



Registration of first information report vis-a-vis the powers of the court: A study

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Abstract

The scope of the powers of the court under Section 156 (3) of Criminal Procedure Code has been studied in depth. Specific or improperly worded prayer or lack of complete details will not be fatal to maintainability of a petition. A complaint against public servants, sanction of competent authority is required for registration of a case against them. The guidelines in Priyanka Srivastava's case has been summarised for the proper application of Sec 156(3) of Cr PC. A good account is given about the recommendations of the study and in particular, the magistrate may require the filing of affidavits in order to ascertain the truth of the complaint, before the magistrate exercises the power to direct registration of FIR.

Keywords: pre cognizable, sanction for prosecution for public servant, reproduction of factual allegations, complaint to accompany affidavits, priyanka srivastava guidelines

1. Introduction

Section 156(3) of the Criminal Procedure Code, which operates at the pre-cognizable stage, confers powers on a magistrate, who is empowered to take cognizance under Sec 190 of Criminal Procedure Code, to order investigation into any cognizable case. In Panchabhai Popatbhai Bhutani & Others^[1] the Supreme Court ruled: "A petition under Section 156(3) cannot be strictly construed as a compliant in terms of Sec 2(d) of the code and absence of a specific or improperly worded prayer or lack of complete and definite details would not prove fatal to a petition under sec 156(3) in so far as it states facts constituting ingredients of a cognizable offence. Such petition would be maintainable before the magistrate".

2. Text of the article

In a case, where the petitioners were public servants and an FIR against them for acts in the discharge of duties without the sanction of appropriate authority, whether the magistrate can give a direction to register an FIR against them came up for consideration before the Supreme Court^[2]. Basing on an earlier decision in Anil Kumar's case^[3], it was held that the magistrate could not have passed the order for registration of FIR without sanction by the appropriate authority. Earlier case-laws were relied upon^[4]. No such sanction is necessary, in case of persons, who are not public servants^[5].

3. Scope of Sec 156 (3) Cr PC

The scope of Sec 156(3) of the Criminal Procedure Code has been explained and detailed by the Supreme Court^[6] thus:-

- i) It is well settled that the law neither prescribes any particular format for application under Sec 156(3) Cr PC^[7] nor contemplates verbatim reproduction of the factual allegations or all the ingredients of the alleged offence;
- ii) Nevertheless, it is imperative that the application under Section 156(3) should contain facts disclosing cognizable offence;
- iii) Failure on the part of the Police to exercise powers under Section 154 Cr pc despite intimation;
- iv) Thereupon the magistrate exercising powers under Section 156(3) Cr Pc to order investigation of the crime.

Stressing the need for application of mind by the magistrate, he cannot refer the matter under Sec 156(3) Cr Pc against public servants for acts done in the discharge of their duties without a valid sanction order^[8]. It was further laid down in the case^[9] thus:-

- a) The application of the mind by the magistrate should be reflected in the order;
- b) The mere statement that he has gone through the complaint, documents and heard the complaint, as such, as reflected in the order will not be sufficient;
- c) After going through the complaint, documents and hearing the complainant, what weighed with the magistrate to order investigation under Sec 156(3) of Cr Pc should be reflected in the order, through a detailed expression of his views is neither required nor warranted.

4. Priyanka Srivastava guidelines

In Priyanka Srivastava's case^[10] the Supreme Court laid down a detailed guidelines on this crucial issue under Sec 156(3) of Cr Pc which can be summarised thus:-

- i) The magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind;
- ii) He may have to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order;
- iii) Power under Sec 156(3) Cr Pc warrants application of judicial mind;
- iv) A court of law is involved;
- v) It is not the police taking steps at the stage of Section 154 of Cr Pc;
- vi) A litigant at his own whim and fancy cannot invoke the authority of the magistrate;
- vii) A principled and really grieved citizen with clear hands must have free access to invoke the said power;
- viii) It protects the citizen but when pervert litigants takes this route to harass the fellow citizens, efforts are to be made to scuttle and curb the same.
- ix) A stage has come to this Country, where Sec 156(3) Cr Pc applications are to be supported by an affidavit duly

sworn by the applicant who seeks the invocation of the jurisdiction of the magistrate;

