(3) or to conduct inquiry himself as the situation may warrant. This discretion is to be exercised by the Magistrate in his wisdom and having regard to the nature of material available. Direction under Section 156(3) to register a criminal case and to investigate is to be exercised where the Magistrate is satisfied that prima facie a cognizable offence has been committed. On the contrary, where he thinks it necessary to conduct further inquiry before deciding whether he should proceed further in the matter, matter has to be dealt with under Section 202. Mere allegation of forgery is not enough to require the Magistrate to pass the order under Section 156(3).

19. Thus, this Court has laid down that while prompt registration of FIR is mandatory, checks and balances on power of police are equally important. Power of arrest or of investigation is not mechanical. It requires application of mind in the manner provided. Existence of power and its exercise are different. Delicate balance had to be maintained between the interest of society and liberty of an individual. Commercial offences have been put in the category of cases where FIR may not be warranted without enquiry.

20. It has been held, for the same reasons, that direction by the Magistrate for investigation under Section 156(3) cannot be given mechanically. In *Anil Kumar vs. M.K. Aiyappa*[5], it was observed :

""11 The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in *Maksud Saiyed* case [(2008) 5 SCC 668] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint

filed in terms of Section 156 (3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation."

The above observations apply to category of cases mentioned in Para 120.6 in Lalita Kumari (supra).

21. On the other hand, power under Section 202 is of different nature. Report sought under the said provision has limited purpose of deciding "whether or not there is sufficient ground for proceeding". If this be the object, the procedure under Section 157 or Section 173 is not intended to be followed. Section 157 requires sending of report by the police that the police officer suspected commission of offence from information received by the police and thereafter the police is required to proceed to the spot, investigate the facts and take measures for discovery and arrest. Thereafter, the police has to record statements and report on which the Magistrate may proceed under Section 190. This procedure is applicable when the police receives information of a cognizable offence, registers a case and forms the requisite opinion and not every case registered by the police.

22. Thus, we answer the first question by holding that the direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone instance of process and finds a case made out to proceed forthwith, direction under the said

provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightway direct investigation, such a direction is issued. Cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed". Category of cases falling under Para 120.6 in *Lalita Kumari* (supra) may fall under Section 202. Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case.

30. We now come to the last question whether in the present case the Magistrate ought to have proceeded under Section 156(3) instead of Section 202. Our answer is in the negative. The Magistrate has given reasons, which have been upheld by the High Court. The case has been held to be primarily of civil nature. The accused is alleged to have forged partnership. Whether such forgery actually took place, whether it caused any loss to the complainant and whether there is the requisite mens rea are the questions which are yet to be determined. The Magistrate has not found clear material to proceed against the accused. Even a case for summoning has not yet been found. While a transaction giving rise to cause of action for a civil action may also involve a crime in which case resort to criminal proceedings may be justified, there is judicially acknowledged tendency in the commercial world to give colour of a criminal case to a purely commercial transaction. This Court has cautioned against such abuse."

(10) While placing reliance on the aforesaid judgment in *Ramdev's case* (supra) it was contended by the learned senior counsel that it was categorically held by the Apex Court that if on a bare reading of the complaint under Section 156(3) Cr.P.C., a cognizable offence is *prima facie* made out, the Magistrate must refer the matter right away for registration of an FIR and if on the other hand he arrives at a conclusion that the complaint does not disclose the commission of a cognizable criminal offence it needs to be sent to the police for investigation, he may then invoke the process under Section 202 Cr.P.C. Still further, the learned senior counsel contended that the

Supreme Court further went on to observe in ***Ramdev's case*** (supra) that the satisfaction of the Magistrate was wrongly set aside by the Additional Sessions Judge concerned, on the ground of the order being a non-speaking one. The learned Senior counsel thus contended that the initial order (Annexure P3) passed by the JMIC, Ludhiana, was a perfectly valid order and had in fact been passed in consonance with the ratio laid down in ***Ramdev's case*** (supra) and that too after seeking a report from the police. The learned senior counsel contended that the order of the ASJ, Ludhiana, remanding the case back to the JMIC, Ludhiana, was on the face of it erroneous. Learned senior counsel while inviting the attention of this court to the observations recorded by the ASJ, Ludhiana, in paragraphs 13,15,18,22,24 of the judgment (Annexure P5) has submitted that it was contrary to the ratio laid down by the Supreme Court in ***Ramdev's case*** (supra). It would be relevant to extract the aforementioned paragraphs from the order of the ASJ, Ludhiana, as under:-

“13. In view of above discussion, this point is determined with the *Gurdip Kaur Vs. Simarjeet Singh Bains & Ors.* Page no.15 observation that power of Magistrate under section 156(3) CrPC is discretionary with only rider that he has to apply his mind to the facts & circumstances and the documents attached with the application and the order must reflect the application of mind.

