Court No. - 46

Case :- CRIMINAL REVISION No. - 1640 of 2001

Petitioner :- Father Thomas
Respondent :- State Of U.P. & Another
Petitioner Counsel :- Samit Gopal,K.D. Tewari,M.K. Shukla,P.R. Maurya,Rajiv Sisodiya,S.S. Chaturvedi
Respondent Counsel :- Govt. Advocate

Connected with

Criminal Revision No. 1731 of 2001

Lal Chand Maurya Vs. State of UP and others

and

Criminal Revision No. 1581 of 2001

Jas Ram Kushwaha Vs. State of UP and others

and

Criminal Revision No. 1727 of 2001

Mohd. Tahir and others Vs. State of UP and others

and

Criminal Revision No. 1656 of 2001

Swaroop and others Vs. State of UP and others

and

Criminal Revision No. 1658 of 2001

Naresh and others Vs. State of UP and others

.....

(Delivered by Hon'ble Amar Saran, J)

1. We have heard Sri. G.S. Chaturvedi Senior Advocate assisted by Sri Samit Gopal, Sri D.S. Mishra and Sri Dileep Gupta Advocates for the private parties and Sri Patanjali Mishra, A.G.A., Sri Neeraj Verma, A.G.A., and Sri D.R. Chaudhari, Governemnt Advocate for the State of U.P. Written arguments and case law were filed by the State. However inspite of time being allowed, no written arguments or case law were filed by the private counsel, except Sri G.S. Chaturvedi, who had filed some case law in 2008 in the leading petition, Crl. Revn. No. 1640 of 2000 on behalf of Father Thomas, and has also supplied us with some additional photocopies of relevant case law.
2. This Full Bench was constituted after an order dated 28.9.01 was

passed by the Single Judge (Hon. J.C. Gupta, J), who was examining the power of the Court in a Criminal Revision to question an order of the Magistrate issuing a direction under section 156(3) of the Code of Criminal Procedure (hereafter 'Cr.P.C' or 'the Code') to the police to register an FIR and to investigate the same.

3. The Single Judge was of the view that as the accused has no *locus standi* before an order is passed summoning the accused, and also as the order directing investigation is purely interlocutory in nature, in view of the statutory bar contained in section 397(2) of the Code, the said order was not revisable.

4. However, as it had been held in *Ajay Malviya vs. State of U.P and others*, reported in *2000(41) ACC 435* that as an order under Section 156(3) Cr.P.C is a judicial order, hence any FIR registered on its basis could not be challenged by means of a writ petition. Dissenting from this view the Single Judge without disputing the position that an order under section 156(3) of the Code was a judicial order, observed that the said order was an interlocutory order, which could not be challenged by a prospective accused who had no *locus standi* at the stage of investigation, hence a Criminal Revision was not maintainable for challenging the said order. In this background the Single Judge raised doubts about the correctness of the decision of the division bench in *Ajay Malviya* which based its conclusions on the position that as an order under section 156(3) was a judicial order, hence it was *ipso facto* revisable, and therefore no FIR pursuant to such an order, could be challenged by means of a criminal writ. The learned single judge thereupon vacated all the stay orders granted in the connected Criminal Revisions, which are before us, and formulated the following three questions for consideration by a larger bench, which are now being examined by the present Full Bench.

5. *A. Whether the order of the Magistrate made in exercise of powers under Section 156(3) Cr.P.C directing the police to register and investigate is open to revision at the instance of a person against whom neither cognizance has been taken nor any process issued?*

   B. Whether an order made under Section 156(3) Cr.P.C is an interlocutory order and remedy of revision against such order is

barred under sub-section (2) of Section 397 of the Code of Criminal Procedure, 1973?

C. Whether the view expressed by a Division Bench of this Court in the case of Ajay Malviya Vs. State of U.P and others reported in 2000(41) ACC 435 that as an order made under Section 156(3) of the Code of Criminal Procedure is amenable to revision, no writ petition for quashing an F.I.R registered on the basis of the order will be maintainable, is correct?

Opinion of the bench on the three issues

A. Locus standi of a prospective accused against whom neither cognizance has been taken nor process issued, to challenge an order under Section 156(3) Cr.P.C in a Criminal Revision.

6. Before examining any of the questions posed in this case, it would be necessary to reproduce the words of section 156 which falls in Chapter XII of the Code.

7. *156. Police officer's powers to investigate cognizable cases.- (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.

