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Reserved

Criminal Misc Case No 3778 of 2012
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Jagannath Verma & Ors
Vs
State of U P & Anr

Appearance:

For Applicants : Shri Vishnu Kumar Srivastava, Advocate
Shri Murli Manohar Srivastava, Advocate
Shri N P Ojha, Advocate

For opp parties : Shri Umesh Verma, AGA
Shri Ran Vijai Singh, Advocate
Shri Indra Pratap Singh, Advocate

Hon'ble Dr Dhananjaya Yeshwant Chandrachud, Chief Justice
Hon'ble Dr D K Arora, J
Hon'ble D K Upadhyaya, J

(By Hon'ble Dr D Y Chandrachud, CJ)

The reference to the Full Bench

The reference to the Full Bench has been occasioned upon two orders passed by learned Single Judges of this Court. By the first of those orders, the following question was referred for consideration:

> "Whether an order made under Section 156 (3) of the Code of Criminal Procedure, 1973[1] is an interlocutory order and the remedy of a revision against such an order is barred under sub-section (2) of Section 397."

Subsequently, a learned Single Judge of this Court, while noticing the above reference, referred two additional questions for consideration by a larger Bench:

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1 Code

> "(1) Whether an order made under Section 156 (3) of the Code **rejecting** an application for a direction to the police to register and investigate, is revisable under Section 397; and
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> (2) If the answer to Question (1) is in the affirmative, then, whether in a revision filed against an order rejecting an application under Section 156 (3), the prospective accused is also a necessary party and is required to be heard before a final order is passed."

The Full Bench decision in Father Thomas

Before we enter upon the issues which are raised in this reference, it would, at the outset, be necessary to traverse, for clarity of exposition, the ground which has been covered by a decision of a Full Bench of this Court in **Father Thomas Vs State of UP**[2]. In that case, a Single Judge of this Court was of the view that as the accused has no locus standi before an order of summoning is passed and since an order directing investigation is interlocutory in nature, such an order is not subject to a revision in view of the statutory bar contained in Section 397(2) of the Code. Section 397 (2) provides that the power of revision which is conferred by sub-section (1) upon the High Court or a Sessions Judge to call for and examine the record of any proceeding before any inferior criminal court for the purpose of satisfying itself of the correctness, legality or propriety of any finding, sentence or order and as to the regularity of any proceedings shall not be exercised in relation to any interlocutory order passed in any appeal, enquiry, trial or other proceeding. However, it had earlier been held in a

2 (2011) CrLJ 2278

decision of this Court in **Ajai Malviya Vs State of UP**[3]**,** that since an order under Section 156 (3) is a judicial order, an FIR registered on its basis could not be challenged by a writ petition. Accepting that an order under Section 156 (3) is a judicial order, the learned Single Judge who made the reference in **Father Thomas** was of the view that since the order is nonetheless interlocutory in nature, it could not be challenged by a prospective accused who has no locus standi at the stage of investigation and, hence, a criminal revision is not maintainable for challenging such an order. The reference before the Full Bench in **Father Thomas** was of the following three questions:

> A. Whether the order of the Magistrate made in exercise of powers under Section 156(3) CrPC 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;
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> B. Whether an order made under Section 156(3) CrPC 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; and
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> 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, [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 FIR registered on the basis of the order will be maintainable, is correct.

3 2000 ACJ 2730

The judgment of the Full Bench on each of these three questions which were referred, held thus:

(A) At the pre-cognizance stage when only a direction has been issued by the magistrate under Section 156 (3) to investigate, a prospective accused has no locus standi to challenge a direction for investigation of a cognizable case before cognizance or the issuance of process;

(B) An order under Section 156 (3) passed by a magistrate directing a police officer to investigate a cognizable case is not an order which impinges on the valuable rights of the party. An order by the magistrate for investigation is an incidental step in aid of investigation and trial and is interlocutory in nature, similar to orders granting bail, calling for records, issuing search warrants, summoning witnesses and other like matters which do not infringe upon a valuable right of a prospective accused and is, hence, not amenable to a challenge in a criminal revision in view of the bar contained in Section 397 (2). The bar under Section 397 (2) to the entertaining of a criminal revision cannot be circumvented by moving an application under Section 482; and

(C) An order made under Section 156 (3) is an interlocutory order and the remedy of a revision against such an order is barred under sub-section (2) of Section 397. The decision in **Ajai Malivya's** case was held not to lay down the correct position in law.

The present case

In the proceedings in which the present reference to the Full Bench has been occasioned, an application was moved before the Chief Judicial Magistrate, Ambedkar Nagar against the petitioners by opposite party no.2

under Section 156 (3). The Magistrate, after considering the contents of the complaint, came to the conclusion that there was no ground for directing the police to register and investigate the case, upon which the application under Section 156 (3) was rejected. Aggrieved, opposite party no.2 preferred a revision before the Sessions Judge which was allowed and while setting aside the order of the Chief Judicial Magistrate, the latter was directed to decide the application under Section 156 (3) afresh. Aggrieved by that order of the Sessions Judge, this Court was moved by the petitioners. The submission of the petitioners was that (i) the Sessions Judge decided the revision without furnishing to them an opportunity of hearing though, according to them, they were necessary parties before the revisional court since their "valuable rights" were going to be affected by the order that was sought before and was eventually passed by the revisional court; (ii) in view of the decision of the Full Bench in **Father Thomas**, the remedy of a criminal revision was barred under Section 397 (2) since an order passed by a magistrate on an application under Section 156 (3) is an interlocutory order.

The learned Single Judge in a referring order dated 15 May 2014 observed that in **Father Thomas**, the Full Bench was examining a case in which a prospective accused had challenged an order passed under Section 156 (3) by which the Magistrate had directed the registration of a First Information Report and an investigation. The learned Single Judge noted that in the decision of the Supreme Court in **Aleque Padamsee Vs Union of India**[4]**,** it has been held that even where the application of an informant for a

4 (2007) 6 SCC 171

direction to register and investigate under Section 156 (3) is refused by the magistrate, the remedy would not lie in filing a writ petition but in a complaint under Section 190 (1) (b) read with Section 200 of the Code. In the view of the learned Single, under the provisions of the Code, a duty is cast upon the police to register and investigate a case whenever information of the commission of a cognizable offence is brought to the notice of the police. It is only when the police refuses to register a case in a cognizable offence that the informant may approach the magistrate under Section 156 (3) for a direction to the police to register and investigate. If the magistrate finds from a perusal of the application that the commission of a cognizable offence is made out, he may direct the police to register and investigate. On the other hand, when the complaint does not disclose the commission of any cognizable offence, the magistrate can reject the application. In some cases, it was held, the magistrate may treat an application under Section 156 (3) as a complaint and while taking cognizance under Section 190 (1) (b), follow the procedure of a complaint case. The problem, it was noted, arises where an informant cannot himself collect evidence against the accused and produce it before the magistrate. In such cases, investigation by the police is necessary. Where the magistrate rejects an application under Section 156 (3) without application of mind and the revision is held to be barred under Section 397, it was held that the informant would be left without a remedy because even if he files a complaint before the magistrate, he may not be able to collect and produce all the evidence needed to prove the guilt of the accused.

In this background, the learned Single Judge observed that while answering the second question which was referred, the Full Bench in **Father Thomas** held that an order under Section 156 (3) is interlocutory. However, it is not clear as to whether an order passed by the magistrate, rejecting an application under Section 156 (3) is also to be treated as an interlocutory order. This legal position requires, in the view of the Single Judge, consideration by a larger Bench and hence the present reference has been occasioned. The learned Single Judge has also felt himself unable to agree with a contrary view of another learned Single Judge in Criminal Revision No. 532 of 2013, holding that an order rejecting an application under Section 156 (3) is interlocutory and that the remedy of a revision is barred.

