antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would land the petitioner in a situation of denial of concession of bail.

5. DECISION:

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

In the afore-said terms, the present petition is hereby allowed.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

Result :- The petitioner is directed to be released on regular bail.

ABC 2025(I) 42ALL
ACQUITTAL & BAIL CASES
ALLAHABAD HIGH COURT

(Saurabh Lavania, J.)

Criminal Appeal No(s). 3500 of 2024

Decided On: 08 November 2024

MAIKU LAL AND ANOTHER – Appellant(s)

Versus

STATE OF U.P. THRU. PRIN. SECY. HOME DEPTT. LKO & ORS. – Respondent(s)

Law Covered:-(A) Bharatiya Nagarik Suraksha Sanhita, 2023 – Section 175(3) – Quashing – Principles of – Application seeking registration of an FIR under Section 175(3) BNSS dismissed – Allegations pertained to a land dispute where the appellants claimed they were assaulted by the private opposite parties – Magistrate observed the matter was prima facie a civil dispute, not requiring criminal investigation – Held, treating such disputes as criminal cases would be an abuse of process – Application rejected as per established legal principles. (Paras 18, 19)

(B) Code of Criminal Procedure, 1973 – Section 156(3) (Bharatiya Nagarik Suraksha Sanhita, 2023 – Section 175(3)) –

Judicial Discretion in Ordering Investigation – Law mandates judicial discretion in deciding applications under Section 175(3) BNSS – Held, Magistrates are empowered to reject applications lacking prima facie evidence of cognizable offences – Case law reiterates that civil disputes cannot be converted into criminal cases unless the allegations disclose clear criminality. (Paras 8, 16, 19)

(C) Constitution of India – Article 21 – Protection Against Misuse of Criminal Law – Filing of criminal complaints for civil disputes contravenes the right to personal liberty – Honourable Court emphasized that misuse of criminal law to pressurize parties undermines constitutional protections under Article 21 – Proceedings rightly dismissed to prevent abuse of process. (Paras 19, 20)

(D) Case Law – Lalita Kumari v. State of U.P. – Application of Principles – Preliminary inquiry permitted where allegations do not clearly disclose a cognizable offence – Court reaffirmed that mandatory FIR registration is subject to the presence of prima facie evidence. (Paras 9, 16)

Facts*:-The case arose from a land dispute where the appellants alleged that private opposite parties forcibly entered their residence, assaulted them, and abused them verbally. Following a delay of nine days, the appellants filed an application under Section 175(3) BNSS, seeking registration of an FIR. The Magistrate dismissed the application, observing that the allegations pertained to a civil dispute and lacked sufficient grounds for criminal investigation.*

The Honourable Allahabad High Court upheld the Magistrate's decision, emphasizing the discretionary power of Magistrates under Section 175(3) BNSS (previously Section 156(3) CrPC). The Court noted that criminal proceedings cannot be initiated for civil disputes unless clear criminality is disclosed. Referring to the principles laid down in Lalita Kumari v. State of U.P., the Court reiterated that preliminary inquiries are permissible when allegations do not prima facie disclose a cognizable offence. It highlighted that converting civil disputes into criminal cases constitutes an abuse of process and violates Article 21 of the Constitution.

The appeal was dismissed, with the Court reiterating the importance of judicial scrutiny to prevent misuse of criminal law and uphold procedural integrity.

***Law of Relief*:- Court emphasized the need to prevent the misuse of criminal law for civil disputes, safeguarding the right to personal liberty under Article 21 of the Constitution.**

***Counsel*:-** **For Appellant(s):** *Mr. Dinesh Kumar Shukla, Adv.*
For Respondent(s): *G.A.*

***Cases Referred*:-**

1. Sukhwasi vs. State of U.P., *reported in 2007 SCC OnLine All 1088*.
2. State of Haryana v. Bhajan Lal*: JT 1990 (4) SC 650 : (1992 Supp (1) SCC 335 : AIR 1992 SC 604).*
3. Ramesh Kumari v. State NCT of Delhi*: JT 2006 (2) SC 548 : ((2006) 2 SCC 677 : AIR 2006 SC 1322).*
4. Chandrika Singh v. State of U.P. *(2007 (58) ACC 777) : (2007 (4) ALJ 157).*
5. Gulab Chandra Upadhaya v. State of U.P. *(2002 All LJ 1225).*
6. Lalita Kumari vs. State of U.P., *reported in (2014) 2 SCC 1.*
7. Ramdev Food Products Private Limited vs. State of Gujarat *(2015) 6 SCC 439.*
8. *Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524.*
9. Joginder Kumar v. State of U.P. *[(1994) 4 SCC 260 : 1994 SCC (Cri) 1172].*
10. Anil Kumar v. M.K. Aiyappa *[(2013) 10 SCC 705 : (2014) 1 SCC (Cri) 35].*
11. Maksud Saiyed v. State of Gujarat*, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692.*
12. Priyanka Srivastava vs. State of U.P., *reported in (2015) 6 SCC 287.*
13. Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy *[(1976) 3 SCC 252 : 1976 SCC (Cri) 380] (Para 17).*
14. Dilawar Singh v. State of Delhi *[(2007) 12 SCC 641 : (2008) 3 SCC (Cri) 330] (Para 18).*
15. Mohd. Yousuf v. Afaq Jahan*, (2006) 1 SCC 627, SCC p. 631, Para 11 : (2006) 1 SCC (Cri) 460.]*
16. *CREF Finance Ltd.v. Shree Shanthi Homes (P) Ltd. [(2005) 7 SCC 467 : 2005 SCC (Cri) 1697].*
17. Madhao *v. State of Maharashtra, (2013) 5 SCC 615 : (2013) 4 SCC (Cri) 141] (Para 18).*
18. XYZ vs. State of Madhya Pradesh and Others *(2023) 9 SCC 705.*
19. *Sakiri Vasu v. State of U.P., (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440.*
20. Srinivas Gundluri *v. Sepco Electric Power Construction Corpn., (2010) 8 SCC 206 : (2010) 3 SCC (Cri) 652].*
21. Kailash Vijayvargiya vs. Rajlakshmi Chaudhari and Others*2023 SCC OnLine SC 569.*

JUDGMENT

SAURABH LAVANIA, J. :- 1. Heard learned counsel for the appellants and learned A.G.A. for the State and perused the records.