8. As pointed out in Suresh Chand Jain v State of M.P. & Ors., AIR 2001 SC 571, (paragraphs 7, 8 and 9) that there is a difference in the position of a prospective accused against whom an order is made under section 156(3) of the Code before cognizance is taken by the Magistrate, and an accused against whom investigation has been directed under section 202(1) of the Code. Although the nature of both the investigations is the same, but the former investigation is carried out by the police, essentially under Chapter XII of the Code which deals with: "Information to the Police and Their Powers to Investigate." The police officer-in-charge of the police station has the

same powers for carrying out an investigation under section 156(1), without orders of the Magistrate as the Magistrate can direct under section 156 (3) of the Code. Section 154 (1) of the Code prescribes the steps to be taken on receipt of a report of a cognizable offence by such a police officer. 154(3) gives powers to the Superintendent to issue appropriate directions requiring a station officer to conduct investigation into a cognizable offence. This power is parallel to the power of the Magistrate to issue a similar direction to the Station officer under section 156(3) of the Code. The investigation culminates with the submission of the report by the police under section 173 of the Code. The post-cognizance investigation directed by the Magistrate under section 202(1) although it is of a limited nature at the stage of inquiry and is carried out mainly for helping the Magistrate decide whether or not there is sufficient ground for him to proceed further, but it is an investigation which is carried out on directions of the police after cognizance has been taken by the Magistrate on a complaint under sections 190(1)(a) and after examination of the complainant under section 200 of the Code.

9. For showing that a prospective accused has no right of being heard before process is issued or cognizance is taken, and therefore he cannot challenge the order directing investigation under section 156(3) Cr.P.C. in a criminal revision, the learned Single Judge has placed reliance on the following decisions of the Apex Court which speak of the absence of any right of an accused to intervene even in an inquiry under section 202 of the Code, which is conducted after cognizance has been taken, under section 190 (1)(a) and 200 of the Code:

10. In Smt. Nagawwa v. V.S. Konjalgi, AIR 1976(13) ACC 225 (SC), V.V. Panchal v. D.D. Ghadigaonkar, AIR (1961) ISCR 1, Chandra Deo Singh v. Prakash Chandra Bose, AIR (1963) I.S.C.R 202, Mansukh Lal V. Chauhan v. State of Gujarat, 1997 (35) ACC 501 (SC) and C.B.I. v. V.K. Sahgal & Others, JT 1999 (8) SC 170 it has been held that the scope of enquiry under section 202 of the Code is extremely limited, and it is only meant for adjudging whether prima facie on the basis of the intrinsic reliability of the material placed by the complainant, a case for issuing process against the accused was

made out. The accused at this stage has a right only to remain personally present or through his agent and to be informed about what is going on, but he has no right to participate in the proceedings. At this stage the defence of the accused is not to be considered. Sufficiency of the material for conviction is beyond the scope of an inquiry under section 202 of the Code as the same is a matter for consideration during trial. The accused is only called upon to answer the allegations against him after process has been issued against him. The legislature had deliberately not provided for an accused to intervene at this stage as that would frustrate the object of the inquiry.

11. In Pratap v. State of U.P., 1991 (28) ACC 422, it has been observed that merely because process has been issued against a person, it cannot be said that a decision adversely affecting his rights has been taken, as he has merely been asked to face trial in a Court of law. Therefore no principle of natural justice is infringed if a Magistrate issues process against a person without first affording him an opportunity of hearing. The Code does not contemplate holding two trials, one before the issue of process and the other after the process is issued. The legislature has provided an elaborate procedure for hearing an accused after the trial begins in a Court of law.

12. The same view has also been taken in S.C. Mishra v. State, 2001 (1) ACC 342, and Anil Kumar v. State of U.P., 1991 (28) ACC 422. The aforesaid views in Pratap (supra) and the other abovementioned authorities have been approved by a Full Bench of this Court in Ranjeet Singh v. State of U.P., 2000 Cri.L.J 2738.

13. The thrust of the argument was that if after cognizance when the Court decides to conduct an inquiry under section 200 or 202 Cr.P.C, no right of hearing, beyond the right of the accused to be present personally or through counsel is permitted, where would the question arise of the accused having a right to be heard when an order by the Magistrate only directing the police to investigate a cognizable offence in exercise of powers under section 156(3) Cr.P.C was passed at the pre-cognizance stage.

14. In Union of India v. W.N. Chaddha, 1993 Cri.L.J 859 (SC) it has been held in paragraph 93: ".....More so, the accused has no right to have

any say as regards the manner and method of investigation. Save under certain exceptions under the entire scheme of the Code, the accused has no participation as a matter of right during the course of the investigation of a case instituted on a police report till the investigation culminates in filing of a final report under S. 173(2) of the Code or in a proceeding instituted otherwise than on a police report till the process is issued under S. 204 of the Code, as the case may be. Even in cases where cognizance of an offence is taken on a complaint notwithstanding the said offence is triable by a Magistrate or triable exclusively by the Court of Session, the accused has no right to have participation till the process is issued. In case the issue of process is postponed as contemplated under S. 202 of the Code, the accused may attend the subsequent inquiry but cannot participate. There are various judicial pronouncements to this effect but we feel that it is not necessary to recapitulate those decisions. At the same time, we would like to point out that there are certain provisions under the Code empowering the Magistrate to give an opportunity of being heard under certain specified circumstances."