15.Point No.3: The contention of learned counsel for the respondent that since the complainant has approached the police authorities by filing the complaint and also preferred petition before the Hon'ble Punjab and Haryana High Court on the same set of facts, so, she is debarred from seeking the remedy under section 156(3) CrPC. And that of learned *Gurdip Kaur Vs. Simarjeet Singh Bains & Ors.* Page no.16 counsel for the revisionist that since no action was taken by the police so the complainant/victim was within her rights to seek remedy under section 156(3) CrPC, is considered.

18.The remedy provided under section 156(3) CrPC is an alternate remedy available to the complainant/informer due to inaction on the part of police. This is a statutory right of the complainant/informer due to inaction of the police to move before the Magistrate, application under section 156(3) CrPC. This point is accordingly determined with the

observation that complainant is not debarred from seeking the remedy under section 156(3) CrPC.

22. The perusal of the impugned order reveals that the learned Magistrate has passed the order on the ground that the matter is under consideration before the police for taking the action against the accused as per law and there is nothing to suggest that police has become biased to take action against the accused. There is nothing on the record to reveal that the learned Magistrate has applied his mind to the facts and circumstances and documents on the file. Nothing reflects in the impugned order that the learned Magistrate has applied his mind to the facts and circumstances of the case before passing the order dated 24.12.2020. The order of the learned Magistrate is not only erroneous rather the same is against the established procedure of the law and the reasoning given is unwarranted.

24. The reasoning given in the impugned order is unwarranted due to the observations that the matter is under consideration before the police for taking the action against the accused as per the law and there is nothing on record suggesting that the police has become biased to take action against the accused. The question of being biased of the police was not in issue before the learned Magistrate. Rather the request was to pass the appropriate direction as per the provisions of Section 156 (3) CrPC due to inaction on the part of the police authority. Thus, under these circumstances the impugned order is against established procedure of law and reasons recorded are unwarranted. Thus, the order is not sustainable in the eyes of the law.”

(11) The learned senior counsel has also urged that the ACJM, Ludhiana, went much beyond his powers while ordering custodial interrogation of the accused in the impugned order (Annexure P6). Reference was made in the said regard to paragraphs 12, 13 and 14 in the order of the ACJM, Ludhiana, which are extracted as under:-

“12. Therefore, it is quite evident from the material on record and seriatum of events referred above that there are clear cut allegations of repeated and forcible sexual assault & harassment, destruction of evidence and criminal intimidation against accused No. 1 to 7

as discussed in detail in the foregoing paragraph which discloses commission of cognizable offences. Palpably, as per the allegations leveled in the application, the role and attribution of above said seven accused in commission of this detestable crime is writ large. Hence, the police is duty bound to register the FIR and investigate the matter.

13. With the clout accused No.1 and his cohorts carry, their political sway would have dissuaded the police officials to extend an unbiased and judicious approach to the abuse. The cries of help by a proverbial common man against an overbearing the powerful political figure are often found to faint to be heard at certain forums. The complainant had been steadfastly pursuing the complaint against all odds and the extraordinary narrative of the sexual exploitation of the complaint indeed warrants a thorough investigation. Since the means and medium for the collection of evidence available with the Investigating Agency can not be equated by the complainant, if she is made to file a complaint under Section 200 of the Cr.P.C. The court at this juncture can not turn a blind eye to the pitched accusations of the gross sexual abuse of the complainant in a systematic manner by the accused more particularly when seemingly there is no cause for the complainant to falsely implicate the accused.

