

POWER OF MAGISTRATE TO DIRECT INVESTIGATION

The procedure of administration of criminal justice in our country is divided into three stages namely investigation, inquiry and trial. The Criminal procedure code 1973 (hereinafter referred as Cr.P.C.) provides for the procedure to be followed in investigation, inquiry and trial, for every offence under the Indian Penal Code or under any other law. Investigation being the preliminary stage is conducted by Police and usually starts after registration of First Information Report. Though, term 'First Information Report' is not used in Cr.P.C., it is popularly known so. Legal ball can be set in motion, by any person by reporting commission of cognizable offence to police. On receipt of any such information, police is duty bound to register a case and investigate as per statute. Section 154(1) cr.p.c., mandates that whenever information relating to commission of a cognizable offence, if given orally or in writing to an officer-in-charge of police station, such information, if given orally, shall be reduced into writing which shall be signed by the informer. Said information after it is reduced into writing is required to be entered in prescribed book and is popularly called as First Information Report (FIR). The FIR is a pertinent document in the criminal law procedure of our country and its main object from the point of view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain information about the alleged criminal activity so as to be able to take suitable steps to trace and to bring to book the guilty.

Despite it being statutory duty of police to register a crime u/s 154 (1) cr.p.c., in refusal to comply such duty is commonly reported. This not only aggrieves the informant/victim but also frustrates the objectives of Welfare State to redress and rehabilitate victims as well as society from the consequences of crime. Whenever, there is denial of duty by police officer as mandated under Section 154(1) cr.p.c., the aggrieved or informant may approach superior police officer (concerned Superintendent of Police), u/s 154(3) cr.p.c., by sending to him, the information in writing and by post. Such superior police officer, after being satisfied, that the information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any subordinate police officer, as per legal procedure.

In cases where attempt of aggrieved informant/victim in getting FIR registered u/s 154(3) cr.p.c., also fails, the informant/victim may approach concerned Judicial Magistrate u/s 156(3) cr.p.c. A Magistrate who is empowered u/s 190 cr.p.c., may, u/s 156(3) cr.p.c., direct investigation in any cognizable case relating to offence committed within the area of his territorial jurisdiction. Section 156(3) cr.p.c., is very brief and fails to express the powers of Magistrate precisely but its scope, ambit and limitations have

been interpreted, discussed and explained in catena of Judicial Pronouncements by Hon'ble Apex Court as well as Hon'ble High Courts across the Country.

Present paper attempts to compile such important Judicial Pronouncements where under, parameters of Powers of Magistrate u/s 156(3) have been set and explained.

WHO CAN EXERCISE THE POWER :

Combined reading of sub-section (1) & (3) of Section 156 Cr.p.c., makes it clear that any Magistrate empowered under section 190 may order police to investigate any cognizable offence reported to have been committed with local area falling under territorial jurisdiction of such Magistrate. In order to understand term 'any Magistrate' used u/s 156(3) cr.p.c., it becomes important to peruse section 3(1) (a) cr.p.c. It lays down :-

3.(1) In this Code-

(a) any reference, without any qualifying words, to a Magistrate, shall be construed, unless the context otherwise requires –

(i) in relation to an area outside a metropolitan area, as a reference to a Judicial Magistrate;

(ii) in relation to a metropolitan area, as a reference to a Metropolitan Magistrate;

(b) xxxxxxxxxxxx

Thus, it becomes clear that 'any Magistrate' u/s 156(3) means Judicial Magistrate or Metropolitan Magistrate, as the case may be. Next qualification of 'any Magistrate' inevitably requires referring to section 190 cr.p.c. As per section 190, subject to provisions of Chapter XIV of cr.pc., any Magistrate of First Class, and any Magistrate of Second Class specially empowered by Chief Judicial Magistrate, may take Cognizance of any offence – (a) upon receiving a complaint of facts which constitute such offence; (b) upon a police report of such facts and (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. Accordingly, a combined reading of section 156 (1) /(3), 190 and section 3(1). (2) & (4) of Cr.P.C., make it amply clear that power u/s 156(3) can be exercised by any of the following Magistrates :-

(a) Chief Metropolitan Magistrate/Metropolitan Magistrate having local territorial jurisdiction where the commission of cognizable offence is reported to have taken place within the Metropolitan Area,

- (b) Chief Judicial Magistrate/Judicial Magistrate of first class having local territorial jurisdiction where the commission of cognizable offence is reported to have taken place within area other than Metropolitan Area.
- (c) Judicial Magistrate of second class who has been by empowered by Chief Judicial Magistrate to cognizance u/s 190(1) cr.p.c., provided such offence is within his competence to inquire into or try.

