AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1583 of 2017

1. Rajendra Chawla S/o Late Shri Harbajan Singh Chawla, Aged About 54 Years Karyakari President, Guru Nanak Shikshan Samiti, Dayalband, Bilaspur, R/o Career Point Ki Gali, Dayalband, Police Station City Kotwali, District Bilaspur, Chhattisgarh.

2. Harbansh Lal Ajmani, S/o Mulkraj Ajmani, Aged About 63 Years Present President/ Ex. Karyakari President, R/o Dashmesh Colony, Dayalband, Near Punjab Tent House, Police Station City Kotwali, District Bilaspur, Chhattisgarh.

3. Indrajeet Singh Chawla, S/o Late Shri Lal Singh Chawla, Aged About 75 Years Present Vice President, R/o Jagmal Chowk, Behind Yamha Show Room, Police Station City Kotwali, District Bilaspur, Chhattisgarh.

4. Jaspal Singh Ajmani, S/o Late Shri Shadilal Ajmani, Aged About 48 Years Karyakarini, R/o Near Dayalband Gurudwara, Police Station City Kotwali, District Bilaspur, Chhattisgarh.

5. Devendrapal Panesar, S/o M. S. Panesar, Aged About 58 Years Secretary, R/o Tikrapara, Panesar Bhawan, Near 16 Kholi, Police Station City Kotwali, District Bilaspur, Chhattisgarh.

6. Gurucharan Singh Juneja, S/o Late Shri Inshwar Singh Juneja, Aged About 57 Years Railway Guard, R/o Ganesh Parisar, Sindhi Dharamsala, P. S. Torwa, District Bilaspur, Chhattisgarh.

7. Charanjeet Singh Ajmani, S/o Mulkraj Ajmani, Aged About 56 Years R/o Behind Hotel Raj, Dayalband, P. S. City Kotwali, District Bilaspur, Chhattisgarh.

8. Kiranpal Chawla, S/o Late Shri Harbhajan Chawla, Aged About 45 Years R/o Career Point, Police Station City Kotwali, District Bilaspur, Chhattisgarh.

9. Praveen Kumar Saluja, S/o Manehdra Lal Saluja, Aged About 45 Years R/o Tikrapara, Opposite Dr. Ghosh, Police Station City Kotwali, District Bilaspur, Chhattisgarh.

10. Surendra Singh Chawla, S/o Late Shri Harbhajan Singh Chawla, Aged About 48 Years R/o Career Point, Police Station City Kotwali, District Bilaspur, Chhattisgarh.

11. Jaspal Singh Kanuja, S/o Arjundas, Aged About 50 Years R/o Near Punjab Tent House, Dayalband, Police Station City Kotwali, District Bilaspur, Chhattisgarh.

12. Gurmeet Singh Arora, S/o Gurumukh Singh, Aged About 55 Years R/o Near Torva Primary School, Police Station Torva, District Bilaspur, Chhattisgarh.

13. Balbeer Singh Saluja, S/o Late Shri Harbansh Singh Saluja, Aged

About 58 Years R/o Punjabi Colony, Dayalband, Police Station City Kotwali, District Bilaspur, Chhattisgarh.

14. Manjit Singh Gandhi, S/o Late Shri Sohan Singh Gandhi, Aged About 62 Years R/o Tikrapara, Geeta Vidyalaya, Police Station City Kotwali, District Bilaspur, Chhattisgarh.

15. Harjit Singh Chabda, S/o Mahendra Chabda, Aged About 37 Years R/o Rajgeer Mohalla, Tikrapara, Police Station City Kotwali, District Bilaspur, Chhattisgarh.

16. Satish Chabda, S/o Gurudasmal, Aged About 53 Years Lab Attendant, Khalsa Higher Secondary School, Dayalband, P. S. City Kotwali, District Bilaspur, Chhattisgarh. **--- Petitioners**

Versus

1. Chandra Prakash Chabda S/o Late Shri Mangal Sen Chabda, Aged About 59 Years R/o Steel Emporium Railway Market, Budhwari Bazar, Police Station Torva, Thasil And District Bilaspur, Chhattisgarh., Chhattisgarh

2. Station House Officer, Police Station City Kotwali, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh. **--- Respondents**

For the applicant : Mr. Rajeev Shrivastava, Advocate.
For the Respondent No.1 : Mr. Amrito Das, Advocate
For respondent No.2 : Mr. Ravi Bhagat, Dy.G.A.