Submissions

On behalf of the petitioners, it has been submitted that:

(i) In **Father Thomas**, the Full Bench has held that an order made under Section 156 (3) is an interlocutory order while answering the second question which was referred for adjudication. An order under Section 156 (3) would include an order rejecting an application for the registration of an offence and investigation, and would not only relate to a situation where a magistrate has directed the registration of an offence and investigation by the police. Consequently, the second question which was decided in **Father Thomas**, sub silentio covers also a situation where an application for a direction to register an FIR and to investigate is rejected. Otherwise, if the only issue pertained to an order made under

Section 156 (3) directing the police to register and investigate, there was no need to frame the second question;

(ii) In **Aleque Padamsee** (supra), the Supreme Court held that where the police have failed to register an FIR despite facts being brought to the notice showing that a cognizable offence has been made out, the modalities contained in Section 190 read with Section 200 of the Code would have to be observed. Since an alternative and efficacious remedy of filing a complaint under Section 190 read with Section 200 is available, an order passed under Section 156 (3) refusing a direction to register an offence and to investigate, does not decide any vital rights so as to be amenable to a criminal revision under Section 397;

(iii) In view of the decision of the Supreme Court in **Raghu Raj Singh Rousha Vs Shivam Sundaram Promoters Private Limited**[5]**,** if it is held that a criminal revision is amenable under Section 397 against an order of the magistrate refusing to direct the registration of a First Information Report and to investigate, then necessarily the prospective accused would be entitled to the right of a hearing before the revisional court.

On the other hand, it has been urged on behalf of the State by Shri Umesh Verma, learned AGA, who has fairly assisted the Court, that:

(i) The provisions of Chapter XII of the Code which deal with information to the police and their powers to investigate, fall in a

5 (2009) 2 SCC 363

different sphere than complaints to magistrates which are governed by Chapter XV;

(ii) Under Section 156 (3), the magistrate is only required to examine whether, from the case of the informant, a cognizable offence is made out. The prospective accused is not arrayed as a party. The grievance of the informant is against the State for not lodging a First Information Report. If the application is allowed, the police would register an FIR and investigate the case. This is at the pre-cognizance stage where the accused has neither a right of hearing nor of being impleaded to the proceedings;

(iii) If an application under Section 156 (3) is rejected, the procedure of an investigation by the police is shut out. Though, a complaint can be filed under Section 200 before a magistrate and Section 202 contemplates that the magistrate may, on receipt of the complaint, postpone the issue of process and direct an investigation to be made by a police officer, this is for "the purpose of deciding whether or not there is sufficient ground for proceeding". An investigation by the police under Section 202 is not mandatory. Whereas an investigation by the police under Section 156 (3) is unfettered in nature, an investigation which a magistrate may direct by a police officer under Section 202, is of a limited nature and is an aid to the magistrate. With the rejection of an application under Section 156 (3), the proceeding under Chapter XII terminates. The duty to investigate is primarily that of the State and that avenue is closed by the rejection of an application under Section 156 (3).

Consequently, an order refusing to direct the registration of a First Information Report and investigation by the police under Section 156 (3) vitally affects the informant and would be revisable under Section 397. Such an order cannot be regarded as being interlocutory in nature;

(iv) In the judgment of the Supreme Court in **Devarapalli Lakshminarayana Reddy Vs V Narayana Reddy**[6], the Supreme Court made a distinction between a police investigation under Section 156 (3) and an investigation directed by the magistrate under Section 202. The first is exercisable at the pre-cognizance stage, while the second at the post-cognizance stage when the magistrate is in seisin of the case. Once a magistrate has taken cognizance and follows the procedure specified in Chapter XV, he cannot switch back to the pre-cognizance stage and avail of Section 156 (3). Section 202 only assists the magistrate in completing the proceedings instituted on a complaint before him;

(v) The decision of the Supreme Court in **Raghu Raj Singh Rousha** (supra) dealt with a situation where a complaint had been filed under Section 200, accompanied by an application under Section 156 (3). The Magistrate took cognizance but rejected the application under Section 156 (3). The Supreme Court held that the Magistrate had taken cognizance and had applied his mind. While doing so, he had refused to exercise his jurisdiction under Section 156 (3), in which event it was held that the High Court ought to

6 (1976) 3 SCC 252

have impleaded the appellant against whom a complaint of a cognizable offence had been filed;

(vi) The consistent position in law is that at the pre-cognizance stage, the accused is not given a right to be heard and no right of the accused is infringed by a mere direction to register an offence and to investigate, to the police authorities. The prospective accused has no right to be heard, either at the stage of Section 154 (1) or, where an officer in charge of a police station has refused to record a First Information Report, at the stage of Section 154 (3) before the Superintendent of Police. Consequently, while issuing a direction under Section 156 (3), a magistrate empowered under Section 190 only orders an investigation into a cognizable case under Section 156 (1) of the Code. A prospective accused, who has no locus standi at the stage of an investigation under Section 156 (1), would have no higher right when a magistrate under Section 156 (3) orders an investigation.

The learned counsel appearing on behalf of opposite party no.2 has adopted the submissions which have been urged on behalf of the State. We have perused both sets of written submissions tendered before the Court in the proceedings.

The statutory provisions

Chapter XII of the Code is titled as:

"Information to the police and their powers to investigate."

Section 154 provides as follows:

"154. Information in cognizable cases. (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:

Provided *that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 375, section 376, section 376A, section 376B, section 376C, section 376D, section 376E and section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, as far as possible, by a woman police officer and such woman shall be provided legal assistance and also the assistance of a healthcare worker or women's organization or both:*

Provided further *that—*

(a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, sub-section (1) or sub-section (2) of section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the

presence of a special educator or an interpreter, as the case may be;

(b) the recording of such information may be videographed;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence."

Sub-section (1) of Section 154 contains a mandate to the officer in charge of a police station to reduce information orally given, relating to the commission of a cognizable offence, into writing. The substance thereof has to be entered in a book kept by such officer in the form as prescribed by the **State Government**. Sub-section (3) of Section 154 provides a remedy to a person who is aggrieved by the refusal of the officer in charge of a police station to record the information referred to in sub-section (1) relating to the

commission of a cognizable offence. Any person aggrieved by such a refusal, may transmit the substance of the information to the Superintendent of Police. If the Superintendent of Police is satisfied that the information discloses the commission of a cognizable offence, he must either investigate the case himself or direct an investigation by a police officer subordinate to him. Section 154 does not contemplate a magisterial intervention or an order of a magistrate for an investigation into a cognizable case. Section 155 (2), on the other hand, provides that a police officer shall not investigate a non-cognizable case without the order of a magistrate having the power to try such a case or to commit the case for trial.

Section 156 provides for the power of a police officer to investigate a cognizable case and is as follows:

> "**156. Police officer's power to investigate cognizable case.** (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
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> (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.
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> (3) Any Magistrate empowered under section 190 may order such an investigation as above mentioned."

Under sub-section (1) of Section 156, the power of a police officer to investigate a cognizable case, which a Court with jurisdiction over the local

area within the limits of such station would have power to enquire into or try under Chapter XIII, is untrammeled in the sense that it does not require an order of a magistrate. Sub-section (3) of Section 156, however, allows any magistrate who is empowered under Section 190 to order an investigation into a cognizable case by an officer in charge of a police station. Section 157 deals with the procedure for investigation. Where an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered to investigate under Section 156, either from information received or otherwise, he has to send a report forthwith to the magistrate empowered to take cognizance of an offence upon a police report and must proceed in person or depute a subordinate officer to proceed to the spot, investigate the facts and circumstances and to take measures for discovery and arrest of the offender. Under clause (a) of the first proviso to Section 157, when the information as to the commission of any such offence is given against any person by name, and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot. Under clause (b) of the said proviso, if it appears to the officer in charge of a police station that there is no sufficient ground of entering on an investigation, he shall not investigate the case. Section 157 (2) specifies the contents of a report which the police officer has to furnish in each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1). Upon receiving such a report, Section 159 provides that the magistrate may direct an investigation or, if he thinks fit, at once proceed to hold a preliminary enquiry into or otherwise dispose of the case, in the manner provided in the Code.

Section 190 forms a part of Chapter XIV which is titled “conditions requisite for initiation of proceedings.” Section 190 provides as follows:

> “**190. Cognizance of offences by Magistrates.** (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence -
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> (a) upon receiving a complaint of facts which constitute such offence;
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> (b) upon a police report of such facts;
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> (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.
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> (2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.”

A magistrate under Section 190 may proceed to take cognizance of any offence (i) upon receiving a complaint of facts which constitute such offence; (ii) upon a police report of such facts; or (iii) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

The expression ‘complaint’ is defined in Section 2(d) as follows:

> “(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

> Explanation: A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant."