2. The present appeal has been filed under Section 14-A (1) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'SC/ST Act') against the impugned order dated 07.10.2024 passed by Special Judge, SC/ST Act, Gonda in Crl. Misc. Case No.423 of 2024, under Section 175 (3) of Bharatiya Nagrik Suraksha Sanhita, 2023 (in short "BNSS") (Maiku Lal & others Vs. Vijay Bahadur & others), relating to P.S. Paraspur, District Gonda.

3. By the impugned order dated 07.10.2024, the trial Court rejected the application preferred by the appellants under Section 175 (3) B.N.S.S.

4. From the submissions made by the learned counsel for the appellants as also the averments made in the application under consideration, it is apparent that the order aforesaid has been impeached by the appellants on the ground that from a bare reading of the application under Section 175(3) B.N.S.S. it is eveident that cognizable offence is made out and as such the order dated 07.10.2024 rejecting the application under Section 175(3) B.N.S.S. is liable to be interfered with by this Court.

5. Per contra, learned A.G.A. stated that a bare reading of the application under Section 175(3) B.N.S.S. would show that subject matter of the same relates to a land dispute in which the appellants have been assaulted by the private opposite parties and the genuineness of the same can be ascertained by the Court of first instance having competent jurisdiction on the basis of evidence adduced before it and accordingly no interference of this Court in the present appeal is required. Prayer is to dismiss the appeal.

6. Considered the submissions of learned counsel for the parties and perused the records.

7. Law dealing with an application under Section 156 (3) Cr.P.C. (now 175(3) B.N.S.S.) has already been settled in various pronouncements including the following judgments:-

8. Relevant paras of the judgment passed in the case of Sukhwasi vs. State of U.P., reported in 2007 SCC OnLine All 1088; wherein this Court answered the question referred on account of difference of opinion on the issue of exercise of power under Section 156(3) Cr.P.C. (now Section 175(3) B.N.S.S.), are as under:-

""Whether the Magistrate is bound to pass an order on each and every application under Section 156(3) Cr.P.C. containing allegations of commission of a cognizable offence for registration of the F.I.R. and its investigation by the police even if those allegations,

prima-facie, do not appear to be genuine and do not appeal to reason, or he can exercise judicial discretion in the matter and can pass order for treating it as 'complaint' or to reject it in suitable cases"? a

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18. It is hardly possible to infer from the aforesaid observations that the Magistrate cannot treat an application b under Section 156(3) Cr.P.C. as a 'complaint'. Even a nebulous of far fetched interpretation will not lead to that inference. The inference drawn by Hon'ble Vinod Prasad, J. is not logical.

19. The Hon'ble Judge has also referred to the case c of State of Haryana v. Bhajan Lal: JT 1990 (4) SC 650 : (1992 Supp (1) SCC 335 : AIR 1992 SC 604) and has extracted the following observations:-- (Paras 30, 32) "At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the d concerned police officer cannot embark upon any enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer-in-charge of a police station is statutorily obliged to register a case e and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 157 of the Code to investigate, subject to the proviso to Section 157 (as we have proposed to make a detailed discussion about the power of a police officer to the field of investigation of a cognizable offence f within the ambit of Sections 156 and 157 of the Code in the issuing part of this judgment, we do not propose to deal with those sections in extenso in the present context).

In case an offence incharge of a police station refuses to g exercise the jurisdiction in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the superintendent of police concerned who if satisfied that the h information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of Section 154 of the Code.

Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used

the expression "information" without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, "reasonable complaint", and "credible information" are used. Evidently, the non-qualification of the word "information" in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, 'reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that 'every complaint or information' preferred to an officer-in-charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that 'every complaint' preferred to an officer-in-charge of a police station shall be reduced in writing. The word 'complaint' which occurred in previous two codes of 1861 and 1872 was deleted and in that place the word 'information' was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 189(c) of the present Code of 1973 (Act 2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be an information and that information must disclose a cognizable offence."

"It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid therefore, officer-in-charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer had no other option except to enter the substance thereof in the prescribed from, that is to say, to register a case on the basis of such information."

(Emphasis mine)

20. As in the earlier case, a completely irrational and egregiously erroneous inference has been drawn from the aforesaid observation. The observations relate to the registration of a case by a police officer as will appear from the last paragraph with emphasis and they have nothing to do with the order passed by the Magistrate under Section 156(3) Cr.P.C.

21. It will not be out of place to note that even for registration of a case by a police officer, the condition is that he must have reason to suspect the commission of an offence as will appear from the following quotations extracted from the case of Ramesh Kumari v. State NCT of Delhi: JT 2006 (2) SC 548 : ((2006) 2 SCC 677 : AIR 2006 SC 1322) the following are the words extracted:--

"The true test is whether the information furnished provides a reason to suspect the commission of an offence which the concerned police officer is empowered under Section 156 of the code to investigate. If it does he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolve of his duty to investigate the case and discover the true facts, if he can."