14. At this juncture, it is germane to add that the evidence to be collected in this case is beyond the reach of complainant. Moreover, custodial interrogation of accused appears to be indispensable for discovery of certain facts and for recovery of incriminating evidence. This court is of the affirmed view that nature of allegations is such that complainant herself may not be in a position to collect and produce evidence before the court and interest of justice demand that the police should step in to assist the complainant. Added thereto, this court of the considered view that allegations made in the complaint requires in-depth investigating which cannot be undertaken without the active assistance and expertise of state machinery. The footage of CCTV

cameras installed by the police at various places nearby the scene of crime are required to be collected. Similarly, many other intricate and technical aspects involved which can only be effectively dealt with by state agency. The complainant would not be in position to secure such kind of evidence on her own. This is a case of such peculiar nature where it would not be possible for complainant to muster evidence against influential accused who are in the helm of affairs. Here, the real cause of concern of this court is whether a miserable and poor victim of sexual exploitation be expected to get justice by lodging the private complaint and collecting evidence from a place alien to her and against the perpetrators who are might, powerful and resourceful. In case, the directions for registration of case and investigation is not made, the entire case of the complainant would crumble and it would tantamount to failure of justice.”

(12) The learned senior counsel also placed reliance upon a judgment of this court in *M/s Sujan Multiports Ltd. versus State of Haryana and others* (CRM-M-12329-2018 decided on 12.03.2019) wherein this court held that the Magistrate was not required to record detailed reasons for passing an order either way and the learned counsel further suggested that such a course of action would foreclose all options for the petitioner and would amount to an expression on merits, and a few lines reflecting application of mind would suffice compliance of the mandate of Section 156 (3) Cr.P.C. The learned senior counsel supplemented his arguments by submitting that once the High Court was seized of the matter in its inherent jurisdiction the Magistrate ought to have awaited the final outcome since the High Court was a superior administrative court and more so when the prayer made in the complaint under Section 156(3) Cr.P.C. was identical to the prayer made in the petition under Section 482 Cr.P.C. in CRM-M-39489-2020. It was thus prayed by the learned senior counsel that the order dated 07.06.2021 passed by the ASJ, Ludhiana, as also the order dated 07.07.2021 passed by the ACJM, Ludhiana, were indicative of judicial impropriety rendering the said orders bad and thus liable to be set aside.

(13) Per contra the learned State counsel while referring to the status report filed by it has pointed out that subsequent to the order of the ACJM, Ludhiana, the FIR stands registered. He has reiterated that there was no illegality much less any impropriety on the part of the

ACJM, Ludhiana, rather the filing of the instant petition was nothing but an abuse of the process of law.

(14) The learned senior counsel appearing for the complainant/respondent No.2 laid a great deal of emphasis on the fact that the powers under Section 156 (3) Cr.P.C. are to be exercised at the pre- cognizance stage and the exercise of such powers could be undertaken only by a Magistrate. He further submitted that once a complaint is filed, the Magistrate has discretion to either take cognizance in terms of chapter XIV of Cr.P.C. or to exercise the powers under chapter XII which relates to the information to the police and their powers to investigate. The learned senior counsel further pointed out that the complainant/respondent No.2 had approached the authorities concerned i.e. the police and the remedy under Section 156(3) Cr.P.C. was an alternate remedy available to the complainant in case the investigating agency did not take any action despite receipt of a complaint. It was thus urged that the right conferred under Section 156(3) Cr.P.C. was statutory and as such the complainant /respondent No.2 could not be debarred from invoking the said right. The learned senior counsel further contended that as per the initial order passed by the Magistrate on 24.12.2020 (Annexure P3) there was nothing on record to *prima facie* suggest that the police had any bias. Consequently, there was no reason to feel apprehensive in facing the investigation. Besides this, a submission was also made to the effect that the court has merely to look into the legality and propriety of an order. Merely because some other view may also be possible would not be a sufficient ground to annul an order. Learned counsel submitted that there had been no concealment of any fact on the part of the complainant/respondent No.2 as she had specifically disclosed in her application under Section 156 (3) Cr.P.C. filed before the JMIC, Ludhiana, qua the filing of a petition before the High Court. Learned senior counsel vehemently argued that even though a strong *prima facie* case was made out and all the essential ingredients attracting the mischief of the offences as alleged were made out, the police had been soft pedalling the issue and had been reluctant in initiating action against the accused including the petitioner who happened to be an influential person. He submitted that it was rather obvious that the petitioner was enjoying the patronage and protection of the police who was most reluctant to initiate any action against him. He also submitted that in the absence of any jurisdictional error, the impugned order directing registration of criminal case under Section 156(3) Cr.P.C. was legally sustainable. The learned counsel in support of his

submissions placed reliance upon the judgment of the Delhi High Court in *M/s Skipper Beverages Pvt. Ltd. versus State*² and the judgment of the Allahabad High Court in *Jagannath Verma & others versus State of U.P. and another*³.