15. Illustrative circumstances where the accused has been given a right of hearing during trial are spelt out in paragraphs 93 and 94 in W.N. Chaddha (supra). Thus under S. 227 of the Code dealing with discharge of an accused in a trial before a Court of Session under Chap. XVIII, the accused is to be heard and permitted to make his submissions before the stage of framing the charges. Under S. 228 of the Code, the trial Judge has to consider not only the records of the case and documents submitted with it, but also the submissions of the accused and the prosecution made under S. 227. Similarly, under S. 239 falling under Chapter XIX dealing with the trial of warrant cases, the Magistrate may give an opportunity to the prosecution and the accused of being heard and to discharge the accused for reasons to be recorded in case the Magistrate considers the charge against the accused to be groundless. S. 240 of the Code dealing with framing of charges also requires examination of an accused under S. 239 before the charge is framed. Under S. 235(2), in a trial before a Court of Sessions and under S. 248(2) of the trial of warrant cases, the accused

as a matter of right, is to be given an opportunity of being heard. On the other hand the provisions relating to investigation under Chapter XII of the Code do not confer any right of prior notice and hearing to the accused.

16. According to the decision in W.N. Chaddha the prospective accused can also not get any advantage of the principle of Audi Alteram Partem at the stage of investigation as no substantive rights of the accused who has not yet been summoned are involved. Moreover the accused will have all rights to be heard and to raise his defence pleas during the course of the trial.

17. In Bhagwan Samardha Sreepada Vallabha Venkata Vishwandaha Maharaj v. State of A.P. and others., JT 1999 (4) SC 537 it has been held that even after submission of a final report, the police in exercise of powers under section 173 (8) is empowered to further investigate the matter. No obligation is cast at that stage also to hear the accused, as casting such an obligation would unnecessarily place a burden on the Courts to search for all the potential accused and to provide them with an opportunity of being heard before further investigation could be conducted, defeating its purpose.

18. In C.B.I. and another v. Rajesh Gandhi and another, AIR 1977 SC 93 it has been observed in paragraph 8 that the decision to investigate and the agency which should investigate the offence does not attract the principles of natural justice and the accused has no say in the matter as to who should investigate the offence he is charged with.

19. In Bhagwant Singh v. Commissioner of Police, 1985 (22) ACC 246 (SC) it was held that after consideration of the report under section 173(2) of the Code, where the Magistrate decides not to take cognizance and to drop the proceedings or reaches a conclusion that there was no sufficient ground for proceeding against some of the persons mentioned in the FIR, the Magistrate must give notice to the informant and provide him with an opportunity to be heard at the time of consideration of the report. Here again no right of hearing has been conferred on an accused when the Magistrate decides to hear the informant on receipt of the report under section 173 (2) of the Code, when he is of the opinion that no ground exists for proceeding against

the accused.

20. In Karan Singh v. State of U.P., 1997 (34) ACC 163 it has been held by the referring single judge, Hon'ble J.C. Gupta that neither under the Code, nor under any principle of natural justice is the Magistrate required to issue notice or afford opportunity of hearing to the accused, where the police has submitted a final report, but the Magistrate on consideration of the material on record decides to take cognizance under section 190(1)(b) of the Code and directs issue of process to the accused.

21. In Karan Singh v. State it has been observed as follows:.

"Where an order is made under section 156 (3) Cr. P. C. directing the police to register FIR and investigate the same, the Code nowhere provides that the Magistrate shall hear the accused before issuing such a direction, nor any person can be supposed to be having a right asking the Court of law for issuing a direction that an FIR should not be registered against him. Where a person has no right of hearing at the stage of making an order under section 156(3) or during the stage of investigation until Courts takes cognizance and issues process, he cannot be clothed also with a right to challenge the order of the Magistrate by preferring a revision under the Code. He cannot be termed as an "aggrieved person" for purpose of section 397 of the Code."

22. Pertinently it has been observed in *Abdul Aziz v. State of U.P., 2009 Cri.L.J 1683* in paragraph 9: "*Thus at the stage of Section 156(3) Cr. P. C. any order made by the Magistrate does not adversely affect the right of any person, since he has got ample remedy to seek relief at the appropriate stage by raising his objections. It is incomprehensible that accused cannot challenge the registration of F.I.R. by the police directly, but can challenge the order made by the Magistrate for the registration of the same with the same consequences. The accused does not have any right to be heard before he is summoned by the Court under the Code of Criminal Procedure and that he has got no right to raise any objection till the stage of summoning and resultantly he cannot be conferred with a right to challenge the order passed prior to his summoning. Further, if the accused does not have a right*

to install the investigation, but for the limited grounds available to him under the law, it surpasses all suppositions to comprehend that he possesses a right to resist registration of F.I.R."

23. In the case of *Chandan v. State of U. P. and another 2007(57) ACC 508 : (2007 (1) ALJ (NOC) 7 (All.)* it was also held that the accused does not have any right to challenge an order passed under Section 156(3) Cr. P. C.

