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interest at 12 % p.a. thereon calculated from the date of its deposit till full payment thereof to the petitioner and that the latter shall be entitled to refund of the same with interest accordingly.

Parties to bear their own costs in the circumstances.

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M.P. CHINNAPPA, J

N. Rajachar and Others vs Sri Kodandarama and Others*

CRIMINAL PROCEDURE CODE 1973 (CENTRAL ACT NO. 2 OF 1974) — SECTION 156(3) — Magistrate acting under Section 156(3) has no power to refer the case for investigation to Central Crime Branch (F and M) and Central Crime Branch.

That the magisterial power cannot be stretched under the said sub-section beyond directing the officer in charge of a police station to conduct the investigation.

CASES REFERRED:

AT PARAS

1. 1980 SCC (CRIME) 272 - State of Bihar and Another vs J.A.C. Saldanha and Others (Ref) 12
2. 2001(1) SC 263 - Central Bureau of Investigation vs State of Rajasthan and Another (do) 14

M/s. S. Balan and Associates, Advocates for Petitioners
Sri H.S. Chandramouli, Advocate for Petitioners
Sri C.V. Nagesh Advocate for Petitioners
Sri Syed Khaleel Pasha, Advocate for Petitioner
Sri D. Ashokan, Advocate for R1; Sri B.C. Muddappa, Addl. SPP for R2; R1 is served and unrepresented
Sri H.M. Raveesh and Smt. Kousalya Raveesh, Advocates for R1; Sri K. Suman, Advocates for R1

* CrI.P.No.1309/01 c/w CrI.P.Nos.4370/01, 4109/01, 4015/01, 1372/01 and CrI.P.No. 3650/99 dated 7th March 2002

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ORDER

Chinnappa, J

Since common questions of law on the basis of identical facts were raised by the advocates appearing for the petitioners, after hearing both the parties, these petitions are disposed of by this order.

2. The brief facts of the case in CrI.P.NO. 3650/99 are that the respondent filed a complaint against the petitioners alleging that they are attached to Navodaya Sahakara Bank Limited, Malleswaram, Bangalore in one capacity or the other and they committed fraudulent acts in their dealing with the Bank, thereby defrauding the Bank to the extent of Rs. 80 lakhs and therefore, the incharge Secretary of the Bank filed a complaint against the partners/proprietors of those business establishments in PCR No. 381/98 on the file of the 7th Addl.C.M.M., Bangalore city alleging that they committed offence punishable under Sections 403, 420, 464, 511 read with Section 120-B of India Penal Code. The Court was pleased to refer the complaint to the inspector of Police, Malleswaram Police Station, Bangalore city under Section 156(3) of the Code of Criminal Procedure on 30.3.1998. However, the learned Magistrate recalled the order on 24.4.1998 and directed the Asst. Commissioner of Police, Central Crime Branch, Bangalore to investigate into the case while exercising his jurisdiction under Section 156(3) Cr.P.C.

3. On the basis of this reference, Central Crime Branch, N.T.Pet, Bangalore registered the case against 8 persons named in the private complaint in Crime No. 249/98 at Malleswaram Police Station, Bangalore for the offence punishable under Sections 403, 420, 464, 511 read with Section 120-B of I.P.C. and took up investigation and thereafter submitted a charge sheet against 8 persons named in the private complaint as well as the petitioners who were not the accused in the private complaint filed by the Bank against whom the Bank had no control, sought for any action whatsoever for the offence punishable under Sections 403, 420 read with Section 120-B of Indian Penal Code. This order is questioned in this petition.

4. In CrI. Petition No. 4015/2001, the facts of the case are that the respondent therein filed a private complaint before the I Addl. Metropolitan City Addl. Court at Bangalore under Sections 380, 383,

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423, 441, 442, 467, 464, 471, 474 of Indian Penal Code on 19.10.2000. The Court was pleased to refer this complaint to Central Crime Branch under Section 156 (3) of Cr.P.C. for investigation and report. The petitioner has questioned this order passed by the Court referring it to C.C.B. under Section 482 Cr.P.C.

5. The facts leading to Crl. Petition No. 4370/2001 are that 2nd respondent filed a complaint in P.C.R. No. 933/99 before the learned IV A.C.M.M. at Bangalore under Section 200 of Cr.P.C. on 2.11.1999 for the offence punishable under Sections 406 and 420 of I.P.C. The learned Magistrate referred the case to the D.C.P. (Crime). CCB for investigation and to submit report under Section 156(3) of Cr.P.C. This order is questioned in this petition.

6. In Crl. Petition No. 1372/2001, the facts leading to this case are that the first respondent presented a private complaint before the IV Addl. C.M.M., Bangalore city against the petitioner alleging against the conduct of the petitioner making incense sticks manufactured by him by packing the same in a container having a registered artistic code with the expression EENADU has committed an offence punishable under the provisions of IPC and under the provisions of Copy Right Act and Trade and Merchandise Marks Act.