Chapter XV of the Code deals with complaints to magistrates. Section 200 provides as follows:

> "**200**. **Examination of complainant.** A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:
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> **Provided** that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-
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> (a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or
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> (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:
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> **Provided further** that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them."

Under Section 200, the magistrate **taking cognizance** of an offence on a complaint has to examine the complainant and the witnesses present, if

any, upon oath. Section 202, however, enables the magistrate to postpone the issue of process against the accused on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him under Section 192 and to follow one of the following modalities:

(i) Either enquire into the case himself; or

(ii) Direct an investigation to be made by a police officer or by such other person as he deems fit for the purpose of deciding whether or not there is sufficient ground for proceeding.

However, under clause (a) of the proviso to sub-section (1), no such direction for investigation can be made where it appears to the magistrate that the offence complained of is triable exclusively by the Court of Session. Similarly, under clause (b), no such direction for investigation may be made where the complaint has not been made by the court, unless the complainant and the witnesses present, if any, have been examined on oath under Section 200. Section 202 provides as follows:

> "**202**. **Postponement of issue of process.** (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer-in-charge of a police station except the power to arrest without warrant."

Section 203 provides that upon considering the statements on oath, if any, of the complainants and of the witnesses and the result of the enquiry or investigation, if any, under Section 202, where the magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint recording, briefly, his reasons for so doing.

Analysis

Section 154 speaks of "every **information** relating to the commission of a cognizable offence". Under Section 154 (1), an officer in charge of a police station is under a mandate and an obligatory duty to cause the substance of the information relating to the commission of a cognizable offence to be entered in a book to be kept by the officer in the form prescribed by the State Government. Sub-section (3) of Section 154 provides a remedy, where an officer in charge of a police station refuses to record the information referred to in sub-section (1), to any person aggrieved by such a refusal. The remedy is to transmit the information to the Superintendent of Police who, upon satisfaction that the information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by an officer subordinate to him. Section 156 enables an officer in charge of a police station to investigate a cognizable case without an order of a magistrate. Sub-section (3) of Section 156 enables a magistrate who has been duly empowered under Section 190 to order such an investigation. By lodging a First Information Report, the informant can set the criminal law in motion. The investigating authority is able to obtain information about an alleged criminal activity so as to pursue an investigation, trace the accused and make him accountable under the criminal law.

In a recent judgment of the Constitution Bench of the Supreme Court in **Lalita Kumari Vs Government of Uttar Pradesh**[7], it has been held that the essential requirement for recording an FIR is that there must be

7 (2014) 2 SCC 1

information and that information must disclose a cognizable offence. If information falling within the meaning of sub-section (1) of Section 154 is led before an officer in charge of a police station, he has no option but to enter the substance of that information in the prescribed form and to register a case on the basis of such information. Section 154 (1) has been held to be mandatory, the use of the word "shall" being an expression of the legislative intent:

> "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."[8]

The reason why the Code casts an affirmative obligation upon an officer in charge of a police station is because investigation of offences and prosecution of offenders is a fundamental and inalienable duty of the State. Hence, in the case of a cognizable offence, a duty and an obligation to register an FIR is cast upon the police. The provisions of Section 154 (1) do not admit to an element of discretion vesting in the officer in charge of a

8 Paragraph 49 at page 35-36.

police station on whether or not to record the substance of the information received by him of the commission of a cognizable offence in the prescribed form. There exists a vital societal interest in the investigation and prosecution of crime. Coupled with this is the societal interest in recognising the rights of a victim of a crime. Both are intrinsic elements of a society governed by the rule of law and which regards a stable social order as a vital object of law. In **Lalita Kumari** (supra), this position was reiterated in the following observations:

> "53. Investigation of offences and prosecution of offenders are the duties of the State. For "cognizable offences", a duty has been cast upon the police to register FIR and to conduct investigation except as otherwise permitted specifically under Section 157 of the Code. If a discretion, option or latitude is allowed to the police in the matter of registration of FIRs, it can have serious consequences on the public order situation and can also adversely affect the rights of the victims including violating their fundamental right to equality.
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> 54. Therefore, the context in which the word "shall" appears in Section 154(1) of the Code, the object for which it has been used and the consequences that will follow from the infringement of the direction to register FIRs, all these factors clearly show that the word "shall" used in Section 154(1) needs to be given its ordinary meaning of being of a "mandatory" character. The provisions of Section 154(1) of the Code, read in the light of the statutory scheme, do not admit of conferring any discretion on the officer in-charge of the police station for embarking upon a preliminary inquiry prior to the registration of an FIR. It is settled position of law that if

> the provision is unambiguous and the legislative intent is clear, the court need not call into it any other rules of construction."

Section 154 (1) significantly uses the expression "information" without the qualification of an adjective such as "reasonable" or "credible". The reasonableness or credibility of the information is hence not a condition precedent to the registration of a case. The import of casting a mandatory obligation on the officer in charge of a police station to record information relating to the commission of a cognizable offence and to register a case thereon, has been emphasized in the decisions of the Supreme Court in **State of Haryana Vs Bhajan Lal**[9] and in **Prakash Singh Badal Vs State of Punjab**[10]. At the same time, the arrest of an accused immediately on the registration of an FIR has been held not to be mandatory. The Code confers a power upon the police to close a matter both before and after the investigation. A police officer can foreclose an FIR before an investigation under Section 157, if if appears to him that there is no sufficient ground to investigate it. The police officer is empowered also to investigate the matter and file a final report under Section 173, seeking closure. In **Lalita Kumari**, it was held that the police is not liable to launch an investigation in every FIR which is mandatorily registered on receiving information relating to the commission of a cognizable offence. The scheme of the Code not only ensures that the time of the police should not be wasted on false and frivolous information but also that the police should not intentionally refrain from doing its duty of investigating cognizable offences. The Code,

9 1992 Supp (1) SCC 335
10 (2007) 1 SCC 1

therefore, contains inbuilt safeguards to prevent a likelihood of misuse. At this stage, the important aspect to mention is that the mandatory requirement in Section 154 is consistent with the need to protect the societal interest in due prosecution of crime and the interest of the victim in ensuring that the offender is brought to book.

The decision of the Constitution Bench in **Lalita Kumari** holds that though the registration of an FIR on receipt of information relating to the commission of a cognizable offence is mandatory, yet there may be instances where a preliminary enquiry is required. In that context, the observation of the Supreme Court are as follows:

> "**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.
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> **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 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry."

The power which is conferred upon the magistrate to order an investigation under Section 156 (3) is before taking cognizance of an offence. Section 156 (3) provides that any magistrate empowered under

Section 190 may order such an investigation into any cognizable case by an officer in charge of a police station.

Section 190 empowers a magistrate to take cognizance of any offence: (i) upon receiving a complaint of facts which constitute such offence; (ii) upon a police report of such facts; and (iii) upon information received from any person other than a police officer, or upon his own knowledge, that such an offence has been committed. Under Section 190, a magistrate is not bound, once a complaint is filed, to take cognizance if the facts stated in the complaint disclose the commission of any offences. Section 190 uses the expression that 'the magistrate may take cognizance' and not that 'the magistrate must take cognizance'. Though, a complaint may disclose a cognizable offence, a magistrate may well be justified in sending the complaint under Section 156 (3) to the police for investigation. In **Gopal Das Sindhi Vs State of Assam**[11], the Supreme Court held that there is no reason why the time of the magistrate should be wasted when primarily the duty to investigate in cases involving cognizable offences is with the police. The magistrate before taking cognizance may well refer the complaint under Section 156 (3) to the police for investigation. Cognizance, it is well settled under CrPC, is where the magistrate on receiving a complaint applies his mind for the purposes of proceeding under Section 200 and the succeeding Sections in Chapter XV of the Code. If, instead of proceeding under Chapter XV, the magistrate orders an investigation by the police under Section 156 (3), he is not said to have taken cognizance of an offence. In **Mohd Yousuf**

11 AIR 1961 SC 986

Vs Afaq Jahan[12], this position was elaborated in the following observations of the Supreme Court:

> " The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter."