CRMP No. 1663 of 2017

1. Rajendra Chawla S/o Late Shri Harbajan Singh Chawla, Aged About 54 Years Karyakari President, Guru Nanak Shikshan Samiti, Dayalband, Bilaspur, R/o Career Point Ki Gali, Dayalband, P.S. City Kotwali, District Bilaspur, Chhattisgarh.

2. Harbansh Lal Ajmani S/o Mulkraj Ajmani, Aged About 63 Years Present President/ Ex. Karyakari President, R/o Dashmesh Colony, Dayalband, Near Punjab Tent House, P.S. City Kotwali, District Bilaspur, Chhattisgarh.

3. Indrajeet Singh Chawla S/o Late Shri Lal Singh Chawla, Aged About 75 Years Present Vice President, R/o Jagmal Chowk, Behind Yamha Show Room, P.S. City Kotwali, District Bilaspur, Chhattisgarh.

4. Jaspal Singh Ajmani S/o Late Shri Shadilal Ajmani, Aged About 48 Years Karyakarini, R/o Near Dayalband Gurudwara, P.S. City Kotwali, District Bilaspur, Chhattisgarh.

5. Devendrapal Panesar S/o M.S.Panesar, Aged About 58 Years Secretary, R/o Tikrapara, Panesar Bhawan, Near 16 Kholi, P.S. City Kotwali, District Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh

6. Gurucharan Singh Juneja S/o Late Shri Inshwar Singh Juneja, Aged About 57 Years Railway Guard, R/o Ganesh Parisar, Sindhi

Dharamsala, P.S. Torwa, District Bilaspur, Chhattisgarh.

7. Charanjeet Singh Ajmani S/o Mulkraj Ajmani, Aged About 56 Years R/o Behind Hotel Raj, Dayalband, P.S. City Kotwali, District Bilaspur, Chhattisgarh.

8. Kiranpal Chawla S/o Late Shri Harbhajan Chawla, Aged About 45 Years R/o Career Point, P.S. City Kotwali, District Bilaspur, Chhattisgarh.

9. Praveen Kumar Saluja S/o Mahendra Lal Saluja, Aged About 45 Years R/o Tikrapara, Opp. Dr. Ghosh, P.S. City Kotwali, District Bilaspur, Chhattisgarh.

10. Surendra Singh Chawla S/o Late Shri Harbhajan Singh Chawla, Aged About 48 Years R/o Career Point, P.S. City Kotwali, District Bilaspur, Chhattisgarh.

11. Jaspal Singh Kanuja S/o Arjundas, Aged About 50 Years R/o Near Punjab Tent House, Dayalband, P.S. City Kotwali, District Bilaspur, Chhattisgarh.

12. Gurmeet Singh Arora S/o Gurumukh Singh, Aged About 55 Years R/o Near Torva Primary School, P.S. Torva, District Bilaspur, Chhattisgarh.

13. Balbeer Singh Saluja S/o Late Shri Harbansh Singh Saluja, Aged About 58 Years R/o Punjabi Colony, Dayalband, P.S. City Kotwali, District Bilaspur, Chhattisgarh.

14. Manjit Singh Gandhi S/o Late Shri Sohan Singh Gandhi, Aged About 62 Years R/o Tikrapara, Geeta Vidyalaya, P.S. City Kotwali, District Bilaspur, Chhattisgarh.

15. Harjit Singh Chabda S/o Mahendra Chabda, Aged About 37 Years R/o Rajgeer Mohalla, Tikrapara, P.S. City Kotwali, District Bilaspur, Chhattisgarh.

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Versus

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2. Station House Officer, Police Station City Kotwali, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh

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For the applicant : Mr. Rajeev Shrivastava, Advocate.
For Respondent No.1 : Mr. Amrito Das, Advocate
For respondent No.2 : Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Goutam Bhaduri

