

**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH**

DATED THIS THE 07th DAY OF SEPTEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE P.N.DESAI

CRIMINAL PETITION NO.200989/2022

BETWEEN:

SHIVAKUMAR
S/O NINGAPPA SINDAGI
AGED ABOUT 54 YEARS,
OCC.BUSINESS,
R/O ALAKUNTE NAGAR,
KITTUR RANI CHENNAMMA NAGAR,
TQ AND DIST VIJAYPUR

...PETITIONER

(BY SRI: S S MAMADAPUR, ADVOCATE)

AND:

- 1 . VIJAYKUMAR
S/O HALAPPA MEKKALAKI
AGED ABOUT 35 YEARS,
OCC. COMMISSIONER,
CITY CORPORATION VIJAYPUR,
R/O CITY CORPORATION OFFICE,
VIJAYPUR 586101
2. THE POLICE SUB INSPECTOR
ADARSH NAGAR POLICE STATION
VIJAYPUR-586 101.
REPTD BY ADDL. SPP,
HIGH COURT OF KARNATATAKA
KALABURAGI

.....RESPONDENT

(BY SRI: GURURAJ V. HASILKAR, HCGP FOR R2)

THIS CRL.P IS FILED U/S.482 OF CR.P.C. PRAYING TO QUASH/SET ASIDE THE ORDER DATED 02.07.2022 PASSED BY THE HON'BLE V ADDL. CIVIL JUDGE AND JMFC-IV, VIJAYPUR ON THE APPLICATION FILED UNDER SECTION 156(3) OF CR.PC IN PCR NO.164/2022.

THIS PETITION COMING ON FOR FURTHER HEARING THIS DAY, THE COURT PASSED THE FOLLOWING:

ORDER

This petition is filed under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short), seeking to quash the order dated 02.07.2022 passed by V Addl. Civil Judge and JMFC-IV, Vijaypura passed on the application filed under section 156(3) Cr.P.C. in PCR No.164/2022.

2. It is contended by learned counsel for the petitioner that the petitioner filed a private complaint in PCR No.164/2022 before the JMFC Court, Vijaypura under section 200 Cr.P.C. against one Vijaykumar and two unknown persons. It is contended in the complaint that the son of the complainant and his friend were assaulted by respondent No.1 and two others. So he gave a complaint and prayed to take cognizance and direct Addl. SP to make investigation. It is further contended in the petition that respondent Nos.1 and 2 and others in the car have

committed the said offence. As the petitioner was not aware of the details of the persons who were present in the car, he filed an application under section 156(3) Cr.P.C. to refer the matter to jurisdictional Magistrate so that the particulars can be ascertained from the charge sheet, but the same came to be rejected. Hence, this petition is filed.

3. Heard Sri. S.S. Mamadapur, learned counsel for the petitioner and Sri. Gururaj V. Hasilkar, the learned High Court Government Pleader for respondent No.2-State.

4. The learned counsel for the petitioner argued that the learned JMFC has committed a grave error in rejecting the petition and not referring the matter to the jurisdictional police. Since the details of two other persons who have committed the offence were not known to complainant, he requested for referring the matter to jurisdictional police under Section 156 (3) of Cr.P.C. for investigation. But the learned JMFC failed to appreciate the same. The Court will not be in a position to know the name of other two assailants unless police investigate the same under Section 156 (3) of Cr.P.C. Therefore, if the matter is

referred for investigation, that would have been the right approach. Contending so, he prayed to quash the said order of JMFC and allow the application under Section 156 (3) of Cr.P.C.

5. In order to appreciate the said order, it is necessary to refer to certain chapters and provisions in the Code of Criminal Procedure, 1973.

6. Section 190 Cr.P.C deals with Cognizance of offences by Magistrates which comes under Chapter XIV i.e., Conditions requisite for initiation of proceedings and it reads as under:-

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-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his

own knowledge, that such offence has been committed.

(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.

Therefore, the Magistrate can take cognizance under section 190(1) (a), (b) or (c) as case made out.

7. Section 156(3) Cr.P.C. falls under Chapter XII which deals with information in cognizable cases. Section 156(3) Cr.P.C. reads as under:-

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.

Section 156(3) Cr.P.C. states that even a Magistrate who is empowered to take cognizance under section 190 Cr.P.C. may order such investigation under clause 3 of section 156.

8. In order to appreciate the rival contentions, it is necessary to refer to Chapter XV -Complaints to Magistrate and sections 200, 201 and 202 Cr.P.C.