When a written complaint disclosing a cognizable offence is made before a magistrate, he may take cognizance under Section 190 (1) (a) and proceed in accordance with the provisions of Chapter XV. The other option available to the magistrate is to transmit the complaint to the police station concerned under Section 156 (3), before taking cognizance, for investigation. Once a direction is issued by the magistrate under Section 156 (3), the police is required to investigate under sub-section (1) of that Section

12 (2006) 1 SCC 627

and to submit a report under Section 173 (2) on the complaint after investigation, upon which the magistrate may take cognizance under Section 190 (1)(b). (**Madhu Bala Vs Suresh Kumar**[13]).

In **Sakiri Vasu Vs State of Uttar Pradesh**[14], the Supreme Court followed the earlier decision in **Mohd Yousuf** (supra) and held that the power of the magistrate to order a further investigation under Section 156 (3) is an independent power and is wide enough to include all such powers in a magistrate which are necessary for ensuring a proper investigation and would include the power of registration of an FIR and of ordering a proper investigation if the magistrate is satisfied that the proper investigation has not been done or is not being done by the police. Section 156 (3) was construed to include all such incidental powers as are necessary for ensuring a proper investigation. The same principle has been adopted in the decision of the Supreme Court in **Mona Panwar Vs High Court of Judicature at Allahabad**[15]:

> "18. When the complaint was presented before the appellant, the appellant had mainly two options available to her. One was to pass an order as contemplated by Section 156(3) of the Code and second one was to direct examination of the complainant upon oath and the witnesses present, if any, as mentioned in Section 200 and proceed further with the matter as provided by Section 202 of the Code. An order made under sub-section (3) of Section 156 of the Code is in the nature of a peremptory reminder or intimation to the police to exercise its plenary power of investigation under Section 156(1). Such an

13 (1997) 8 SCC 476
14 (2008) 2 SCC 409
15 (2011) 3 SCC 496

investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with the final report either under Section 169 or submission of charge sheet under Section 173 of the Code. A Magistrate can under Section 190 of the Code before taking cognizance ask for investigation by the police under Section 156(3) of the Code. The Magistrate can also issue warrant for production, before taking cognizance. If after cognizance has been taken and the Magistrate wants any investigation, it will be under Section 202 of the Code.

19. The phrase "taking cognizance of" means cognizance of an offence and not of the offender. Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position **where** the Magistrate takes cognizance of an offence on a complaint or on a police report or upon information of a person other than a police officer. Before the Magistrate can be said to have taken cognizance of an offence under Section 190(1)(b) of the Code, he must have not only applied his mind to the contents of the complaint presented before him, but must have done so for the purpose of proceeding under Section 200 and the provisions following that Section. However, when the Magistrate had applied his mind only for ordering an investigation under Section 156(3) of the Code or issued a warrant for the purposes of investigation, he cannot be said to have taken cognizance of an offence."

The same principle has been reiterated in **Samaj Parivartan Samudaya Vs State of Karnataka**[16].

There is a fundamental distinction between the provisions of Chapter XII and of Chapter XV of the Code. This came up for consideration before the Supreme Court in **Devarapalli Lakshminarayana Reddy Vs V Narayana Reddy** (supra). The Supreme Court noted that, whereas Section 156 (3) occurs in Chapter XII dealing with information to the police and the powers of the police to investigate, Section 202 forms part of Chapter XV which relates to complaints to magistrates. The Supreme Court observed that the power to order a police investigation under Section 156 (3) is distinct from the power to direct an investigation under Section 202 (1). Section 156 (3) is at the pre-cognizance stage, Section 202 is at the post-cognizance stage. Moreover, once a magistrate has taken cognizance and has adopted the procedure under Chapter XV, it is not open to him then to go back to the pre-cognizance stage and avail of Section 156 (3). Investigation by the police under Section 156 (3) is in exercise of the plenary power to investigate offences which begins with collection of evidence and ends with a report under Section 173 (2). The investigation, on the other hand, which Section 202 contemplates, is of a different nature and is for the purpose of enabling the magistrate to decide whether or not there is sufficient ground for proceeding. The Supreme Court observed as follows:

> "Section 156(3) occurs in Chapter XII, under the caption: "Information to the Police and their powers to investigate"; while Section 202 is in Chapter XV which bears the heading "Of complaints to Magistrates". **The**

16 (2012) 7 SCC 407 at para 26, p 420

power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by Section 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the pre cognizance stage, the second at the post-cognizance stage when the magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). **But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3). It may be noted further 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)**. Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173. On the other hand, Section 202 comes in at a stage when some evidence has been collected by the magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the magistrate is empowered under Section 202 to direct, within the limits circumscribed by that section, an investigation "for the purpose of deciding whether or not there is sufficient ground for proceeding ". Thus **the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the magistrate in completing proceedings already**

> **instituted upon a complaint before him**." (emphasis supplied)

Noting the distinction between an investigation under Chapter XII and proceedings under Chapter XV, the Supreme Court in **Samaj Parivartan Samudaya** (supra), held as follows:

> "... **In the former case, it is upon the police report that the entire investigation is conducted by the investigating agency and the onus to establish commission of the alleged offence beyond reasonable doubt is entirely on the prosecution. In a complaint case, the complainant is burdened with the onus of establishing the offence and he has to lead evidence before the court to establish the guilt of the accused**. The rule of establishing the charges beyond reasonable doubt is applicable to a complaint case as well." (emphasis supplied)

The same principle was enunciated in **Madhao Vs State of Maharashtra**[17]:

> "When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The Magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative

17 (2013) 5 SCC 615

> to taking cognizance of the offence itself. As said earlier, in the case of a complaint regarding the commission of cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156(3)."

In **Anil Kumar Vs M K Aiyappa**[18], this distinction is brought out in the following observations of the Supreme Court:

> "...When a Special Judge refers a complaint for investigation under Section 156(3) CrPC, obviously, he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage. When a Special Judge takes cognizance of the offence on a complaint presented under Section 200 CrPC and the next step to be taken is to follow up under Section 202 CrPC. Consequently, a Special Judge referring the case for investigation under Section 156(3) is at pre-cognizance stage."

Now it is in this background that it would be necessary for the Court to consider the import of an order passed by the magistrate declining to issue a direction under Section 156 (3) ordering an investigation as specified in sub-section (1). When a written complaint is made before a magistrate disclosing a cognizable offence, the magistrate may send the complaint to the concerned police station under Section 156 (3) for investigation. If this course of action is adopted, the police is required to investigate into the

18 (2013) 10 SCC 705

complaint. On the completion of the investigation, a report is submitted under Section 173 (2), upon which a magistrate may take cognizance under Section 190 (1) (b). Alternately, when a written complaint disclosing a cognizable offence is made before a magistrate, he may take cognizance under Section 190 (1) (a), in which event he has to proceed in accordance with the provisions of Chapter XV. The exercise of the power under Section 156 (3) is before the magistrate takes cognizance. Once the magistrate has taken cognizance under Section 190, it is not open to him to switch back to Section 156 (3) for the purposes of ordering an investigation. Section 200 requires that the magistrate taking cognizance of an offence on a complaint shall examine upon oath the complainant and the witnesses, if any. Section 202 enables the magistrate to postpone the issuance of process against the accused on receipt of a complaint of an offence of which he is authorised to take cognizance, in which event he may follow one of the following courses:

(i) The magistrate may, either enquire into the case himself; or

(ii) The magistrate may direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purposes of deciding whether or not there is sufficient ground for proceeding. However, the two provisos to Section 202 stipulate that no direction for investigation shall be made (i) where it appears that the offence complained of is triable exclusively by the Court of Session; or (ii) in a complaint which has not been made by a court, unless the complainant and the witnesses present, if any, have been examined on oath under Section 200. The proviso to sub-section (2) stipulates that if it appears to the magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call

upon the complainant to produce all the witnesses and examine them on oath. Under Section 203, upon considering the statements on oath, if any, of the complainant and of the witnesses and the result of the enquiry or investigation, if any, under Section 202, if the magistrate is of the opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint recording brief reasons.