CAV ORDER/JUDGMENT

Reserved on 23.01.2019

Pronounced on 28.02.2019

1. Both the petitions i.e., Cr.M.P.No.1583 of 2017 & Cr.M.P. No.1663 of 2017 are decided together as two different orders passed by the Courts below in different stages are subject to challenge in one proceeding. Since the facts and law involved in both the cases are one and the same, they are decided by this common order.
2. Cr.M.P.No.1663 of 2017 is against the judgment dated 23rd August 2017 passed in Criminal Revision No.119 of 2017 by the Sixth Additional Sessions Judge, Bilaspur. The said order was passed by the revisional Court against the order dated 07.06.2017 passed by the Judicial Magistrate First Class, Bilaspur whereby the JMFC has refused to take cognizance of the complaint u/s 156(3) of Cr.P.C. In the result the complaint moved by the complainant u/s 156(3) was dismissed.
3. Cr.M.P.No.1583/2017 is filed against the Order dated 09.10.2017 passed by Sixth Addl. Sessions Judge, Bilaspur in Criminal Revision No.188/2017. In such revision, the order passed by the JMFC dated 26.10.2017 was under challenge whereby the Magistrate has held that prima facie sufficient evidence is available and directed the Station Incharge, City Kotwali to register the case against the petitioners/accused u/ss 420, 467, 468, 471 of IPC and submit the final report after investigation.

4. Both the orders of the JMFC as also by the Revisional Court are passed in one Criminal Complaint filed but at the different stages, therefore, it involves the same facts which are narrated herein below :

5. The facts of the case are that a complaint was filed by respondent No.1 Chandra Prakash Chabra with an allegation that offence u/s 420, 465, 467, 468, 471 & 120-B has been committed by the petitioners herein. Along-with the application, another application was also filed u/s 156(3) of Cr.P.C. The subsequent order sheets which are on record would show that on 31.12.2016, the police report was called by the JMFC u/s 153(3) of Cr.P.C., and the case was further fixed for 28.02.2017 and on that date the police report was received. Thereafter on 10.03.2017 the arguments were heard finally. The order was passed on 07.06.2017 and the application u/s 156(3) was rejected. The aforesaid order was subject of revision before the Additional Sessions Judge. The Additional Sessions Judge by order dated 23rd August, 2017 remanded the case back to the JMFC with a direction to restrict the same in terms of section 156(3) of Cr.P.C. and passed the order. In such revision order only State was party. Subsequently after remand of the case, the trial Court by order dated 20.09.2017 observed that considering the facts alleged, it was felt that the statement u/s 200, 202 of Cr.P.C., would be required and directed the complainant to keep present his witnesses for recording evidence u/s 200 & 202 Cr.PC. The said order was again subject of challenge and by impugned order dated 09th October, 2017 passed in Criminal Revision No. 118 of 2017, the Revisional Court

observed that earlier direction given by it on 23.08.2017 has not been properly followed and set aside the order of JMFC dated 20.09.2017 and further directed for hearing and passed an order for consideration of the application u/s 156(3) of Cr.P.C. Under these circumstances on 26.10.2017, the JMFC heard the complainant u/s 156(3) and directed for registration of offence u/s 420, 467, 468, 471 of Cr.P.C.

6. Learned counsel for the petitioner would submit that initially the Judicial Magistrate has asked for the report from the police thereby has taken cognizance. However, when the application u/s 156(3) of Cr.P.C., was dismissed, the complainant filed revision without impleading the proposed accused in the revision, therefore, it would be against the principles laid down in ***(2012) 10 SCC 517 Manharibhai Muljibhai Kakadia Vs. Shaileshbhai Mohanbhai Patel.*** It is stated that as consequence of the Revisional Court order dated 09th October, 2017, the FIR has been registered. If the FIR has been registered, it would be the consequence of the order of Revisional Court, therefore, unless and until the petitioners were heard before the Revisional Court such order could not have been passed.

7. Per Contra, learned counsel for respondent No.1 submits that at this point of time the petition has become infructuous. It is stated that the FIR has been registered on 29.10.2017 before the instant Cr.M.P., was filed on 07.11.2017. It is further stated that even before the Order of the trial Court was stayed by interim order dated 13.11.2017 passed in Cr.M.P., the FIR was already registered.

8. Learned counsel for the respondent further submits that

since the summons were not issued as such the cognizance was not taken by the JMFC, therefore, there was no necessity to hear the applicants who were the proposed accused before the case is registered.

9. Counsel for the Respondents further shows that as on date the FIR has been registered as per the documents which is placed on record. Therefore, both the instant petitions have become infructuous. It is further submitted that as the FIR has its own sanctity and independent, it requires to be challenged separately. Consequently both the Cr.M.Ps., deserve to be dismissed.

