A.F.R.

Reserved on 30.09.2020

Delivered on 18.12.2020

Court No. - 35
Case :- CRIMINAL REVISION No. - 1611 of 2020
Revisionist :- Lalaram
Opposite Party :- State Of U.P. And 13 Others
Counsel for Revisionist :- Akansha Verma,Deepak Kumar Verma, Siya Ram Verma
Counsel for Opposite Party :- G.A.

Hon'ble Ravi Nath Tilhari,J.

1. Heard Sri Deepak Kumar Verma, learned counsel for the revisionist/applicant Sri Pankaj Saxena, learned AGA appearing for the State and perused the material brought on record.

2. This Criminal Revision under Section 397/401 of Criminal Procedure Code (Cr.P.C.) has been filed challenging the order dated 26.08.2020, passed by learned Judicial Magistrate, Ist Kanpur Dehat, in Misc. Case No.743 of 2020 (Lalaram Vs. Ram Kishan & Others), under Section 156(3) Cr.P.C., Police Station Rasoolabad, District kanpur Dehat. Further prayer is for a direction to the court below to issue direction to the concerned police station for registration of first information report in pursuance of the Misc. Case No.743 of 2020 (Lalaram Vs. Ram Kishan & Others), under Section 156(3) Cr.P.C., Police Station Rasoolabad, District kanpur Dehat, under suitable section and submit report under Section 173(2) Cr.P.C. before the court concerned.

3. Considering nature of the order under challenge, as well as the order proposed to be passed and as purely legal question is involved and keeping this revision pending would serve no fruitful purpose as well as keeping in view that at this stage, the proposed accused-private respondents have no right to be heard, the notice to the private respondents is dispensed with.

4. Briefly stated facts of the case as per the revision/petition are that the opposite party nos.2 to 14 demolished foundation in front of the door of the revisionist/applicant on 02.07.2020 at about 10.00 A.M. for

constructing path, to which the revisionist objected in view of the pendency of a Civil Suit No.279 of 2020 in the Court of learned Civil Judge (Senior Division), Kanpur Dehat. On 07.07.2020 at about 8.00 A.M., the opposite party nos. 2 to 14 entered the house of the revisionist and mercilessly beaten him with lathi-danda & foot. They also snatched Rs.1600/- from purse in the pocket of the revisionist and thereafter ran away by extending threat to face dire consequences. The revisionist immediately informed the concerned police station but his case was not registered and he was told to go for medical examination firstly. On the next day i.e. on 08.07.2020 the revisionist went to the District Hospital Akbarpur, Kanpur Dehat for his medical examination and was referred to the Dentist for further examination. The revisionist informed the whole incident to the Superintendent of Police Kanpur Dehat by way of an application through registered post on 16.07.2020, but no action was taken thereon and consequently he filed an application under Section 156(3) Cr.P.C. before the Judicial Magistrate Ist Kanpur Dehat on 14.08.2020, alongwith the injury report dated 08.07.2020, X-ray report dated 16.07.2020 and other documents, according to which the revisionist had sustained grievous injuries caused by hard and blunt object. The learned Magistrate by order dated 26.03.2020 treated the application as a complaint case.

5. Learned counsel for the revisionist has submitted that the order under challenge does not secure the ends of justice, in as much as the learned Magistrate has registered the application under Section 156 (3) Cr.P.C. as a complaint case and has directed the applicant/complainant to record his statement under Section 200 Cr.P.C. His submission is that the learned Magistrate must have directed the police to register the FIR and make investigation and submit report under Section 173(2) Cr.P.C., as the averments in the complaint/application under Section 156(3) Cr.P.C. disclosed commission of a cognizable offence, and if the application disclosed commission of a cognizable offence, the Magistrate must have directed for investigation by police before taking cognizance and must not have taken upon himself to inquire into the matter after taking cognizance

by registering the application as a complaint case.

6. Learned counsel for the revisionist has submitted that in view of the nature of the averments and the offence disclosed in the application, without any police investigation the matter could not be resolved. He has submitted that the order passed by the Magistrate suffers from non-application of mind to the facts of the case and the law applicable therein.

7. Learned counsel for the applicant has placed reliance on the judgment of the Constitution Bench of the Hon'ble Supreme Court in ***'Lalita Kumari Vs. Government of U.P. and others'***, ***2014(2) SCC 1***, and the judgments of this Court in ***'Jitendra Kumar Vs. State of U.P. and 2 others',*** Criminal Revision No.1768 of 2018, decided on 29.05.2018; **'Shiv Mangal Singh Vs. State of U.P. and others',** Criminal Revision No.715 of 2019, decided on 25.02.2019.

8. Learned AGA has submitted that the Magistrate has the jurisdiction to direct the police to register the F.I.R. and make investigation without taking cognizance. But, he has also the jurisdiction to take cognizance and proceed to inquire the matter by himself, registering the application as a complaint case. In such circumstance he has to follow the procedure prescribed for complaint case. He has submitted that the Magistrate while proceeding as a complaint case has still the power to direct for police investigation, in view of Section 202(1) Cr.P.C. If the Magistrate in his discretion has adopted the option of registering the application as a complaint case, no illegality has been committed by the Magistrate. Learned A.G.A. has placed reliance on the case of **'Sukhwasi Vs. State of U.P. and others'** 2007 (59) ACC 739 (Allahabad) (D.B.) in support of his contention that it is in the discretion of the Magistrate to direct for police investigation before taking cognizance under Section 156(3) Cr.P.C., or after taking cognizance to proceed with the application as a complaint case.

9. With respect to the case of **'Lalita Kumari (Supra)**', learned A.G.A. has submitted that the said case is not on the powers of the Magistrate under Section 156(3) Cr.P.C.; but it has been laid down therein that

whenever an application submitted to the police discloses commission of a cognizable offence, the FIR must be registered by the police authorities and they can not refuse registration of FIR.

10. In reply the learned counsel for the applicant has submitted that in the course of inquiry by the Magistrate in a complaint case he has the power to call for the police report of the investigation under Section 202(1) Cr.P.C., but that investigation by the police would be different and distinct than the investigation directed under Section 156(3) Cr.P.C.

11. I have considered the submissions as advanced by the learned counsel for the applicant, the learned AGA and perused the material brought on record.

12. The points which arise for consideration are:-

i) Whether in each and every case, where an application under Section 156(3) Cr.P.C. is made to the Magistrate disclosing commission of a cognizable offence, the Magistrate is legally bound to direct registration of the FIR and investigation by police or the Magistrate has also the power and jurisdiction to pass order for registration of the application as a complaint case.?

ii) On what considerations the Magistrate should take decision for investigation by police or to proceed with as a complaint case?

iii) What is the nature of an investigation by the police in pursuance of the direction of the Magistrate issued under Section 156(3) Cr.P.C. and the investigation by the police in pursuance of the direction of the Magistrate issued under Section 202(1) Cr.P.C. ?

iv) Whether the order passed by the Magistrate in the present case deserves to be maintained or not?