These provisions amply demonstrate that Chapter XII on the one hand and Chapter XV on the other, operate in two distinct spheres. The duty to investigate into offences is of the State and it is from that perspective that the provisions of Chapter XII including Sections 154 and 156 have been engrafted into legislation. The rejection of an application under Section 156 (3) closes the avenue of an investigation by the police under Chapter XII. For the informant or complainant who provides information in regard to the commission of a cognizable offence, an investigation by the police under Chapter XII is a valuable safeguard which sets in motion the criminal law and ensures that the offender is traced and is made answerable to the crime under the penal law of the land. Closing this avenue of ordering an investigation by the police under Section 156 (1) cannot be treated as a matter of no moment or a matter akin to a procedural direction. Depriving the person who provides information of the safeguard of an investigation under Chapter XII is a serious consequence particularly when we evaluate this in the context of the alternative remedy which is available under Chapter XV of the Code.

In Chapter XV of the Code, the complainant is subject to the burden of producing evidence before the court. This distinction between the

procedure which is enunciated in Chapter XII and the provisions of Chapter XV has been noted in several decisions of the Supreme Court from **Devarapalli Lakshminarayana Reddy** (supra) to the more recent decision in **Samaj Parivartan Samudaya** (supra). A magistrate who takes cognizance under Section 200 has to examine the complainant and his witnesses on oath. Though, under Section 202 the magistrate may postpone the issuance of process and direct an investigation to be made by a police officer, it is well settled that this investigation under Section 202 is for the purpose of deciding whether or not there is sufficient ground for proceeding. The object of an investigation under Section 202 is not to initiate a fresh case on a police report but to assist the magistrate in completing proceedings already instituted on a complaint before him.

Section 397

Section 397 (1) empowers the High Court and a Sessions Judge to call for and examine the record of any proceeding before an inferior criminal court situated within the local jurisdiction, for the purpose of satisfying itself or himself of the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. Sub-section (2) of Section 397, however, excludes the exercise of the revisional power in relation to an interlocutory order passed in an appeal, inquiry, trial or other proceeding. Section 397 (2) provides as follows:

> "**397. Calling for records to exercise powers of revision.** (1) … …

> (2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding."

The issue which falls for determination is the meaning of the expression "interlocutory order" in Section 397 (2). In **Amar Nath Vs State of Haryana**[19], an FIR was registered in relation to an incident in a village where three persons had died. The appellants were named in the FIR as having participated in the event. After investigation, the police submitted a charge sheet against the other accused except the appellants in relation to whom the police opined that no case was made out. A final report under Section 173 was submitted, which came to be accepted by the judicial magistrate. The revision petition filed by the complainant was dismissed by the Additional Sessions Judge, upon which a regular complaint was filed before the judicial magistrate against all the accused, including the appellants. The magistrate dismissed the complaint on being satisfied that no case was made out against the appellants, whereupon the complainant took the matter in revision before the Sessions Judge. The Sessions Judge allowed the revision and remanded the case to the judicial magistrate for further enquiry, upon which the latter issued summons to the appellants straightaway. This order was challenged unsuccessfully by the appellants before the High Court, inter-alia, under Section 397: the High Court dismissed the petition on the ground that the order of the judicial magistrate summoning the appellants was interlocutory in nature and hence the revision was barred. The Supreme Court observed that the bar on a revision against

19 AIR 1977 SC 2185

interlocutory orders was introduced because High Courts were flooded with revisions of all kinds against interlocutory orders resulting in a delay in the disposal of cases. Explaining the ambit of the expression “interlocutory order”, the Supreme Court observed as follows:

> “The main question which falls for determination in this appeal is as to what is the connotation of the term "interlocutory order" as appearing in sub-section (2) of Section 397 which bars any revision of such an order by the High Court. The term "interlocutory order" is a term of well-known legal significance and does not present any serious diffident. It has been used in various statutes including the Code of Civil Procedure, Letters Patent of the High Courts and other like statutes. In Webster's New World Dictionary "interlocutory" has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide the rights and liabilities of the parties concerning a particular aspect. It seems to us that **the term "interlocutory order" in Section 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 right 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 Section 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 orders** so as to be outside the purview of the revisional jurisdiction of the High Court." (emphasis supplied)

The test to be applied is whether an order is purely interim or temporary in nature which does not decide or touch upon important rights or liabilities of parties. In distinction, an order which substantially affects the rights of the accused or decides certain rights of the parties is not an interlocutory order. An order which deals with matters of moment and which affects or adjudicates upon rights or a particular aspect of the trial is not an interlocutory order so as to be outside the pale of revision. Interlocutory orders are purely procedural orders which do not affect rights and liabilities of parties and are steps towards the process of final adjudication. An interlocutory order merely regulates the procedure and does not affect rights or liabilities. Bearing in mind these principles, the Supreme Court noted that in that case, the appellants had been released by the judicial magistrate upon the submission of a final report by the police and a revision to the Additional Sessions Judge had failed. The appellants were held to have acquired a valuable right of not being put on trial unless a proper order was made against them. When a complaint was thereafter filed which again was dismissed by the judicial magistrate, the Sessions Judge

remanded the proceedings. In pursuance of the remand, when the judicial magistrate summoned the appellants, the question of the appellants being put to trial arose for the first time. This was held to be a valuable right which the appellants possessed and which was being denied to them by the order of the judicial magistrate. The order of the judicial magistrate was, in the circumstances, a matter of moment in the view of the Supreme Court and a valuable right was regarded as having been taken away by the magistrate in passing an order, prima facie, in a mechanical fashion without application of mind. Hence, the revision was held to be maintainable.

The submission which has been urged on behalf of the petitioners, however, is that while the police ought to register an FIR whenever facts brought to their notice show that a cognizable offence has been made out, a remedy is provided by the Code in the event that the police fail to do so. In such an event, it has been urged that the modalities to be adopted are those which are specified in Section 190 read with Section 200. The submission is that since an alternate remedy is available, the rejection of an application under Section 156 (3) does not result in the doors being shut to the complainant who can avail of the remedy provided in Chapter XV by submitting a complaint to the magistrate.

Since this submission is based on the judgment of the Supreme Court in **Aleque Padamsee** (supra), the judgment in that case would have to be analyzed. In **Aleque Padamsee**, a petition was filed under Article 32 of the Constitution before the Supreme Court because of the inaction of police officials in failing to register an FIR and in according sanction in terms of Section 196 IPC. It was alleged that the fifth and sixth respondents made

speeches which were likely to disturb the communal harmony and to create hatred against persons belonging to minority communities. The police authorities in Maharashtra found that since speeches were delivered outside the State, action could be taken by the authorities in that latter State. The report which was lodged was, accordingly, forwarded to officials in the other State. The submission was that though the FIR ex facie disclosed the commission of a cognizable offence, the police were not justified in registering it. It was in this background that the Supreme Court held as follows:

> "(1) If any person is aggrieved by the inaction of the police officials in registering the FIR, the modalities contained in Section 190 read with Section 200 of the Code are to be adopted and observed.
>
> (2) It is open to any person aggrieved by the inaction of the police officials to adopt the remedy in terms of the aforesaid provisions."

These observations would not determine the issue as to whether a revision under Section 397 is barred where an application made to the magistrate under Section 156 (3) is rejected. That was not the matter in issue before the Supreme Court. Whether an order rejecting an application under Section 156 (3) would constitute an interlocutory order did not fall for determination and hence the judgment in **Aleque Padamsee** does not deal with this aspect. On the contrary, it is clear that for a revision to be barred under Section 397 (2), an order must fulfill the description of being an interlocutory order. An interlocutory order is in the nature of a procedural order which is a step taken towards final adjudication of the case. An

interlocutory order is an order which does not affect or adjudicate upon the substantial rights of parties.