10. Perused the records. A perusal of the records would show that initially a complaint was filed by the respondent u/s 200 of Cr.P.C., with a prayer that the offence u/s 420, 468, 471 & 120-B of IPC has been committed by the proposed accused. Along-with such complaint, another application was moved u/s 156(3) of the Cr.P.C., The Court of JMFC by order dated 07.06.2017 has passed an order and dismissed the application u/s 156(3) of Cr.P.C. The same was challenged in revision by the complainant and the revisional Court of Additional sessions Judge on 23rd August, 2017, remanded the case with a direction to reconsider the application u/s 156(3) of Cr.P.C., and set aside the order. The said order was subject of challenge in Cr.M.P. No.1663/2017. Subsequently, after the order of Sessions Judge was received, the JMFC again has passed the order dated 20.09.2017 and directed the complainant to keep his witnesses present for recording evidence u/ss 200 & 202 Cr.P.C.

11. The said order was again subjected to challenge in Criminal Revision No.188/2017 and the VIth Additional Sessions Judge by order dated 09th October, 2017 observed that the JMFC has not obeyed its direction given in order dated 23.08.2017 which was passed in Criminal Revision bearing No.119 of 2017. It was further observed that the Order of the JMFC dated 20.09.2017 does not take into account the direction to consider the application u/s 156(3) of Cr.P.C. Therefore, the order dated 20.09.2017 was set aside and directed that again the application u/s 156(3) of cr.P.C., should be considered. Subsequent thereto, the JMFC on 26.10.2017 heard the application u/s 156(3) of Cr.P.C., and directed the Police to register the case u/s 420, 467, 468 & 471 of IPC and further directed to conduct enquiry. Therefore, these cumulative orders are under challenge in these two petitions filed u/s 482 of Cr.P.C.

12. A perusal of the entire orders passed by the Additional Sessions Judge in Revision, prima facie appears to be faulty. The order of the JMFC dated 07.06.2017 is the outcome of rejection of an application u/s 156(3). The Magistrate as per the provisions of Section 156(3) of Chapter XII of Code and Section 202 of Chapter XV of the Code is empowered to direct the Police for investigation u/s 156(3) of the Code before taking cognizance of the offence or if he has chosen not to take cognizance of the offence, the Magistrate is also empowered to direct for investigation under Section 202 of the Code, if he chooses to take cognizance and after taking cognizance, both are stages of pre and post taking cognizance. Once the Magistrate has taken cognizance and

proceeded under Chapter XV of the Code, then he is not empowered to direct for investigation under Section 156(3) of the Code.

13. The revisional Court by its order dated 23rd August, 2017 has directed for reconsideration of application u/s 156(3) of Cr.P.C., to JMFC. The order would reveal that the JMFC thereafter on 20.09.2017 has directed to record evidence u/s 200 & 202 of Cr.P.C. The said order was subject of revision and the revisional Court again directed for hearing on application u/s 156(3) of the Code on the ground that the direction given on 23.08.2017 in earlier revision has not been followed. Therefore, the revisional Court has reiterated its earlier order that the JMFC should consider the application u/s 156(3) of Cr.P.C.

14. In these circumstances, Section 156(3) of the Code would be relevant which is reproduced as under :

> "**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."

15. Chapter XIV of the Code stipulates requisite conditions for initiation of proceedings. Section 190 contained in Chapter

XIV relates to cognizance of offences by the Magistrate which reads thus:

> "**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. "

16. The direction given by the Court apart from other facts that the aggrieved persons were not heard would be faulty as it is in direct conflict to the principles/proposition laid down by this Court in two cases i.e., (I) ***Rakhi Patel vs. State of Chhattisgarh 2013 CGLJ 638*** and ***Indresh Sharma vs. Heera Bai 2015 (II) MPJR 65***. Paras 14 & 15 of the decision rendered in *Rakhi Patel v. State of C.G* (supra) are relevant here and quoted below:

> "14. On a plain reading of Section 156(3) of Chapter XII of the Code and Section 202 of Chapter XV of the Code, it is clear that the Magistrate is empowered to direct the police for investigation under Section 156(3) of the Code before taking cognizance of the offence or if he has chosen not to take cognizance of the offence, the Magistrate is also empowered to direct for investigation under Section 202 of the Code, if he chooses to take cognizance and after taking cognizance, both are stages

of pre and post taking cognizance. Once the Magistrate has taken cognizance and proceeded under Chapter XV of the Code, then he is not empowered to direct for investigation under Section 156(3) of the Code.