- x) In appropriate cases, the magistrate would be well advised to verify the truth and also can verify the veracity of the allegations;
- xi) The affidavit can make the applicant more responsible;
- xii) Such kind of applications are filed in a routine manner without taking any responsibility whatsoever, only to harass certain persons;
- xiii) It becomes disturbing and alarming when one tries to pick up people, who are passing orders under a statutory duty, which can be challenged under the said Act or under Art 226 of the Constitution;
- xiv) It cannot be done to take undue advantage in a criminal court, as if somebody is determined to settle the scores;
- xv) The warrant for giving a direction that an application under Sec 156(1) Cr Pc be supported by an affidavit so that the person making the application shall be conscious and also endeavour to see that no false affidavit is made;
- xvi) If the affidavit is found to be false, he will be liable for prosecution in accordance with law;
- xvii) Prosecution will deter him to casually invoke the authority of the magistrate under Section 156(3) Cr Pc;
- xviii) Veracity can also be verified regarding the nature of the allegations of the case;
- xix) In a number of cases pertaining to sphere of fiscal nature, medical negligence and others criminal prosecutions are filed;
- xx) The magistrate is also aware of the delay in lodging FIR. In cases, where the allegations are made in a petition under Sec 156(3) of Cr Pc who are public servants and the acts done in the discharge of duties, magistrate cannot given any direction to register FIR without a valid sanction from the appropriate authorities ^[11].

5. Unwarranted Criminal Prosecution

The Supreme Court deprecated the practice of subjecting police officers to unwarranted criminal prosecution when the court observed: ^[12] Subjecting police officers to unwarranted criminal prosecution for having registered a case will certainly peril the fair investigation of the said crime.

Allowing the aggrieved and disgruntled persons to hold the police machinery at ransom by unjustifiable vexatious prosecutions will affect the morale and effective functioning of the police machinery which in turn will have serious and far-reaching adverse impact on the interests of the society.

It is worthwhile to follow the principle laid down by the Supreme Court in *Lalitha Kumari Vs. Government of UP* ^[13] which stipulates that the police must conduct a preliminary inquiry in certain cases to ascertain whether the information reveals the commission of a cognizable offence. This procedure will weed out frivolous and vexatious compliant. The magistrate will be able to send only deserving cases for investigation by the police.

6. Conclusions & Recommendations

In conclusion, it may be suggested as follows:-

- i) Magistrates acting under Sec 156(3) Cr Pc will be competent to order registration of the case (FIR) and the investigation that follows.

- ii) Magistrates, while passing orders, act by the application of mind which should be reflected in the order;
- iii) Cr Pc be amended to provide that applications under Sec 156(3) be accompanied by a sworn affidavit to make complainants responsible;
- iv) Instead of ordering the police to register FIR, magistrates may order preliminary enquiry by the police to ascertain the truthfulness and genuineness of complaints.
- v) In cases involving public servants magistrates should not pass orders directing FIR to be registered, unless a valid sanction under Section 197(1) is produced by the prosecution;
- vi) In regard to complaint against police officers for registering FIR, detailed scrutiny be made regarding genuineness of the complaint before registering the case so that vexatious prosecutions are averted;
- vii) Magistrates must send only deserving cases for police investigation.

7. References

1. Panchabhai Popatbhai Bhutani & Others Vs. State of Maharashtra All MR (Cri), 2010, 244.
2. Rizwan Ahmed Javed Shaik Vs. Jamal Patel AIR SC. 2001, 2198.
3. Anil Kumar Vs. M.K. Aiyappa AIR SC, 2014, 1801.
4. Matajog Dubey Vs. H.C Bhandari AIR. SC 1956, 144; Nandram Agarwal Vs. S.C. Bihari AIR SC (1956) P.044; Om Prakash & Others Vs. State of Jharkhand (2012) 12 SCC P.72; Sankaran Moitra Vs. Sadha Das AIR 2006 SC 1597.
5. Sanction is contemplated only in the case of public servants for acts done in the discharge of duties under sec 197 of the Criminal Procedure Code. See for details Fakhru-Zamma and Nagaraj AIR 1964 SC P.269, AIR 2014 SC 1550.
6. Phandharinath Narayan Patil Vs. State of Maharashtra Cr LJ, Bombay HC, 2016, 146.
7. Cr Pc refers to Criminal Procedure Code throughout this study.
8. See Note 3.
9. Ibid.
10. Priyanka Srivatsava Vs. State of UP AIR SC, 2015, 1758.
11. State of UP Vs. Parasnath Singh, AIR 2009 SC P.1615. See also Subramanya Swami Vs. Man Mohan Singh AIR Sc, 2012, 1185.
12. See Note 6 Para 33.
13. AIR 2014 SC P.187.