22. In a recent pronouncement, Hon'ble Mr. Justice Shiv Charan Sharma in the case of Chandrika Singh v. State of U.P. (2007 (58) ACC 777) : (2007 (4) ALJ 157), has held that a Magistrate can treat an application under Section 156(3) Cr.P.C. as a complaint. The Hon'ble Judge referred to various cases in his judgment and has come to this conclusion thereafter. It was observed by Shiv Charan, J. as follows (paras 24 to 26):

"In view of this judgment of Full Bench, the Magistrate is fully competent to pass an order to register a case and investigate on an application under Section 156(3) Cr.P.C., all the application under Section 156(3) Cr.P.C. may be treated as complaint and in the circumstance, the Magistrate shall follow the procedure as provided in Chapter XV Cr.P.C. This, judgment of Full Bench has not been set aside. Hence, in view of the Apex Court and Full Bench of this Court the Magistrate is fully competent to treat an application under Section 156 Cr.P.C. as a complaint and in the present case the Magistrate passed an order in the circumstances of the case that it may be registered as a complaint case and proceed to record the statement under Sections 200 and 202 Cr.P.C. There appears no illegality and impropriety in the order of the Magistrate.

This controversy must come to an end that an

application under Section 156(3) Cr.P.C. can only be treated as an application for passing an order for registration of the case and investigation cannot be treated as a complaint case. The Magistrate is not bound in each and every case to pass an order to register a case and investigate if cognizable offence is made out. The Magistrate is fully competent to use this judicial direction in the matter. This is wrong notion that if an application has been moved under Section 156 (3) Cr.P.C. that the only order can be passed for registration in the matter. The magistrate has got direction under Section 190 Cr.P.C. to take the cognizance directly or to pass an order that the police to investigate and then take cognizance on submissions of a report under Section 173 Cr.P.C. The Magistrate is also expected to act under some guidelines and it should not be left at the arbitrary discretion of the Magistrate to pass an order or not to pass an order to register the case and investigation under Section 156(3) Cr.P.C. In Gulab Chandra Upadhaya v. State of U.P. (2002 All LJ 1225). Hon'ble Single Judge of this Court laid down the guidelines for the guidance of Magistrate while deciding the application under Section 156(3) Cr.P.C. and the guidelines cannot be said against any provision of law or check on the judicial direction of the Magistrate. Even Hon'ble Apex Court also held that the Magistrate has got a direction to pass an order to register the case and investigation under Section 156(3) Cr.P.C. or to treat an application as a complaint case.

In the law laid down by Hon'ble the Apex Court and various judgments of this Court clearly laid down that the Magistrate is not always bound to pass an order to register a case and investigation when application under Section 156(3) Cr.P.C. is moved. It will not be proper to deal with this hypothetical position that if the Magistrate is of opinion that false and frivolous allegation has been made in application then he may reject the application or it is for the investigating officer to decide the truthfulness of the story and if found false then launch prosecution against the applicant. But it is discretion of the Magistrate to be used judiciously while disposing of the application.

For the reasons mentioned above, I am of the opinion that the Magistrate is not always bound to pass an order for register of the case and investigation after receipt of the application under Section 156(3) Cr.P.C. disclosing a cognizable offence. The Magistrate may use his discretion judiciously and if he is of the opinion that in the circumstances of the case, it will be proper to treat the application as a complaint case then he may proceed according to the procedure provided under Chapter XV of Cr.P.C. I am also of the

opinion that it is not always mandatory in each and every case for the Magistrate to pass an order to register and investigate on receipt of the application under Section 156(3) Cr.P.C. In the present case, the Magistrate is perfectly within the judicial power to treat the application under Section 156(3) Cr.P.C. as a complaint case. There is no illegality or impropriety in the order. The revision is devoid of merit and is liable to be dismissed."

23. The Full Bench decision of Ram Babu Gupta's case (2001 All LJ 1587) (supra) also lays down that the Magistrate can treat an application under Section 156(3) Cr.P.C. as a complaint. This will appear from the following observations (Para 18):--

"Coming to the second question noted above, it is to be at once stated that a provision empowering a Court to Act in a particular manner and a provision creating a right for an aggrieved person to approach a Court or authority, must be understood distinctly and should not be mixed up. While Sections 154, 155 sub-section (1) and (2) of 156, Cr.P.C. confer right on an aggrieved person to reach the police, 156(3) empowers a Magistrate to act in a particular manner in a given situation. Therefore, it is not possible to hold that where a bare application is moved before Court only praying for exercise of powers under Section 156(3) Cr.P.C., it will remain an application only and would not be in the nature of a complaint. It has been noted above that the Magistrate has to always apply his mind on the allegations in the complaint where he may use his powers under Section 156(3) Cr.P.C. In this connection, it may be immediately added that where in an application, a complainant states facts which constitute cognizable offence but makes a defective prayer, such an application will not cease to be a complaint nor can the Magistrate refuse to treat it as a complaint even though there be no prayer seeking trial of the known or unknown accused. The Magistrate has to deal with such facts as constitute cognizable offence and for all practical purposes even such an application would be a complaint. This Court can do no better than refer to the following observations in Suresh Chand Jain: ((2001) 2 SCC 628 : AIR 2001 SC 571) (supra) (Para 10):--

"The position is thus clear. Any judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code..... could take further steps contemplated in Chapter XII of the Code only thereafter."

9. In the case of Lalita Kumari vs. State of U.P., reported in

(2014) 2 SCC 1; the Hon'ble Apex Court concluded as under:-

"120. In view of the aforesaid discussion, we hold:-

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7 . While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed fifteen days generally and in exceptional cases, by giving adequate reasons, six

weeks' time is provided. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

10. In the case of Ramdev Food Products Private Limited vs. State of Gujarat reported in (2015) 6 SCC 439, the appellant making allegations of preparing forged partnership deed, sought directions for investigation under Section 156(3) Cr.P.C. (now Section 175(3) B.N.S.S.) and the Magistrate instead of directing investigation as prayed for, thought it fit to conduct further inquiry under Section 202 and sought report of the Police Sub-Inspector within thirty days and being aggrieved by the order of Magistrate the appellant approached the High Court and the High Court declined to interfere in the order of Magistrate and thereafter the appellant approached the Hon'ble Apex Court and after considering the facts and issue involved the Hon'ble Apex Court framed three questions and while dealing with question as to "(i) Whether the discretion of the Magistrate to call for a report under Section 202 instead of directing investigation under Section 156(3) is controlled by any defined parameters?" the Hon'ble Apex Court observed as under:-

"15. Cognizance is taken by a Magistrate under Section 190 (in Chapter XIV) either on "receiving a complaint", on "a police report" or "information received" from any person other than a police officer or upon his own knowledge.