An order which determines matters of moment or which affects valuable rights is not an interlocutory order. An order passed by the magistrate declining to entertain an application under Section 156 (3) is a matter of moment for the complainant or the informant because such an order has the effect of declining to issue a direction to the police to register an FIR and investigate the case. That avenue of a police investigation is foreclosed by the passing of an order under Section 156 (3). The remedy of a complainant under Section 200 stands in a distinct and independent sphere and is subject to the discharge of statutory obligations which a complainant, who brings focus on the commission of a cognizable offence, may not be able to bear. In the referral order of 13 December 2013, the learned Single Judge has emphasized that it is a primary constitutional mandate of the State, under the Directive Principles of State Policy, to ensure that opportunities for securing justice are not denied to a citizen by reason of economic and other disabilities. The learned Single Judge has cited two telling illustrations, which we may extract hereafter only to emphasize the serious consequences that are liable to emerge if the remedy of a revision under Section 397 (2) is shut out to a complainant against an order of the magistrate declining to order the registration of a case or registration of an FIR and declining to direct an investigation under Section 156 (3):

> "To elucidate the point: where a son of a maid servant, who had gone to demand his wages from a doctor in a nursing home on the occasion of the doctor's

> daughter's marriage is found drowned in a pond and the body discovered had blood oozing from the mouth and nostrils and the Magistrate on the application under Section 156(3) CrPC refuses to order registration and investigation of the case, can the maid servant be expected to get justice by lodging a private complaint and collecting evidence against the influential doctor. Similarly, where in an open assault, the husband of the complainant is felled and killed at the spot, the victim being the near relation of the accused, say brother of the accused, the widow having been first withheld from going to police station to lodge a report and when after some time she reaches the police station, the police turning her away and not registering a case and when the woman resorts to her parental house and then moves an application along with post mortem report under Section 156 (3) CrPC and the Magistrate treats the same as complaint, can the lady be expected to collect evidence from a village where she is not residing, the persons who are powerful and resourceful (both the illustrations cited happen to be the real cases which came to my notice while working as District and Sessions Judge).”

To expect a complainant who suffers from grave social disabilities occasioned by the widespread societal discrimination on grounds of gender and caste, which prevail in our society more than six decades after independence, to effectively prosecute a complaint before the magistrate under Chapter XV of the Code, would be to shut our eyes to social reality. The well settled distinction between a police investigation falling within the ambit and purview of Chapter XII and an enquiry or investigation ordered by the magistrate under Section 202 have already been noticed earlier

following the decision of the Supreme Court in **Devarapalli Lakshminarayana Reddy** (supra). The power of the magistrate under Section 202 to postpone the issuance of process and to direct an investigation to be made by a police officer for the purpose of deciding whether or not there is sufficient ground for proceeding, is distinct from an order under Section 156 (3). This distinction is part of the well settled principle of our law. Hence, in our view, where an order is passed by the magistrate declining to order an investigation under Section 156 (3), such an order affects the valuable rights of the complainant and is a matter of moment. Access to the remedy of a revision under Section 397 (1) is not barred since such an order is not an interlocutory order under sub-section (2). Nor can access to the statutory remedy of a revision under Section 397 (1) be defeated on the ground that the complainant may avail of the procedure prescribed in Chapter XV of the Code.

The decision of the Full Bench in **Father Thomas** arose from a judgment of the learned Single Judge which doubted the correctness of an earlier decision in **Ajai Malviya** (supra). In **Ajai Malviya**, it was held that an order under Section 156 (3) is a judicial order and hence an FIR registered on its basis could not be challenged in a writ petition. While dissenting from that view, the learned Single Judge had observed that though the order under Section 156 (3) is a judicial order, nonetheless it is an interlocutory order which could not be challenged by a **prospective accused** who had no locus standi at the stage of investigation. The ambit of the reference in **Father Thomas** was on whether a direction under Section 156 (3) ordering an investigation is interlocutory in nature and whether a

prospective accused has the locus standi to challenge that order under Section 397. Undoubtedly, three questions were formulated for the decision of the Full Bench. The first question was whether an order of the magistrate under Section 156 (3) 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. The second question was whether an order under Section 156 (3) is an interlocutory order against which the remedy of a revision is barred under Section 397 (2). The second question which was formulated in **Father Thomas** was consequential upon the first. The answers to both the questions must, therefore, be construed from the perspective of the controversy which was before the Court. No judgment can be read in the abstract, isolated from the facts which constitute the basis or foundation for the invocation of a judicial remedy. The ruling of the Full Bench in **Father Thomas** that an order under Section 156 (3) is interlocutory is, therefore, to be construed as laying down the principle that a prospective accused against whom neither cognizance has been taken nor process has been issued, has no right of revision against an order directing the registration of an FIR and an investigation. The issue which has fallen for determination in the present proceedings was not before the Full Bench in **Father Thomas**. The judgment in **Father Thomas** does not decide that question. The issue has not been decided expressly or sub silentio.

Right to be heard

Now it is in this background, that we deal with the next issue in the present reference which is, whether in a revision under Section 397 filed against the rejection of an application under Section 156 (3) for the

registration of a case and for investigation, the prospective accused has a right to be heard. While considering this question, it would be appropriate to refer to some of the leading decisions of the Supreme Court which have a bearing on the issue. In **P Sundarrajan Vs R Vidhya Sekar**[20], a Bench of two learned Judges considered a situation where a complaint under Section 420 IPC had been dismissed by the judicial magistrate. Against the dismissal of the complaint, the complainant preferred a revision before the High Court. Holding that no notice to the suspects for the disposal of the revision was necessary, the High Court set aside the order of the magistrate and directed him to proceed afresh in accordance with law. The Supreme Court granted leave in a Special Leave Petition under Article 136 and while setting aside the order of the High Court, remanded the proceedings with a direction to issue proper notice to the persons accused of the crime in the complaint and to proceed after affording them a reasonable opportunity of being heard. The Supreme Court held that the order of the High Court was "ex facie unsustainable in law by not giving an opportunity to the appellant herein to defend his case" and that the learned Judge "violated all principles of natural justice as also the requirement of law of hearing a party before passing an adverse order"[21].

In **Raghu Raj Singh Rousha** (supra), the first respondent filed a complaint before the Additional Chief Metropolitan Magistrate under Section 200 in respect of offences punishable under Sections 323, 382, 420, 465, 468, 471, 120-B, 506 and 34 IPC together with an application under Section 156(3). The Metropolitan Magistrate declined to direct an

20 (2004) 13 SCC 472
21 At para 5, page 472-473

investigation by the Station House Officer under Section 156 (3) and dismissed the application. However, the Magistrate held that the complaint can be conveniently dealt with under Section 200 and, if necessary, the assistance of the police could be taken under Section 202. The complainant was called upon to lead pre-summoning evidence and to furnish the list of witnesses. The first respondent filed a revision impleading only the State as a party. The High Court, on hearing counsel for the parties, noted that it was agreed that the order of the Metropolitan Magistrate be set aside with a direction to examine the matter afresh after calling for a report from the police. The police was directed to hold a preliminary enquiry on the basis of the complaint and to submit a report to the magistrate. The Supreme Court held as follows:

> "22. Here, however, the learned Magistrate had taken cognizance. He had applied his mind. He refused to exercise his jurisdiction under Section 156(3) of the Code. He arrived at a conclusion that the dispute is a private dispute in relation to an immovable property and, thus, police investigation is not necessary. It was only with that intent in view, he directed examination of the complainant and his witnesses so as to initiate and complete the procedure laid down under Chapter XV of the Code."

The judgment of the High Court was set aside with a direction to implead the appellant as a party in the criminal revision and to hear the proceedings afresh. The decision in **Raghu Raj Singh Rousha** (supra) dealt with a situation where, as the Supreme Court noted, the magistrate had taken

cognizance, and had applied his mind while, at the same time, refusing to exercise his jurisdiction under Section 156 (3).

In a subsequent decision in **A N Santhanam Vs K Elangovan**[22], a Bench of two learned Judges of the Supreme Court considered whether the High Court had committed an error in disposing of a criminal revision petition filed by the complainant without notice to the accused. Relying upon the provisions of Section 401 (2) of the Code, the Supreme Court observed that the High Court in the exercise of its revisional power cannot pass any order which may cause prejudice to the accused or to other persons unless an opportunity of being heard is granted. While setting aside the decision of the High Court, the Supreme Court restored the criminal revision for disposal afresh after notice to the appellant. In that context, the Supreme Court observed as follows:

> "In the instant case it cannot be said that the rights of the appellant have not been affected by the order of revision. The complaint filed by the respondent which was rejected for whatsoever reasons has been resurrected with a direction to the Magistrate to proceed with the complaint. Undoubtedly, whether the appellant herein was an accused or not but his right has been affected and the impugned order has resulted in causing prejudice to him."