TO WHOM DIRECTIONS U/S 156(3) CAN BE ISSUED BY MAGISTRATE

Under sub- section (3) of Section 156, Magistrate is empowered to direct only officer in charge of a police station to conduct investigation. The power cannot be exercised or directions cannot be issued to officer in charge of police station outside territorial jurisdiction of the Magistrate. While dealing with the issue, recently Hon'ble Delhi High Court in **Ramesh Awasthi vs State of NCT of Delhi**, 2017 SCC online Del 7832 & (2017) 3 DLT (Cri) 22, while referring to law as laid down by Hon'ble Apex Court in **Central Bureau of Investigation vs State of Rajasthan and anr.**, (2001) 3 SCC 333, held :-

“.....though Section 154 Cr.P.C. does not qualify the territorial jurisdiction of the officer in-charge who receives the information to register the same, however, Sections 155 and 156 Cr.P.C. qualify the territorial jurisdiction of the officer in-charge to investigate offences within the limits of such station. Therefore, a Magistrate can direct the officer in-charge of a police station to investigate a cognizable offence which is within the jurisdiction of its local area. Thus a Magistrate is required to adhere to the territorial jurisdiction and in case it is not empowered to try the said offence, it has no jurisdiction to pass order under Section 156 (3) Cr.P.C.”

Hon'ble Apex Court in matter of CBI vs. State of Rajasthan (supra) held that Magistrate while exercising power u/s 156(3) cr.p.c., cannot direct CBI to investigate any cognizable offence. Hon'ble Apex Court in said case observed that 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. It was also held that 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. The question before Hon'ble Apex court in said case was whether Magistrate u/s 156(3) can direct CBI to investigate an offence. It was held that

“ As the present discussion is restricted to the question whether a magistrate can direct the CBI to conduct investigation in exercise of his powers under Section

156(3) of the Code it is unnecessary for us to travel beyond the scope of that issue. We, therefore, reiterate 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.”

Similar view was expressed by the Division Bench of the Bombay High Court in the decision reported as 2008 CriLJ 1496 **State of Maharashtra vs. Ibrahim A. Patel**. It was held: *Plain reading of Sub-section (3) of Section 156 would, therefore disclose that the Magistrate who is empowered to take cognizance of an offence in terms Section 190 of Cr. P.C. can direct the investigation thereof by any police officer in charge of the police station, who is empowered to perform his duties within the local area demarcated for such police station and that such local area lies within the jurisdiction of the Court of the Magistrate.*

On the basis of settled legal position it can be concluded that u/s 156(3) Magistrate can direct for investigation only to SHO (officer-in-charge) of police station within his local jurisdiction. The power u/s 156(3) cr.p.c., does not authorize Magistrate to issue directions for conducting investigation to superior police officer, any other investigating agency (CBI/CID etc.,) or to officer-in-charge of police station outside his territorial jurisdiction. This also implies that if offence is alleged to have been committed outside territorial jurisdiction of Magistrate, directions cannot be passed by Magistrate u/s 156(3) cr.p.c.

WHEN AND WHAT POWER U/S 156(3) CR.P.C., CAN BE EXERCISED :

It was held by Hon'ble Apex Court in **Mohd. Yousuf vs. Smt. Afaq Jahan and Anr.**, (2006) 1 SCC 627 - *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.

In **Sakiri Vasu Vs State of U.P. and Ors.**, (2008) 2 SCC 409 Hon'ble Apex Court held after referring to precedents and relevant statutory provisions – “In view of the abovementioned legal position, we are of the view that although [Section 156\(3\)](#) is very briefly worded, there is an implied power in the Magistrate under [Section 156\(3\)](#) Cr.P.C. to order registration of a criminal offence and /or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in [Section 156\(3\)](#) Cr.P.C., we are of the opinion that they are implied in the above provision.”