15. As per copies of the order sheets, the Magistrate has directed for investigation not under Section 156(3) of the Code, after receiving report he has proceeded for recording evidence before registration and thereafter, he has passed the order under Section 156(3) of the Code. These order sheets reveal that the Magistrate has taken cognizance of the offence on 17-11-2008 and proceeded for enquiry under Chapter XV of the Code. Therefore, he was not competent to pass any order under Section 156(3) of the Code. By passing such order and proceeding under Section 156(3) of the Code vide order impugned, the Magistrate has committed illegality requiring interference in exercise of supervisory jurisdiction."

17. The order sheet would reveal that initially the Magistrate has asked for investigation u/s 156(3) of the Code and after receiving the report it was felt that no proceeding can be carried out as such dismissed the application. Therefore, before registration, he has passed the order u/s 156(3) of the Code.

18. The order sheet further reveals that subsequently the revisional Court passed the impugned order to reconsider the application u/s 156(3) of Cr.P.C. Section 156(3) of Cr.P.C., is a compliance to be made by the Police i.e., power to order for any enquiry/investigation. The scheme of the Code therefore would be clear that if the Magistrate after receiving the application u/s 156(3) sends it for investigation and the police after investigation finds out that no offence is made out then the Magistrate can proceed u/s 200 to record the

statement. Section 156(3) is an enabling provision to the effect that if the Magistrate is not satisfied he can proceed further to record the statement of witnesses of complaint u/s 200 of Cr.P.C. Here in the instant case, the revisional Court initially committed fault to again direct for investigation u/s 156(3) which the Court was not empowered. After the remand of the case by initial order dated 23rd August, 2017 passed by the revisional Court, the learned trial Court by order dated 20th September, 2017 has proceeded to record the statement u/s 200 & 202 and thereby has proceeded under Chapter XV of Cr.P.C. The said order further being subject of revision, the revisional Court again committed a fault by passing impugned order dated 09th October, 2017 and again tried to set back the clock which is not permissible under law to direct the JMFC to proceed u/s 156(3) of Cr.P.C.

19. Consequently both the orders of the revisional Court directing the JMFC u/s 156(3) of Cr.P.C., on earlier occasion followed by 2nd order dated 09th October 2017 would be in gross conflict to the settled proposition of law. Therefore, it is settled proposition that the Magistrate can order investigation u/s 156(3) only at precognizance stage that is to say before taking cognizance u/ss 190, 200 & 204 and where by Magistrate decides to take cognizance under the provisions of Chapter XIV, he is not entitled in law to order any investigation under section 156(3). The said legal proposition has been laid down by th Supreme Court in case of ***Tula Ram v. Kishore Singh AIR 1977 S.C. 2401 (Para 14)*** which was followed by this Court in ***Indresh Sharma Vs. Heera Bai 2015 (II) MPJR 65*** wherein the

following legal propositions quoted which read thus :

> " 1. That a Magistrate can order investigation under section 156(3) only at the pre-cognizance stage that is to say, before taking cognizance under Sections 190, 200 & 204 and where a Magistrate decides to take cognizance under the provisions of Chapter 14 he is not entitled in law to order any investigation under Section 156(3) though in cases not falling within the proviso to section 202, he can order an investigation by the Police which would be in the nature of an enquiry as contemplated by Section 202 of the Code.
>
> 2. Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives :
>
> (a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straight-away issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complaint or his witnesses.
>
> (b) The Magistrate can postpone the issue of process and direct an enquiry by himself.
>
> (c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.
>
> 3. In case the Magistrate after considering the statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceeding he can dismiss the complaint.
>
> 4. Where a Magistrate orders investigation by the police before taking cognizance under section 156(3) of the Code and receives the report thereupon he can act on the report and discharge the accused or straight-away issue process against the accused or apply his mind to the complaint filed before him and take action under Section 190 as described above."

20. In view of the aforesaid legal propositions, the order directing

reinvestigation and reconsideration of application u/s 156(3) of Cr.P.C., which was passed by the Revisional Court is illegal and bad and could not have been ordered. Apart from the aforesaid facts, another important thing which emerges in both the revisions is the legal provisions of sections 397, 399 & 401 of Cr.P.C., itself govern the revisions as the revisional Court failed to follow the provisions of Cr.P.C.

