IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 25th OF OCTOBER, 2024

WRIT PETITION NO.23171 of 2023

BRIJENDRA KUMAR PATEL& OTHERS

VS.

THE STATE OF MADHYA PRADESH AND ANOTHER

Appearance:

Shri Sankalp Kochar – Advocate for the petitioner.

Smt. Shraddha Tiwari – Panel Lawyer for the respondent/State.

Shri Utkarsh Agrawal – Advocate for the respondent No.2.

Reserved on: 08.07.2024

Pronounced on : 25/10/2024

ORDER

Petitioner has filed this petition under Article 226 of the Constitution of India seeking the following relief:

> (i) That, this Hon'ble Court be pleased to issue a writ of *certiorari* and quash the impugned order dated 10.08.2023 passed by learned JMFC, Hanumana, District Rewa (Annexure P/1) as well as impugned complaint under Section 156(3) of CrPC dated 23.01.2023 submitted before JMFC, Hanumana and discharge the petitioners, in the interest of justice.

> (ii) That, the Hon'ble Court be pleased to any writ, order or direction which may deem fit in the circumstances of the present case."

2. The facts of the case in brief are that on 25.11.2021, father of the respondent No.2 made a complaint to the Human Rights Commission about the incident that took place on 20.11.2021 in which respondent No.2 was badly beaten by the petitioners. On receiving the complaint, Human Rights Commission wrote a letter on 27.12.2021 to the Superintendent of Police, Rewa instructing him to conduct an inquiry about the said incident and submit the report. The police conducted an inquiry and submitted a report on 12.09.2022 mentioning therein that it was a case of accident and allegations made in the complaint are false because no injury was caused by any of the petitioners and at the same time a complaint was also filed by the respondent No.2/victim under Section 156(3) CrPC before the JMFC, Hanumana, District Rewa for issuing a direction to the police to register an FIR against the petitioners. The complaint was made on 23.01.2023. In the said case, the JMFC directed the police to submit a report with regard to the said incident but before receiving the report, final order was passed in the complaint filed by the respondent No.2 directing police to register an FIR against the petitioners.

3. Learned counsel for the petitioners has assailed the order of the court below and also the complaint made by the victim mainly on the ground that the complainant has suppressed material facts before the Court with regard to inquiry already conducted by the police and the conclusion drawn therein. He has submitted that along with the complaint, a false affidavit was also sworn by the injured before the JMFC and since the said fact of conducting enquiry by the police was not brought before the court, therefore, the Court

below had issued direction to the police for registration of FIR and as such he has submitted that the impugned order deserves to be set aside and consequently the complaint may also be quashed since the complainant has not approached the Court with clean hands and clean heart.

4. In support of his contention, learned counsel for the petitioners has placed reliance upon decisions rendered in the cases of **Priyanka Srivastava & another vs. State of Uttar Pradesh & ors,** reported in **(2015) 6 SCC 287** and **Babu Venkatesh & ors. vs. State of Karnataka & anr.** reported in **(2022) 5 SCC 639**. He has also placed reliance on the order in **MP No. 1994/2024** decided on 06.05.2024 **(Smt.Aruna Singh vs. State of Madhya Pradesh & another)** and judgment reported in 2**023 Live Law SC 435 (Sanjay Dubey vs. The State of Madhya Pradesh & another).**

5. *Per contra,* learned counsel appearing for the respondent No.2 has opposed the submissions made by learned counsel for the petitioners and submitted that the petition is not maintainable for the reason that the impugned order has been passed by the Court in a criminal proceeding and to challenge the same, the appropriate remedy is a revision under Section 397 of Cr.P.C. but not a petition under Article 226 of the Constitution. He has also submitted that the complaint cannot be quashed only on the ground that the complainant (respondent No.2) has suppressed the material facts by not disclosing the same in the complaint filed before the court below. He has submitted that in case of **Lalita Kumari Vs. Govt. of U.P. and others**, reported in **(2014) 2 SCC**, the Supreme Court has observed and laid down yardsticks for registration of an FIR in a cognizable offence. He has relied upon paragraph 120 of the said judgment and submitted that it was the duty of the police to register an FIR if a complaint is made to them for a cognizable offence. There was no need to conduct an inquiry and as such the

facts with regard to conducting an inquiry though suppressed by the complainant, that would not have direct impact over the complaint and the same cannot be quashed on this ground. He has also relied upon the judgments rendered in the cases of **Radhey Shyam & another vs. Chhabi Nath & others** reported in **(2015) 5 SCC 423, HDFC Securities Ltd. & others vs. State of Maharashtra & another** reported in **(2017) 1 SCC 640** and **Mohit @ Sonu & another vs. State of Uttar Pradesh & another** reported in **(2013) 7 SCC 789**.

6. Relying upon the Supreme Court judgment rendered in **HDFC Securities Ltd. (supra)**, learned counsel for the respondent No.2 has submitted that the petitioners have no locus to challenge the order passed by the JMFC in a complaint made under Section 156(3) CrPC unless the offence is registered by the police. He has further submitted that the petition deserves to be dismissed not only on the ground of maintainability but also considering the law laid down by the Supreme Court on which he has placed reliance.