16. Chapter XV deals exclusively with complaints to Magistrates. Reference to Section 202, in the said Chapter, shows that it provides for "postponement of issue of process" which is mandatory if the accused resides beyond the Magistrate's jurisdiction (with which situation this case does not concern) and discretionary in other cases in which event an enquiry can be conducted by the Magistrate or investigation can be directed to be made by a police officer or such other person as may be thought fit "for the purpose of deciding whether or not there is sufficient ground for proceeding". We are skipping the proviso as it does not concern the question under discussion. Clause (3) provides that if investigation is by a person

other than a police officer, he shall have all the powers of an officer in charge of a police station except the power to arrest.

17. Chapter XII, dealing with the information to the police and their powers to investigate, provides for entering information relating to a "cognizable offence" in a book to be kept by the officer in charge of a police station (Section 154) and such entry is called "FIR". If from the information, the officer in charge of the police station has reason to suspect commission of an offence which he is empowered to investigate subject to compliance with other requirements, he shall proceed, to the spot, to investigate the facts and circumstances and, if necessary, to take measure, for the discovery and arrest of the offender [Section 157(1)].

18. In Lalita Kumari v. State of U.P. [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , this Court dealt with the questions : (SCC p. 28, para 30) "30.1. (i) Whether the immediate non-registration of FIR leads to scope for manipulation by the police which affects the right of the victim/complainant to have a complaint immediately investigated upon allegations being made; and 30.2. (ii) Whether in cases where the complaint/ information does not clearly disclose the commission of a cognizable offence but the FIR is compulsorily registered then does it infringe the rights of an accused."

These questions were answered as follows : (Lalita Kumari case [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , SCC pp. 35-36, 41, 51-52, 57-59 & 61, paras 49, 72-73, 94, 107-108, 111, 114-15 & 120)

49. "Consequently, the condition that is sine qua non for recording an FIR under Section 154 of the Code is that there must be information and that information must disclose a cognizable offence. If any information disclosing a cognizable offence is led before an officer in charge of the police station satisfying the requirement of Section 154(1), the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. The provision of Section 154 of the Code is mandatory and the officer concerned is duty-bound to register the case on the basis of information disclosing a cognizable offence. Thus, the plain words of Section 154(1) of the Code have to be given their literal meaning.

'Shall' ***

72. It is thus unequivocally clear that registration of FIR is mandatory and also that it is to be recorded in the FIR book by

giving a unique annual number to each FIR to enable strict tracking of each and every registered FIR by the superior police officers as well as by the competent court to which copies of each FIR are required to be sent.

"Information"

73. The legislature has consciously used the expression 'information' in Section 154(1) of the Code as against the expression used in Sections 41(1)(a) [Ed. : Vide Act 5 of 2009, w.e.f. 1-1-2010 Sections 41(1)(a) and (b) of the principal Act were substituted with differently worded Sections 41(1)(a) and (b) : the new clause (b) being substantially in pari materia with the old clause (a). A new clause (ba) was also added. The old clause (a) mentioned in most of the judgments cited hereinbelow stood as follows:"41. (1)(a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or"The new Sections 41(1)(a), (b) and (ba) are as follows:"41. (1) (a) who commits, in the presence of a police officer, a cognizable offence;(b) against whom a reasonable complaint has been made, or credible information has been received ...(ba) against whom credible information has been received that he has committed a cognizable offence ..."Clause (g) of Section 41(1) remains unaltered.] and (g) where the expression used for arresting a person without warrant is 'reasonable complaint' or 'credible information'. The expression under Section 154(1) of the Code is not qualified by the prefix 'reasonable' or 'credible'. The non-qualification of the word 'information' in Section 154(1) unlike in Sections 41(1)(a) [Ed. : Vide Act 5 of 2009, w.e.f. 1-1-2010 Sections 41(1)(a) and (b) of the principal Act were substituted with differently worded Sections 41(1)(a) and (b) : the new clause (b) being substantially in pari materia with the old clause (a). A new clause (ba) was also added. The old clause (a) mentioned in most of the judgments cited hereinbelow stood as follows:"41. (1)(a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or"The new Sections 41(1)(a), (b) and (ba) are as follows:"41. (1)(a) who commits, in the presence of a police officer, a cognizable offence;(b) against whom a reasonable complaint has been made, or credible information has been received ...(ba) against whom credible information has been received that he has committed a cognizable offence ..."Clause (g) of Section 41(1) remains unaltered.]

and (g) of the Code is for the reason that the police officer should not refuse to record any information relating to the commission of a cognizable offence on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, reasonableness or credibility of the said information is not a condition precedent for the registration of a case.

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94. Principles of democracy and liberty demand a regular and efficient check on police powers. One way of keeping check on authorities with such powers is by documenting every action of theirs.

Accordingly, under the Code, actions of the police, etc. are provided to be written and documented. For example, in case of arrest under Section 41(1)(b) of the Code, the arrest memo along with the grounds has to be in writing mandatorily; under Section 55 of the Code, if an officer is deputed to make an arrest, then the superior officer has to write down and record the offence, etc. for which the person is to be arrested; under Section 91 of the Code, a written order has to be passed by the officer concerned to seek documents; under Section 160 of the Code, a written notice has to be issued to the witness so that he can be called for recording of his/her statement, seizure memo/panchnama has to be drawn for every article seized, etc.

