

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) 572/2022
CrIM 1586/2022

Reserved on: 31.07.2023
Date of Decision:01.09.2023

Dilshad Sheikh and others

.....Petitioner

Through: Mr. Areeb Javid Kawoosa, Advocate

Versus

Sabha Sheikh

Through: Mr. Saqib Shabir, Advocate

.....Respondent(s)

CORAM:

Hon'ble Mr. Justice Javed Iqbal Wani, Judge

J U D G E M E N T

1. The petitioners in the instant petition have invoked inherent power of this court enshrined under section 482 Cr.PC seeking quashment of complaint filed by the respondent herein under Section 156(3) Cr.PC titled as “Sabha Sheikh versus Dilshad Sheikh and others” filed before the court of City Munsiff Srinagar (for short the Magistrate) along with order dated 3.10.2022 (for short impugned order) passed therein.
2. The facts discernable from the record of the petition would reveal that the respondent herein is the daughter of petitioner 1 herein and sister of petitioners 2 and 3 being successors-in-interest of one Javed Sheikh, who has died in the year 1986.

3. It is being stated that the respondent herein has not been in good terms with the petitioners herein, having been litigating with the petitioners herein in respect of various properties left behind by the above named deceased Javed Sheikh.
4. It is being stated that the respondent herein earlier filed a complaint before Chief Judicial Magistrate Srinagar against the petitioner 1 herein whereupon cognizance for offences under section 447 Indian Penal Code, is stated to have been taken vide order dated 5.11.2021. The said complaint as also the order of cognizance dated 5.11.2021 is stated to have been thrown challenge to by the petitioner 1 herein before this court in CRM (M) 403 of 2021, which came to be disposed of by this court on 20.4.2022 quashing the complaint *supra* and proceedings emanating therefrom.
5. It is being next stated that faced with the dismissal of the complaint *supra*, the respondent herein, being a resident of New Delhi, flew to Srinagar, and started illegal activities and committed offences against the petitioner 1, which necessitated filing of a complaint by the petitioner herein before the police station concerned on 10.5.2022. The said complaint is stated to have been followed by another complaint by the petitioner 1 herein on 16.6.2022 before the police station concerned after the respondent herein threatened the petitioner 1 of physical assault and direct consequences.

6. It is being further stated that the respondent herein filed an application before the Revenue authorities on 24.5.2022 for partition of the properties situated at Nursing Garh and Kothi Bagh whereupon the Tehsildar South, Srinagar, is stated to have passed an *ex parte* order on 24.6.2022 constituting a team for carrying out the partition of the property on 28.6.2022, aggrieved whereof the petitioner is stated to have filed an application for recalling of the said order before the Tehsildar on 27.6.2022 and the said order was consequently recalled.
7. It is being further stated that the respondent herein also filed a suit for partition of the properties left behind by her deceased father in the court of Principal District Judge Srinagar which suit came to be transferred for adjudication of the court Chief Judicial Magistrate Srinagar.
8. It is being next stated that the respondent herein having failed to obtain any relief from the courts filed an application under section 156 (3) Cr.PC seeking therein a direction to the SHO, Police Station, Crime Branch, for taking necessary action having alleged in the complaint that her signatures were forged and a writ petition was withdrawn way back in the year 2015. The said complaint is stated to have been disposed of by the court of City Judge/JMIC Srinagar holding that on preliminary enquiry in the matter, before proceeding ahead in the case it is desirable to directed SHO police station concerned to conduct a preliminary enquiry in the matter

and in case commission of a cognizable offence is made out upon conclusion of enquiry, he shall register an FIR in the matter and file a report in the case. The petitioners claim to have no information and knowledge about the filing of the aforesaid application and stated to have come to know about it only after they came to be summoned by the Crime Branch in this regard.

9. It is being further stated that the respondent herein in the meantime again approached the Revenue authorities for demarcation of property whereupon an order came to be passed by the Tehsildar, South.
10. It is being stated that on 19.9.2022 at around 6 PM, 12 to 14 persons forcibly and unauthorisedly entered the property of the petitioners along with Naib Tehsildar Kothibagh and broke open the gates and threatened the petitioner as a consequence whereof the petitioner filed an application before the Divisional Commissioner, who directed for an inquiry into the matter.
11. It is next stated in the petition that failing to get any relief, the respondent herein filed the impugned complaint wherein the court below passed the impugned order.
12. Petitioners herein being accused persons in the impugned complaint filed by the respondent herein under section 156 (3) Cr.PC have maintained the instant petition on the grounds urged therein while seeking its quashment as also of the impugned order dated 3.10.2022.