(15) I have heard the learned counsel for the parties, perused the material on record as well as the judgments relied upon by them.

(16) The following issues would thus arise for consideration by this court:-

1. Whether the exercise of the powers under Section 156(3) Cr.P.C. by the Magistrate during the pendency of the petition under Section 482 Cr.P.C. before the High Court would amount to an act of judicial impropriety?
2. Whether the observations made by the Magistrate while passing the impugned order (Annexure P6) while directing the registration of a criminal case amount to pre-judging the case?

(17) Adverting to the issues as aforesaid the learned senior counsel for the petitioner vehemently argued that the order dated 07.07.2021 suffered from gross judicial impropriety and the initial order dated 24.12.2020 whereby the learned Magistrate had chosen to take cognizance of the matter by converting it into a criminal complaint was valid and appropriate.

(18) Before proceeding further, it would be apposite to refer to the relevant provisions of the Code of Criminal Procedure, 1973 which are extracted as under:-

1. Section 156 Cr.P.C.

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

² 92 (2001) DLT 2017

³ 2014 (3) MWN (Cr) 16 (FB) (All)

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.

2. Section 482 Cr.P.C.

Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

(19) The emphasis of the learned senior counsel for the petitioner was on the fact that while CRM-M-39489-2020 was pending before this court, the Magistrate ought not to have exercised the powers under Section 156(3) Cr.P.C. and should have awaited the final outcome of the said proceedings. It thus becomes crucial to delve into the scope of the power conferred upon the Magistrate under Section 156(3) Cr.P.C. viz.-e-viz. power vested in this court under Section 482 Cr.P.C. It would therefore be pertinent to refer to the various judgments in the said regard. The Hon'ble Supreme Court examined the scope of Section 156(3) Cr.P.C. in *Sakiri Vasu* versus *State of U.P and others*⁴. The relevant extracts of the said judgment are reproduced as under:-

17. In our opinion Section 156(3) Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) Cr.P.C., though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

18. It is well-settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that

⁴ 2008 (1) RCR (Criminal) 392

thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution.

19. The reason for the rule (doctrine of implied power) is quite apparent. Many matters of minor details are omitted from legislation. As Crawford observes in his *Statutory Construction* (3rd edn. page 267):-

“If these details could not be inserted by implication, the drafting of legislation would be an indeterminable process and the legislative intent would likely be defeated by a most insignificant omission.”

20. In ascertaining a necessary implication, the Court simply determines the legislative will and makes it effective. What is necessarily implied is as much part of the statute as if it were specifically written therein.

21. An express grant of statutory powers carries with it by necessary implication the authority to use all reasonable means to make such grant effective. Thus in *ITO, Cannanore vs. M.K. Mohammad Kunhi*, AIR 1969 SC 430, this Court held that the income tax appellate tribunal has implied powers to grant stay, although no such power has been expressly granted to it by the Income Tax Act.

24. In view of the abovementioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) Cr.P.C. to order registration of a criminal offence and /or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) Cr.P.C., we are of the opinion that they are implied in the above provision.

(20) The Supreme Court reiterated its above ratio in *Sudhir*

Bhaskarrao Tambe versus ***Hemant Yashwant Dhage & others***⁵ which was against the order of the Bombay High Court changing the investigating officer.

(21) Still further, this Court in ***Sujan Multiport's case*** (*Supra*) also examined the requirement for exercise of jurisdiction under Section 156(3) Cr.P.C. The relevant extract of the order so passed by this court is reproduced as under:-

“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

⁵ 2016 (6) SCC 277

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 be 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."

