HIGH COURT OF GAUHATI
Bench: Honourable Mrs. Justice Malasri Nandi
Date of Decision: 20th May 2024

CRIMINAL PETITION NO. 1209 OF 2022

Ishan Saikia …Petitioner

Versus

The State Of Assam And Anr. …Respondents

Legislation:

Sections 494, 294, 506, 447 of the Indian Penal Code (IPC)

Sections 154, 156, 190, 200 of the Code of Criminal Procedure (Cr.P.C.)

Subject:

Petition under Section 482 Cr.P.C. for quashing the criminal proceeding in PRC Case No. 2154/2021, pending before the Chief Judicial Magistrate, Nagaon, arising out of Nagaon, Sadar PS Case No. 1374/2019 registered under Sections 494, 294, 506, 447 IPC.

Headnotes:

Criminal Law – Quashing of FIR and Charge-sheet – Validity of Magistrate's Order under Section 156(3) Cr.P.C. – Petition seeking quashing of criminal proceedings, FIR, and charge-sheet in PRC Case No. 2154/2021 – Allegation of second marriage by petitioner without dissolution of first marriage – Magistrate's order under Section 156(3) Cr.P.C. directing police investigation challenged for non-compliance with Sections 154(1) and 154(3) Cr.P.C. – Held that the Magistrate's order was

justified, and investigation order at pre-cognizance stage did not indicate judicial cognizance of the offence – Petition dismissed. [Paras 1-18]

Magistrate's Discretion under Section 156(3) Cr.P.C. – Analysis – Held – Magistrate is empowered to direct investigation at pre-cognizance stage and is not obligated to take cognizance immediately upon receiving a complaint – Application of judicial mind to allegations required before issuing process or directing investigation. [Paras 12-18]

Precedents and Judicial Interpretation – Invocation of Section 156(3) Cr.P.C. – Supreme Court and High Court precedents underscore that Section 154 provisions are normally a prerequisite but allow for exceptions in direct magistrate applications – Compliance with procedural requirements stressed but not absolute. [Paras 6-7, 13-14, 16]

Decision – Petition Dismissed – The Magistrate's order for investigation under Section 156(3) Cr.P.C. upheld as appropriate exercise of discretion – FIR and charge-sheet not quashed, and criminal proceedings allowed to continue. [Para 18]

Referred Cases:

- Priyanka Srivastava and another vs. State of UP and others (2015) 6 SCC 287
- Tarun Dev Sharma vs. State of Assam (2015) 4 GLT 413
- Panchabhai Popatbhai Butani vs. State of Maharashtra 2010 Cri.L.J. 2723
- R. Antulay v. Ramdas Sriniwas Nayak and another (1984) 2 SCC 500
- Ram Babu Gupta and another vs. State of UP and others (2001) CRLJ 3363

Representing Advocates:

Mr. S. C. Biswas for the petitioner

Mr. S. Ahmed for the respondent No. 2

JUDGMENT & ORDER (CAV)

1. Heard Mr. S. C. Biswas, learned counsel appearing for the accused/petitioner. Also heard Mr. S. Ahmed, learned counsel for the respondent No. 2.

2. By filing this application u/s 482 Cr.PC, the petitioner has prayed for quashing of the criminal proceeding being PRC case no. 2154/2021, pending in the court of learned Chief Judicial Magistrate, Nagaon, including the impugned FIR and charge-sheet.

3. In the instant petition, the petitioner put to challenge the legality andvalidity of registration of Nagaon, Sadar PS case No. 1374/2019 (PRC Case no. 2154/2021) u/s 494/294/506/447 IPC. Initially, the opposite party no. 2 filed a complaint case before the learned SDJM(S) Nagaon vide CR case No. 424/2019, alleging that the petitioner, who is the husband of the complainant/opposite party No. 2, without dissolution of their marriage had contracted another marriage. The learned SDJM, Nagaon invoked the provision of section 156(3) Cr.P.C and vide impugned order dated 14/05/2019, directed the OC, Nagaon PS to register a case and investigate the same and submit report. Consequently, on receipt of the same complaint petition, the OC, Nagaon P.S registered a case vide Nagaon P.S case no. 1374/2019 u/s 494/294/506/447 IPC. Accordingly,

after submission of charge sheet, the case was proceeded as PRC case no. 2154/2021 before the learned CJM, Nagaon.

4. It was urged by the learned counsel for the petitioner that the complaintcase being CR case No. 424/2019 was not supported by any affidavit as required for invoking the benefit of Section 156 (3) Cr.P.C. Further, the complainant has not averred in her complaint that she has ever approached the police for registering a case in connection with the offences as alleged in the complaint before filing of such complaint petition.

5. The learned counsel for the petitioner has further contended that thesection 154(1) of the Cr.P.C provides every offence relating to the commission of a cognizable offence, is required to be given to the officer-in-charge of a police station having jurisdiction first. If the OC of the police station refuses to record the information, then the aggrieved person can send the substance of such offence in writing and by post to the Superintendant of police concerned as provided u/s 154(3) of Cr.PC. In the instant case, the complaint/opposite party
No. 2 is totally silent in respect of lodging of any FIR or having approached the SP, concerned prior to filing of her complaint petition.