21. Sections 397, 399 & 401 of Cr.P.C., are relevant here for the sake of reference and quoted below:

> 397. **Calling for records to exercise powers of revision.-** (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, leglity or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.
>
> Explanation - All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purpose of this sub-section and of Section 398.
>
> (2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.
>
> (3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

Section 399 of Cr.P.C., reads thus :

> 399. **Sessions Judge's powers of revision**.- (1) In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of Section 401.
>
> (2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3) (4) and (5) of Section 401 shall, so far as may be, apply to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.
>
> (3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.

Sub-section (2) of Section 399 says that where any proceeding by way of revision is commenced before a Sessions Court under sub-section (1), the provisions of sub-sections (2), (3), (4) & (5) of Section 401 shall apply to the proceeding. Therefore, section 401 of Cr.P.C. is relevant here which reads as under:

> **“Sec. 401.** High Court's Powers of revision.-(1) In the case of any proceeding, the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a court of appeal by Section 386, 389, 390 and 391 or on a Court of Session by Section 307 and, when the Judges composing the Court of revision are equally

divided in opinion, the case shall be disposed of in the manner provided by Section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

Sub-section (2) of Section 401 of Cr.P.C., mandates that no order in this section shall be made to the prejudice of the accused or the other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

22. In both the revisions, the proposed accused were not heard and the complainant had only preferred the revision against the State. When such order is passed without impleading the suspect cum accused in the complaint, the said oder would be in conflict to the principles laid down in (***2012) 10 SCC 517 Manharibhai Muljibhai Kakadia v. Shailesh Bhai Mohanbhai Patel*** wherein the Supreme Court has interpreted section 401 of sub-section (2). The Court held

that the expression "other person" in the context of section 401 sub-section (2) means a person other than the accused. It includes suspects or the persons alleged in the complaint to have been involved in an offence although they may not be termed as accused at a stage before issuance of process.

23. Since in this case the JMFC by initial order dated 07.06.2017 has dismissed the application u/s 156(3) Cr.P.C., thereby it would be a dismissal in termination of the complaint proceeding. Therefore, if such order was subject of challenge in revision, then by virtue of section 401(2) of Cr.P.C., the suspects get the right of hearing before the revisional Court although such order was passed without their participation. The right given to "accused" or "the other person" u/s 401(2) Cr.P.C., of being heard before the Revisional Court to defend an order which operates in his favour should be distinct. In the instant case, the revisional Court after termination of the complaint has revived it by a faulty finding to reconsider the application u/s 156(3) in absence of hearing of proposed accused to deprive of their valuable right. In such facts situation of the case, the Magistrate, after the second remand dated 09th October, 2017 of revisional Court, has reheard the matter on application u/s 156(3) and by order dated 26.10.2017 directed the Incharge of Police Station to register the FIR u/ss 420, 467, 468, 471 of IPC and submit the final report after investigation. A perusal of the copy of FIR would show that as per the direction of the Court, the FIR has been registered.

24. The Supreme Court in ***AIR 1968 SC 117 (Abhinandan Jha v. Dinesh Mishra*** had dealt with similar question as to

whether a Magistrate can direct the Police to submit a charge sheet when the Police after investigation into a cognizable offence has submitted a final report. The Supreme Court held that there is no power, expressly or impliedly conferred under the Code on a Magistrate to call upon the Police to submit a charge sheet, when they have sent a report under section 169 of the Code, that there is no case made out for sending up an accused for trial. It is further held that the the functions of the Magistracy and the Police are entirely different and though the Magistrate may accept or differ the report, he cannot impinge upon the jurisdiction of the Police, by compelling them to change their opinion, so as to accord with his view.

25. In the instant case the revisional Court has exceeded its jurisdiction not vested in it and virtually entered into jurisdiction of Police to direct for registration of FIR by not accepting the Police Report, which is not permissible. The Magistrate could have recorded the statement u/s 200 and thereafter could have proceeded but it is not the case here.

26. In the result, the FIR which is registered at the direction of the Magistrate despite the fact that the Police gave a report that no offence is made out, cannot be continued.

27. In view of the above discussion on facts and law, the petitions are allowed. The order of Judicial Magistrate and that of the Revisional Court are quashed. Consequently, the FIR which is registered against the petitioner shall also stand quashed.

Sd/-
GOUTAM BHADURI
JUDGE

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