13. All the aforesaid points i), ii) and iii) are interrelated and therefore are being considered simultaneously. It would be appropriate to consider the legal provisions and the law on the subject at this very stage.

14. Crime detection and the adjudication are two inseparable wings of justice delivery system. While crime detection is the exclusive function of the police, judiciary is the final arbiter of the guilt or otherwise of the persons charged with the offence. To sustain the faith of the people in the

efficacy of the whole system investigative agency should work efficiently, impartially and uninfluenced by any outside agency, however, powerful it may be. For an orderly society, importance of the police cannot be denied. But, many times there have been serious comments on their functioning. It is very often complained that when a person having suffered at the hands of others, goes to the police to ventilate his grievance and to bring the offenders to book, his report is not accepted. The Code of Criminal Procedure takes care of this position. While it provides for information to the police and the investigation by the police, it also provides for the judicial surveillance by the Magistrate in cases where the reports are not registered by the police.

15. The duties of the police and their power to investigate are enumerated in Chapter XII of the Code, under caption "information to the police and their powers to investigate." It would be appropriate to reproduce Sections 154 and 156 Cr.P.C. as under:-

> *"**Section 154.** Information in cognizable cases.*
>
> *(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.*
>
> *(2) A copy of the information as recorded under sub- section (1) shall be given forthwith, free of cost, to the informant.*
>
> *(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence."*
>
> *"**Section 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."

16. Cognizance and procedure of complaint case is provided under Chapter XIV and XV, respectively of which Sections 190, 200, 202 and 203 Cr.P.C. are being reproduced as under:-

*"**Section 190 cognizance of offence by Magistrates-(1)** Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under Sub-Section (2), may take cognizance of any offence—*

(a). upon receiving a complaint of facts which constitute such offence;

(b). upon a police report of such facts;

(c). upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under Sub-Section (1) of such offences as are within his competence to inquire into or try."

*"**Section 200. Examination of complainant.***

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:- Postponement of issue of process.**-(1) 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 and shall in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, 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 Sessions; 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.

(2). In an inquiry under Sub-Section (1), the Magistrate may, if he thinks fit, take evidence of witness 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.

(3). 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:- 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,

17. From the bare perusal of the Scheme of Chapter XII of the Code it is clear that when a report either on oral or written is made to the officer-in-charge of the police station which discloses commission of a cognizable offence, it is obligatory of him to register a case and proceed with the investigation. In the event, he refuses to receive the report and shows indifference to perform statutory duties, the person aggrieved by such refusal may approach the Superintendent of Police giving substance of the information in writing and by post. The Superintendent of Police on being satisfied that the information discloses the commission of a cognizable offence shall investigate the case either himself or direct an investigation to be made by any police officer subordinate to him. If F.I.R. is not being lodged or the investigation is not being done the alternative course available to the aggrieved person is to approach the court of law, by making an application giving detail narration of the incident fulfilling the requirements of a complaint under Section 156(3) Cr.P.C. or a regular complaint.

18. Where the Magistrate receives a complaint or an application under Section 156(3) and the facts alleged therein disclose commission of an offence, he 'may take cognizance' which in the context in which these words occur in Section 190 of the Code, cannot be equated with 'must take cognizance.' The word 'may' gives a discretion to the Magistrate in the matter. Two, of the available, courses to the Magistrate under Section 190, are that he may either take cognizance under Section 190 or may forward the complaint to the police under Section 156(3) Cr.P.C., for investigation by the police.

19. If the Magistrate takes cognizance, he is required to embark upon the procedure embodied in Chapter XV "Complaints to Magistrate", by directing the complainant to get the statement recorded under Section 200 Cr.P.C. The Magistrate may make further enquiry as per Section 202(1) Cr.P.C. Where the accused is residing at a place beyond the area of exercise of jurisdiction of the Magistrate concerned, he has to postpone

the issue of process and make inquiry or he may direct an investigation to be made by a police officer or by such other person as he may think fit. Thereafter, if the Magistrate is of the opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint under Section 203 Cr.P.C. briefly recording the reasons for such dismissal. On the other hand, if the Magistrate is of the opinion that there is sufficient ground for proceeding, he would issue process by following Section 204 Cr.P.C.

20. If the Magistrate on a reading of the complaint finds that the allegations therein clearly disclose commission of a cognizable offence and forwarding of the application/complaint under Section 156(3) Cr.P.C. to the police for investigation, will be conducive to justice and valuable time of the Magistrate will be saved in inquiring into the matter which is the primary duty of the police to investigate, he will be justified in adopting that course as an alternative to take cognizance of the offence himself. An order under Section 156(3), Cr.P.C. directing the police to investigate is in the nature of a reminder or intimation to the police to exercise their full powers of investigation. Such an investigation begins with the collection of evidence and ends with a report under Section 173(2) Cr.P.C.

21. In ***Gopal Das Sindhi versus State of Assam AIR 1961 SC 986,*** the Hon'ble Supreme Court, referring to earlier judgments held that the provisions of Section 190 cannot be read 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. The word 'may' in Section 190 cannot mean as 'must'. The reason is obvious. A complaint disclosing cognizable offences 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 when 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 XV of the Code.

It is relevant to reproduce paragraph no.7 of **Gopal Das Sindhi (supra)** as under:-

> ***"7.*** *In support of the first submission it was urged that the Additional District Magistrate had on August 3, 1957, transferred under Section 192 of the Cr PC the complaint to Mr Thomas for disposal. In these circumstances, it must be assumed that the Additional District Magistrate had taken cognizance of the offences mentioned in the complaint and Mr Thomas had no authority to refer the case to the police for investigation. He was bound to have examined the complainant on oath and then proceeded in accordance with the provisions of the Code of Criminal Proceedure which applied to disposal of complaints. Mr Thomas had no authority in law to send the complaint under Section 156(3) to the police for investigation. It was urged that Section 190 of the Cr PC sets out how cognizance may be taken of an offence. Section 190(1)(a) authorizes a Presidency Magistrate, District Magistrate or a Sub-Divisional Magistrate and any other Magistrate specially empowered in this behalf, to take cognizance of an offence upon receiving a complaint stating facts which constitute such offence. Once a complaint is filed before a Magistrate empowered to take cognizance of an offence he was bound to take cognizance and the word 'may' in this sub-section must be read as 'shall'. Thereafter the proceedings with reference to the complaint must be under Chapter XVI and the procedure stated in the various sections under that Chapter must be followed. Consequently, it was not open to Mr Thomas to direct the police to investigate the case under Section 156(3) of the Code."*

It was further held that before it can be said that any magistrate has taken cognizance of any offence under Section 190(1)(a) Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding in a particular way as per the provisions of Cr.P.C.