7. Learned counsel for the State has submitted that the respondent/State has no direct role in the matter because the case has been registered against the petitioners on the basis of a complaint made by a private person i.e. respondent No.2.

8. I have heard the arguments advanced by the learned counsel for the parties and perused the record.

9. The complaint was made by the victim under Section 156(3) of Cr.P.C. on the ground that despite making report by the victim, the police did not take any action on the said report and as such he had no option but to approach the Court whereas as per the petitioners, the report was made to the police upon which an enquiry was conducted by the police and a report

in that regard was submitted. According to the said report, after recording the statement of various persons and examining the other aspects of the matter, it was found that though the incident had occurred but it was an accident, however, it was given a shape of Loot and Dacoity and the alleged accused were falsely implicated in the said offence. However, relying upon the statements made in the affidavit that after making complaint in the Police Chowki Hata, Police Station Hanumana and moving an application before the Superintendent of Police, the police was under obligation to register an FIR but by not doing so, a great disrespect has been shown by the police to their obligation and the police had failed to discharge its duties, the court below has passed the impugned order and directed the police to register an FIR against the petitioners. It clearly indicates that the intention of the complainant was not bona-fide and he did not approach the court with clean hands and heart. He has suppressed the material facts before the court because had it been informed to the court that the police had already conducted an enquiry and prepared a report touching all the relevant aspects of the matter and found that it was a false complaint filed with an intention to implicate some persons in a crime to settle personal enmity, the complaint would have been rejected by the court.

10. The Supreme Court in case of **Priyanka Shrivastava (supra)** has considered the very purpose of filing of an affidavit in support of complaint and also observed that it is the duty cast upon the complainant while filing a complaint under Section 156(3) of Cr.P.C. and also upon the Magistrate to act fairly for preventing the abuse of process of law. The Supreme Court in the said case has observed as under:-

> "19. We have narrated the facts in detail as the present case, as we find, exemplifies in enormous magnitude to

take recourse to Section 156(3) CrPC, as if, it is a routine procedure. That apart, the proceedings initiated and the action taken by the authorities under the Sarfaesi Act are assailable under the said Act before the higher forum and if, a borrower is allowed to take recourse to criminal law in the manner it has been taken, it needs no special emphasis to state, has the inherent potentiality to affect the marrows of economic health of the nation. It is clearly noticeable that the statutory remedies have cleverly been bypassed and prosecution route has been undertaken for instilling fear amongst the individual authorities compelling them to concede to the request for one-time settlement which the financial institution possibly might not have acceded. That apart, despite agreeing for withdrawal of the complaint, no steps were taken in that regard at least to show the bona fides. On the contrary, there is a contest with a perverse sadistic attitude. Whether the complainant could have withdrawn the prosecution or not, is another matter. Fact remains, no efforts were made.

20. The learned Magistrate, as we find, while exercising the power under Section 156(3) CrPC has narrated the allegations and, thereafter, without any application of mind, has passed an order to register an FIR for the offences mentioned in the application. The duty cast on the learned Magistrate, while exercising power under Section 156(3) CrPC, cannot be marginalised. To understand the real purport of the same, we think it apt to reproduce the said provision:

> "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.

(3) Any Magistrate empowered under Section 190 may order such an investigation as abovementioned."

21. Dealing with the nature of power exercised by the Magistrate under Section 156(3) CrPC, a three-Judge Bench in Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy [(1976) 3 SCC 252 : 1976 SCC (Cri) 380] , had to express thus : (SCC p. 258, para 17)

"17. … 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."

22. In Anil Kumar v. M.K. Aiyappa [(2013) 10 SCC 705 : (2014) 1 SCC (Cri) 35] , the two-Judge Bench had to say this : (SCC p. 711, para 11)

"11. The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed [Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be

sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation."

23. In Dilawar Singh v. State of Delhi [(2007) 12 SCC 641 : (2008) 3 SCC (Cri) 330] , this Court ruled thus : (SCC p. 647, para 18)

"18. …'11. 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 complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.' [Ed. : See Mohd. Yousuf v. Afaq Jahan, (2006) 1 SCC 627, SCC p. 631, para 11 : (2006) 1 SCC (Cri) 460.] "

25. Recently, in Ramdev Food Products (P) Ltd. v. State of Gujarat [(2015) 6 SCC 439] , while dealing with the exercise of power under Section 156(3) CrPC

by the learned Magistrate, a three-Judge Bench has held that : (SCC p. 456, para 22)

> "22.1. The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone instance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued.
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> 22.2. The cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine 'existence of sufficient ground to proceed'."

