

HIGH COURT OF PUNJAB AND HARYANA**CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI****Date of Decision: 30.01.2024**

CRM-M-4763-2024

DR. SHAHABUDDIN**...Petitioner****VERSUS****STATE OF HARYANA & OTHERS****...Respondents****Legislation:**

Section 482, 156(3), 200, 202, 203, 204 of the Cr.P.C.

Subject: Petition for setting aside orders declining the registration of an FIR against respondent No.4 regarding the retention of a car, and proceeding under Section 200 Cr.P.C.

Headnotes:

Petition Under Section 482 Cr.P.C. - Challenge against orders refusing to direct SHO to register FIR against respondent No.4 for retaining petitioner's car - Orders passed by JMIC and upheld by Addl. Sessions Judge, Gurugram - Petitioner's car allegedly retained by close relative under false pretenses - Initial complaint led to no FIR registration [Para 1].

Factual Background - Petitioner alleges that after lending his car to respondent No.4 for medical reasons, the respondent refused to return it - Legal notice ignored, leading to a complaint for FIR registration under Section 156(3) Cr.P.C. - Magistrate chose to proceed under Section 200 Cr.P.C. instead [Paras 2-4].

Magistrate's Discretion Under Law - Magistrate has discretion to either refer a case for FIR registration under Section 156(3) Cr.P.C. or treat it as a private complaint under Section 200 Cr.P.C. - Case law supports Magistrate's discretion in such matters [Para 10].

Court's Observation - Petitioner's case based on documentary evidence, which he is free to present - No dishonest intention at inception established against respondent No.4 - Petitioner has opportunity to present evidence under Section 202 Cr.P.C. [Paras 12-13].

Decision - Petition found meritless and dismissed - No irreparable loss to petitioner, who can still present his case with documentary evidence before the Magistrate [Para 13].

Referred Cases: None.

Representing Advocates: Mr. Chanderhas Yadav, Advocate with Mr. Anshul Baghla, Advocate for the petitioner.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for setting aside the order dated 29.04.2023 (Annexure P-3) passed by the JMJC, 1st Class, Gurugram vide which the prayer of the petitioner to treat his complaint under Section 156(3) Cr.P.C. and direct the concerned SHO to register an FIR against respondent No.4 was declined and the complaint was ordered to be proceeded with under Section 200 Cr.P.C. as well as the order dated 04.11.2023 (Annexure P-6) passed by the Addl. Sessions Judge, Gurugram vide which the order dated 29.04.2023 (Annexure P-3) has been upheld.

2.The brief facts of the case are that the petitioner/complainant filed a complaint alleging that the accused/respondent No.4 was his close relative. In January, 2022, he (petitioner/complainant) had purchased a CELERIO Car bearing Registration No.HR-51-H-0011. The accused/respondent No.4 expressed his desire to use the said car as his parents had got operated and were required to be taken to various hospitals. Keeping in view the request, he (petitioner) handed over the car to the accused/respondent No.4 for a few months on 07.02.2022. Later, when he (petitioner/complainant) came to know about the recovery of the parents of the accused/respondent No.4 and requested him to return the car, he (accused/respondent No.4) refused to do so. A legal notice dated 02.07.2022 was sent to the accused/respondent No.4 but no reply thereto was received. A complaint was made to the SHO, P.S. Sector 50, Gurugram to register an FIR, However, no case was registered.

3. As the Investigating Agency did not register a case on the basis of the complaint of the petitioner/complainant, a complaint under Section 156(3) Cr.P.C. was instituted by the petitioner/complainant with a prayer for the registration of an FIR.

4. On consideration of the entire matter, the JMFC, Gurugram vide order dated 29.04.2023 declined to send the complaint for the registration of an FIR under Section 156(3) Cr.P.C. but decided to treat the said complaint as a private complaint under Section 200 Cr.P.C. and directed the complainant to produce his preliminary evidence on 20.07.2023. A copy of the order dated 29.04.2023 is attached as Annexure P-3 to the present petition.

5. Aggrieved with the aforementioned order, the petitioner/complainant preferred a revision petition before the Court of Sessions. Vide judgment dated 04.11.2023, the Court of Addl. Sessions Judge, Gurugram dismissed the revision petition and directed the petitioner/complainant to appear before the Trial Court on 16.11.2023 for further proceedings.

6. The aforementioned orders dated 29.04.2023 and 04.11.2023 (Annexures P-3 and P-6) are under challenge in the present petition.