22. In ***Fakruddin Ahmed versus State of Uttaranchal (2008) 17 SCC 157*** it has been held that on receipt of a complaint the Magistrate has more than one course open to him to determine the procedure and the manner to be adopted for taking cognizance of the offence. It would be relevant to reproduce paragraph nos. 9 to 12 as under:-

> ***"9.*** *Before examining the rival contentions, we may briefly refer to some of the relevant provisions in the Code. Chapter XIV of the Code, containing Sections 190 to 199 deals with*

the statutory conditions requisite for initiation of criminal proceedings and as to the powers of cognizance of a Magistrate. Sub-section (1) of Section 190 of the Code empowers a Magistrate to take cognizance of an offence in the manner laid therein. It provides that a Magistrate may take cognizance of an offence either (a) upon receiving a complaint of facts which constitute such offence; or (b) upon a police report of such facts; or (c) upon information received from any person other than a police officer, or upon his own knowledge that such offence has been committed.

10. *Chapter XV containing Sections 200 to 203 deals with "Complaints to Magistrates" and lays down the procedure which is required to be followed by the Magistrate taking cognizance of an offence on complaint. Similarly, Chapter XVI deals with "Commencement of Proceedings before Magistrates". Since admittedly, in the present case, the Magistrate has taken cognizance of the complaint in terms of Section 190 of the Code, we shall confine our discussion only to the said provision. We may, however, note that on receipt of a complaint, the Magistrate has more than one course open to him to determine the procedure and the manner to be adopted for taking cognizance of the offence.*

11. *One of the courses open to the Magistrate is that instead of exercising his discretion and taking cognizance of a cognizable offence and following the procedure laid down under Section 200 or Section 202 of the Code, he may order an investigation to be made by the police under Section 156(3) of the Code, which the learned Magistrate did in the instant case. When such an order is made, the police is obliged to investigate the case and submit a report under Section 173(2) of the Code. On receiving the police report, if the Magistrate is satisfied that on the facts discovered or unearthed by the police there is sufficient material for him to take cognizance of the offence, he may take cognizance of the offence under Section 190(1)(b) of the Code and issue process straightaway to the accused. However, Section 190(1)(b) of the Code does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation makes out a case against the accused. Undoubtedly, the Magistrate can ignore the conclusion(s) arrived at by the investigating officer.*

12. *Thus, it is trite that the Magistrate is not bound by the opinion of the investigating officer and he is competent to exercise his discretion in this behalf, irrespective of the view expressed by the police in their report and decide whether an offence has been made out or not. This is because the purpose*

> *of the police report under Section 173(2) of the Code, which will contain the facts discovered or unearthed by the police as well as the conclusion drawn by the police therefrom is primarily to enable the Magistrate to satisfy himself whether on the basis of the report and the material referred therein, a case for cognizance is made out or not."*

23. In ***Suresh Chand Jain & others versus State of M.P. & another, (2001) 2 SCC 628*** the Hon'ble Supreme Court held that any Magistrate empowered under Section 190 may order an investigation by police, but a Magistrate need not order any such investigation, if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the Code. It was further held that Chapter XII of the Code contains provisions relating to information to the police and their powers to investigate, whereas Chapter XV, which contains Section 202 deals with provisions relating to the steps which a Magistrate has to adopt while and after taking cognizance of any offence on a complaint. The Investigation referred to in Section 202 is the same investigation and the various steps to be adopted for it have been elaborated in Chapter XII of the Code. Such investigation would start with making the entry in a book to be kept by the officer-in-charge of a police station, of the substance of the information relating to the commission of a cognizable offence. The investigation started thereafter can end up only with the report filed by the police as indicated in Section 173 of the Code. The investigation contemplated in that Chapter can be commenced by the police even without the order of a Magistrate. But, that does not mean that when a Magistrate orders an investigation under Section 156(3) it would be a different kind of investigation, such investigation must also end up only with the report contemplated in Section 173 of the code. But when a Magistrate orders investigation under Chapter XII he does so before he takes cognizance of the offence. A Magistrate need not order any such investigation if he proposes to take cognizance of the offence. The direction for investigation under Section 202 (1) is after taking cognizance of the offence and is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further. It is relevant to reproduce paragraph nos. 8 and 10 of

Suresh Chand Jain (supra) as under:-

> *"**8.** The investigation referred to therein is the same investigation, the various steps to be adopted for it have been elaborated in Chapter XII of the Code. Such investigation would start with making the entry in a book to be kept by the officer in charge of a police station, of the substance of the information relating to the commission of a cognizable offence. The investigation started thereafter can end up only with the report filed by the police as indicated in Section 173 of the Code. The investigation contemplated in that chapter can be commenced by the police even without the order of a Magistrate. But that does not mean that when a Magistrate orders an investigation under Section 156(3) it would be a different kind of investigation. Such investigation must also end up only with the report contemplated in Section 173 of the Code. But the significant point to be noticed is, when a Magistrate orders investigation under Chapter XII he does so before he takes cognizance of the offence.*
>
> ***10.** The position is thus clear. Any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter."*

24. In ***Mohd. Yousuf Vs. Smt. Afaq Jahan and another, (2006) 1 SCC 627*** the Hon'ble Supreme Court reiterated that the clear position is that any Judicial Magistrate before taking cognizance of the offence can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he is not taking cognizance of any offence therein. For the purpose of enabling the police to start

investigation, it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. A Magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the Code. It would be appropriate to reproduce paragraph nos. 6 to 11 of **"Mohd. Yousuf (supra)"** as under:-

> *"6. Section 156 falling within Chapter XII, deals with powers of police officers to investigate cognizable offences. Investigation envisaged in Section 202 contained in Chapter XV is different from the investigation contemplated under Section 156 of the Code.*
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> *7.Chapter XII of the Code contains provisions relating to "information to the police and their powers to investigate", whereas Chapter XV, which contains Section 202, deals with provisions relating to the steps which a Magistrate has to adopt while and after taking cognizance of any offence on a complaint. Provisions of the above two chapters deal with two different facets altogether, though there could be a common factor i.e. complaint filed by a person. Section 156, falling within Chapter XII deals with powers of the police officers to investigate cognizable offences. True, Section 202, which falls under Chapter XV, also refers to the power of a Magistrate to "direct an investigation by a police officer". But the investigation envisaged in Section 202 is different from the investigation contemplated in Section 156 of the Code.*
>
> *8. The various steps to be adopted for investigation under Section 156 of the Code have been elaborated in Chapter XII of the Code. Such investigation would start with making the entry in a book to be kept by the officer in charge of a police station, of the substance of the information relating to the commission of a cognizable offence. The investigation started thereafter can end up only with the report filed by the police as indicated in Section 173 of the Code. The investigation contemplated in that chapter can be commenced by the police even without the order of a Magistrate. But that does not mean that when a Magistrate orders an investigation under Section 156(3) it would be a different kind of investigation. Such investigation must also end up only with the report contemplated in Section 173 of the Code. But the significant point to be noticed is, when a Magistrate orders investigation under Chapter XII he does so before he takes cognizance of the offence.*
>
> *9.But a Magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the Code. A reading of Section 202(1) of the Code makes the position clear that the investigation referred to therein is of a limited nature. The Magistrate can direct such an investigation to be made either by a police officer or by any other*

person. Such investigation is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further. This can be discerned from the culminating words in Section 202(1) i.e. "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".