7. On 19.4.2001 on receipt of the complaint, the learned Magistrate exercised his jurisdiction under Section 156(3) of Cr.P.C. and has made a reference to the said complaint to the Asst. Commissioner of Police, Central Crime Branch (F and M), Bangalore for investigation and report. After receipt of the reference, the Police, Central Crime Branch (F and M), Bangalore registered the case in Crime No. 262/01 of Banashankari Police station, Bangalore city for the offence punishable under Sections 482, 483, 485, 420 of I.P.C. read with Sections 63, 64, 65 and 68 of the Copy Right Act 1958, and 77, 78 and 79 of the Trade and Merchandise Marks Act 1958 and submitted First Information Report to the Court. Hence, the petitioner has preferred this petition.

8. In Crl. Petition No. 1309/2001 the respondent No.1 filed a complaint before the IV Addl. Chief Metropolitan Magistrate, Bangalore on the allegation that the petitioner one N. Rajachar has cheated the respondent by collecting gold and silver articles worth

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Rs. 2 lakhs and also collected cash of Rs. 3 lakhs from the first respondent under the guise of performing pooja, etc. This was registered in P.C.R. 656/2000 and the matter was referred to City Crime Branch, N.T. Pet police for investigation and report. Hence, this petition.

9. In all these cases, the point that arises for consideration is whether the magistrate is empowered to refer the case to Central Crime Branch or (F and M) City Crime Branch, while acting under Section 156(3) of Cr.P.C. Under the circumstance, detailed facts of the case are not necessary in these petitions. As indicated above, in all these cases the Magistrates have referred the matter to the different Branches of Police for investigation under Section 156(3) Cr.P.C. and those facts are not in dispute.

10. The learned Counsel for the petitioners submitted that according to Section 156(3) of Cr.P.C., the Magistrate can refer the case only to the Police Station over which he has jurisdiction and he cannot refer to any other Police Station or to the other officers who do not come under his jurisdiction. Therefore, the order passed in these cases referring the matter to other Central Crime Branch or City Crime Branches which do not come within the jurisdiction, is contrary to the provisions of law and therefore, all these orders passed by the concerned magistrates will have to be set-aside.

11. Per contra, the learned Public Prosecutor submitted that C.C.B./ (F and M) have wide jurisdiction in Bangalore city and there is no prohibition for these Branches to conduct investigation on reference being made under Section 156(3) of Cr.P.C. by the Magistrate. Further in some cases, the concerned Police Officers have investigated and submitted chargesheet, therefore, it cannot held to be illegal. Under the circumstance, he submitted that these petitions are liable to be dismissed.

12. As stated above, a common question is involved in these cases. Therefore, it is necessary to refer to Section 156(3) of Cr.P.C. which reads:

"156. Police Officer's power to investigate cognizable case.
(1) Any officer in charge of a Police Station may, without the order of a Magistrate investigate any cognizable case which a Court having jurisdiction over the local area within the limits of

such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

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

To substantiate that the Court has no jurisdiction to refer the matter to the police station which does not come within his jurisdiction, he relied on a decision of the Supreme Court in the case of STATE OF BIHAR AND ANOTHER vs J.A.C. SALDANHA AND OTHERS¹ wherein their Lordships have considered the scope of Sections 156(3), 170, 173(8) and 190 and it is held I.G., Vigilance having jurisdiction over the whole State, if employed as a Police Officer, would be superior in rank to an officer in charge of a police station within the contemplation of Section 36 and would be competent to take up further investigation under Section 173(8) of a cognizable offence and the State Government's power of superintendence under Section 3 of Police act, 1861 includes giving directions to such a superior officer for further investigation under Section 173(8) in a case beyond the jurisdiction in bribery or corruption matters even after submission of report by the previous investigation.

13. In this case their Lordships have considered the scope and purport of Section 156(3) of Cr.P.C.; on the other hand power of a Superior Officer over the subordinate and to take up further investigation under Section 173(8) was considered. Therefore, as rightly pointed out by the learned Counsel for the petitioner, this decision is not applicable to the question involved in this case.

14. Their Lordships of Supreme Court in CENTRAL BUREAU OF INVESTIGATION vs STATE OF RAJASTHAN AND ANOTHER² considered the scope and purport of Section 156(3). In that case the question was whether the Magistrate has power to order investigation by the C.B.I. in non-cognizable cases? (No) and effect of Section 36 of the Code on Section 156(3) in a case referring to

1. 1980 SCC (CRIME) 272

2. 2001(1) SC 263

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investigate into cognizable offence, the question which arose before their Lordships was whether Section 5 and 6 of Delhi Act confer power on a Magistrate to order the CBI to conduct investigation in exercise of power under Section 156(3) of the Code. After elaborately discussing the section their Lordships have held:

“What is contained in sub-section (3) of Section 156, is the power to order the investigation referred to in sub-section (1), because the words “order such an investigation as above-mentioned” in sub-section (3) are unmistakably clear as referring to the other sub-section. Thus, the power is to order an “officer in charge of a police station” to conduct investigation.”