Section 200 of The Code of Criminal Procedure, 1973 deals with examination of complainant which reads as under:-

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: Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(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

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

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.

It is evident from this section that if a 'complaint' is made to the Magistrate and on perusing the complaint, if the Magistrate decides to take cognizance on the complaint, he shall examine upon oath the complaint and the witnesses present, if any.

9. Section 201 Cr.P.C. prescribes the procedure by Magistrate not competent to take cognizance of the case, which reads as under:-

201. Procedure by Magistrate not competent to take cognizance of the case- If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall,-

- (a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;
- (b) if the complaint is not in writing, direct the complainant to the proper Court.

Further, Section 202 Cr.P.C. reads as under:-

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.

10. On perusing the above referred provisions, it is evident that when a private complaint is filed before a Magistrate, there are two courses open to him, one is he can peruse the complaint, if he applies his judicial mind to the contents of the complaint and documents, produced, any prima-facie material to show the commission of offence, take cognizance of the offence and proceed to record sworn statement of the complainant and witnesses as provided under section 200 Cr.P.C. The other course open is, if the Magistrate feels that investigation by police is necessary before taking cognizance, he can refer the complaint to the police for investigation under section 156(3) Cr.P.C.

11. Section 156(3) Cr.P.C. comes into picture at the pre-cognizance stage i.e., still the Magistrate has not taken cognizance and not decided to proceed under section 200 Cr.P.C. In the light of these principles, let me consider the

order of the Magistrate and proceedings before the learned JMFC, the order-sheet produced before the Court, the complaint which is filed and registered as PCR.

12. The order-sheet dated 23.02.2022 reads as under:-

23.02.2022

For S/st by 4/3

Sd/-
23/2

13. Learned counsel for the petitioner stated that "S/St" means 'Sworn Statement'. Such order shows that the Magistrate has taken cognizance and decided to proceed under Chapter XV under section 200 Cr.P.C. Because, the stage of recording Sworn Statement i.e., examination of the complainant on oath comes only when the Magistrate takes cognizance under section 200 Cr.P.C. Typed copy of the order sheet is not happily worded. Use of Practice of such stereotype filling the blanks of typed order sheet is deprecated by the High Court earlier. But, still, such a practice of mechanically filling the blanks in typed order sheet has continued in some courts. The Magistrate

should avoid using and filling such typed blank column formats of order sheets. They must clearly state whether they have taken cognizance of the offence and decided to proceed under section 200 Cr.P.C. for recording of sworn statement. This short-cut method of writing 'S/St' in typed blank format of order sheet shall not be resorted. Otherwise, such order itself gives rise to multiplicity of proceedings. The order-sheet dated 04.03.2022 shows that it is posted for S/St i.e., for Sworn statement(As stated by learned counsel for the petitioner). Date was given on 14.6.2022, which is struck off. An application under section 91 Cr.P.C. is filed on 04.03.2022, which is kept in abeyance as per the order dated 11.03.2022. Then on 06.06.2022, the matter is posted for 'S/St'. It appears, thereafter on 15.06.2022, application under section 156(3) Cr.P.C. is filed and the Magistrate has passed the order and in the order itself at para 3, learned Magistrate stated that the office has registered the case and put up the file. Thereafter, the Magistrate has posted the case for sworn statement of the complainant and again an application under section 91 Cr.P.C. was filed. It was kept in abeyance

and posted the case for recording of sworn statement of complainant and witnesses. When the matter is posted for recording of sworn statement of complainant and the witnesses, this application is filed.

14. This Court and the Hon'ble Apex Court stated in several decisions as to what is 'taking cognizance' and how the Magistrate has to pass an order regarding taking cognizance. In spite of deprecating short cut practice of filling blank typed forms, still such unknown procedure of filling the blanks regarding taking cognizance and issuing summons on printed format is prevailing. It is high time that the trial Courts shall desist from using such typed blank printed forms and filling the blanks without passing proper order regarding taking cognizance which does not disclose clearly whether the magistrate has taken cognizance or not.

15. I have perused the impugned order dated 02.07.2022, passed by learned JMFC which reads as under:-

Counsel for the complainant filed this application U/sec.156(3) of Cr.P.C. praying to refer the case for police investigation.

Heard on complainant and perused the records.

This is a private complaint filed by the complainant against the accused persons u/sec. 200 of Cr.P.C. for the offences punishable under sections 307, 324, 326, 504 and 506 r/w. 34 of IPC. After presentation of the complaint, this Court has scrutinized the complaint and relevant records, then directed the office to Register the case as PCR.