10.This is because he has already taken cognizance of the offence disclosed in the complaint, and the domain of the case would thereafter vest with him.

11.The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter."

25. The law laid down in Mohd Yousuf (supra) was reaffirmed in Hemant Yashwant Dhage versus State of Maharashtra (2016) 6 SCC 273. It was held by Hon'ble the Apex Court that registration of an F.I.R. involves only the process of recording the substance of information relating to commission of any cognizable offence in a book kept by the officer in charge of the police station concerned. It is open to the Magistrate to direct the police to register an FIR and even where a Magistrate does not do so in explicit words but directs for investigation under Section 156(3) Cr.P.C. the police should register an FIR because Section 156 falls within Chapter XII of the Code which deals with powers of the police officers to investigate cognizable offences, the police office concerned would always be in a better position to take further steps contemplated in Chapter XII once FIR is registered in respect of the cognizable offence concerned.

26. In **'Ram Babu Gupta and others Vs. State of U.P. and others', 2001(43) ACC 50 (F.B.)** the full Bench of this Court had formulated two questions of which first was as follows :-

> *"(1) Should the Magistrate while exercising powers under Section 156(3) Cr.P.C. be left to write criptic orders "register and investigate," or "register and do the needful" or "he has to investigate," or the like? or the Magistrate's order should prima-facie indicate application of mind.?"*

The Full Bench answered the first question by holding that on receiving a complaint, the Magistrate has to apply his mind to the allegations 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. But, if the Magistrate takes cognizance, he proceeds to follow the procedure provided in Chapter XV of Cr.P.C. It was further held that the order of the Magistrate must indicate application of mind. Paragraph 17 of Ram Babu Gupta (supra) is being reproduced as under:-

> *"17. In view of the aforesaid discussion on the legal provisions and decisions of the Supreme Court as on date, it is hereby held that on receiving a complaint, the Magistrate has to apply his mind to the allegations 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 Magistrate's order must indicate application of mind. If the Magistrate takes cognizance, he proceeds to follow the procedure provided in Chapter XV of Cr.P.C. The first question stands answered thus."*

27. In **"Sukhwasi Vs. State of U.P. & others" 2007 (9) ADJ 1 (DB),** the following question was referred for consideration to the Division Bench:-

> *"Whether the Magistrate is bound to pass an order on each and every application under Section 156 (3) Cr.P.C. containing allegations of commission of a cognizable offence for registration of the F.I.R. and its investigation by the police, even if those allegations, prima-facie, do not appear to be genuine and do not appeal to reason, or he can exercise judicial discretion in the matter and can pass order for treating it as 'complaint' or to reject it in suitable cases?"*

The Division Bench answered the reference by holding that it cannot be said that the Magistrate is bound to order registration of a First

Information Report in all cases, where a cognizable offence is disclosed. It is not incumbent upon a Magistrate to allow an application under Section 156(3) Cr.P.C. and there is no such legal mandate. The Magistrate may or may not allow the application in his discretion. He has a discretion to treat an application under Section 156(3) Cr.P.C. as a complaint. Paragraph nos. 9, 11 and 23 of **"Sukhwasi (Supra)"** are being reproduced as under:-

> *"9. The use of the word 'Shall' in Section 154(3) Cr.P.C. and the use of word 'May' in Section 156(3) Cr.P.C. should make the intention of the legislation clear. If the legislature intended to close options for the Magistrate, they could have used the word 'Shall' as has been done in Section 154(3) Cr.P.C. Instead, use of the word 'May' is, therefore, very significant, and gives a very clear indication, that the Magistrate has the discretion in the matter, and can, in appropriate cases, refuse to order registration."*
>
> *"11. Let us take an example to make things clear. If somebody wants to file a First Information Report, that the District Judge of the concerned District came to his house at 1.20 O'clock in the day, and fired upon him, with the country made pistol and he ducked and escaped being hurt, and the District Judge is, therefore, liable for an offence under Section 307 Indian Penal Code. The Magistrate knows that the District Judge was in his court room, at that time, and the concerned staff also knows that. Is the Magistrate still bound to order registration of a First Information Report because the application discloses a cognizable offence? It is obvious that the answer has to be in negative and it cannot, therefore, be said that the Magistrate is bound to order registration of a First Information Report in all cases, where a cognizable offence is disclosed."*
>
> *"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) Cr.P.C. 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) Cr.P.C. as a complaint."*

28. In **"Anil Kumar versus M.K. Aiyappa and another (2013) 10 SCC 705** the Hon'ble Supreme Court also examined if the Magistrate, while exercising powers under Section 156 (3) Cr.P.C. could act in a mechanical or casual manner and go on with the complaint after getting the reports 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 and the application of mind by the Magistrate should be reflected in the order. The Mere statement that he had 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.

29. In **'Lalita Kumari versus Govt. of U.P., (2014) 2 SCC 1,** a Constitution Bench of Hon'ble the Supreme Court has given the following conclusion/directions, which as contained in paragraph no.120 are being reproduced as under:-

"120.) In view of the aforesaid discussion, we hold:

120.1) The Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/ family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases

e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

30. In ***'Jagannath Verma' & others versus State of U.P. and another****, 2014 (8) ADJ 439(F.B.)* the Full Bench of this Court, on consideration of various judgments of the Hon'ble Supreme Court including the case of **'Lalita Kumari (Supra)** held that Section 190 empowers a Magistrate to take cognizance of any offence (i) upon receiving a complaint of facts which constitutes such offence; (ii) upon a police report of such facts; and (iii) upon information received from any person other than a police officer, or upon his own knowledge that such an offence has been committed under Section 190 when a written complaint disclosing a cognizable offence is made before a Magistrate, he may take cognizance

and proceed in accordance with the provisions of Chapter XV. But Magistrate is not bound once a complaint is filed, to take cognizance if the facts stated in the complaint disclose the commission of any offences. Though a complaint may disclose a cognizable offence, a Magistrate may well be justified in sending the complaint under Section 156(3) to the police for investigation before taking cognizance.