7. The learned counsel for the petitioner contends that the Magistrate was bound to send the complaint under the provisions of Section 156(3) Cr.P.C. for the purposes of registration of an FIR once he came to the conclusion that a cognizable offence was made out. It was apparent, that *prima facie*, accused/respondent No.4 had committed the offences under Sections 406, 420 and 427 IPC etc. as he had taken the car on the pretext of usage and had thereafter retained the same. The accused/respondent No.4 had an intention to cheat from the very inception. Further, the order dated 29.04.2023 (Annexure P-3) would reveal that the Court had already given its mind that the accused/respondent No.4 had no intention to deceive at the inception thereby, effectively closing the doors on the petitioner/complainant inasmuch as there was hardly any possibility of the Court summoning the accused to face Trial having observed thus. He, therefore, contends that the impugned orders were liable to be set aside and directions be issued to send the complaint of the petitioner for registration of an FIR.

8. I have heard the learned counsel for the petitioner.

9. Before proceeding further with the matter, it would be useful to refer to the relevant provisions of law for the proper adjudication of the present case.

Section 156(3) Cr.P.C., 1973, reads 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.”

Section 200 Cr.P.C., 1973 reads as under:-

“200. Examination of complainant. A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate: Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or- purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192: Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re- examine them.”

Section 202 Cr.P.C., 1973 reads as under:-

“202. Postponement of issue of process.

(2) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to

be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding: Provided that no such direction for investigation shall be made:-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(3) In an inquiry under sub- section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath: Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(4) If an investigation under sub- section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer- in- charge of a police station except the power to arrest without warrant.”

Section 203 Cr.P.C., 1973 reads as under:-

“203. Dismissal of complaint. If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.”

Section 204 Cr.P.C., 1973 reads as under:-

“204. Issue of process.

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-

(a) a summons- case, he shall issue his summons for the attendance of the accused, or

(b) a warrant- case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub- section (1) until a list of the prosecution witnesses has been filed.

(3) *In a proceeding instituted upon a complaint made in writing every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.*

(4) *When by any law for the time being in force any process fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.*

(5) *Nothing in this section shall be deemed to affect the provisions of section 87."*

10. As per the settled legal position, the concerned Magistrate has the discretion to decline the prayer of the complainant to refer the case to the Police under Section 156(3) for the registration of the FIR and can treat the case like a private complaint as envisaged under Chapter XV & XVI Cr.P.C. and proceed to examine the complainant. This has been so held in various judgments some of which are discussed hereinbelow:-

The Hon'ble Supreme Court in **'Gopal Das Sindhi Vs. State of Assam & another, 1961 AIR (Supreme Court)** held as under:-

"7. When the complaint was received by Mr. Thomas on August 3, 1957, his order, which we have already quoted, clearly indicates that he did not take cognizance of the offences mentioned in the complaint but had sent the complaint under Section 156(3) of the Code to the Officer Incharge of Police Station Gauhati for investigation. Section 156(3) states. "Any Magistrate empowered under section 190 may order such investigation as above-mentioned." Mr. Thomas was certainly a Magistrate empowered to take cognizance under Section 190 and he was empowered to take cognizance of an offence upon receiving a complaint. He, however, decided not to take cognizance but to send the complaint to the police for investigation as Sections 147, 342 and 448 were cognizable offences. It was, however, urged that once a complaint was filed the Magistrate was bound to take cognizance and proceed under Chapter XVI of the Code. It is clear, however, that Chapter XVI would come into play only if the Magistrate had taken cognizance of an offence on the complaint filed before him, because Section 200 states that a Magistrate taking cognizance of an offence on complaint shall at once examine the complainant and the witnesses present, if any, upon oath and the substance of the examination shall be reduced to writing and shall be signed by the complainant and the witnesses and also by the Magistrate. If the Magistrate had not taken cognizance of the offence on the complaint filed

*before him, he was not obliged to examine the complainant on oath and the witnesses present at the time of the filing of the complaint. We cannot read the provisions of Section 190 to mean that once a complaint is filed, a Magistrate is bound to take cognizance if the facts stated in the complaint disclose the commission of any offence. We are unable to construe the word 'may' in section 190 to mean 'must'. The reason is obvious. A complaint disclosing cognizable may well justify a Magistrate in sending the complaint, under Section 156(3) to the police for investigation. There is no reason why the time of the Magistrate should be wasted primarily the duty to investigate in cases involving cognizable offences is with the police. On the other hand, there may be occasions when the Magistrate may exercise his discretion and take cognizance of a cognizable offence. If he does so then he would have to proceed in the manner provided by Chapter XVI of the Code. Numerous cases were cited before us in support of the submissions made on behalf of the appellants. Certain submissions were also made as to what is meant by "taking cognizance". It is unnecessary to refer to the cases cited. The following observations of Mr. Justice Das Gupta in the case of **Superintendent and Remembrancer of Legal Affairs, West Bengal v. Abani Kumar Banerjee, AIR 1950 Calcutta 437.** "*