6. Learned counsel for the petitioner has also pointed out that the Hon'ble Supreme Court in the case of Priyanka Srivastava and another vs. State of UP and others, reported in (2015) 6 SCC 287, has held that the remedy available u/s 156 (3) of Cr.P.C is not of routine nature and the learned Magistrate while exercising the power u/s 156(3) has to apply the judicious mind. It was also held that prior to seeking remedy u/s 156(3) of Cr.P.C, one is to invoke the provision of section 154(1) and 154(3) of Cr.P.C.

7. Learned counsel for the petitioner has also relied on another case law,Tarun Dev Sharma vs. State of Assam, reported in (2015) 4 GLT 413. In the said case also, it was held that the complainant, before invoking the Magistrate's power u/ s 156(3) of Cr.P.C, has to take steps u/s 154(1) and 154(3) of Cr.P.C. It was also held that the learned Magistrate before passing an order u/s 156(3) Cr.P.C has to ascertain as to whether the complainant has approached the authorities u/s 154(1) and 154(3) Cr.P.C.

8. According to learned counsel for the petitioner, as the learned Magistratedid not follow the procedure before passing an order u/s 156 (3), hence, the impugned order being registration of Nagaon PS case No. 1374/2019, corresponding to PRC case No. 2154/2021 u/s 494/294/506/447 IPC is liable to be set aside and quashed.

9. Per contra, learned counsel for the respondent submits that section 156(3)of the code, operates at pre-cognizance stage of the complaint which clarifies that who is empowered to take cognizance of offence u/s 190, may order investigation into any cognizable case. The investigation into a cognizable offence is domain of the police. Section 156(3) empowers the Magistrate to order a police inquiry in any case, where the Magistrate has not issued process at once.

10. It was further contended that on receiving a complaint, the Magistrate is required to apply his mind to the allegation made in the complaint. The Magistrate has discretion either at once to take cognizance or he may order police to register the offence and investigate. If the Magistrate decides, to inquire himself, he may record substance of statement made by the complainant and witnesses present, with a view to issue process against the accused or if there is no sufficient ground to proceed, further he may dismiss the complaint.

11. According to the learned counsel for the complainant/respondent, thepower to direct investigation by police under section 156(3) is to be exercised before taking cognizance of the offence, disclosed in the complaint. Once the Magistrate has taken cognizance by examining the complainant and witnesses present, if any, then he cannot revert back at pre-cognizance stage so as to order investigation u/s 156(3) of Cr.P.C but at post Cognizance stage, he has power to direct investigation by police.

12. Having heard the learned counsel for the parties, the question to be considered in this case is whether the Magistrate has the power u/s 156(3) to direct the police to register a case and investigate the same without invoking the provisions of Section 154(1) and 154(3) Cr.PC.

13. Hon'ble Supreme Court, in the case of **Panchabhai Popatbhai Butani Vs. State of Maharashtra : 2010 Cri.L.J. 2723** has observed as follow:-

"46.....As a normal proposition of law, invocation of the provisions of Section 154 in its entirety should be treated as a condition precedent to invocation of the powers of the Court under section 156 (3), but there can be exceptions where the facts and circumstances of the case justify directly approaching the Court by complainant. If a person is desirous of invoking the judicial process at the very first instance, he can always take recourse to section 200 as contained in Chapter XV of the Code, but if he wishes to invoke the powers of the Court under Section 156(3), normally, he may exhaust the remedy available to him as is provided by the Legislature in terms of Section 154 of the Code.

It appears that the Full Bench of this Court had answered the question whether in absence of a complaint to the police, a complaint can be made directly before the Magistrate. While answering this question, it is stated that normally a person should invoke the provisions of Section 154 of the Code before he takes recourse to the power to take cognizance under sec.190 of the Code. Under sec. 154(3) at least an intimation to the Police of commission of offence of cognizable offence would be a condition precedent for invocation of powers of the Magistrate u/s 156(3) of the

Code. However, the Full Bench made it clear that this dictum of law is not free from exception because there can be cases when noncompliance of the provisions of Section 154(3) would not divest the Magistrate of his jurisdiction in terms of Sec. 156(3) and there can be cases where incidentally and in the facts of the case, however, there is possibility of the evidence of commission of offence being destroyed and/or tampered with; then an applicant could approach the Magistrate u/s 156(3) of the Code directly by way of exception as the Legislature has vested wide discretion in the Magistrate……."