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107. While registration of FIR is mandatory, arrest of the accused immediately on registration of FIR is not at all mandatory. In fact, registration of FIR and arrest of an accused person are two entirely different concepts under the law, and there are several safeguards available against arrest. Moreover, it is also pertinent to mention that an accused person also has a right to apply for 'anticipatory bail' under the provisions of Section 438 of the Code if the conditions mentioned therein are satisfied. Thus, in appropriate cases, he can avoid the arrest under that provision by obtaining an order from the court.

108. It is also relevant to note that in Joginder Kumar v. State of U.P. [(1994) 4 SCC 260 : 1994 SCC (Cri) 1172] , this Court has held that arrest cannot be made by the police in a routine manner. Some important observations are reproduced as under : (SCC pp. 267-68, para 20) '20. ... No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and

perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do.' ***

111. Besides, the Code gives power to the police to close a matter both before and after investigation. A police officer can foreclose an FIR before an investigation under Section 157 of the Code, if it appears to him that there is no sufficient ground to investigate the same. The section itself states that a police officer can start investigation when he has "reason to suspect the commission of an offence". Therefore, the requirements of launching an investigation under Section 157 of the Code are higher than the requirement under Section 154 of the Code. The police officer can also, in a given case, investigate the matter and then file a final report under Section 173 of the Code seeking closure of the matter. Therefore, the police is not liable to launch an investigation in every FIR which is mandatorily registered on receiving information relating to commission of a cognizable offence.

*** (emphasis in original)

114. It is true that a delicate balance has to be maintained between the interest of the society and protecting the liberty of an individual. As already discussed above, there are already sufficient safeguards provided in the Code which duly protect the liberty of an individual in case of registration of false FIR. At the same time, Section 154 was drafted keeping in mind the interest of the victim and the society. Therefore, we are of the cogent view that mandatory registration of FIRs under Section 154 of the Code will not be in contravention of Article 21 of the Constitution as purported by various counsel.

Exceptions

115. Although, we, in unequivocal terms, hold that

Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint.

*** 120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay."

19. Thus, this Court has laid down that while prompt registration of FIR is mandatory, checks and balances on power of police are equally important. Power of arrest or of investigation is not mechanical. It requires application of mind in the manner provided. Existence of power and its exercise are different. Delicate balance had to be maintained between the interest of society and liberty of an individual. Commercial offences have been put in the category of cases where FIR may not be warranted without enquiry.

20. It has been held, for the same reasons, that direction by the Magistrate for investigation under Section 156(3) cannot be given mechanically. In Anil Kumar v. M.K. Aiyappa [(2013) 10 SCC 705 : (2014) 1 SCC (Cri) 35] , it was observed : (SCC p. 711, para 11)

11. "The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed case [Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/

Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation."

The above observations apply to category of cases mentioned in para 120.6 in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] .

21. On the other hand, power under Section 202 is of different nature. Report sought under the said provision has limited purpose of deciding "whether or not there is sufficient ground for proceeding". If this be the object, the procedure under Section 157 or Section 173 is not intended to be followed. Section 157 requires sending of report by the police that the police officer suspected commission of offence from information received by the police and thereafter the police is required to proceed to the spot, investigate the facts and take measures for discovery and arrest. Thereafter, the police has to record statements and report on which the Magistrate may proceed under Section 190. This procedure is applicable when the police receives information of a cognizable offence, registers a case and forms the requisite opinion and not every case registered by the police.

22. Thus, we answer the first question by holding that:

22.1. The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone the issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued.

22.2. The cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet

to determine "existence of sufficient ground to proceed". Category of cases falling under para 120.6 in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] may fall under Section 202."

11. In the case of Priyanka Srivastava vs. State of U.P., reported in (2015) 6 SCC 287; subject matter of which relates to preferring an application under Section 156(3) Cr.P.C. by the borrower against the Officer of the financial institution after initiation of proceedings under SARFAESI Act, 2002, the Hon'ble Apex Court, after considering the judgment(s) passed in the case of Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy [(1976) 3 SCC 252 : 1976 SCC (Cri) 380] (Para 17); Anil Kumar v. M.K. Aiyappa [(2013) 10 SCC 705 : (2014) 1 SCC (Cri) 35] (Para 11); Dilawar Singh v. State of Delhi [(2007) 12 SCC 641 : (2008) 3 SCC (Cri) 330] (Para 18); Mohd. Yousuf v. Afaq Jahan, (2006) 1 SCC 627, SCC p. 631, Para 11 : (2006) 1 SCC (Cri) 460.]; CREF Finance Ltd.v. Shree Shanthi Homes (P) Ltd. [(2005) 7 SCC 467 : 2005 SCC (Cri) 1697]; Madhao v. State of Maharashtra [Madhao v. State of Maharashtra, (2013) 5 SCC 615 : (2013) 4 SCC (Cri) 141] (Para 18); Ramdev Food Products (P) Ltd. v. State of Gujarat [(2015) 6 SCC 439] (Para 22); Lalita Kumari v. State of U.P. [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] (Para 30), observed as under:-

29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same.

30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC 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 the 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 Sections 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 application under Section 156(3) be supported by an affidavit is 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 [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

12. In the judgment passed in Criminal Revision No. 4629 of 2019 (Vishwanath Vs. State of U.P. and 4 Ors.) dated 09.12.2019, wherein this Court while dealing with similar issue, after considering the relevant previsions of Cr.P.C. and various pronouncements, concluded as under:-

55. Thus, in the whole scheme of the Code of Criminal Procedure as clarified in the pronouncements of the Apex Court ranging from 1951 to 2019, it is evident that if a person has a grievance that his F.I.R. has not been registered by the police, his first remedy is to approach the Superintendent of Police under Section 154 (3), Cr.P.C. or other police officer referred to in Section 36, Cr.P.C. If his grievances still persist, then he can approach a Magistrate under Section 156(3), Cr.P.C. He has a further remedy of filing a criminal complaint under Section 200, Cr.P.C. On receipt of the complaint, however, several courses are open to the Magistrate:

(i) He may take cognizance of the offence at once and proceed to record statements of the complaints and the witnesses present under Section 200, and proceed under Chapter XV and Chapter XVI, accordingly.