In **Vinubhai Haribhai Malaviya and ors., vs. State of Gujarat and another** (2019) 17 SCC 43, (three Judge Bench), their Lordships considered the question of law as to whether, after a charge-sheet is filed by the police, the Magistrate has the power to order further investigation, and if so, up to what stage of a criminal proceeding. After referring to various precedents and relevant statutory provisions, it was held - *It is thus clear that the Magistrate's power under [Section 156\(3\)](#) of the CrPC is very wide, for it is this judicial authority that must be satisfied that a proper investigation by the police takes place. To ensure that a “proper investigation” takes place in the sense of a fair and just investigation by the police - which such Magistrate is to supervise - [Article 21](#) of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him under [Section 173\(2\)](#); and which power would continue to enure*

in such Magistrate at all stages of the criminal proceedings until the trial itself commences. Indeed, even textually, the “investigation” referred to in [Section 156\(1\)](#) of the CrPC would, as per the definition of “investigation” under [Section 2\(h\)](#), include all proceedings for collection of evidence conducted by a police officer; which would undoubtedly include proceedings by way of further investigation under [Section 173\(8\)](#) of the CrPC.

In the light of settled legal position, a Magistrate can exercise power U/s 156(3) at pre cognizance stage as well as during post cognizance stage. The power may include issuing directions to officer-in-charge of police station to register a case and investigate, where FIR has already been registered Magistrate may direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same.

PRE-CONDITION FOR EXERCISING POWER u/s 156(3) :

Whenever a victim/informant approaches Magistrate with prayer to issue directions for registration of FIR u/s 156(3), it is required that said informant/victim has exhausted procedure as laid u/s 154(1) & (3). It was observed by their Lordships in **Priyanka Srivastava and Ors. vs. State of U.P. and Ors.** (19.03.2015 - SC) : 2015 (3) PLJR 78

that ” In our considered opinion, a stage has come in this country where Section 156(3) Code of Criminal Procedure applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or Under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores. We have already indicated that there has to be prior applications Under Section 154(1) and 154(3) while filing a petition Under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application Under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate Under Section 156(3). ”

Similarly, in **Yogesh Malhotra vs State of Bihar, 2017 SCC OnLine Pat 2043** and **Bipin Kumar Singh & Anther vs The State of Bihar and ors., 2016 (1) PLJR 923, Hon'ble Patna High Court**, while applying the law as laid down in Priyanka Srivastava's case held that in absence of compliance of Section 154(1) & (3) Cr.P.C., an informant cannot approach Magistrate seeking directions for registration of FIR u/s 156(3) cr.p.c.

NO ORDER U/S 156(3) WHERE SANCTION IS REQUIRED

In **Anil Kumar and Ors. vs. M.K. Aiyappa and Ors. (01.10.2013 - SC) : 2014 (1) PLJR 4**, Hon'ble Apex Court held that Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers Under Section 156(3) Code of Criminal Procedure. The above legal position, as already indicated, has been clearly spelt out in **State of U.P. vs. Paras Nath Singh (2009) 6 SCC 372 and Subramanian Swamy vs. Manmohan Singh and Ors. (31.01.2012 - SC) : 2012 SC 1185**. The law was reiterated in **L. Narayana Swamy vs state of Karnataka, (2016)9SCC598** While relying upon law as laid down by Hon'ble Apex Court in Anil Kumar's case, Hon'ble Patna High Court in **Sakal Deo Paswan vs state of Bihar, 2015 (3) PLJR 790 & Alka Jha Vs. State of Bihar, 2016 (4) PLJR 207** held that in absence of previous sanction, power under section 156(3) cr.p.c., cannot be invoked by Magistrate.

Section 22 of Mines & Minerals (Development & Regulation Act) is not bar to direct registration FIR u/s 156(3) cr.p.c.)

In the case of **Jayant vs State of Madhya Pradesh, AIR 2021 SC 496** Hon'ble Supreme Court while referring and discussing law as laid down in catena of judgments including Anil Kumar v. M.K. Aiyappa, (Supra) observed that” After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the MMDR Act and the Rules made thereunder vis-à-vis the Code of Criminal Procedure and the Penal Code, and the law laid down by this Court in the cases referred to hereinabove and for the reasons stated hereinabove, our conclusions are as under:

- i) that the learned Magistrate can in exercise of powers Under Section 156(3) of the Code order/direct the concerned In-charge/SHO of the police station to lodge/register crime case/FIR even for the offences under the MMDR Act and the Rules made thereunder and at this stage the bar Under Section 22 of the MMDR Act shall not be attracted.