It would be appropriate to refer as follows:-

> *"15. When a written complaint disclosing a cognizable offence is made before a magistrate, he may take cognizance under Section 190 (1) (a) and proceed in accordance with the provisions of Chapter XV. The other option available to the magistrate is to transmit the complaint to the police station concerned under Section 156 (3), before taking cognizance, for investigation. Once a direction is issued by the magistrate under Section 156 (3), the police is required to investigate under sub-section (1) of that Section and to submit a report under Section 173 (2) on the complaint after investigation, upon which the magistrate may take cognizance under Section 190 (1)(b). (**Madhu Bala Vs Suresh Kumar**),(1997) 8 SCC 476.*
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> *16. In **Sakiri Vasu Vs State of Uttar Pradesh,** (2008) 2 SCC 409 , the Supreme Court followed the earlier decision in Mohd Yousuf (supra) and held that the power of the magistrate to order a further investigation under Section 156 (3) is an independent power and is wide enough to include all such powers in a magistrate which are necessary for ensuring a proper investigation and would include the power of registration of an FIR and of ordering a proper investigation if the magistrate is satisfied that the proper investigation has not been done or is not being done by the police. Section 156 (3) was construed to include all such incidental powers as are necessary for ensuring a proper investigation. The same principle has been adopted in the decision of the Supreme Court in Mona Panwar Vs High Court of Judicature at Allahabad (2011) 3 SCC 496.*
>
> > *"18. When the complaint was presented before the appellant, the appellant had mainly two options available to her. One was to pass an order as contemplated by Section 156(3) of the Code and second one was to direct examination of the complainant upon oath and the witnesses present, if any, as mentioned in Section 200 and proceed further with the matter as provided by Section 202 of the Code. An order made under sub-section (3) of Section 156 of the Code is in the nature of a peremptory*

> *reminder or intimation to the police to exercise its plenary power of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with the final report either under Section 169 or submission of charge sheet under Section 173 of the Code. A Magistrate can under Section 190 of the Code before taking cognizance ask for investigation by the police under Section 156(3) of the Code. The Magistrate can also issue warrant for production, before taking cognizance. If after cognizance has been taken and the Magistrate wants any investigation, it will be under Section 202 of the Code.*
>
> *19. The phrase "taking cognizance of" means cognizance of an offence and not of the offender. Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position where the Magistrate takes cognizance of an offence on a complaint or on a police report or upon information of a person other than a police officer. Before the Magistrate can be said to have taken cognizance of an offence under Section 190(1)(b) of the Code, he must have not only applied his mind to the contents of the complaint presented before him, but must have done so for the purpose of proceeding under Section 200 and the provisions following that Section. However, when the Magistrate had applied his mind only for ordering an investigation under Section 156(3) of the Code or issued a warrant for the purposes of investigation, he cannot be said to have taken cognizance of an offence."*

The same principle has been reiterated in ***Samaj Parivartan Samudaya Vs State of Karnataka, (2012) 7 SCC 407 at para 26, p 420****.*

> *"17. There is a fundamental distinction between the provisions of Chapter XII and of Chapter XV of the Code. This came up for consideration before the Supreme Court in Devarapalli Lakshminarayana Reddy Vs V Narayana Reddy (supra). The Supreme Court noted that, whereas Section 156 (3) occurs in Chapter XII dealing with information to the police and the powers of the police to investigate, Section 202 forms part of Chapter XV which relates to complaints to magistrates. The Supreme Court observed that the power to order a police investigation under Section 156 (3) is distinct from the power to direct an investigation under Section 202 (1). Section 156 (3) is at the pre-cognizance*

stage, Section 202 is at the post-cognizance stage. Moreover, once a magistrate has taken cognizance and has adopted the procedure under Chapter XV, it is not open to him then to go back to the pre-cognizance stage and avail of Section 156 (3). Investigation by the police under Section 156 (3) is in exercise of the plenary power to investigate offences which begins with collection of evidence and ends with a report under Section 173 (2). The investigation, on the other hand, which Section 202 contemplates, is of a different nature and is for the purpose of enabling the magistrate to decide whether or not there is sufficient ground for proceeding. The Supreme Court observed as follows:

"Section 156(3) occurs in Chapter XII, under the caption: "Information to the Police and their powers to investigate"; while Section 202 is in Chapter XV which bears the heading "Of complaints to Magistrates". The power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by Section 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the pre cognizance stage, the second at the post-cognizance stage when the magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3). It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173. On the other hand, Section 202 comes in at a stage when some evidence has been collected by the magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the magistrate is empowered under Section 202 to direct, within the limits circumscribed by that section, an investigation "for the purpose of deciding whether or not there is sufficient ground for proceeding ". Thus the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the magistrate in completing proceedings already instituted upon a complaint before him." (emphasis supplied).

18. Noting the distinction between an investigation under Chapter XII and proceedings under Chapter XV, the Supreme Court in Samaj Parivartan Samudaya (supra), held as follows:

> *"... In the former case, it is upon the police report that the entire investigation is conducted by the investigating agency and the*

onus to establish commission of the alleged offence beyond reasonable doubt is entirely on the prosecution. In a complaint case, the complainant is burdened with the onus of establishing the offence and he has to lead evidence before the court to establish the guilt of the accused. The rule of establishing the charges beyond reasonable doubt is applicable to a complaint case as well." (emphasis supplied)

19. The same principle was enunciated in Madhao Vs State of Maharashtra (2013) 5 SCC 615:

> *"When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The Magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence itself. As said earlier, in the case of a complaint regarding the commission of cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1) (a). However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156(3)."*

> *20. In* ***Anil Kumar Vs M K Aiyappa,*** *(2013) 10 SCC 705 this distinction is brought out in the following observations of the Supreme Court:*

> > *"...When a Special Judge refers a complaint for investigation under Section 156(3) CrPC, obviously, he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage. When a Special Judge takes cognizance of the offence on a complaint presented under Section 200 CrPC and the next step to be taken is to follow up under Section 202 CrPC. Consequently, a Special Judge referring the case for investigation under Section 156(3) is at pre-cognizance stage."*

31. In **Jagannath Verma (supra) the Full Bench further held as follows:-**

"21. Now it is in this background that it would be necessary for the Court to consider the import of an order passed by the magistrate

declining to issue a direction under Section 156 (3) ordering an investigation as specified in sub-section (1). When a written complaint is made before a magistrate disclosing a cognizable offence, the magistrate may send the complaint to the concerned police station under Section 156 (3) for investigation. If this course of action is adopted, the police is required to investigate into the complaint. On the completion of the investigation, a report is submitted under Section 173 (2), upon which a magistrate may take cognizance under Section 190 (1) (b). Alternately, when a written complaint disclosing a cognizable offence is made before a magistrate, he may take cognizance under Section 190 (1) (a), in which event he has to proceed in accordance with the provisions of Chapter XV. The exercise of the power under Section 156 (3) is before the magistrate takes cognizance. Once the magistrate has taken cognizance under Section 190, it is not open to him to switch back to Section 156 (3) for the purposes of ordering an investigation. Section 200 requires that the magistrate taking cognizance of an offence on a complaint shall examine upon oath the complainant and the witnesses, if any. Section 202 enables the magistrate to postpone the issuance of process against the accused on receipt of a complaint of an offence of which he is authorised to take cognizance, in which event he may follow one of the following courses:

(i) The magistrate may, either enquire into the case himself; or

(ii) The magistrate may direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purposes of deciding whether or not there is sufficient ground for proceeding. However, the two provisos to Section 202 stipulate that no direction for investigation shall be made (i) where it appears that the offence complained of is triable exclusively by the Court of Session; or (ii) in a complaint which has not been made by a court, unless the complainant and the witnesses present, if any, have been examined on oath under Section 200. The proviso to sub-section (2) stipulates 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 the witnesses and examine them on oath. Under Section 203, upon considering the statements on oath, if any, of the complainant and of the witnesses and the result of the enquiry or investigation, if any, under Section 202, if the magistrate is of the opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint recording brief reasons.