[emphasize supplied]

In '**Sukhwasi Vs. State of U.P., 2008(1) RCR (Criminal) 520**', a Division Bench of the Hon'ble Allahabad High Court held as under:-

"22. Applications under Section 156(3) Criminal Procedure Code are now coming in torrents. Provisions under Section 156(3) Criminal Procedure Code should be used sparingly. They should not be used unless there is something unusual and extra ordinary like miscarriage of justice, which warrants a direction to the Police to register a case. Such applications should not be allowed because the law provides them with an alternative remedy of filing a complaint, therefore, recourse should not normally be permitted for availing the provisions of Section 156(3) Criminal Procedure Code.

23. The reference is, therefore, answered in the manner that it is not incumbent upon a Magistrate to allow an application under Section 156(3) Criminal Procedure Code and there is no such legal mandate. He may or may not allow the application in his discretion. The second leg of the reference is

also answered in the manner that the Magistrate has a discretion to treat an application under Section 156(3) Criminal Procedure Code as a complaint.”
[emphasize supplied]

The Hon'ble Kerala High Court in **'P. Kannappan Vs. State of Kerala, 2006(1) RCR (Criminal)'** held as under:-

“13. When a complaint is filed before the Magistrate, he has got two options. The Magistrate may without taking cognizance forward the complaint to the Police under Section 156(3) of the Code of Criminal Procedure with a direction to the S.H.O. to investigate and file a report. He may take cognizance and proceed under Section 202 of the Code of Criminal Procedure. The power to order police investigation under Section 156(3) of the Code is different from the power to direct investigation during the course of enquiry under Section 202(1) of the Code. The two operate in two distance spheres. The first is exercisable at the precognizance stage, the second at the post-cognizance stage. If the Magistrate takes cognizance, he can adopt any of the following methods: (i) He may peruse the complaint and if satisfied that there are sufficient grounds, he can straight away issue process to the accused. (ii) He can postpone the issue of process and direct an enquiry by himself. (iii) He can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.

14. The fact that the Magistrate has got a discretion to forward a complaint under Section 156(3) does not mean that the complainant has a right or privilege to make a demand to refer the case to the police. The option to refer the complaint to the police for investigation under Section 156(3) before cognizance or under Section 202(1) after cognizance, is to be exercised by the Magistrate. But that discretion has to be exercised in a judicious manner and not mechanically.

16. In V.K. Sreenivasan v. D.G. Nair & Others, 2005(3) RCR (Criminal) 8 (Kerala): (2005(1) KLJ 788), this Court had considered the right of a complainant to ask the Magistrate to refer the matter to police under Section 156(3) of the Code of Criminal Procedure. This Court relying on a decision reported in *Morarji Jivraj v. Emperor*, (AIR 1935 Bombay 76) held that the complainant has no right or privilege to require the court to refer the case to the police. The Magistrate shall not act mechanically; merely because a complainant makes a request to refer the case to the police. In this case the learned Magistrate had not applied his mind before forwarding the complaint

to the police and mechanically and mechanically passed an order forwarding the same to the Sub Inspector of Police.”

[emphasize

supplied] 11. A perusal of the aforementioned provisions of the Criminal Procedure Code as also the settled proposition of law, clearly reveals that the Magistrate has a discretion to either refer the case to the Investigating Agency under Section 156(3) for the registration of the FIR, which would be at the pre-cognizance stage. On the other hand, he can choose to take cognizance and treat the complaint as one under Chapter XV Cr.P.C., record the statement of the complainant and proceed thereafter in accordance with law.

12. Coming back to the facts of the instant case, quite apparently, the vehicle in question was handed by the petitioner/complainant to the accused/respondent No.4 who is his close relative. On the mere assertion of the petitioner/complainant, it cannot be held that accused/respondent No.4 had a dishonest intention at the very inception. Be that as it may, the case is based on documentary evidence which is in possession of the petitioner/complainant. He is at liberty to lead evidence in that regard before the concerned Magistrate who may, in addition also order an inquiry under Section 202 Cr.P.C. if he thinks fit to satisfy himself as to the veracity of the allegations levelled. Therefore, the petitioner/complainant has multiple opportunities to bring forth all the necessary materials before the Court and as such no irreparable loss has been caused to him by virtue of the orders under challenge moreso when as has already been mentioned above, the entire case of the petitioner/complainant is based on documentary evidence.

13. In view of the aforementioned discussion, I find no merit in the present petition. Therefore, the same stands dismissed.

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