11. Further, in **Criminal Appeal No. 142/2021-Kapil Agrawal and others vs. Sanjay Sharma and others** decided on01.03.2021, the Supreme Court has observed as under:-

> "**6.** However, at the same time, if it is found that the subsequent FIR is an abuse of process of law and/or the same has been lodged only to harass the accused, the same can be quashed in exercise of powers under Article 226 of the Constitution or in exercise of powers under Section 482 Cr.P.C. In that case, the complaint case will proceed further in accordance with the provisions of the Cr.P.C.
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> **6.1** As observed and held by this Court in catena of decisions, inherent jurisdiction under Section 482 Cr.P.C. and/or under Article 226 of the Constitution is designed to achieve salutary purpose that criminal proceedings ought not to be permitted to degenerate into weapon of harassment. When the Court is satisfied that proceedings amount to an abuse of process of lawor that it amounts to bringing pressure upon accused, in exercise of inherent powers, such proceedings can be quashed."

12. The respondent No.2 although has relied upon several judgments pointing out that the order passed in a proceeding initiated by the court below under Section 156(3) of Cr.P.C. is revisable and only by filing a revision under Section 397 of Cr.P.C., the order of the court can be assailed, but I am not convinced with the said submission made by the learned counsel for the respondent for the reason that in a petition filed under Article 226 of the Constitution of India, the petitioners are seeking quashing of complaint filed under Section 156(3) of Cr.P.C. as well as setting aside the order dated 10.08.2023 whereby the court below has directed the police to registered an FIR. The Supreme Court in case of **Sanjay Dubey (supra)** has observed as under:-

> "**12.** A little disgression is necessitated. The High Court is a Constitutional Court, possessing a wide repertoire of powers. The High Court has original, appellate and *suo motu* powers under Article 226 and 227 of the Constitution. The powrs under Articles 226 and 227 of the Constitution are meant for taking care of sitautions where the High Court feels that some direction(s)/order(s) are required in the interest of justice. Recently in ***B.S.Hari Commandant v. Union of India, 2023 SCC OnLine SC 413***, the present coram had the occasion to hold as under:
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> > "*50. Article 226 of the Constitution is a succour to remedy injustice, and any limit on exercise of such power, is only self-imposed. Gainful reference can be made to, amongst others,A.V. Venkateswaran v. Ramchand Sobhraj Wadhwani, (1962) 1 U P SCR 573 and State Sugar Corporation v. Kamal Swaroop Tandon, Ltd. (2008) 2 SCC 41. The High Courts, under the Constitutional scheme, are endowed with the ability to issue prerogative writs to sdafeguard rights of citizens. For exactly this reason, this Court has never laid down any strait-jacket principles that can be said to have "cribbed, cabined and confined" [toborrow the term*

> *employed by the Hon' Bhagwati, J. (as he then was) in E P Royappa v. State of Tamil Nadu, (1974) 4 SCC 3 : AIR 1974 SC 555] the extraordinary powers vested under Article 226 or 227of the Constitution. Adjudged on the anvil of Nawab Shaqafath Ali Khan (supra),this was a fit case for the High Court to have examined the matter threadbare, more so, when it did not involve navigating a factual minefield."*
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> (emphasis supplied)

13. Thus, in view of the aforesaid, it is clear that the respondent while approaching the Judicial Magistrate First Class by filing a complaint under Section 156(3) of Cr.P.C. has suppressed the material fact that the police has already conducted a detailed enquiry and submitted its report. On the contrary, the complainant has made a false statement in the affidavit that the police has not done anything on the complaint and therefore the victim had no other alternative forum but to approach the court. It clearly indicates that the direction given by the Magistrate is without application of mind. If the enquiry report would have been submitted before the Magistrate, he would have taken a different decision and it was possible that the complaint would not have been entertained.

14. It is expected from a litigant to approach the court with all bonafides and without any ill-motive. The judicial forum are not available for harassing the person, but it is available to protect the right of the parties and therefore it is expected that all the correct facts should be placed before the court. In my opinion, the complainant/respondent No.2 in the existing circumstance was not entitled to get any order from the court because he had suppressed the very material information from the Court that police has conducted a detailed enquiry in which it is found that the incident of

Dacoity and Loot has not been committed and suppressing that report and alleging that the police, on his complaint, did nothing and this false statement of the complainant prejudiced the Magistrate, therefore, he has passed the impugned order.

15. In a petition filed under Article 226 of the Constitution of India, the High Court has ample power to restrain the abuse of process of law and as such this Court is of the opinion that the complaint filed by the respondent is nothing but a misuse of the forum only to harass the petitioners and this amounts to abuse of process of law.

16. Consequent upon the discussion made hereinabove and also taking note of the law laid down by the Supreme Court on the issue in the cases referred hereinabove, **this petition is allowed**. The impugned order dated 10.08.2023 (Annexure P/1) passed by the Judicial Magistrate First Class, Hanumana, District Rewa in UNCR/18/2023 is hereby set aside and in consequence thereof, the impugned complaint filed under Section 156(3) Cr.P.C. on 23.01.2023 (Annexure P/j2) is also quashed. However, there shall be order as to costs.

(SANJAY DWIVEDI)
JUDGE

Raghvendra