(22) It would be relevant also to advert to a submission made by the counsel for the petitioner wherein he referred to the above judgment in *Sujan Multiport's case (Supra)* to impugn the order dated 07.07.2021 on the ground that the Magistrate ought not to have expressed his opinion on the allegations leveled in the complaint against the petitioner. Though it was not necessary for the ACJM, Ludhiana, to record reasons in extenso but the order reveals that he had recorded only enough reasons to show that there was application of mind. Hence, the above argument of the learned counsel for the petitioner is somewhat misplaced as there is no prohibition on recording reasons by a Magistrate.

(23) The Supreme Court in the matter of *Kapil Aggarwal and others v. Sanjay Sharma and others* (Crl. Appeal No. 142 of 2021 decided on March 01, 2021) was seized of a matter where the police had registered an FIR during the pendency of an application under Section 156 (3) Cr.P.C. The Supreme Court held as under:-

"5. We have heard the learned counsel for the respective parties at length. It is the case on behalf of the appellants that as on the same allegations, the private respondent-complainant has filed an application under Section 156(3) Cr.P.C., which is pending before the learned Magistrate, the impugned FIR with the same allegations and averments would not be maintainable, and therefore, the FIR lodged with the police station Loni Border, District Ghaziabad

deserves to be quashed and set aside. The aforesaid cannot be accepted for the simple reason that Code of Criminal Procedure permits such an eventuality of a complaint case and enquiry or trial by the Magistrate in a complaint case and an investigation by the police pursuant to the FIR. At this stage, Section 210 Cr.P.C. is required to be referred to, which reads as under:

“210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence – (1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation. (2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. (3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.”

Thus, as per Section 210 Cr.P.C., when in a case instituted otherwise than on a police report, i.e., in a complaint case, during the course of the inquiry or trial held by the Magistrate, it appears to the Magistrate that an investigation by the police is in progress in relation to the offence which is the subject matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation. It also provides that if a report is made by the investigating police officer under Section 173 Cr.P.C. and on such report cognizance of any offence is

taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. It also further provides that if the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of Cr.P.C.

Thus, merely because on the same set of facts with the same allegations and averments earlier the complaint is filed, there is no bar to lodge the FIR with the police station with the same allegations and averments.

6. However, at the same time, if it is found that the subsequent FIR is an abuse of process of law and/or the same has been lodged only to harass the accused, the same can be quashed in exercise of powers under Article 226 of the Constitution or in exercise of powers under Section 482 Cr.P.C. In that case, the complaint case will proceed further in accordance with the provisions of the Cr.P.C.

As observed and held by this Court in catena of decisions, inherent jurisdiction under Section 482 Cr.P.C. and/or under Article 226 of the Constitution is designed to achieve salutary purpose that criminal proceedings ought not to be permitted to degenerate into weapon of harassment. When the Court is satisfied that criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon accused, in exercise of inherent powers, such proceedings can be quashed.”

(24) A conjoint reading of the aforesaid judgments establishes that the Apex Court has recognized the power vested in a Magistrate to direct registration of a case under Section 156(3) Cr.P.C. and in fact has consistently ruled against vesting of such power, for directing the registration of a case, by a High Court in the exercise of its inherent jurisdiction under Section 482 Cr.P.C. The ratio laid down in the matter of *Sakiri Vasu's case (supra)* has been followed consistently by the Supreme Court. The reliance placed by the petitioner on *Ramdev's case (supra)* is in fact misconceived as it nowhere supports the arguments raised by the learned counsel for the petitioner in the instant case

and rather holds that directions under Section 156(3) Cr.P.C. are to be issued only on application of mind by a Magistrate, on the basis of the material available before it. Cases where the Magistrate takes cognizance and postpones issuance of process are those cases where the Magistrate is yet to determine the existence of sufficient grounds to proceed further. In *Ramdev's case (supra)* the Supreme Court held the order under Section 156(3) Cr.P.C. to be bad since the Magistrate did not have any material before it to proceed against the accused. However, the facts of the case in hand are clearly distinguishable. A perusal of application (Annexure-P1) reveals that the allegations *prima facie* disclose specific instances pertaining to the existence of material constituting commission of a cognizable offence. Apart therefrom, the aforesaid judgment in *Ramdev's case (supra)* does not prohibit the Magistrate from exercising its jurisdiction under Section 156 (3) Cr.P.C., and neither does it impose any curbs on the exercise of its powers. The judgment relied upon by the petitioner thus does not support/substantiate his case. On the contrary, the law as laid down supports the case of the complainant/respondent No.2.