(ii) If, he thinks fit, he may postpone the issue of process and either inquire into the case himself or direct an investigation to be made by the police officer or such other process as he may thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. He may then issue process if in his opinion there is sufficient ground of proceeding; or dismiss the complaint if there is no sufficient ground for proceeding.

(iii) Yet another course open to the Magistrate is that instead of taking cognizance of the offence and following the procedure laid down under Section 200 or Section 202, he may order investigation to be made by the police under Section 156(3).

(iv) On receiving the police report, the Magistrate may take cognizance of the offence under Section 190(1)(b) and issue process straightway to the accused. The Magistrate may exercise his power in this behalf irrespective of the view expressed by the police in their report whether an offence has been made out or not. This is because the Magistrate is not bound by the opinion of the police officer as to whether an offence has been made out or not.

56. Thus, the above discussion pertaining to the power of the Magistrate under Section 156(3) in Chapter XII read with Section 190 in Chapter XIV of the Code leaves no room for doubt that there is nothing in the Code of Criminal Procedure, which curtails or puts any embargo on the power of the Magistrate to make an "inquiry" as defined under Section 2(g) of the Code or to order for "investigation" defined under Section 2(h) of the Code, in dealing with the application under Section 156(3), Cr.P.C. i.e., in exercise of the power conferred upon it under Chapter XII or Chapter XIV of the Code to satisfy itself about the veracity of the allegations of commission of a criminal offence made therein.

57. In its discretionary power, it is open for the Magistrate to direct the police to register a criminal case under Section 154, Cr.P.C. and conduct investigation. At the same time, it is open for the Magistrate, where the facts of the case and the ends of justice so demand, to take cognizance of the matter by treating it as a complaint and proceed for the "inquiry" under Sections 200 and 202, Cr.P.C.

58. It cannot be said nor it could be demonstrated that in each case, without application of its independent mind, the

Magistrate shall issue simply direction "to register and investigate" i.e., to lodge a first information report on an application filed under Section 156(3), Cr.P.C. The power to conduct a preliminary inquiry into the report of commission of criminal offence(s), conferred on the Magistrate within the scheme of the Code of Criminal Procedure has not been curtailed by any of the observations made by the Apex Court in the case of Lalita Kumari, MANU/ SC/1166/2013MANU/SC/1166/2013 : 2014(2) SCC 1.

59. However, it is pertinent to note that while exercising its discretionary power under Section 156(3), Cr.P.C., the Magistrate like any other court of discretionary jurisdiction is to act fairly and consciously and ensure that the discretion conferred upon it is exercised within the limits of judicial discretion. The entire emphasis is to act in an unbiased and just manner, strictly in accordance with law, to find but the truth of the case which shall come before it.

60. It is a Magistrate who is the competent authority to take cognizance of an offence and it is his duty to decide whether on the basis of the record and documents produced, an offence is made out or not and if made out, what course of law should be adopted. Emphasis is laid to the statement in Vinubhai (supra), wherein it is stated that "it is the judicial conscience of the Magistrate which has to be satisfied with reference to the record and the documents placed before him by the investigating agency, in coming to an appropriate conclusion in consonance with the principles of law." It would not be out of place to note para '17' of the report in Vinubhai, at this stage:

"17. It is clear that a fair trial must kick off only after an investigation is itself fair and just. The ultimate aim of all investigation and inquiry, whether by the police or by the Magistrate, is to ensure that those who have actually committed a crime are correctly booked, and those who have not/are not arraigned to stand trial That this is the minimal procedural requirement that is the fundamental requirement of Article 21 of the Constitution of India cannot be doubted. It is the hovering omnipresence of Article 21 over the Cr.P.C. that must needs inform the interpretation of all the provisions of the Cr.P.C., so as to ensure that Article 21 is followed both in letter and in spirit."

(Emphasis added)

61. Applying the above legal principles, in the facts of the present case, this Court finds that the application under Section 156(3), Cr.P.C. was filed after a period of two months of the alleged

incident and it was noted by the court concerned that nothing could be traced in favour of the prosecution by medical examination etc. In the circumstances before it, the court deemed it fair, just and proper to search the evidence(s) which is/are well known to the applicant and in his possession so as to find out the truth of the allegations in the application.

62. Having perused the contents of the application and the order of the court below, it cannot be said that the court concerned has committed illegally in exercise of its discretionary jurisdiction under Section 156(3), Cr.P.C. or it has exceeded in its jurisdiction in any manner or has exercised jurisdiction not vested in it in law. It cannot be said also that any material injustice has been caused to the applicant on account of the decision of the court below to treat the application under Section 156(3), Cr.P.C. as a complaint for the purpose of deciding whether or not there is sufficient ground for proceeding, rather than directing the police to register an F.I.R. and investigate under Section 154 of the Code."

13. The Hon'ble Apex Court in the case of XYZ vs. State of Madhya Pradesh and Others reported in (2023) 9 SCC 705; observed as under:-

"14. First, we find it appropriate to reiterate the duty of police to register an FIR whenever a cognizable offence is made out in a complaint. A Constitution Bench of this Court in Lalita Kumari v. State of U.P. [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] has laid out the position of law as summarised in the following extract of the decision : (SCC p. 60, para 119) "119. Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to

be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR."