24. Similarly in *Surya Kant Dubey & Ors. v. State of U.P. & Anr., 2008 Cri.L.J. 2556, Rakesh Mohan Sharm v. State of U.P. & Ors., 2007(57 ACC 488, Rakesh Puri v. State (2007 (1) ALJ 169)* it has been held in Single Judge decisions that at the stage of 156(3) of the Code, the prospective accused can not step in before the Magistrate and interfere with the investigation by challenging a direction for registration of the FIR, when he cannot even participate in the investigation, which is conducted *ex parte* at this stage.

25. The learned Single Judge Hon'ble J.C. Gupta J also referred to Arun Vyas & others v. Anita Vyas, 1999 (39) SC 170 wherein it was observed that even if a statutory bar for taking cognizance is raised on the ground that the complaint was barred by limitation under section 468 of the Code, the appropriate stage for the accused to raise this objection was at the stage of framing of charges.

26. State of Punjab v. Raj Singh & Others, JT 1999 SC 145 was cited for the proposition that even where a jurisdictional bar to proceed with a case, in the absence of certain pre-conditions as required under section 195 Cr.P.C is claimed, no embargo can be placed on the power of the police to investigate. The bar, if at all, could only be considered at the stage when the Court decides to take cognizance of the case.

27. Sri D.S. Mishra on the other hand has placed reliance on the decision of the Apex Court in Raghu Raj Singh Rousha v. Shiva Sundaram Promoters Private limited and another, (2009) 1 SCC (Cri) 801 for making a submission that at the stage of passage of an order under section 156 (3) Cr.P.C, the accused has a right to be heard.

28. It may be noted that the backdrop of Raghu Raj Singh Rousha's case was that the complainant company had filed a complaint petition accompanied by an application under section 156 (3) of the Code

before the Metropolitan Magistrate alleging commission of offences under sections 323, 382, 420, 465, 471, 120-B, 506 and 34 IPC against the accused. The Magistrate refused to direct investigation in terms of section 156(3) Cr.P.C, but directed the complainant to lead pre-summoning evidence. The High Court however in a criminal revision against the order of the Magistrate, where only the State was impleaded, without giving any opportunity to the accused to be heard set aside the order of the Magistrate and directed the Magistrate to examine the matter afresh after calling for a police report. The High Court's order was set aside by the Apex Court on two counts. One that there was an infringement of section 401 (2) of the Code as the right of hearing to an accused, or any other person who may be aggrieved mandated by the aforesaid provision, was denied to the aggrieved party as a result of the High Court's order. Two, according to the Apex Court the initial order of the Magistrate, who declined to entertain the application under section 156 (3) of the Code, but directed that the procedure of a complaint case be followed, and that the witnesses be examined under section 200 and 202 Cr.P.C. indicated that cognizance had been taken, hence a right of hearing had accrued to the accused. That would not have been the case, if only a pre-cognizance order of the Magistrate refusing to issue a direction under section 156(3) Cr.P.C. had been challenged in the High Court by the informant, where right of hearing had been denied to the accused in a Criminal Revision. These are the two basic distinctions from a direct order by a Magistrate to the police to investigate an offence. Here the direction under section 156(3) Cr.P.C has not been issued consequent to any direction by the High Court in a criminal revision at the instance of the informant where only the State is made a party, and the aggrieved accused is denied the opportunity of hearing contemplated under section 401(2) Cr.P.C. Also it is a pre-cognizance order only containing a direction of the Magistrate for investigation by the police, where no valuable right has accrued to the prospective accused, which is distinct from the post cognizance order in Rousha's cases, where the Magistrate had decided to follow the procedure of a complaint case under section 200 and 202 Cr.P.C. We therefore find that Rousha's

case is no authority for the proposition that any right of hearing accrues to a prospective accused or that any criminal revision is maintainable against an order of the Magistrate simply directing the police officer in-charge of a police station to investigate a case in exercise of powers under section 156(3) of the Code.

29. From a consideration of the aforesaid authorities, it is apparent that even when a complaint is filed under section 190(1) (a) and the Court decides to take cognizance and to adopt the procedure provided for inquiry under section 200 and 202 Cr.P.C, the accused is only permitted to remain present during the proceedings, but not to intervene or to raise his defence, until the order issuing summons is passed. The right of hearing of a prospective accused at the pre-cognizance stage, when only a direction for investigation by the police is issued by the Magistrate under section 156(3) Cr.P.C., can only be placed at a lower pedestal. It is only during the course of trial that the accused has been conferred rights at different stages to raise his defence. As the authorities show, that in the absence of any statutory right of hearing to the prospective accused at the pre-cognizance stage, when the direction to investigate has only been issued by the Magistrate under section 156(3), the accused cannot be conferred with any right of hearing even under any principle of audi alteram partem.

30. We have also seen that during the stage of investigation the accused has no right of intervention as to the mode and manner of investigation and who should investigate.