14.In the aforesaid case, it was also held that :–

"…..11. Section 156(3) of the Code operates at precognizance stage of the complaint which clarify that any Magistrate who is empowered to take cognizance of offence u/s 190 may order investigation into any cognizable case. The investigation into a case of cognizable offence is domain of the police. Sec. 156(3) empowers the Magistrate to order a police enquiry in any case where the Magistrate has not issued process at once. Once the Magistrate has acted under Chapter XV then he cannot go backwards at precognizance stage so as to order the investigation of an offence by the police. On receiving the complaint, the Magistrate is required to apply his mind to the allegations made in the complaint. The Magistrate has discretion either at once to take cognizance or he may order police to register the offence and investigate. If the Magistrate decides to enquire himself he may record substance of statement made by the complainant and witnesses present, if any, with a view to issue process against the accused or if there is no sufficient ground to proceed further, he may dismiss the complaint. Thus, the power to direct investigation by police u/s 156(3) is to be exercised before taking cognizance of the offence disclosed in the complaint. Once the Magistrate has taken cognizance by examining the complainant and witnesses present, if any, then he cannot revert back at recognizance stage so as to order investigation u/s. 156(3) Code; but at post cognizance stage, he has power to direct investigation by police u/s 202 of the Code. These two powers operate in distinct spheres at different stages. The first under section 156(3) is exercisable at the pre cognizance stage and the second power under sec.202 of the Code is exercisable at the post cognizance stage when the Magistrate has already taken cognizance of the offence. The term 'taking cognizance" is not defined in the Code but it means taking cognizance of an offence. Once the Magistrate has taken cognizance of an offence by conscious application of mind; it is his duty to find out who the offenders really are. Thus, the Magistrate is required to apply his judicial mind to the averments in the complaint so as to take cognizance of offences. The Magistrate is required to satisfy himself prima facie as to whether there is sufficient ground to

proceed further to issue process or not. Merely because the Magistrate has perused the complaint, it cannot be said that he has taken cognizance of offences because the term “taking cognizance” means judicial action contemplated under the Code by application of judicial mind with a view to proceed further under Chapter XV of the code. Thus, the question as to whether the Magistrate had taken cognizance of offences or not is a question of fact to be determined in each case: In a given case when the Magistrate has applied his mind only for ordering investigation u/s.156 (3) of the Code, then it cannot be said that he has taken cognizance of an offence. The Magistrate may apply his mind merely with a view to order investigation by police at precognizance stage. The order u/s 156(3) of the Code is in the nature of administrative order directing the police to exercise their powers to investigate cognizable offence, if any, the accused at such pre cognizance stage has no right to object registration of FIR as against him nor the accused can claim right of hearing at the stage of preregistration of FIR. In other words, the accused cannot be allowed to thwart investigation at its threshold. Thus, the term “taking cognizance” would indicate judicial application of mind to facts stated in the complaint with a view to take further action i.e. to proceed u/s 200 and subsequent sections in Chapter XV of the Code to find out whether there is sufficient ground to proceed further to issue process. Hence, the stage of taking cognizance of offences indicate a stage when Magistrate has applied his conscious judicious mind to the contents of the complaint for to satisfy himself regarding commission of offences….”

14.The Hon’ble Supreme Court in the case of **A. R. Antulay v. Ramdas Sriniwas Nayak and another, (1984) 2 SCC 500**, it was clearly stated that scheme underlying the Code of Criminal Procedure reveals that anyone who wants to give information of an offence may either approach theMagistrate or the officer in charge of a police station. It also stated that it was open to the Magistrate but not obligatory upon him to direct investigation by police. Thus, two agencies have been set up for taking offenders to the Court."

15.In the case of **Ram Babu Gupta and another vs. State of UP and others**, reported in **(2001) CRLJ 3363**, it was observed as follows:-

“…..on receiving a complaint, the Magistrate has to apply his mind to the allegation in the complaint upon which he may not at once proceed to take cognizance and may order it to go to the police station for being registered and investigated. The Magistrates order must indicate application of mind. If the Magistrate takes cognizance, he proceeds to follow the procedure provided in chapter XV of Cr.PC. It was also held that the Magistrate has

always to apply his mind on the allegation in the complaint where he may use his power u/s 156 (3) Cr.PC. "

16. Coming to the case in hand, by order dated 14.05.2019, the learned SDJM merely directed the registration of criminal case and investigated the same and submit report. By passing this order, it does not indicate as to whether the learned Magistrate had applied his judicious mind to the contents of the complaint to satisfy himself regarding commission of the offence mentioned in the complaint. Therefore, it cannot be said that the learned Magistrate had taken cognizance of the offences in the case by passing order dated 14.05.2019.

17. Thus, the learned Magistrate was justified in passing the order u/s 156(3)
Cr.PC so as to direct the police to register a case and to investigate into

the matter. The case was, therefore, still at the pre cognizance stage as no any action was taken to record the statements of the complainant and witnesses present, if any, in view of section 200 Cr.P.C and subsequent Sections. It is therefore, concluded that merely because the Magistrate ordered registration of the case and to investigate the same and submit report, one cannot say that the Magistrate had already taken cognizance of the offence by applying judicious mind to the contents of the complaint. The impugned order did not spell out intention of the learned Magistrate to proceed under Chapter XV, so as to examine the complainant and his witnesses present, if any, in the case, while he passed merely a preliminary order to register a criminal case and investigate the same and submit report accordingly.

18. In the result, the criminal petition being devoid of any merit, stands dismissed and disposed of accordingly.