(25) The submissions of the learned counsel for the petitioner hinges upon an argument of judicial impropriety. The phrase 'Judicial Impropriety' is nowhere defined. However, in a broader perspective, it can be held to be an act of a judicial officer which violates law or which displays dishonesty, partiality or misuse of his office. However, a mere allegation of impropriety without any supporting material would not be enough to persuade this court to set aside the order. That apart, it is not even the suggested case of the petitioner that the order passed by the Magistrate was beyond his jurisdiction. Once the Magistrate had the competence, and he had exercised his jurisdiction in accordance with law, this court would loathe to interfere in the matter.

(26) As discussed earlier, exercise of jurisdiction by a Magistrate under Section 156(3) Cr.P.C. is not vitiated merely because a petition under Section 482 Cr.P.C. is pending before the High Court. Hence, as the order passed by the Magistrate in the case in hand is not without jurisdiction, and no mandate of law being there to prohibit the Magistrate from exercising his jurisdiction, this court cannot agree with the submission that the Magistrate, must stay his hands in the matter because a petition under Section 482 Cr.P.C. was filed before this court.

(27) A perusal of the allegations contained in Annexure P1 sufficiently persuades this court that the ACJM, Ludhiana, had enough material before it to order registration of an FIR. The Magistrate

certainly had the jurisdiction to do so under Section 156 (3) Cr.P.C. and the pendency of the petition under Section 482 Cr.P.C. will not take away that jurisdiction vested in him. Reference may be made to the judgment of the Apex Court in *M.Subramaniam and another* versus *S. Janaki and another*⁶ wherein the Supreme Court again reiterated the above position of law and held that remedy of an aggrieved person against non registration of FIR was to approach the competent Magistrate under Section 156 Cr.P.C. and not by invoking the inherent jurisdiction of the High Court under Section 482 Cr.P.C.

(28) It cannot be over emphasized that registration of a criminal case would not be seen as an act prejudicial to the accused and the investigating agency cannot be stalled/stopped from conducting investigation into the allegations which *prima facie* reflect commission of cognizable offence. The petitioner is in fact seeking quashing of the FIR without raising any challenge to the same. The case set up by the petitioner is not in accordance with the parameters and guidelines prescribed by the Supreme Court for quashing of an FIR. The allegations leveled by the complainant/respondent No.2 cannot be disbelieved outrightly at this juncture.

(29) Both the impugned orders dated 07.06.2021 (Annexure P5) and 07.07.2021 (Annexure P6) in the opinion of this court are neither without jurisdiction nor can be termed as an abuse of the process of law. They do not suffer from any infirmity much less illegality since they have not been passed without jurisdiction or in violation of any prohibition contained in any act/rules or regulations or even instructions issued by the High Court or any other superior court. In the absence of the existence of any such infirmity it cannot be said that the orders suffer from an act of judicial impropriety. Besides, there has been no concealment on the part of respondent No.2/complainant about the pendency of the criminal miscellaneous petition i.e. CRM-M-39489-2020 in the High Court. Moreover, the power under Section 156(3) Cr.P.C. is a statutory power conferred upon the Magistrate giving rise to a statutory remedy in favour of a person aggrieved. It would rather be an act of abdication of his powers by a Magistrate in case he does not take an appropriate decision and fails to exercise his jurisdiction in the event of an aggrieved person approaching him.

(30) Adverting to issue No.2, a great deal of stress was laid by the learned senior counsel on the fact that the Magistrate while passing

⁶ 2020 (2) RCR (Cr.) 788

the impugned order (Annexure P6) had made certain observations regarding the custodial interrogation of the petitioner and thus it amounted to pre-judging the case. This argument is noticed only to be rejected.

(31) The mere registration of an FIR cannot be construed as an act which might prejudice the petitioner in any manner. The court is only required to examine the existence of a cognizable offence and direct registration of FIR in case the necessary ingredients with respect to the cognizable offence are made out. I do not thus find any illegality in the impugned orders dated 07.06.2021 (Annexure **P5**) passed by the ASJ, Ludhiana, and 07.07.2021 (Annexure **P6**) passed by the ACJM, Ludhiana, wherein the latter rightly directed the registration of the case on the basis of the material before it.

(32) The petition is dismissed.

Shubreet Kaur