15. It is clear that a place or post declared by the government as police station, must have a police officer in charge of it and if he, for any reason, is absent in the station-house, the officer who is in next junior rank present in the police station, shall perform the function as officer in charge of that police station. The primary responsibility for conducting investigation into offences in cognizable cases vests with such police officer. Section 156(3) of the Code empowers a magistrate to direct such officer in charge of the police station to investigate any cognizable case over which such magistrate has jurisdiction. (emphasis supplied).

16. This means any other police officer, who is superior in rank to an officer in charge of a police station can exercise the same powers of the officer in charge of a police station and when he so exercises the power he would do it in his capacity as officer in charge of the police station. But when a magistrate orders investigation under Section 156(3), he can only direct an officer in charge of a police station to conduct such investigation and not a superior police officer, though such officer can exercise such powers by virtue of Section 36 of the Code. Nonetheless when such an order is passed, any police officer, superior in rank of such officer, can as well exercise the power to conduct investigation, and all such investigations would then be deemed to be investigation conducted by the officer in charge of a police station. Section 36 of the Code is not meant to substitute the magisterial power envisaged in Section 156(3) of the Code, though it could supplement the powers of an officer in charge of a police station. It is permissible for any superior officer of police to take over the investigation from such officer in charge of the police

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station either suo motu or on the direction of the superior officer or even that of the Government.

17. Section 5 of the Delhi Act enables the Central government to extend the powers and jurisdiction of members of the Delhi Police Establishment to any area in a State. Section 6 of the Delhi Act says that "nothing contained in Section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction any area in a State, not being a Union Territory or railway area, without the consent of the Government of that State". A contention was made before us that when the State Government gives consent for the CBI to investigate any offence within the area of the State it would be permissible for the Magistrate to direct the officer of the CBI to conduct such investigation. What is envisaged in Sections 5 and 6 of the Delhi Act is not one of conferring power on a Magistrate to order the CBI to conduct investigation in exercise of Section 156(3) of the Code.

That the magisterial power cannot be stretched under the said sub-section beyond directing the officer in charge of a police station to conduct the investigation. (emphasis supplied).

18. The learned S.P.P. however has produced a copy of the Government notification to show the creation of certain posts in the Police Department for the proper implementation of law and order and sanctioning of important posts and also different branches. As far as this notification is concerned, there cannot be any dispute but as stated above, the question is very limited as to whether the CCB and CCB (F and M) are police stations. Therefore, this notification does not in any way confer any power on the Magistrate to refer the case to these officers while acting under Section 156(3) Cr.P.C.

19. The learned SPP however submitted that even if the Courts were to hold that the Magistrate had no power to refer the matter to the City Crime Branch and Central Crime Branch (F and M) as is done in these cases in Cr.P. 3650/90 charge sheet has already been filed and in other cases the investigation is in progress and hence the same cannot be quashed only on technical ground that the Magistrate's order is improper. He further submitted that it is only a technical defect as the CCB (F and M) after the receipt of the records from the Court registered each case in the concerned

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police station and assigned respective crime number. After complying with this requirement, the investigation was taken up. Therefore, these technical defects are deemed to have been rectified.

20. It is no doubt true in all the cases as indicated above, the authorities got registered the cases in their jurisdictional police stations and have taken up investigation, but the fact is that the Magistrate had neither the jurisdiction nor power nor authority to refer the case to these authorities. The C.C.B. and C.C.B. (F and M) are not police station and undisputedly they have no authority to register the case. On the other hand, the case has to be registered in the respective police station and thereafter only, they have to take up investigation. Hence, it is clear that the very reference is not only improper but it is illegal as the Magistrate had no power or authority under Section 156(3) Cr.P.C. as held by their Lordships in the case of Central Bureau of Investigation referred to supra. It is directly applicable to the facts of this case. For the foregoing reasons, this argument is liable to be rejected.

21. However, it cannot be said that the filing of private complaint is not proper. Under the circumstances, the only order that can be passed is to direct the concerned Magistrate to take up the case at the stage at which it was referred to the C.C.B and C.C.B. (F and M) as the case may be and then consider the case in accordance with law and if the Court feels that it has to be referred to the police, it shall do so only in strict compliance of Section 156(3) Cr.P.C. and in the light of the observations made above. If such complaints are referred to the police in consonance with Section 156(3) Cr.P.C., the concerned police shall take up the matter and proceed with the investigation or deal with the case in accordance with law.

For the foregoing reasons, these petitions are allowed. the impugned orders are set aside in the light of the observations made above.
