

**IN THE COURT OF SH. VIRENDER BHAT, A.S.J., DWARKA
COURTS, NEW DELHI.**

CR No. 152/12.

Unique Case ID No.02405R0079272012.

**All India Federation of
Agricultural Association (AIFAA)
(Through Secretary General)
A/G-4, National Societies Block,
NASC Complex, Pusa,
New Delhi – 110 012.**

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Petitioner.

Vs.

**State.
(Through NCT of Delhi)**

.....

Respondent.

Date of Institution : 25.4.2012.

05.5.2012

Present : Sh. Praveen Singh, Advocate for the petitioner
alongwith Sh. Sehdev Singh, A.R. of the petitioner
society.

Arguments heard on the revision petition.

ORDER

1. The petitioner has assailed the order dated 21.3.2012 of the Ld. M.M.-05, Dwarka, New Delhi, whereby the Ld. Magistrate declined to direct registration of FIR and dismissed the application u/s.156(3) Cr.PC of the petitioner.

2. It appears that the petitioner has filed a complaint against one Sh. H.K. Gangwani, Advocate, before the Trial court under section 190 read with section 200 of Cr.PC alleging commission of offence punishable u/s.415, 417, 419, 420, 463,

464, 465, 466, 470, 477A and 120B IPC read with sections 7, 8 and 13 of Prevention of Corruption Act, 1988. It has been contended in the complaint that Sh. H.K. Gangwani, Advocate, was engaged by the Department of Agriculture & Cooperation to contest the civil suit bearing no.930/2008 and also criminal revision petition no. 286/2009 filed by the petitioner. It has been alleged that the Department of Agriculture & Cooperation had sanctioned a fee of Rs.48,650/- per hearing for the said advocate. It has been further alleged that the advocate Sh. Gangwani in collusion with officials in the Department of Agriculture & Cooperation, has committed serious fraud and irregularities in respect of advocate's fee payable to him by the department. According to the petitioner, advocate Gangwani had been raising bills for the imaginary dates of hearing and also for the dates of hearing, on which he never appeared in the court on behalf of the department in the aforesaid two cases.

3. The Ld. Magistrate has observed in the impugned order that there is no dispute regarding the identity of the accused i.e. advocate Gangwani and the mode as well as manner in which the offence has been committed, can very well be established by the petitioner by leading evidence. Accordingly, Ld. Magistrate dismissed the application u/s.156(3) Cr.PC of the petitioner.

4. Ld. Counsel for the petitioner has argued that the Ld. Magistrate has failed to appreciate that the huge amount of fee had been released by the officials of the Department to advocate Sh. Gangwani without verifying the genuineness of his bills and thus immense loss has been caused to the Public Exchequer. He

argued that the Ld. Magistrate has committed an error in dismissing the application u/s.156(3) Cr.PC as the complaint of the petitioner disclosed commission of a cognizable offence. He also submitted that the SHO, P.S. Inder Puri also committed a grave error in the first place in not entertaining the complaint of the petitioner and not filing an FIR on the basis of the same. According to him, the SHO cannot refuse registration of FIR on any ground whatsoever, when the complaint brought to his notice disclosing the commission of cognizable offence.

5. I have considered the submission of Ld. Counsel for the petitioner and have perused the impugned order as well as Trial Court record.

6. It is apparent from the record that the petitioner had approached P.S. Inderpuri with his complaint against advocate Sh. Gangwani but no action was taken on his complaint as the police officials were of the opinion that the offence has not been committed within the territorial jurisdiction of their police station. The refusal of police official of P.S. Inderpuri to register FIR on the ground of lack of jurisdiction cannot be sustained and the same is patently unjustified. The SHO of a police station is bound to register an FIR where commission of a cognizable offence is brought to his notice. In case he is of the view that the place of occurrence does not fall within the territorial jurisdiction of his police station, he may then transfer the FIR to the concerned police station.

7. Let me now examine the impugned order on the

touchstone of legal principles enunciated by our own High Court and the Supreme Court in this regard and also in view of the factual matrix appearing in the present case.

8. **Sub-section 3 of Section 156 Cr.P.C.** reads as under:-

“(3) Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned.”

9. It would also be useful to note the provisions of **Section 190 Cr.P.C.** which are as under:-

Section 190:- Cognizance of offences by Magistrate.- (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.

10. A combined reading of aforesaid two provisions of law reveals that a Magistrate is neither bound to take cognizance of the offence mentioned in a complaint before him, nor is he bound to order any investigation into the offence alleged in the complaint. The use of word 'may' in both the aforesaid Sections

leaves it to the judicial discretion of the Magistrate concern either to take cognizance of the offence or to direct investigations into the offence.