22. These provisions amply demonstrate that Chapter XII on the one hand and Chapter XV on the other, operate in two distinct spheres. The duty to investigate into offences is of the State and it is from that perspective that the provisions of Chapter XII including Sections 154 and 156 have been engrafted into legislation. The rejection of an application under Section 156 (3) closes the avenue of an investigation by the police under Chapter

XII. For the informant or complainant who provides information in regard to the commission of a cognizable offence, an investigation by the police under Chapter XII is a valuable safeguard which sets in motion the criminal law and ensures that the offender is traced and is made answerable to the crime under the penal law of the land. Closing this avenue of ordering an investigation by the police under Section 156 (1) cannot be treated as a matter of no moment or a matter akin to a procedural direction. Depriving the person who provides information of the safeguard of an investigation under Chapter XII is a serious consequence particularly when we evaluate this in the context of the alternative remedy which is available under Chapter XV of the Code.

23. In Chapter XV of the Code, the complainant is subject to the burden of producing evidence before the court. This distinction between the procedure which is enunciated in Chapter XII and the provisions of Chapter XV has been noted in several decisions of the Supreme Court from Devarapalli Lakshminarayana Reddy (supra) to the more recent decision in Samaj Parivartan Samudaya (supra). A magistrate who takes cognizance under Section 200 has to examine the complainant and his witnesses on oath. Though, under Section 202 the magistrate may postpone the issuance of process and direct an investigation to be made by a police officer, it is well settled that this investigation under Section 202 is for the purpose of deciding whether or not there is sufficient ground for proceeding. The object of an investigation under Section 202 is not to initiate a fresh case on a police report but to assist the magistrate in completing proceedings already instituted on a complaint before him."

32. In Ram Dev Food Products Pvt. Ltd. Versus State of Gujarat, (2015) 6 SCC 439, the Hon'ble Supreme Court framed the first question as to "(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?," and answered it 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 straightaway direct investigation, such a direction is issued. It is further held that the 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.

33. It would be appropriate to reproduce relevant paragraph nos. 19 to 22 of **'Ramdev Food Products Private Limited'** (Supra) as under:-

> *"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 straightaway 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."

34. From the aforesaid judgment in Ramdev Food Product, (Supra) it is evident that the Magistrate may, where on account of credibility of information available or weighing the interest of justice considers it appropriate to straightaway direct investigation, such a direction may be issued, but in cases where the Magistrate takes cognizance and postpones issuance of process, are those cases where the Magistrate has yet to determine existence of sufficient ground to proceed against the offender by issuance of process if a prima-facie case is made out. A category of cases which fall under para 120.6 in **'Lalita Kumari'** (Supra) case, may fall under Section 202.

35. It is also very specific that the Magistrate has to apply his mind before exercising jurisdiction under Section 156(3) Cr.P.C. to decide if the case is one in which he should direct investigation by police under Section 156(3) Cr.P.C. or he should take cognizance, treat the application as a complaint case; and proceed as per the provisions of Sections 200,

202 Cr.P.C. etc. under Chapter XV. The application of mind should also be reflected in the order. Mere statement that the Magistrate has gone through the complaint or/and the material accompanying the complaint and on hearing the complainant, is not sufficient. That would not be a reflection of application of judicial mind. Though, a detailed expression of his views is neither required nor warranted but reasons for decision, one way or the other, must be reflected from the order. Reasons have to be stated in the order as to why the Magistrate was passing an order for investigation by police under Sub Section (3) of Section 156 or as to why he was taking cognizance and then proceeding with the application as a complaint case and not directing for police investigation.

36. So far as the inquiry in pursuance of the direction under Section 202 Cr.P.C. is concerned, in **'Ramdev Food Products'** (Supra), the Hon'ble Supreme Court in paragraph no.34 held as follows:-

> *"34. We may now also refer to other decisions cited at the bar and their relevance to the questions arising in the case.*
>
> *In Smt. Nagawwa vs. Veeranna Shivalingappa Konjalgi & Ors. [15], referring to earlier Judgments on the scope of Section 202, it was observed :*
>
> *"3. In Chandra Deo Singh v. Prokash Chandra Bose [AIR (1963) SC 1430 this Court had after fully considering the matter observed as follows:*
>
> *"The courts have also pointed out in these cases that what the Magistrate has to see is whether there is evidence in support of the allegations of the complainant and not whether the evidence is sufficient to warrant a conviction. The learned Judges in some of these cases have been at pains to observe that an enquiry under Section 202 is not to be likened to a trial which can only take place after process is issued, and that there can be only one trial. No doubt, as stated in sub-section (1) of Section 202 itself, the object of the enquiry is to ascertain the truth or falsehood of the complaint, but the Magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant."*
>
> *Indicating the scope, ambit of Section 202 of the Code of Criminal Procedure this Court in Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker [AIR (1960) SC 1113] observed as follows:*

"Section 202 says that the Magistrate may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against and direct an inquiry for the purpose of ascertaining the truth or falsehood of the complaint; in other words, the scope of an inquiry under the section is limited to finding out the truth or falsehood of the complaint in order to determine the question of the issue of process. The inquiry is for the purpose of ascertaining the truth or falsehood of the complaint; that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at that stage; for the person complained against can be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial."

Same view has been taken in Mohinder Singh vs. Gulwant Singh[16], Manharibhai Muljibhai Kakadia & Anr. vs. Shaileshbhai Mohanbhai Patel & Ors.[17], Raghuraj Singh Rousha vs. Shivam Sunadaram Promoters Pvt. Ltd.[18], Chandra Deo Singh vs. Prokas Chandra Bose[19].

In Devrapalli Lakshminaryanan Reddy & Ors. vs. V. Narayana Reddy & Ors.[20], National Bank of Oman vs. Barakara Abdul Aziz & Anr.[21], Madhao & Anr. vs. State of Maharashtra & Anr.[22], Rameshbhai Pandurao Hedau vs. State of Gujarat[23], the scheme of Section 156(3) and 202 has been discussed. It was observed that power under Section 156(3) can be invoked by the Magistrate before taking cognizance and was in the nature of pre-emptory reminder or intimation to the police to exercise its plenary power of investigation beginning Section 156 and ending with report or chargesheet under Section 173. On the other hand, Section 202 applies at post cognizance stage and the direction for investigation was for the purpose of deciding whether there was sufficient ground to proceed."