The earlier decisions and the provisions of Section 401 (2) of the Code came up for consideration before a Bench of three learned Judges of the Supreme Court in **Manharibhai Muljibhai Kakadia Vs Shaileshbhai Mohanbhai Patel**[23]. Before we analyze the decision, it would be necessary

22 (2012) 12 SCC 321
23 (2012) 10 SCC 517

to advert to the provisions of sub-sections (1) and (2) of Section 401 of the Code:

> "**401. High Court's powers of revisions.** (1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by Section 392.
>
> (2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence."

Sub-section (1) of Section 401 deals with the power of the High Court in revision and stipulates that where the record of a proceeding has been called for by the High Court or comes to its knowledge, it may, in its discretion, exercise any of the powers, inter-alia, conferred on a Court of Session by Section 307 or on a Court of Appeal by Sections 386, 389, 390 and 391. Sub-section (2) of Section 401 stipulates that no order under the section shall be made to the prejudice of the accused "or other person" unless an opportunity of being heard has been furnished.

In **Manharibhai Muljibhai Kakadia Vs Shaileshbhai Mohanbhai Patel** (supra), the first respondent filed a criminal complaint in the court of the Chief Judicial Magistrate against the appellants alleging that they had entered into a conspiracy and had created forged documents in the name of

the complainant and his relatives and had used them as genuine documents before the District Registrar of Cooperative societies and by making false representations, thereby causing a financial loss. The appellants were alleged to have committed offences punishable under Sections 420, 467, 468, 471 and 120-B IPC. The Chief Judicial Magistrate, in exercise of the power under Section 202 of the Code, directed an enquiry to be made by the police Inspector. The Investigating Officer, upon investigation, submitted a C Summary Report stating that the dispute was of a civil nature and no offence was made out. The Chief Judicial Magistrate accepted the report of the Investigating Officer. That order was challenged by the complainant in a criminal revision under Section 397. The appellants made an application for joining them as respondents and to be heard but the learned Single Judge of the High Court dismissed the application. The Supreme Court granted leave in petitions under Article 136 of the Constitution and disposed of the appeals by its decision. The Supreme Court observed that under Section 202, the magistrate may himself hold an enquiry or direct an investigation by a police officer. The dismissal of the complaint under Section 203 is at the stage of pre-issuance of process. The Code does not permit an accused person to intervene at the stage of inquiry by the Magistrate under Section 202. The Supreme Court formulated the issue as whether, when a complaint has been dismissed by the magistrate under Section 203 at the post-cognizance stage and pre-issuance of process, on a challenge to the legality of the order of dismissal of a complaint being laid by the complainant in a revision before the High Court, persons who are arraigned as accused had a right to be heard. The Supreme Court observed as follows:

> "The legal position is fairly well-settled that in the proceedings under Section 202 of the Code the accused/suspect is not entitled to be heard on the question whether the process should be issued against him or not. As a matter of law, upto the stage of issuance of process, the accused cannot claim any right of hearing. Section 202 contemplates postponement of issue of process where the Magistrate is of an opinion that further inquiry into the complaint either by himself is required and he proceeds with the further inquiry or directs an investigation to be made by a Police Officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. If the Magistrate finds that there is no sufficient ground for proceeding with the complaint and dismisses the complaint under Section 203 of the Code, the question is whether a person accused of crime in the complaint can claim right of hearing in a revision application preferred by the complainant against the order of the dismissal of the complaint. Parliament being alive to the legal position that the accused/suspects are not entitled to be heard at any stage of the proceedings until issuance of process under Section 204, yet in Section 401(2) of the Code provided that no order in exercise of the power of the revision shall be made by the Sessions Judge or the High Court, as the case may be, to the prejudice of the accused or the other person unless he had an opportunity of being heard either personally or by pleader in his own defence."

The Supreme Court noted, in the course of the decision, that three expressions which have been used in Section 401 (2) are significant, namely (i) "prejudice"; (ii) "other person"; and (iii) "in his own defence". It was

held that the expression "other person" in the context of Section 401 (2) means a person other than the accused and includes suspects or persons alleged in the complaint to have been involved in the offence, although they may not be termed as accused at a stage before the issuance of process. The expression "in his own defence" was held to comprehend for the purposes of Section 401 (2), in defence of the order which is under challenge in the revision before the Sessions Judge or the High Court. The principle of law which has been formulated by the Supreme Court is as follows:

> "In a case where the complaint has been dismissed by the Magistrate under Section 203 of the Code either at the stage of Section 200 itself or on completion of inquiry by the Magistrate under Section 202 or on receipt of the report from the police or from any person to whom the direction was issued by the Magistrate to investigate into the allegations in the complaint, the effect of such dismissal is termination of complaint proceedings. On a plain reading of sub-section (2) of Section 401, it cannot be said that the person against whom the allegations of having committed the offence have been made in the complaint and the complaint has been dismissed by the Magistrate under Section 203, has no right to be heard because no process has been issued. **The dismissal of complaint by the Magistrate under Section 203 – although it is at preliminary stage – nevertheless results in termination of proceedings in a complaint against the persons who are alleged to have committed crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or the Sessions Judge, by virtue of Section 401(2) of the Code, the suspects get the right of hearing before**

> **revisional court although such order was passed without their participation. The right given to "accused" or "the other person" under Section 401(2) of being heard before the revisional court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Sections 200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of the express provision contained in Section 401(2) of the Code. The stage is not important whether it is pre-process stage or post process stage.**" (emphasis supplied)

Expressing its agreement with the principles which were formulated in the earlier decisions in **P Sundarrajan**, **Raghu Raj Singh Rousha**, and **A N Santhanam**, the Supreme Court held thus:

> "... We hold, as it must be, that in a revision petition preferred by the complainant before the High Court or the Sessions Judge challenging an order of the Magistrate dismissing the complaint under Section 203 of the Code at the stage under Section 200 or after following the process contemplated under Section 202 of the Code, the accused or a person who is suspected to have committed the crime is entitled to hearing by the revisional court. In other words, where the complaint has been dismissed by the Magistrate under Section 203 of the Code, upon challenge to the legality of the said order being laid by the

> complainant in a revision petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition. This is a plain requirement of Section 401(2) of the Code. If the revisional court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in the complaint to have committed the crime have, however, no right to participate in the proceedings nor are they entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process. We answer the question accordingly. The judgments of the High Courts to the contrary are overruled."

The decision of the Supreme Court in **Manharibhai Muljibhai Kakadia** holds that where a complaint is dismissed under Section 203, the accused or a person who is suspected to have committed the crime is entitled to a hearing before the revisional court. This has been held to be a consequence of the requirement in Section 401 (2) that no order under sub-section (1) shall be made **to the prejudice** of the accused or **other persons** unless he has had an opportunity of being heard **in his own defence.** The stage, whether it be pre-process or post-process has been held not to matter. The issue has been looked at from two perspectives. Firstly, the dismissal of a complaint by a magistrate under Section 203 results in a termination of the proceedings in a complaint against a person who is alleged to have committed the crime. Once a challenge is made to such an order at the instance of the complainant, the suspects get a right of hearing before the

revisional court, although such an order was passed in the first instance by the magistrate without their participation. The right to be heard is one which emanates from Section 401 (2). Secondly, if the revisional court overturns the order of the magistrate dismissing the complaint and the complaint is restored to the file of the magistrate for fresh consideration, the persons who are alleged in the complaint to have committed the crime have no right to participate in the proceedings before the magistrate until the consideration of the matter by the magistrate for issuance of process. The fact that the persons who are suspected of having committed the crime have not been heard when the original order of dismissal has been passed under Section 203 and will not be heard upon the restoration of the proceedings following the allowing of the revision, has been held not to affect their right to be heard in the revision under Section 397 (2).

As we have noted earlier, once an application has been filed before the magistrate upon the refusal of the police to investigate under Section 156 (1), the Supreme Court has observed that the magistrate has an option of either proceeding under Section 156 (3) or under Section 200. If the magistrate were to proceed under Section 200 and the complaint is dismissed under Section 203, whether pre- or post-process, the persons who are suspected of having committed the crime have been held to be entitled to be heard in a revision by the complainant under Section 397 against the order of rejection. That being the position, there is no reason or justification to exclude an opportunity of being heard to the persons suspected of having committed the crime when a revision is filed under Section 397 against the rejection of an application under Section 156 (3) for the registration of a

case involving a cognizable offence and for investigation by the police. The provisions of Section 401 (2) have been held to require a hearing to a person suspected of having committed a crime when a criminal revision is laid against an order of dismissal of the complaint under Section 203, irrespective of the stage at which the complaint had been dismissed. Equally, there would be no justification to exclude the right of a hearing for, to use the language of Section 401 (2), a hearing has to be afforded to the accused or other person and no order can be made to his prejudice unless he has an opportunity of being heard in his own defence.