31. Even after submission of a final report, either when the police decides to order further investigation under section 173(8) Cr.P.C, or before accepting or rejecting the report, only the informant is required to be heard. The accused is not entitled to be heard even at this stage. In this view it would be unrealistic to confer a right of hearing when only an innocuous direction for investigation is passed by the Magistrate in a case disclosing a cognizable offence., especially when the allied order regarding the decision of a police officer to investigate in exercise of powers under section 156(1) is not vulnerable to challenge in the criminal revision. Also when objections to maintainability of a case are raised on the ground of limitation under section 468 or under

section 195 Cr.P.C, the appropriate stage for raising these objections is at the time of cognizance or at the time of framing of charges, and not when a Magistrate issues a direction for investigation under section 156(3) Cr.P.C.

32. In the light of the aforesaid discussion, it is abundantly clear that the prospective accused has no locus standi to challenge a direction for investigation of a cognizable case under Section 156(3) Cr.P.C before cognizance or issuance of process against the accused. The first question is answered accordingly.

B. Whether an order under Section 156(3) is an interlocutory order and revision against the said order is barred, under Section 397(2) Cr.P.C.

33. It was observed by the learned Single Judge that as no substantive rights and liabilities of the accused are involved at the stage when an order is passed by the Magistrate directing the police merely to investigate into a cognizable offence in exercise of powers under section 156(3) Cr.P.C. and only the informant and the police are in the picture, the said proceedings are purely interocutory in nature, and are not revisable. It is only after investigation when a report under section 173 (2) of the Code is submitted by the police, that the Magistrate makes up his mind whether to take cognizance or to drop the proceedings.

34. S. 397 (2) of the Code reads as follows.

"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."

35. Only if cognizance is taken and process issued that the accused gets a right of hearing. Before that stage according to the learned Single Judge, any order, including an order under section 156(3) Cr.P.C, will be interlocutory in nature.

36. The Statement of Objects and Reasons of s. 397(2) as contained Clause (d) of Paragraph 5 of the accompanying the 1973 Code. runs thus:

"the powers of revision against interlocutory orders are being taken away, as it has been found to be one of the main contributing factors

in the delay of disposal of criminal cases."

37. In support of his contention that a direction by the Magistrate to the police under section 156 (3) Cr.P.C. to register and investigate a criminal offence may not amount to an interlocutory order, but it could at best be described as an intermediate order, Sri D.S. Mishra Advocate has placed reliance on the Apex Court decision in Madhu Limaye v State of Maharashtra 1978 (15) ACC 184.

38. Madhu Limaye (supra) no doubt lays down that orders, such as the order in that case issuing process against the accused could not be described as a final order, but it was also not an interlocutory order, which could have attracted the bar to the maintainability of the criminal revision in view of section 397 (2) of the Code, because if the plea of the accused was rejected on a point which when accepted could have concluded the particular proceedings. Rather according to the said decision it should be described as a type of intermediate order falling in the middle course. In Madhu Limaye an objection had been raised by the appellant that the cognizance taken by the Sessions Court without commitment of the case to it in exercise of powers under section 199(2) Cr.P.C, on a complaint under section 500 IPC by the Public Prosecutor based on the sanction by the State government under section 199(4) Cr.P.C was incompetent, as no complaint had been made by the aggrieved person Sri A.R. Antulay, the Chief Minister, and the alleged defamatory statements related to acts done in his personal capacity, and not in the discharge of his public duties. If this contention was accepted, it would have resulted in the order of cognizance passed by the Sessions Judge without the case being committed to him, being set aside. Hence this objection would go to the root of the matter, and could not be ignored only by describing the order as interlocutory in nature.

39. In Amar Nath v. State of Maharashtra, AIR 1977 SC 2185 interlocutory orders have been described thus in paragraph 6: "It seems to us that the term "interlocutory order" in S. 397 (2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of

the parties. Any order which substantially affects the rights of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in S. 397 of the 1973 Code. Thus, for instance, orders summoning witnesses. adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397 (2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court.

40. In Amar Nath the order summoning the appellants in a mechanical manner after the police had submitted a final report against them leading to their release by the Judicial Magistrate, and the revision against that order before the Additional Sessions Judge preferred by the complainant had also failed. Even the subsequent complaint by the complainant had been dismissed on merits. Against the latter dismissal of the complaint when the complainant preferred a revision, the Sessions Judge set aside the order of the Judicial Magistrate and ordered further inquiry, whereupon the Magistrate straightaway summoned the appellants for trial. This order which appeared to infringe substantial rights acquired by the appellants was considered an order of moment and not a mere interlocutory order, which would invite the bar to entertaining the revision under S. 397(2) of the Code.