37. In **'Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel & others',** (2017) 4 SCC 177, the Hon'ble Supreme Court pointed out the distinction in the power to order police investigation under Section 156(3) and under Section 202(1) of the Cr.P.C. It was ruled that the two powers operate in separate distinct spheres at different stages, the former being exercisable at the pre-cognizance stage and the latter at the post-cognizance stage when the Magistrate is in seisin of the case. In the case

of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) could be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a), but once such cognizance is taken and he embarks upon the procedure embodied in Chapter XV, he would not be competent to revert to the pre-cognizance stage and avail Section 156(3). On the other hand, it was observed that Section 202 would be invocable at a stage when some evidence has been collected by the Magistrate in the proceedings under Chapter XV, but is deemed to be insufficient to take a decision as to the next step and in such an event, the Magistrate would be empowered under Section 202 to direct, within the limits circumscribed by that provision, an investigation for the purpose of deciding whether or not, there is sufficient ground for proceeding. It was thus exposited that the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing the proceedings already instituted upon a complaint before him.

It is relevant to reproduce paragraph nos. 30 and 31 as under:-

"30. This Court also recounted its observations in Ram Lal Narang (supra) to the effect that on the Magistrate taking cognizance upon a police report, the right of the police to further investigate even under the 1898 Code was not exhausted and it could exercise such right often as necessary, when fresh information would come to light. That this proposition was integrated in explicit terms in sub-Section (8) of Section 173 of the new Code, was noticed. The desirability of the police to ordinarily inform the Court and seek its formal permission to make further investigation, when fresh facts come to light, was stressed upon to maintain the independence of the judiciary, the interest of the purity of administration of criminal justice and the interest of the comity of the various agencies and institutions entrusted with different stages of such dispensation.

31. The pronouncement of this Court in Devarapalli Lakshminarayana Reddy and others v. V. Narayana Reddy and others, (1976) 3 SCC 252 emphasizing on the distinction in the power to order police investigation under Section 156(3) and under Section 202(1) of the Cr.P.C, was referred to. It was ruled that the two powers operate in separate distinct spheres at different stages, the former being exercisable at the pre-cognizance stage and the latter at the post-cognizance stage when the Magistrate is in seisin of the case. It was underlined that in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) could be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a), but once such cognizance is taken and he embarks upon the procedure embodied in

Chapter XV, he would not be competent to revert to the pre-cognizance stage and avail Section 156(3). On the other hand, it was observed that Section 202 would be invocable at a stage when some evidence has been collected by the Magistrate in the proceedings under Chapter XV, but is deemed to be insufficient to take a decision as to the next step and in such an event, the Magistrate would be empowered under Section 202 to direct, within the limits circumscribed by that provision, an investigation for the purpose of deciding whether or not, there is sufficient ground for proceeding. It was thus exposited that the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing the proceedings already instituted upon a complaint before him. It was thus concluded on an appraisal of the curial postulations above referred to, that the Magistrate of his own, cannot order further investigation after the accused had entered appearance pursuant to a process issued to him subsequent to the taking of the cognizance by him."

38. A reference deserves to be made to the case of **"Gulab Chand Upadhyaya Vs. State of U.P. and others"** 2002 Criminal Law Journal 2907(Alld), in which case this Court finding that no decision was cited to throw any light upon the considerations, which should weight with the Magistrate to guide his discretion, in adopting the courses open to him when an application under Section 156(3) Cr.P.C. is made to him, held that as per the scheme of the Cr.P.C. and the prevailing circumstances required that the option to direct the registration of the case and its 'investigation' by the police should be exercised, where some 'investigation' is required, which is of a nature that is not possible for a private complainant and which can only be done by the police upon whom statute has conferred, the powers essential for investigation, e.g., where the full details of the accused are not known to the complainant and the same can be determined only as a result of investigation; the recovery of abducted person or stolen property is required by raids or searches; where for the purpose of launching a successful prosecution of the accused evidence is required to be collected and preserved etc.

It is relevant to reproduce paragraph 22 & 23 of the **"Gulab Chand Upadhyaya"** (Supra) as under:-

"22. The scheme of Cr.P.C. and the prevailing circumstances require that the option to direct the registration of the case and its investigation by the police should be exercised where some "investigation" is required, which is of a nature that is not possible for the private complainant, and which can only be done by the police upon whom statute has conferred the powers essential for investigation.

(1) where the full details of the accused are not known to the complainant and the same can be determined only as a result of investigation, or

(2) where recovery of abducted person or stolen property is required to be made by conducting raids or searches of suspected places or persons, or

(3) where for the purpose of launching a successful prosecution of the accused evidence is required to be collected and preserved. To illustrate by example cases may be visualised where for production before Court at the trail (a) sample of blood soaked soil is to be taken and kept sealed for fixing the place of incident; or (b) recovery of cases property is to be made and kept sealed; or (c) recovery under Section 27 of the Evidence Act; or (d) preparation of inquest report; or (e) witnesses are not known and have to be found out or discovered through the process of investigation."

23. But where the complainant is in possession of the complete details of all the accused as well as the witnesses who have to be examined and neither recovery is needed nor any such material evidence is required to be collected which can be done only by the police, no "investigation" would normally be required and the procedure of complaint case should be adopted. The facts of the present case given below serve as an example. It must be kept in mind that adding unnecessary cases to the diary of the police would impair their efficiency in respect of cases genuinely requiring investigation. Besides even after taking cognizance and proceeding under Chapter XV the Magistrate can still under Section 202(1) Cr.P.C. order investigation, even though of a limited nature {see para 7 of JT (2001)2 (SC) 81:(AIR 2001 SC 571)"

39. Power of the Magistrate to order investigation by police under Section 156(3) Cr.P.C. is at pre-cognizance stage whereas the power to order police investigation under Section 202(1) Cr.P.C. is at a post-cognizance stage. The police report of the investigation in pursuance of direction under Section 156(3) Cr.P.C. is for the purpose of taking cognizance whereas the report of the police investigation in pursuance of the direction under Section 202(1) Cr.P.C. is for the purposes of satisfying the Magistrate, if a case for proceeding further against the accused persons is made out or not After the Magistrate takes cognizance on the application under Section 156(3) Cr.P.C. without ordering for police investigation, he cannot return back to the stage of Section 156(3) Cr.P.C. as that is a pre-cognizance stage. But, if the Magistrate did not order for police investigation under Section 156(3) Cr.P.C. and took cognizance of the case, that would not be bar to the exercise of the power of the Magistrate for directing the police investigation under Section 202(1) Cr.P.C. which is with a different

object of proceeding further in the matter. So, in a case where the Magistrate has declined for police investigation under Section 156(3) Cr.P.C. and had taken cognizance treating the application as a complaint case, that would not come in the way of the Magistrate in passing the order for police investigation under Section 202(1) Cr.P.C. Any observation in the order of the Magistrate while taking cognizance of application under Section 156(3) Cr.P.C. as a complaint case, that there is no need of police investigation and directing the complainant to get the statement recorded under Section 200 Cr.P.C. shall only mean that no police investigation was needed for the purpose of taking cognizance.

40. From the aforesaid judgments, some of the following proposition of law, well settled, may be summarized as under:-

(40.01). Under Section 154 of the Code, if the information discloses commission of a cognizable offence it is the mandatory duty of the police officer in charge to register the FIR. He cannot avoid his duty of registering offence, if cognizable offence is made out.