15. We cannot help but note that the police's inaction in this case is most unfortunate. It is every police officer's bounden duty to carry out his or her functions in a public-spirited manner. The police must be cognizant of the fact that they are usually the first point of contact for a victim of a crime or a complainant. They must abide by the law and enable the smooth registration of an FIR. Needless to say, they must treat all members of the public in a fair and impartial manner. This is all the more essential in cases of sexual harassment or violence, where victims (who are usually women) face great societal stigma when they attempt to file a complaint. It is no secret that women's families often do not approve of initiating criminal proceedings in cases of sexual harassment. Various quarters of society attempt to persuade the survivor not to register a complaint or initiate other formal proceedings, and they often succeed. Finally, visiting the police station and interacting with police officers can be an intimidating experience for many. This discomfort is often compounded if the reason for visiting the police station is to complain of a sexual offence.

16. This being the case, the police ought not to create yet another obstacle by declining to register an FIR despite receiving a complaint regarding sexual harassment. Rather, they should put the complainant at ease and try to create an atmosphere free from fear. They ought to be sensitive to her mental state and the fact that she may have recently been subjected to a traumatic experience.

17. Whether or not the offence complained of is made out is to be determined at the stage of investigation and/or trial. If, after conducting the investigation, the police find that no offence is made out, they may file a B Report under Section 173CrPC. However, it is not open to them to decline to register an FIR. The law in this regard is clear -- police officers cannot exercise any discretion when they receive a complaint which discloses the commission of a cognizable offence.

18.Second, we deal with the issue of the discretion granted to a Magistrate vis-à-vis the exercise of powers under Section 156(3)CrPC. On this issue, the High Court has held that the JMFC was not under an obligation to direct the police to register the FIR and the use of the

expression "may" in Section 156(3)CrPC indicated that the JMFC had the discretion to direct the complainant to examine witnesses under Sections 200 and 202CrPC, instead of directing an investigation under Section 156(3).

19. A Division Bench of this Court in Sakiri Vasu v. State of U.P. [Sakiri Vasu v. State of U.P., (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440] expounded upon the Magistrate's powers under Section 156(3) CrPC. In this decision, the Court noted : (SCC pp. 412-15, paras 11, 13, 15 17 & 26)

11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154CrPC, then he can approach the Superintendent of Police under Section 154(3)CrPC by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3)CrPC before the learned Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

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13. The same view was taken by this Court in Dilawar Singh v. State (NCT of Delhi) [Dilawar Singh v. State (NCT of Delhi), (2007) 12 SCC 641 : (2008) 3 SCC (Cri) 330] . 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.

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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.

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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.

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26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3)CrPC or other police officer referred to in Section 36CrPC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3)CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482CrPC. Moreover, he has a further remedy of filing a criminal complaint under Section 200CrPC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?"

(emphasis supplied)

20. It is clear from the above extract that the Magistrate has wide powers under Section 156(3) which ought to be exercised towards meeting the ends of justice. A two-Judge Bench of this Court in Srinivas Gundluri v. Sepco Electric Power Construction Corpn. [Srinivas Gundluri v. Sepco Electric Power Construction Corpn., (2010) 8 SCC 206 : (2010) 3 SCC (Cri) 652] , further clarified the powers of a Magistrate and held that whenever a cognizable offence is made out on the bare reading of complaint, the Magistrate may direct police to investigate : (SCC pp. 218-19, para 23) "23. To make it clear and in respect of doubt raised by Mr Singhvi to proceed under Section 156(3) of the Code, what is required is a bare reading of the complaint and if it discloses a cognizable offence, then the Magistrate instead of applying his mind to the complaint for deciding whether or not there is sufficient ground for proceeding, may direct the police for investigation. In the case on hand, the learned Single Judge [Srinivas Gundluri v. Sepco Electric Power Construction Corpn., 2009 SCC OnLine Chh 308] and the Division Bench [Srinivas

Gundhuri v. Sepco Electric Power Construction Corpn., WA No. 281 of 2009, order dated 1-4-2010 (Chh)] of the High Court rightly pointed out that the Magistrate did not apply his mind to the complaint for deciding whether or not there is sufficient ground for proceeding and, therefore, we are of the view that the Magistrate has not committed any illegality in directing the police for investigation. In the facts and circumstances, it cannot be said that while directing the police to register FIR, the Magistrate has committed any illegality. As a matter of fact, even after receipt of such report, the Magistrate under Section 190(1)(b) may or may not take cognizance of offence. In other words, he is not bound to take cognizance upon submission of the police report by the investigating officer, hence, by directing the police to file charge-sheet or final report and to hold investigation with a particular result cannot be construed that the Magistrate has exceeded his power as provided in sub-section (3) of Section 156."

21. In the present case, the narration of facts makes it clear that upon the invocation of the jurisdiction of the Magistrate under Section 156(3)CrPC, the JMFC came to the conclusion that serious allegations had been levelled against the accused by the appellant and, that, from a perusal of the documents in this regard, the statements of the complainant were satisfactory. After taking note of the fact that the police had at an earlier stage reported that the occurrence of an incident or offence was not found, the JMFC opined that, from the facts which were set out by the complainant in the complaint, prima facie, the occurrence of an offence was shown.

22. It is true that the use of the word "may" implies that the Magistrate has discretion in directing the police to investigate or proceeding with the case as a complaint case. But this discretion cannot be exercised arbitrarily and must be guided by judicial reasoning. An important fact to take note of, which ought to have been, but has not been considered by either the trial court or the High Court, is that the appellant had sought the production of DVRs containing the audio-video recording of the CCTV footage of the then Vice-Chancellor's (i.e. the second respondent) chamber. As a matter of fact, the Institute itself had addressed communications to the second respondent directing the production of the recordings, noting that these recordings had been handed over on his oral direction by the then Registrar of the Institute as he was the Vice-Chancellor. Due to the lack of response despite multiple attempts, the Institute had even filed a complaint with PS Gole Ka Mandir on 29-10-2021 for registering an FIR against the second respondent for theft of the

DVRs.