41. An order under section 156(3) Cr.P.C. passed by the Magistrate directing the police officer to investigate a cognizable case on the other hand is no such order of moment, which impinges on any valuable rights of the party. Were any objection to the issuance of such a direction to be accepted (though it is difficult to visualize any objection which could result in the quashing of a simple direction for investigation), the proceedings would still not come to an end, as it would be open to the complainant informant to move an application under section 154(3) before the Superintendent of Police (S.P.) or a

superior officer under section 36 of the Code. He could also file a complaint under section 190 read with section 200 of the Code. This is the basic difference from the situations mentioned in Madhu Limaye and in Amar Nath's cases, where acceptance of the objections could result in the said accused being discharged or the summons set aside, and the proceedings terminated. Also the direction for investigation by the Magistrate is but an incidental step in aid of investigation and trial. It is thus similar to orders summoning witnesses, adjourning cases, orders granting bail, calling for reports and such other steps in aid of pending proceedings which have been described as purely interlocutory in nature in Amar Nath (supra).

42. In this connection it has been aptly noted in Devarapalli Lakshminarayana Reddy v Narayan Reddy, AIR 1976 SC 1672, that "an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156 (1)."

43. The power conferred under section 156(3) Cr.P.C. is of the same nature as the power under section 156(1), which is the power conferred on a police officer in-charge of a police station to investigate any cognizable case to investigate a case, without orders of the Magistrate, which the Magistrate of the local area would have power to inquire into or try. The police officer records an FIR in accordance with the procedure mentioned in section 154(1) of the Code. In the event of the failure of the police officer to record the information, the aggrieved informant has been given a right to approach the Superintendent of Police under section 154(3) for a direction for investigation. Such powers may also be exercised by any officer superior in rank to an officer in-charge of a police station in view of s. 36 of the Code. The powers of a Magistrate for giving directions under section 156(3) is thus allied to the powers of police officers under sections 154(1), 154(3) and 36 of the Code. It would thus be highly illogical to suggest that the Courts have no jurisdiction to interfere in a criminal revision or other judicial proceedings with the decision of the police officer in-charge of the police station to lodge an FIR under section 154(1) of the Code or by a superior officer under section

154(3), or the actual investigation conducted by the police under the aforesaid provisions, but the initial order of the Magistrate under section 156(3) Cr.P.C peremptorily reminding the police to perform its duty and investigate a cognizable offence could be subject to challenge in a criminal revision or other judicial proceeding.

44. We thus see that the orders for investigation are only an ancillary step in aid of the investigation or trial, and are clearly interlocutory in nature, similar to orders granting bail, or calling for records, or issuing search warrants, or summoning witnesses and other like matters which infringe no valuable rights of the prospective accused, and are not amenable to challenge in a criminal revision, in view of the bar contained in section 397(2) of the Code.

45. Also the situations in Madhu Limaye or in Amar Nath's cases are clearly distinguishable, where refusal to consider the objections raised on behalf of the accused may have prevented his being discharged and may have caused him to be summoned to face trial, resulting in the orders being described as neither final nor interlocutory, but intermediate in nature. Revisions against the said intermediate orders would therefore not attract the bar under section 397(2). Acceptance of the objection to the direction for investigation under section 156(3) at the pre-cognizance stage, would however not result in the closure of the proceedings against the accused, as the complainant/informant could have sought summoning of the accused by filing a complaint under sections 190(a) read with 200 or by moving an application for investigation before the S.P. or other superior officer under section 154(3) or s. 36 of the Code (if that step had not earlier been taken). From the above discussion it follows that the said orders are clearly interlocutory in nature, and not revisable in view of the bar contained in section 397(2) of the Code.

46. As the direction for investigation passed by the Magistrate under section 156(3) is purely interlocutory in nature, and involves no substantial rights of the parties, we are of the view that the bar under section 397(2) Cr.P.C to the entertainment of a criminal revision can also not be circumvented by moving an application under section 482 Cr.P.C. As observed in State v. Navjot Sandhu, (2003) 6 SCC 641 in

paragraph 29:

47."*29.....This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment."*

48.An application under section 482 Cr.P.C would also not lie against an order for investigation under section 156(3) CrP.C., which is an adjunct to the police power to investigate in Chapter XII of the Code, because as held in Divine Retreat Centre v. State of Kerala & Othrs., AIR 2008 SC 1614 (paragraph 22, and Nirmaljit Singh Hoon v. State of West Bengal & Anr., AIR 1972 SC 2639, (paragraph 35), whilst conducting an investigation into a offence cognizable offence the police authorities are exercising their statutory powers under sections 154 and 156 of the Code, and even the High Court in its inherent powers under section 482 Cr.P.C cannot interfere with the exercise of this statutory power.

49.Moreover the said inherent power needs to be utilized very sparingly and with circumspection and as held by the Apex Court while considering the jurisdiction of the High Court in Kurukshetra University vs. State of Haryana, AIR 1977 SC 2229, (paragraph 2): "It ought to be realised that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases."