(40.02). If FIR is not registered, the person aggrieved by a refusal to record the information has remedy to approach the Superintendent of Police by submitting an application in writing and by post to enable him to satisfy if such information discloses the commission of a cognizable offence and in case of such satisfaction, either to investigate himself or direct an investigation to be made by any police officer subordinate to him.

(40.03). If the person still feels aggrieved from inaction of the police authorities he has the remedy to approach the Magistrate by way of application under Section 156(3) Cr.P.C.,

(40.04). On such an application having been made, if, the Magistrate finds that a cognizable offence is made out, the Magistrate may direct the police to register the FIR and investigate the matter, without taking cognizance.

(40.05). The other option open to the Magistrate is to take cognizance on the complaint, register it as a complaint case and proceed as per the procedure prescribed under Chapter XV Cr.P.C. The Magistrate would record the statement of the complainant and the witnesses if any present, under Section 200 Cr.P.C. He may, if he thinks fit and shall in cases where accused resides out side the area of exercise of jurisdiction of the Magistrate concerned, either enquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, under Section 202(1) Cr.P.C. Thereafter, he shall pass order, either under Section

203 dismissing the complaint, for brief reasons to be recorded, or he shall issue process under Section 204 Cr.P.C.

(40.06). In either case, i.e. issuing direction for investigation by the police officer under Section 156(3) Cr.P.C. or taking cognizance and registering it as a complaint case, the Magistrate has to apply judicial mind. There cannot be mechanical exercise of jurisdiction or exercise in a routine manner. Mere statement in the order that he has gone through the complaint, documents and heard the complainant will not be sufficient. What weighed with the Magistrate to order investigation or to take cognizance should be reflected in the order, although a detailed expression of his view is neither required nor warranted.

(40.07). The exercise of discretion by the Magistrate is basically guided by interest of justice, from case to case.

(40.08). However, where some investigation is required which is of a nature that is not possible for the private complainant and which can only be done by the police officer upon whom statute has conferred the powers essential for investigation, the option to direct the registration of the FIR and its investigation by the police officer should be exercised, for example:-

> *(i) where the full details of the accused are not known to the complainant and the same can be determined only as a result of investigation, or*
>
> *(ii) where recovery of abducted person or stolen property is required to be made by conducting raids or searches of suspected places or persons, or*
>
> *(iii) where for the purpose of launching a successful prosecution of the accused evidence is required to be collected and preserved, and to illustrate this, by few example cases may be visualised where for production before Court at the trial*
>
> *(a) sample of blood soaked soil is to be taken and kept sealed for fixing the place of incident; or*
>
> *(b) recovery of case property is to be made and kept sealed; or*
>
> *(c) recovery under Section 27 of the Evidence Act; or*
>
> *(d) preparation of inquest report; or*
>
> *(e) witnesses are not known and have to be found out or discovered through the process of investigation.*

(40.09). Where the complainant is in possession of the complete details of all the accused and the witnesses who have to be examined and neither recovery is needed nor any such

material evidence is required to be collected which can be done only by the police, no "investigation" would normally be required and the procedure of complaint case should be adopted.

(40.10). Category of cases falling under para 120.6 in ***Lalita Kumari (Supra)*** *i.e.*

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases,

(d) Corruption cases

(e) Cases where there is abnormal delay in filling criminal complaint etc. may fall under Section 202 Cr.P.C .

(40.11). The Magistrate should also keep in view that primarily, it is the duty of the State/police to investigate the cases involving cognizable offence. Generally, the burden of proof to bring the guilt of the accused is on the State and this burden is a heavy burden to prove the guilt beyond all reasonable doubts. This burden should not unreasonably be shifted on an individual/complainant from the State by treating the application under Section 156(3) Cr.P.C. as a complaint case.

(40.12). The investigation which the police officer or such other person makes in pursuance of the direction of the Magistrate under Section 202(1) Cr.P.C. is the same kind of investigation as is required to be conducted by police officer, under Chapter XII Cr.P.C. which ends with submission of the report as per Section 173(2) Cr.P.C.

(40.13). The distinction between the investigation by the police officer under Section 156(3) and under Section 202(1) Cr.P.C. is that the former is at the pre-cognizance stage and the latter is at post cognizance stage, when the Magistrate is seisin of the case. The investigation under Section 202(1) Cr.P.C. is for the purpose of ascertaining the truth or false hood of the complaint for helping the Magistrate to decide, whether or not there is sufficient ground, for him to proceed further against the accused by issuing process, whereas, the inquiry report under Section 173(2) Cr.P.C. of the investigation made by the police of its own or under the directions of the Magistrate under Section 156(3) Cr.P.C. is for the purpose of enabling the Magistrate to take cognizance of an offence under Section 190(1)(a) Cr.P.C.

(40.14). Once cognizance is taken on the application under Section 156(3) Cr.P.C. by the Magistrate and he embarks upon

the procedure embodied in Chapter XV, he would not be competent to revert to the pre-cognizance stage under Section 156(3) Cr.P.C.

(40.15). If the Magistrate did not order for police investigation under Section 156(3) Cr.P.C. and took cognizance of the case, that would not be bar to the exercise of the power of the Magistrate for directing the police investigation under Section 202(1) Cr.P.C.

41. Point nos. 1, 2 and 3 as framed in para 12 of this judgment stands answered as per para no.40 above.

42. In **'Jitendra Kumar'** (Supra) and **'Shiv Mangal Singh'** (Supra), relied upon by the learned counsel for the applicant also it was held that the Magistrate shall pass order with due application of judicious mind.

43. Now coming to point No.4 as regards the order under challenge, perusal of the order clearly shows that the learned Magistrate has not applied judicious mind to the facts of the case and the law applicable therein. The order does not assign any reason, as to why the application was treated as a complaint case and why the order for police investigation was not required. The order does not reflect application of judicious mind. It does not stand the test of the law as laid down in the cases of **'Ashok Kumar'** (Supra) and **Ram Deo Food Products (Supra)** of the Hon'ble Supreme Court, and in the case of **'Gulab Chand Upadhyay'** (Supra) of this Court.

44. The present revision therefore, deserves to be allowed and the order under challenge deserves to be set-aside, with the direction to the learned Magistrate to pass fresh orders on the application of the revisionist/applicant, after affording opportunity of hearing to him in accordance with law, within a period of two months from the date of production of true/attested copy of this judgment, before him. It is made clear that this Court has not commented upon the merits of the application under Section 156(3) Cr.P.C. either way. In other words this Court has not adjudicated if the order for police investigation be passed or the application be registered as a complaint case. This would be in the discretion of the learned Magistrate to be exercised keeping in view the

principles of law as discussed above.

45. With the aforesaid observations and directions, this revision /petition is **allowed.**

46. No orders as to costs.

Order Date :- 18.12.2020 **(Ravi Nath Tilhari)**

VKG