23. Therefore, in such cases, where not only does the Magistrate find the commission of a cognizable offence alleged on a prima facie reading of the complaint but also such facts are brought to the Magistrate's notice which clearly indicate the need for police investigation, the discretion granted in Section 156(3) can only be read as it being the Magistrate's duty to order the police to investigate. In cases such as the present, wherein, there is alleged to be documentary or other evidence in the physical possession of the accused or other individuals which the police would be best placed to investigate and retrieve using its powers under the CrPC, the matter ought to be sent to the police for investigation."

14. Expression "Investigation" has been defined in Section 2 (h) of Cr.P.C. which reads as under:-

""investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf;"

15. Regarding expression "investigation", it would be appropriate to refer the paras 53 to 55 of the judgment passed in the case of Kailash Vijayvargiya vs. Rajlakshmi Chaudhari and Others; reported in 2023 SCC OnLine SC 569. The Hon'ble Apex Court by this judgment remanded the matter back to the Magistrate to decide the application under Section 156(3) Cr.P.C. preferred by the victim afresh, wherein allegations were levelled to attract the offence indicated under Section 417, 376, 406, 313, 120 IPC, which was initially rejected by the Magistrate, and thereafter the Magistrate in compliance of order of remand of High Court, without recording reasons, directed the Police to lodge an FIR and investigate the matter. The aforesaid paras are reproduced hereinunder:-

"53. The Code vide Chapter XII, ranging from Section 154 to Section 176, deals with information to the Police and their power to investigate. Section 154 deals with the information relating to the commission of a cognizable offence and fiats the procedure to be adopted when prima facie commission of a cognizable offence is made out. Section 156 authorises a police officer in-charge of a Police station to investigate any cognizable offence without the order of a Magistrate. Sub-section (3) of Section 156 provides for any Magistrate empowered under Section 190 to order an investigation as mentioned in Section 156(1). In cases where a cognizable offence is suspected to have been committed, the officer in-charge of the Police station, after

sending a report to the Magistrate empowered to take cognizance of such offence, is entitled under Section 157 to investigate the facts and circumstances of the case and also to take steps for discovery and arrest of the offender. Clauses (a) and (b) of the proviso to sub-section (1) to Section 157 give discretion to the officer in-charge not to investigate a case, when information of such offence is given against any person by name and the case is not of serious nature; or when it appears to the officer in-charge of the Police station that there is no sufficient ground for entering the investigation. In each of the cases mentioned in clauses (a) and (b) to the proviso to sub-section (1) to Section 157, the officer in-charge of the Police station has to file a report giving reasons for not complying with the requirements of sub-section (1) and in a case covered by clause (b) to the proviso, also notify the informant that he will not investigate the case or cause it to be investigated. Section 159 gives power to a Magistrate, on receiving such report of the officer in-charge, to either direct an investigation or if he thinks fit, proceed to hold a preliminary inquiry himself or through a Magistrate subordinate to him, or otherwise dispose of the case in the manner provided by the Code.

54. Sections 160 to 164 deal with the power of the Police to require attendance of witnesses, examination of witnesses, use of such statements in evidence, inducement for recording statement and recording of statements. Section 165 deals with the power of a Police officer to conduct search during investigation in the circumstances mentioned therein.

55. The power under the Code to investigate generally consists of following steps : (a) proceeding to the spot; (b) ascertainment of facts and circumstances of the case; (c) discovery and arrest of the suspected offender; (d) collection of evidence relating to commission of offence, which may consist of examination of various persons, including the person accused, and reduction of the statement into writing if the officer thinks fit; (e) the search of places of seizure of things considered necessary for investigation and to be produced for trial; and (f) formation of opinion as to whether on the material collected there is a case to place the accused before the Magistrate for trial and if so, taking the necessary steps by filing a chargesheet under Section 173."

16. As per settled view, the Magistrate/Court of competent of jurisdiction, after verifying the truth and veracity of the allegations made in the application under Section 156(3) Cr.P.C. (now Section 175

(3) B.N.S.S.), can (i) pass an order contemplated by Section 156 (3) Cr.P.C. (now Section 175(3) B.N.S.S.), (ii) direct examination of complaint and witnesses and proceed further in the manner provided by Section 202 Cr.P.C. and (iii) can also direct the preliminary inquiry by police in terms of law laid down in the judgment passed in the case of Lalita Kumari (supra). The Magistrate/Court of competent jurisdiction is also empowered to reject the application under Section 175(3) B.N.S.S..

17. In other words, the Magistrate/Court of competent jurisdiction while dealing with an application under Section 175(3) B.N.S.S. is empowered to pass an order for registration of FIR and investigate into the matter or to treat such application as a 'Complaint Case', if Investigation in the matter is not required and he is fully empowered to reject the application under Section 175(3) B.N.S.S.

18. From the application under consideration as also the application under Section 175(3) B.N.S.S. which is on record as Annexure No. 3, this Court finds that there was some land dispute due to which private opposite parties barged into the house of the appellants and while hurling abuses assaulted them and thereafter the appellants after a delay of about nine days preferred an application dated 29.08.2024 under Section 175(3) B.N.S.S.

19. Having considered the aforesaid facts and circumstances of the case as also the settled principle of law on the issue, this Court is of the view that the impugned order dated 07.10.2024 has rightly been passed as (i) the dispute between the parties, prima facie, appears to be a civil dispute and (ii) in facts of the case no investigation is required.

20. For the reasons aforesaid, this Court finds no force in the present appeal. It is accordingly dismissed. Costs made easy.

Result :- Appeal dismissed.