NON-COMPLIANCE OF DIRECTIONS ISSUED U/S 156(3) Cr.P.C.

It is observed in some cases that despite directions issued by Magistrate for registration of FIR u/s 156(3) cr.p.c., police fails to comply. In this reference, it is pertinent to note that order passed under section 156(3) Cr.P.C., cannot be reviewed. Hence it is necessary for Magistrate to apply judicial mind before passing any order u/s 156(3) cr.p.c. In this reference observations as recorded by Hon'ble Supreme Court in Priyanka Srivastava's case (supra) - *"At this stage it is seemly to state that power Under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same."*

Disciplinary Action :- Once a order has been passed by Magistrate u/s 156(3) cr.p.c., after due application of judicial mind but it is not complied with then Magistrate must in reference to observations recorded by Hon'ble Supreme Court in Lalita Kumari vs State of U.P. 2013(4)PLJR504, it was observed by their Lordships that -*"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."* In recent case In Re: Abdul Khaleque (17.07.2019 - CALHC) : MANU/WB/1717/2019 Hon'ble Calcutta High Court passed following directions :- In order to ensure that such breaches of statutory duty do not occur in future and the constitutional obligation to 'uphold rule of law' by promptly registering FIRs pursuant to directions given by learned Magistrates under Section 156(3) of the Code of Criminal Procedure are effectively enforced, we direct as follows:-

1) order under Section 156(3) of the Code of Criminal Procedure passed by the learned Magistrate directing registration of FIR shall be positively dispatched from the court concerned to the appropriate police station on the day on which such order is passed and FIR shall be drawn up at the police station and not later than 24 hours from the date of receipt of such order;

2) Failure to do so shall attract disciplinary proceedings and also penal consequences under Section 166B of the Indian Penal Code particularly in sex offences;

Action u/s section 166 A IPC – In case where directions u/s 156(3) cr.p.c., involve offences punishable u/s 326A, 326B, 354, 354B, 370, 370A, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, 376E and section 509 IPC, and the police officer concerned fails to comply the directions, such police officer commits offence u/s 166A IPC. Accordingly, Magistrate may take action as per law against such erring official.

Action under other provisions of Law : In appropriate cases where material is

available fulfilling ingredients of offences punishable u/s 217 or 166 A (b) IPC may also be taken against erring police officer who fails to comply directions passed by Magistrate u/s 156(3) IPC.

KEY FEATURES

- Magistrate having local territorial jurisdiction where the commission of cognizable offence is reported to have taken place can only pass directions u/s 156(3) cr.p.c.
- Magistrate can direct for investigation only to SHO (officer-in-charge) of police station within his local jurisdiction.
- The power u/s 156(3) cr.p.c., does not authorize Magistrate to issue directions for conducting investigation to superior police officer, any other investigating agency (CBI/CID etc.,) or to officer-in-charge of police station outside his territorial jurisdiction
- 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.
- Magistrate under Section 156(3) Cr.P.C. to order registration of a criminal offence and /or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same.
- Magistrate can exercise power U/s 156(3) at pre cognizance stage as well as during post cognizance stage.
- Power u/s 156(3) Cr.P.C. can be exercised by Magistrate either suo motto or on application filed by the informant.
- If application has been filed u/s 156(3) Cr.P.C., then there has to be

prior compliance of Section 154(1) and 154(3).

- **An application u/s 156(3) cr.p.c., must be supported with an affidavit.**
- **No order U/S 156(3) for registration of FIR in case where sanction is required**
- **Section 22 of Mines & Minerals (Development & Regulation Act) is not bar to direct registration FIR u/s 156(3) cr.p.c.)**
- **In case directions passed u/s 156(3) are not complied with, action should be taken against erring official u/s 166A (c) IPC (for offences specified therein), Disciplinary Action should be recommended against the erring official, in other cases and in appropriate case where material is available, action may be taken against the erring police official u/s 217 & 166A(b) IPC.**