11. No doubt the discretion has to be exercised by the Magistrate after taking into consideration all the relevant facts and circumstances of the case and in a judicious manner. Besides ascertaining whether complaint discloses the commission of cognizable offence, the Magistrate has also to satisfy himself that the nature of allegations in the complaint is such as requires investigations by the Police in the matter of collection of evidence, custodial interrogation of the accused, taking the opinion of the experts etc. etc.

12. The procedure to be followed by a Magistrate while dealing with an application u/s 156 (3) Cr.P.C. has been succinctly explained by the Hon'ble High Court in **2010 (3) LRC 120 (Del) High Court of Delhi Subhakaran Loharuka & Anr. Vs. State (Govt. of NCT of Delhi) & anr.**, as under:-

(i) Whenever a Magistrate is called upon to pass orders under Section 156 (3) of the Code, at the outset, the Magistrate should ensure that before coming to the Court, the Complainant did approach the police officer in charge of the Police Station having jurisdiction over the area for recording the information available with him disclosing the commission of a cognizable offence by the person/persons arrayed as an accused in the complainant. It should also be examined what action was taken by he SHO, or even by the senior officer of the Police, when approached by the Complainant under Section 154(3) of the Code.

(ii) The Magistrate should then form his own opinion whether the facts mentioned in the complaint disclose

commission of cognizable offences by the accused persons arrayed in the Complaint which can be tried in his jurisdiction. He should also satisfy himself about the need for investigation by the Police in the matter. A preliminary enquiry as this is permissible even by an SHO and if no such enquiry has been done by the SHO, then it is all the more necessary for the Magistrate to consider all these factors. For that purpose, the Magistrate must apply his mind and such application of mind should be reflected in the Order passed by him.

Upon a preliminary satisfaction, unless here are exceptional circumstances to be recorded in writing, a status report by the Police is to be called for before passing final orders.

(iii) *The Magistrate, when approached with a Complaint under Section 200 of the Code, should invariably proceed under Chapter XV by taking cognizance of the Complaint, recording evidence and then deciding the question of issuance of process to the accused. In that case also, the Magistrate is fully entitled to postpone the process if it is felt that there is a necessity to call for a police report under Section 202 of the Code.*

(iv) *Of course, it is open to the Magistrate to proceed under Chapter XII of the Code when an application under Section 156 (3) of the Code is also filed alongwith with a complaint under Section 200 of the Code if the Magistrate decides not to take cognizance of the complaint. However, in that case, the Magistrate, before passing any order to proceed under Chapter XII, should not only satisfy himself about the pre-requisites as aforesaid, but, additionally, he should also be satisfied that it is necessary to direct Police investigation in the matter for collection of evidence which is neither in the possession of the complainant nor can be produced by the witnesses on being summoned by the Court at the instance of complainant, and the matter is such which calls for investigation by a State Agency. The Magistrate must pass an order giving cogent reasons as to why he intends to proceed under Chapter XII instead of Chapter XV of the Code.*

13. Thus, when a Magistrate is approached with a complaint, normally he shall proceed under chapter-XV of the code of criminal Procedure by taking cognizance of the complaint, taking the evidence produced by the complainant and then deciding whether or not to proceed against the accused. The Magistrate may proceed under chapter XII of the Code when the complaint is accompanied by an application u/s 156 (3) Cr.P.C., if he is satisfied that it is not possible for the complainant to collect the incriminating evidence against the accused and that the custodial interrogation of the accused is necessary in order to unearth any conspiracy entered into by the accused. Directing registration of an FIR entails serious consequences, as the accused may be arrested pursuant to the registration of the FIR, which would amount to infringement of their personal liberty. Therefore, it is all the more necessary for a Magistrate to be circumspect in passing any such order which is likely to affect the liberty of an individual. The Magistrate would be required to pass a reasoned order, if he intends to proceed under chapter XII instead of chapter XV of the Code.

14. It would also be relevant to point out what the Supreme Court had observed in **Suresh Chand Jain vs. State of Madhya Pradesh, 2001 (1) AD (Crl.) SC 34** :

“It is true that Section 156(3) of the Code empowers a Magistrate to direct the police to register a case and initiate investigations but this power has to be exercised judiciously on proper grounds and not in a mechanical manner. In those cases where the allegations are not very serious and the complainant

himself is in possession of evidence to prove his allegations there should be no need to pass orders under Section 156(3) of the Code. The discretion ought to be exercised after proper application of mind and only in those cases where the Magistrate is of the view that the nature of allegations is such that the complainant himself may not be in a position to collect and produce evidence before the Court and interests of justice demand that the police should step in to help the complainant. The police assistance can be taken by a Magistrate even Under Section 202 (1) of the Code after taking cognizance and proceeding with the complaint under Chapter XV of the Code.