50.In para 9 in single judge decision in the case of Prof. Ram Naresh Chaudhary v. State of U. P., 2008 Cri.L.J 1515 the following observations have been made :-

"At this stage accused does not come into picture at all, nor can he be heard. He has no locus to participate in the proceedings. He can at the most stand and watch the proceedings. It must be remembered that it is pre-cognizance stage. The nature of the order passed by the Magistrate under Section 156(3) Cr. P.C. directing registration and investigation of case is only a peremptory reminder or intimation to the police to exercise its power of investigation under Section 156(1) Cr. P. C, as has been held by Hon'ble Apex Court in the case of Devarappalli

Lakshaminarayana Reddy and others vs. Narayana Reddy and others 1976 ACC 230 : (AIR 1976 SC 1672). How such a reminder is subject to revisional power of the Court is something which goes beyond comprehension. From the nature of the order itself, it is clear that it is an interlocutory order, not amenable to revisional power of the Court. Section 397(2) Cr. P. C. specifically bars revision filed against interlocutory orders."

51. Likewise in Rakesh Puri & Anr. v. State of U.P. (supra), Smt. Rekha Verma and others v. State of U. P. and others 2007 (57) ACC 241 and Abdul Aziz v. State of U.P., Paragraph 13 (supra) it has been held by single judge decisions of this Court that neither a Criminal Revision nor an Application under section 482 Cr.P.C. would lie against the direction of the Magistrate to register and investigate an FIR in exercise of powers under section 156(3) Cr.P.C. In Abdul Aziz it has further been held that only after an FIR can an accused move the High Court in its writ jurisdiction under Article 226 of the Constitution of India for quashing of the FIR, but prior to the registration of the F.I.R., the prospective accused has no right to challenge that order.

52. Piqued by the over flowing dockets of petitions under section 482 Cr.P.C on miscellaneous matters, which have created a huge back log affecting disposal by the High Court of grave matters under section 302 IPC etc., because the circumspection and caution required before admitting such petitions under section 482 Cr.P.C is not being exercised, Hon'ble G.P.Mathur J speaking for the bench has expressed his disquiet thus in paragraph 38 of Hamida V. Rashid, AIR 2007 (Supp) SC 361:

"38..... Ends of justice would be better served if valuable time of the Court is spent in hearing those appeals rather than entertaining petitions under Section 482 Cr.P.C. at an interlocutory stage which are often filed with some oblique motive in order to circumvent the prescribed procedure, as is the case here, or to delay the trial which will enable the accused to win over the witnesses by money or muscle power or they may become disinterested in giving evidence, ultimately resulting in miscarriage of justice."

53. As we have observed that the direction under section 156(3) of the

Code refers to a pre-cognizance stage, it does not strictly relate to proceedings pending in a Court, but as mentioned herein-above it only relates to directions to the police to carry out the investigation in a cognizable case under Chapter XII of the Code. In this context it has been clarified in State of W.B. and Ors. vs. Sujit Kumar Rana [(2004) 4 SCC 129], that inherent powers of the High Court come into play only where an order has been passed by the Criminal Court which is required to be set aside to secure the ends of justice or where the **proceedings pending before a court** amounts to abuse of the process of Court.

54. As on the basis of the aforesaid reasoning we have already held the order under section 156(3) Cr.P.C not to be amenable to challenge in a criminal revision or an application under section 482 Cr.P.C, it is not necessary for this Court to go into the further question whether the said order is administrative in nature as urged by Sri G.S. Chaturvedi and the learned Government Advocate or judicial in nature as contended by Sri D.S. Mishra and Sri Dileep Gupta. Following the decision of the Apex Court in Asit Bhattacharjee v Hanuman Prasad Ojha and Others, (2007) 5 SCC 786, we are also not inclined to express any opinion on this issue, and leave the question open for decision in a subsequent proceeding where an answer to this question may become necessary.

55. In view of the aforesaid, our answer is that the revision against that the order under section 156(3) of the Code directing the police to investigate is clearly an interlocutory order and a Criminal Revision (as also an order under section 482 Cr.P.C against the same) is barred in view of section 397(2) of the Code.

56. **C. Whether the view of the division bench in Ajay Malviya's case(supra) that an order under Section 156(3) Cr.P.C was amenable to revision, no writ petition would lie for challenging an FIR lodged pursuant to the order under Section 156(3) Cr.P.C will be maintainable, is correct.**

57. Ajay Malviya (supra) relied on the following lines from paragraph 4 in the decision in Devarapalli Lakshminarayana Reddy (supra) ".....If instead of proceeding under Chapter XV, he has, in the judicial

exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police under section 156(3), he cannot be said to have taken cognizance of any offence....." On that basis the Division Bench inferred that an order under section 156(3) was a judicial order, hence the said order was amenable to revision, and conversely a writ against an FIR which had been lodged on the basis of such an order was barred. However in view of our answers to the first two referred questions that the learned Single Judge who had not gone into the question whether an order under Section 156(3) Cr.P.C was judicial or administrative in nature, has rightly held that the the said order was not open to challenge by a prospective accused at the pre-cognizance stage, and it was also an interlocutory order which is not revisable in view of the bar contained under section 397(2) of the Code. That being the position, the necessary inference is that the view of the Division Bench in Ajay Malviya that the said order is amenable to revision and no writ petition would lie for challenging the FIR can not be held to be correct.