The decision in **Manharibhai Muljibhai Kakadia** has been followed in a subsequent judgment of the Supreme Court in **Mohit alias Sonu Vs State of Uttar Pradesh**[24]. In that case, an order passed by the Additional Sessions Judge rejecting an application moved by the complainant under Section 319 of the Code was set aside by the High Court and the trial Court was directed to examine the accused–appellants. The accused were named in an FIR of having committed offences under Sections 147, 323, 504, 506 and 304 IPC. The Investigating Officer submitted a charge sheet against five accused leaving out the names of two accused who were the appellants before the Supreme Court. After the committal of the case for trial, the complainant in his examination-in-chief specifically stated the role of the appellants and moved an application under Section 319 for summoning them. The trial Court disposed of the application on the ground that the cross-examination had been not completed. This Court found no error in the order passed by the trial Court which had simply postponed the issue

24 (2013) 7 SCC 789

pending the cross-examination of the witnesses. A second application under Section 319 was thereafter rejected by the trial court, against which an application under Section 482 was allowed by this Court. This Court held that the trial Court was in error in rejecting the application for summoning the appellants and directed the trial Court to summon them under Section 319. The Supreme Court observed as follows:

> "25. In the light of the ratio laid down by this Court referred to herein above, we are of the considered opinion that the order passed by the trial court refusing to issue summons on the application filed by the complainant under Section 319 of CrPC cannot be held to be an interlocutory order within the meaning of sub-section (2) of Section 397 of CrPC. Admittedly, in the instant case, before the trial court the complainant's application under Section 319 of CrPC was rejected for the second time holding that there was no sufficient evidence against the appellants to proceed against them by issuing summons. The said order passed by the trial court decides the rights and liabilities of the appellants in respect of their involvement in the case. As held by this Court in Amar Nath's case, an 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 as contemplated under Section 397(2) of CrPC.
>
> 26. In the instant case as noticed above, when the complainant's application under Section 319 of CrPC was rejected for the second time, he moved the High Court challenging the said order under Section 482 of CrPC on the ground that the Sessions Court had not correctly appreciated the facts of the case and the evidence brought

on record. The complainant wanted the High Court to set aside the order after holding that the evidence brought on record is sufficient for coming to the conclusion that the appellants were also involved in the commission of the offence.

27. In our considered opinion, the complainant ought to have challenged the order before the High Court in revision under Section 397 of CrPC and not by invoking inherent jurisdiction of the High Court under Section 482 of CrPC Maybe, in order to circumvent the provisions contained in sub-section (2) of Section 397 or Section 401, the complainant moved the High Court under Section 482 CrPC. In the event a criminal revision had been filed against the order of the Sessions Judge passed under Section 319 of CrPC, the High Court before passing the order would have given notice and opportunity of hearing to the appellants."

The conclusion which was arrived at was as follows:

"34. Indisputably, a valuable right accrued to the appellants by reason of the order passed by the Sessions Court refusing to issue summons on the ground that no prima facie case has been made out on the basis of evidence brought on record. As discussed herein above, when the Sessions Court order has been challenged, then it was incumbent upon the revisional court to give notice and opportunity of hearing as contemplated under sub-section (2) of Section 401 of CrPC. In our considered opinion, there is no reason why the same principle should not be applied in a case where such orders are challenged in the High Court under Section 482 of CrPC."

The appeal was, accordingly, allowed and the proceedings were remitted back to the High Court for a decision afresh after furnishing an opportunity of being heard to the appellants. The principle underlying Section 401 (2) has been extended by the Supreme Court also to a proceeding under Section 482.

The test as to whether a person is entitled to an opportunity of being heard in a challenge to an order passed in an original proceeding by another is not dependant necessarily on whether such a person had a right to be heard in the original proceeding. A person who is entitled to be heard in an original proceeding may legitimately assert a right to be heard when a substantive right created by an order passed in that proceeding is sought to be assailed before a higher forum at the behest of another person. But a right to be heard in revision is not excluded because a person who claims such a right was not entitled to be heard before the original order, which is assailed, was passed in the first instance or merely because a right of a hearing will not be available in the original proceedings on remand. The entitlement of a hearing at a particular stage has to be assessed independently, by considering the consequences of the proceeding in which a hearing is sought. Where a substantial right will be affected, a prejudice is likely to result or a result which has enured to the benefit of a person is sought to be negated, a hearing can legitimately be claimed when the order is assailed in a higher forum. Natural justice in our jurisprudence is not merely a matter of statutory entitlement but is an emanation or recognition of the constitutional right to fair procedure, fair treatment and objective decision making. Hence, a prospective accused is entitled to be heard in revision under Section 397

when an order rejecting an application under Section 156 (3) is assailed. For, such a person would have a legitimate entitlement to defend the order as having been correctly made. The fact that in the event of a remand by the revisional court to the Magistrate, for fresh consideration of an application under Section 156 (3), such a person has no right of a hearing does not preclude a right of a hearing in revision when the original order rejecting an application under Section 156 (3) is assailed.

Before concluding our discussion on this aspect of the matter, it would be appropriate to refer to the decision of the Supreme Court in **Divine Retreat Centre Vs State of Kerala**[25]. The Supreme Court observed as follows:

> "49. It is evident from Sections 154, 156 and 157 of the Code that even a police officer can act on the basis of information received or otherwise and proceed to investigate provided he has reason to suspect the commission of a cognizable offence which he is empowered to investigate under Section 156 CrPC. If the essential requirements of the penal provisions are not prima facie disclosed by a First Information Report and the police officer has no reason to suspect the commission of a cognizable offence, no investigation can be undertaken by him based on the information received or otherwise.
>
> 51. ...It was, however, submitted that accused gets a right of hearing only after submission of the charge-sheet, before a charge is framed or the accused is discharged vide Sections 227 & 228 and 239 and 240 CrPC. The appellant is not an accused and, therefore, it was not

25 (2008) 3 SCC 542

> entitled for any notice from the High Court before passing of the impugned order. We are concerned with the question as to whether the High Court could have passed a judicial order directing investigation against the appellant and its activities without providing an opportunity of being heard to it. The case on hand is a case where the criminal law is directed to be set in motion on the basis of the allegations made in anonymous petition filed in the High Court. No judicial order can ever be passed by any court without providing a reasonable opportunity of being heard to the person likely to be affected by such order and particularly when such order results in drastic consequences of affecting ones own reputation..."

In view of the discussion above and for the reasons which we have furnished, we have come to the following conclusion:

> (i) Before the Full Bench of this Court in **Father Thomas**, the controversy was whether a direction to the police to register a First Information Report in regard to a case involving a cognizable offence and for investigation is open to revision at the instance of a person suspected of having committed a crime against whom neither cognizance has been taken nor any process issued. Such an order was held to be interlocutory in nature and, therefore, to attract the bar under sub-section (2) of Section 397. The decision in **Father Thomas** does not decide the issue as to whether the rejection of an application under Section 156 (3) would be amenable to a revision under Section 397 by

the complainant or the informant whose application has been rejected;

(ii) An order of the magistrate rejecting an application under Section 156 (3) of the Code for the registration of a case by the police and for investigation is not an interlocutory order. Such an order is amenable to the remedy of a criminal revision under Section 397; and

(iii) In proceedings in revision under Section 397, the prospective accused or, as the case may be, the person who is suspected of having committed the crime is entitled to an opportunity of being heard before a decision is taken in the criminal revision.

The reference to the Full Bench is, accordingly, disposed of. The proceedings shall now be placed before the appropriate Bench in accordance with the roster of work for disposal in light of the principles laid down in this decision.

September 23, 2014
AHA

(Dr. D.Y. Chandrachud, C.J.)

(Dr. D.K. Arora, J.)

(D.K. Upadhyaya, J.)