13. **Response/reply** to the petition has been filed by the respondent herein wherein it is being admitted that the respondent herein filed impugned complaint under section 151 (3) Cr.PC before the Magistrate after the requirements under section 154 (3) Cr.PC came to be complied with by the complainant respondent herein having reported the matter not only to the SHO concerned but also to Sr. Superintendent of Police as well as to the Director General of Police through various emails, copies whereof placed on record with the objections.
14. It is further stated in the objections that the petitioners herein resorted to violence and broke open the locks of the room of the respondent herein and restrained the complainant respondent herein from entering the house besides damaging furniture of the rooms of the property the complainant is in possession of while taking advantage of the decision of court passed in the earlier CRM(M) 403/2021 petition filed by them against the complaint of the complainant respondent herein and cognizance order passed thereon.
15. It is being denied in the objections that the respondent herein is giving colour of criminal offences to a civil dispute and while defending the maintainability of the complaint and the impugned order it has been averred in the objections that impugned order has been passed validly and legally by the Magistrate and that upon furnishing of a report of enquiry/investigation by the police

concerned, in case no offence on the basis of allegations in the complaint is made out against the petitioners, the complaint would be dismissed.

Heard learned counsel for the parties and perused the record.

16. The appearing counsel for the petitioners while making his submissions would vehemently argue that the complaint filed by the respondent herein is baseless and unfounded, and that the impugned order came to be passed by the Magistrate in violation of the mandatory guidelines laid down by the Apex Court in case titled as **Priyanka Srivastava and another versus State of Uttar Pradesh and others reported in 2015 (6) SCC 287** followed by a judgment passed in case titled as **Babu Venkatesh and others versus State of Karnataka and another reported in (2022) 5 SCC 639**, as there was nothing on record suggesting that the respondent complainant had complied with the provisions of sections 154(1) and 154(3) Cr.PC before taking recourse to provisions of section 156 (3) Cr.PC. It is also contended by the counsel for the petitioners that the allegations levelled in the complaint by the respondent herein, in essence pertain to the properties left behind by their predecessor-in-interest being a private family dispute and the complainant respondent herein sought setting criminal law into motion for settlement of such civil family disputes.

17. Learned counsel for the complainant respondent on the contrary while opposing the contentions of the counsel for the petitioner contends that the complaint came to be filed by the respondent herein for the criminal acts committed by the accused persons petitioners herein and invoked the provisions of section 156 (3) Cr.PC after complying with section 154 (1) and 154 (3) Cr.PC.
18. Law is no more res integra and stands settled in regard to the ambit and scope of section 156 (3) Cr.PC in a series of judgments passed by the Apex Court including in case titled as **Vinubhai Haribhai Malaviya and others versus State of Gujarat and another reported in (2019) 17 SCC 1** wherein in paras 24 and 25 following has been laid down:

“24. Likewise, in [Sakiri Vasu v. State of U.P. and Ors.](#) (2008) 2 SCC 409, this Court held:

“12. Thus in [Mohd. Yousuf v. Afaq Jahan](#) [(2006) 1 SCC 627: (2006) 1 SCC (Cri) 460: JT (2006) 1 SC 10] this Court observed: (SCC p. 631, para 11)

“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 complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.”

13. The same view was taken by this Court in [Dilawar Singh v. State of Delhi](#) [(2007) 12 SCC 641 : JT (2007) 10 SC 585] (JT vide para 17). We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under [Section 156\(3\)](#) CrPC, and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order(s) as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under [Section 156\(3\)](#) CrPC.

14. Section 156(3) states:

“156. (3) Any Magistrate empowered under [Section 190](#) may order such an investigation as abovementioned.” The words “as abovementioned” obviously refer to [Section 156\(1\)](#), which contemplates investigation by the officer in charge of the police station.

15. [Section 156\(3\)](#) provides for a check by the Magistrate on the police performing its duties under Chapter XII CrPC. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

16. The power in the Magistrate to order further investigation under [Section 156\(3\)](#) is an independent power and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide [Section 173\(8\)](#). Hence the Magistrate can order reopening of the investigation even after the police submits the final report, vide [State of Bihar v. J.A.C. Saldanha](#) [(1980) 1 SCC 554 : 1980 SCC (Cri) 272 : AIR 1980 SC 326] (SCC : AIR para 19).

