



1

MCRC-55135-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

MISC. CRIMINAL CASE No. 55135 of 2024*ASHISH JAIN**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

.....
Appearance:

Shri Arvind Dudawat- Senior Advocate with Shri Abhishek Singh
Kourav - Advocate for petitioner.

Shri Dinesh Savita - Public Prosecutor for respondent/State.

Shri Rakesh Kumar Sharma - Senior Advocate with Shri Abhijeet
Singh Tomar- Advocate for the respondent [R-2].
.....

Heard on : 15.09.2025

Pronounced on : 27.09.2025

ORDER

This petition under Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 482 of the Code of Criminal Procedure, 1973) has been filed by the petitioner being aggrieved by the order dated 05.12.2024 passed by the learned 7th Additional Sessions Judge, Gwalior in Criminal Revision No.197/2023 arising out of the order dated 10.06.2023 passed by the learned JMFC, Gwalior in UNCR No.165/2023.

2. In brief, the facts of the case are that one Piyush Garg, a relative of the petitioner, was carrying on his business of colours and paints in the shop situated in the petitioner's house. On asking respondent No.2, who was posted as Sub-Inspector, to remove his car which was parked in front of the



2

MCRC-55135-2024

shop thereby creating traffic jam on the road, the respondent No.2 became annoyed, threatened the people present by using filthy language and when the petitioner intervened, the respondent went to Police Station Janakganj, returned with 3-4 police officials in a Bolero police vehicle, and forcibly took away the petitioner, Piyush Garg and Vishal Kushwah by dragging them on the road to the police station where they were subjected to third degree treatment and put in the lockup. On the complaint of respondent No.2, a false case was registered against the petitioner and others in Crime No.959/2022 for the offences under Sections 294, 323, 341, 506 and 34 IPC.

3. The petitioner and co-accused thereafter submitted written complaints dated 08.12.2022 but no case was registered, even though a complaint was also made before the Superintendent of Police. Finding no alternative, the petitioner filed a private complaint along with an application under Section 156(3) CrPC (now Section 175 BNSS) before the learned JMFC. After calling for a report and considering the material available, the learned JMFC by order dated 10.06.2023 directed the police to register FIR and investigate. In compliance, Crime No.374/2023 was registered on 30.06.2023 under Sections 294, 323, 324, 341, 506, 120-B, 166 read with 34 IPC.

4. The said order was challenged by respondent No.2 before the Revisional Court in Criminal Revision No.197/2023 which was initially dismissed on the ground of maintainability. In MCRC No.30789/2023, this Court remanded the matter for consideration on merits. Upon remand, the Revisional Court by the impugned order dated 05.12.2024 partly allowed the



revision by quashing the proceedings initiated under Section 156(3) CrPC by the order dated 10.06.2023, however rejected the prayer for quashing FIR of Crime No.374/2023.

5. Learned counsel for the petitioner submits that the revisional Court has erred in holding that the Magistrate had taken cognizance while passing the order under Section 156(3) CrPC. It is urged that at the stage of Section 156(3), the Magistrate does not take cognizance; he merely directs the police to investigate and register FIR if a cognizable offence is disclosed. The stage of cognizance comes under Section 200 CrPC when the complainant and witnesses are examined upon oath, which was not done in the present case. It is further submitted that the view of the Revisional Court that the prima facie satisfaction recorded by the Magistrate amounts to cognizance is contrary to law. Reliance has been placed on the decision of the Hon'ble Supreme Court in *Anurag Bhatnagar & Anr. Vs. State (NCT of Delhi) & Ors.*, SLP (Crl.) No.18084 of 2024, decided on 25.07.2025, para 34.

6. On the other hand, learned counsel for respondent No.2 has supported the impugned order and submitted that no illegality has been committed by the Revisional Court. It has also been submitted that since the FIR has not been quashed and the police are going to file closure report, the same may be directed to be placed before the competent Court.

7. Having heard learned counsel for the parties and perused the record, this Court finds that the issue revolves around whether the Magistrate while passing the order dated 10.06.2023 under Section 156(3) CrPC had in fact taken cognizance of the offence or had simpliciter directed to register an FIR



4

MCRC-55135-2024

and investigate the matter. The law is settled in this regard that the Magistrate has two courses open when a complaint disclosing a cognizable offence is filed; either to direct registration and investigation under Section 156(3), or to take cognizance under Section 200 CrPC. Once cognizance is taken, the Magistrate cannot resort to Section 156(3). A careful reading of the order dated 10.06.2023 shows that the Magistrate merely recorded that prima facie a cognizable offence is made out and directed the police to register FIR and investigate. No statements of complainant or witnesses were recorded, nor was any inquiry initiated under Section 200 or 202 CrPC. Thus, the Magistrate had not taken cognizance, but rightly exercised jurisdiction under Section 156(3).

8. The view taken by the Revisional Court in para 15 of the impugned order that a prima facie observation amounts to taking cognizance is clearly unsustainable and contrary to the law laid down by the Hon'ble Supreme Court including the judgment relied upon by the petitioner.

9. In these circumstances, the impugned order dated 05.12.2024 passed by the learned 7th Additional Sessions Judge, Gwalior in Criminal Revision No.197/2023 is hereby quashed.

10. The observations made herein shall not come in the way of investigating agency to file final report or further investigate the matter, as the case may be. If the investigating agency files a closure report, the same shall be considered by the competent Court strictly in accordance with law.

11. The petition is accordingly allowed. No order as to costs.



5

MCRC-55135-2024
(MILIND RAMESH PHADKE)
JUDGE

ojha