Section 156(3) of the Code aims at curtailing and controlling the arbitrariness on the part of the police authorities in the matter of registration of FIRs and taking up investigations, even in those cases where the same are warranted. The Section empowers the Magistrate to issue directions in this regard but this provision should not be permitted to be misused by the complainants to get police cases registered even in those cases which are not very serious in nature and the Magistrate himself can hold enquiry under Chapter XV and proceed against the accused if required. Therefore, the Magistrate, must apply his mind before passing an order under Section 156(3) of the Code and must not pass these orders mechanically on the mere asking by the complainant. These powers ought to be exercised primarily in those cases where the allegations are quite serious or evidence is beyond the reach of complainant or custodial interrogation appears to be necessary for some recovery of articles or discovery of fact."

15. In Para 42, Hon'ble Supreme Court elaborated the conditions which require exercises of discretionary powers of ordering registration of FIR :

"Thus, there are pre-requisites to be followed by the complainant before approaching the Magistrate under Section 156(3) of the Code which is a discretionary remedy as the provision proceeds with

the word "May". The magistrate is required to exercise his mind while doing so. He should pass orders only if he is satisfied that the information reveals commission of cognizable offences and also about necessity of police investigation for digging out of evidence neither in possession of the complainant nor can be procured without the assistance of the police. It is thus not necessary that in every case where a complaint has been filed under Section 200 of the Code the Magistrate should direct the Police to investigate the crime merely because an application has also been filed under Section 156(3) if the Code even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, may be with the assistance of the court or otherwise. The issue of jurisdiction also becomes important at that stage and cannot be ignored."

16. Coming to the present case, there can be no two opinions that the identity of the accused is not in dispute. It also appears prima facie that the advocate Sh. Gangwani had raised bills to the Department of Agriculture & Cooperation for 17.12.09 in Criminal Revision petition no.296/2009 whereas the said revision petition was not listed before the court on 17.12.09. It is also apparent that the Ld. Counsel raised another bill for 19.12.09 whereas he did not appear before the court on that day. Similarly, another bill was raised for 06.2.2010, on which date also advocate Sh. Gangwani had not appeared before the court. It is also apparent that the Ld. Counsel Sh. Gangwani raised bill in civil suit no.930/08 (new No.299/2008) pending disposal in the court of Sh. D.K. Malhotra, Ld. Additional District Judge, Tis Hazari Court, Delhi, for date 29.8.2008 and on 16.1.2010, on which dates no effective hearing had taken place and only adjournments were sought from

the court.

17. No doubt, the fraud, misappropriation and cheating committed by advocate Sh. Gangwani to the extent mentioned herein-above can be proved by the petitioner by leading his evidence before the Trial Court, I do not think that matter ends there. It needs to be investigated and found out who and in what circumstances passed the bills submitted by the Ld. Counsel in the Department of Agriculture & Cooperation, Government of India. Apparently, there seems to be some collusion between advocate Gangwani and the concerned officials posted in the Department of Agriculture & Cooperation, Government of India, which needs to be unearthed. The loss caused to the Public Exchequer and the consolidated fund of India, from which the fee has been paid to advocate Sh. Ganwani, cannot be brushed aside lightly and cannot be left for the petitioner to prove it. The exact magnitude of the fraud and the persons responsible for the same have to be found out and it can be done only through a proper investigation by the police.

18. The petitioner has no means to inspect the accounts of the Department of Agriculture & Cooperation, Govt. of India, and other relevant record. Such records can be got checked thoroughly only through police machinery. The petitioner cannot be expected to prove his allegations in the court when officers/officials of the said department appear to be hand in glove with Advocate Gangwani.

19. In my opinion, this is a fit case where directions for

registration of FIR should have been passed. The impugned order of the Ld. Magistrate dismissing the application u/s.156(3) of the petitioner cannot be sustained and is hereby set aside.

20. The SHO, P.S. Inderpuri, is directed to register an FIR in this case under relevant provisions of law as disclosed in the complaint of the petitioner. He shall, thereupon, conduct the investigation himself.

21. Revision petition stands allowed. Revision file be consigned to Record Room and copy of the order be sent to the Trial Court.

22. A copy of this order be sent to SHO, P.S. Inderpuri, for compliance.

**Announced in open
Court on 05.5.2012.**

**(VIRENDER BHAT)
A.S.J. :Dwarka Courts
New Delhi**