17. In our opinion [Section 156\(3\)](#) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. [Section 156\(3\)](#) CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

18. It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power

and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution.”

25. It is thus clear that the Magistrate’s power under [Section 156\(3\)](#) of the CrPC is very wide, for it is this judicial authority that must be satisfied that a proper investigation by the police takes place. To ensure that a “proper investigation” takes place in the sense of a fair and just investigation by the police - which such Magistrate is to supervise - [Article 21](#) of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him under [Section 173\(2\)](#); and which power would continue to enure in such Magistrate at all stages of the criminal proceedings until the trial itself commences. Indeed, even textually, the “investigation” referred to in [Section 156\(1\)](#) of the CrPC would, as per the definition of “investigation” under [Section 2\(h\)](#), include all proceedings for collection of evidence conducted by a police officer; which would undoubtedly include proceedings by way of further investigation under [Section 173\(8\)](#) of the CrPC.

A reference to the judgments of the Apex court passed in **Priyanka Srivastava supra** also being relevant and germane herein would also be appropriate, wherein at paras 30 and 31 following has been laid down:

“30. In our considered opinion, a stage has come in this country where [Section 156\(3\)](#) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under [Article 226](#) of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under [Section 154\(1\)](#) and [154\(3\)](#) while filing a petition under [Section 156\(3\)](#). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under [Section 156\(3\)](#) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under [Section 156\(3\)](#). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

19. Keeping in mind the aforesaid principles and position of law and reverting back to the case in hand, perusal of the record would reveal that the complainant respondent herein seemingly forwarded a complaint on 5.5.2022 before SHO police station concerned as is evident from annexure-B appended to the objections being the pictures of Whatsapp chats between the complainant respondent herein and SHO police station concerned revealing that the complainant had submitted a complaint and made request to the SHO police station concerned for registration of a case and response thereto from the SHO that the complaint has been diarized and is proceeded legally. Further perusal of the record would further reveal that the complainant had requested the SHO concerned to provide the details of the diarized three complaints filed by her on 9.6.2022. Another complaint also appears to have

been filed through Whatsapp by the complainant respondent herein to SHO concerned on 22.9.2022 after the complainant alleged harassment and attack on her by the petitioner 1 herein. Further perusal of the reply filed by the respondent herein tends to show that the complainant respondent herein had also lodged a complaint on the same lines before the SSP concerned on 24.6.2022, 20.9.2022, 27.9.2022 and 3.10.2022 intimating him that the complaints also stand filed before the SHO concerned who had failed to give any confirmation of the same.

20. The aforesaid facts essentially amounts to substantial compliance of section 154 (1) and 154 (3) Cr.PC and as such the complainant respondent herein can safely be said to have complied with the said requirement for invoking the provisions of section 156 (3) Cr.PC, so much so that compliance of filing an affidavit along with application filed under section 156 (3) by the complainant respondent also being *sine qua non* under and in terms of the principles of law laid down in the Priyanka Srivastava *supra* also seemingly has been complied with by the complainant respondent.
21. In view of the aforesaid facts and circumstances, the filing of the complaint/application by the respondent herein and its entertaining by the Magistrate and passing of the impugned order cannot be found fault with. Even if it is assumed that the Whatsapp chats and the email aforesaid were not part of the complaint at the time of its filing before the Magistrate as at this stage while examining the

validity of the complaint as also the impugned order, non-filing of the same before the Magistrate would be having no effect on the merits of the application now in view of the said material being available before this court.

22. The next question that would be for consideration of this court would be as to whether exercise of inherent powers is warranted in the facts and circumstances of the case. Law in this regard is no more *res integra* and stands settled by the Apex Court in a catena of judgments including the one passed in case titled as *Neeharika Infrastructure Private Limited v. State of Maharashtra* reported in *2021 SCC OnLine SC 315*, holding that criminal proceedings are not to be scuttled in the initial stage and that quashment of a complaint/FIR should be an exception and a rarity than an ordinary rule as the inherent power of the court do not confer an arbitrary jurisdiction on the court to act according to the whims and caprice and though the inherent power is very wide but conferment of the same requires the court to be cautious and casts an onerous and very diligent duty on the Court.
23. In view of the aforesaid position and principles of law and having regard to the facts of the case the instant petition fails and is accordingly *dismissed*.

(Javed Iqbal Wani)
Judge

Srinagar
01.09.2023

N Ahmad

Whether the order is speaking?	Yes
Whether approved for reporting?	Yes