58. However it is made clear that the initial order for investigation under section 156(3) is also not open to challenge in a writ petition, as it is now beyond the pale of controversy that the province of investigation by the police and the judiciary are not overlapping but complementary. As observed by the Privy Council in paragraph 37 in Emperor v. Khwaja Nazir Ahmad, AIR 1945 PC 18 when considering the scope of the statutory powers of the police to investigate a cognizable case under sections 154 and 156 of the Code, that it would be an unfortunate result if the Courts in exercise of their inherent powers could interfere in this function of the police. The roles of the Court and police are "complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function."

59. In State of Bihar v. J. A. C. Saldanha (AIR 1980 S C 326) while dealing with the powers of investigation of a police officer as contemplated in Section 156 of the Code of Criminal Procedure the Apex Court has stated thus (at pp. 337-338 of AIR): "There is a clear-

cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take cognizance of the offence under Section 190 of the Code its duty comes to an end."

60. The Magistrate can not interfere with the investigation so long as the police officer proceeds with the investigation in compliance with the statutory powers mentioned in paragraph XII of the Code. Only in a case where a police officer decides not to investigate an offence, that the concerned Magistrate can intervene and either direct an investigation or in the alternative, if he thinks fit, he himself can, at once proceed or depute any Magistrate subordinate to him to proceed to hold a preliminary inquiry into or otherwise to dispose of the case in the manner provided in the Code. (Vide S.N. Sharma vs. Bipen Kumar Tiwari and Ors., AIR 1970 SC 786, paragraph 7).

61. Even where the informant's plea for a direction for investigation under section 156(3) Cr.P.C is refused by the Magistrate, as held by the three judge bench of the Supreme Court in Aleque Padamsee v. Union of India, AIR 2007 SC (Supp) 684, the remedy for the informant lies not in filing a writ petition, but in filing a complaint under section 190 (1) (b) read with section 200 of the Code. The legal position after review of the authorities as noted in Aleque Padamsee in paragraph 7 was as follows: "The correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to its notice show that a cognizable offence has been made out. In case the police officials fail to do so, the modalities to be adopted are as set out in Section 190 read with Section 200 of the Code.

62. In Sakhiri Vasu v State of U.P. and Ors., AIR 2008 SC 907, it has been observed in paragraph 27:"The High Court should discourage the practice of filing a writ petitions or petitions under section 482 Cr.P.C. simply because a person has a grievance that his FIR has not been registered by the police. For this grievance, the remedy lies under sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under section 200 Cr.P.C. and not be filing a writ petition or a petition under section 482 Cr.P.C."

63. It is only at the stage that an FIR has been lodged, and in the rarest cases where the FIR does not prima facie disclose the commission of a cognizable offence, or where there is legal bar to proceeding with the complaint/ FIR or if it is a case of no evidence or the evidence is wholly inadequate for proving the charge, or it is demonstrated that the FIR has been lodged in a mala fide manner, only in those circumstances, with the exercise of extreme circumspection can a writ petition be filed challenging the lodging of the FIR and that too strictly in accordance with the parameters and subject to the restrictions mentioned in State of Haryana v Bhajan Lal, AIR 1992 SC 604 and the Full Bench decision of this Court in Ajit Singh @ Muraha v. State of U.P., 2006 (56) ACC 433 and a catena of decisions of the Apex Court and this Court on the issue. In view of what has been stated the view taken in Ajay Malviya's case can not be held to be laying down the correct law and needs to be clarified as above.

64. In this view of the matter, the Opinion of the Full bench on the three questions posed is:

65. A. The order of the Magistrate made in exercise of powers under Section 156(3) Cr.P.C directing the police to register and investigate is not open to revision at the instance of a person against whom neither cognizance has been taken nor any process issued.

B. An order made under Section 156(3) Cr.P.C is an interlocutory order and remedy of revision against such order is barred under sub-section (2) of Section 397 of the Code of Criminal Procedure, 1973.

C. The view expressed by a Division Bench of this Court in the case of Ajay Malviya Vs. State of U.P and others reported in 2000(41) ACC

435 that as an order made under Section 156(3) of the Code of Criminal Procedure is amenable to revision, and no writ petition for quashing an F.I.R registered on the basis of the order will be maintainable, is not correct.

66. As we have recorded a finding that no criminal revision will lie against the orders passed by the Magistrate directing investigation under section 156(3) Cr.P.C., no useful purpose will be served in sending back the said Criminal Revisions to the Single Judge bench hearing criminal revisions. The stay orders have already been vacated by the Single Judge. All the connected criminal revisions accordingly fail and are dismissed. There shall be no orders as to costs.

Order Date :- 22.12.2010

Ishrat