In compliance of the Order, office has register the case and put-up the file. Thereafter, matter was posted for sworn statement of complainant on 23.02.2022. Thereafter, on 04.03.2022 complainant has filed application u/sec. 91 of Cr.P.C., The said application was kept in abeyance and case is posted for recording of sworn statement of complainant and witnesses. When the matter is pending for recording of sworn statement of complainant and witnesses on 15.06.2022, the complainant advanced the case and filed the present application and requested to refer the case for police investigation U/sec. 156(3) of Cr.P.C.

As per Sec.156(3) of Cr.P.C., it is not mandatory to refer the case for police investigation. When the private complaint is filed before the Court, the Court can either refer the case for police investigation or Court can record the sworn statement of complainant and witnesses. Therefore, the complainant cannot insist the Court to refer the case for police investigation as the powers conferred u/sec. 156(3) of Cr.P.C. is a discretionary power of the Court. Further, it is not mandatory to the Court for referring every case to the police investigation. Further, in the complaint at page No.8 para No.3 it is stated by the complainant himself he has been filed the complaint before the SP Vijayapura. Thereafter, the SP has sent the complaint to the DYSP Vijayapura for investigation But, DYSP has not taken any action against the accused persons. Because of that reason only, the complainant has filed this complaint U/Sec.200 of Cr.P.C. Further, the alleged offences against the accused persons U/Sec.307, 324, 326, 504, 506 R/w. 34 of IPC are exclusively triable by the Court of Sessions. Therefore, taking into consideration of the gravity of the offences, this Court has not refer the case for police investigation and posted for sworn statement of complainant and witnesses. But, now

the complainant is insisting to the Court to refer the matter for police investigation.

Therefore, the complainant has no right to insist the Court to refer the matter for police investigation as a matter of right. Hence, in view of the above reasons and discussion, I proceed to pass the following:

ORDER

Application filed by the complainant U/sec. 156(3) of Cr.P.C. is hereby rejected.

Sd/-
V Addl. Civil Judge & JMFC-IV
Vijayapura

16. The order of the learned Magistrate indicates already he has taken cognizance and decided to proceed further as per section 200 Cr.P.C. Section 156(3) comes into picture at pre-cognizance stage. Already, that stage has gone and the learned Magistrate has taken cognizance and decided to proceed by recording the sworn statement i.e., what is indicated from the order sheet and the order of the learned JMFC.

17. Be that as it may. The learned JMFC has mentioned in turn that section 156(3) Cr.P.C. is not

mandatory and it is discretion of the Court. When complaint is lodged, the Court can refer the matter under section 156(3) Cr.P.C. or take cognizance and proceed to record sworn statement and enquire itself.

18. The Hon'ble Supreme Court in **Suresh Chand Jain v. State of M.P. and Another, (2001), 2 SCC 628**, dealt with power of the Magistrate under section 156(3) Cr.P.C. and section 200 Cr.P.c. and also dealt as to when the Magistrate has the power under section 156(3) Cr.P.C. and section 202 Cr.P.C. and at paras 8, 9 and 10, it is held as under:-

8. The investigation referred to therein is the same investigation, the various steps to be adopted for it have been elaborated in Chapter XII of the Code. Such investigation would start with making the entry in a book to be kept by the officer-in-charge of a police station, of the substance of the information relating to the commission of a cognizable offence. The investigation started thereafter can end up only with the report filed by the police as indicated in Section 173 of the Code. The investigation contemplated in that Chapter can be commenced by the police even without the order of a magistrate. But that does not mean that when a magistrate orders an investigation under Section 156(3) it would be a different kind of investigation. Such investigation must also end up only with the report contemplated in Section 173 of the Code. But the significant point to be noticed is, when a magistrate orders investigation under Chapter XII he does so before he takes cognizance of the offence.

9. But a magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the Code. A reading of Section 202(1) of the Code would convince that the investigation referred to therein is of a limited nature. The Magistrate can direct such an investigation to be made either by a police officer or by any other person. Such investigation is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further. This can be discerned from the culminating words in Section 202(1) i.e. or direct an investigation to be made by a police officer or by such other persons as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. This is because he has already taken cognizance of the offence disclosed in the complaint, and the domain of the case would thereafter vest with him.

10. The position is thus clear. 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.

19. The Hon'ble Supreme Court in the case of **Dilawar Singh v. State of Delhi, (2007) 12 SCC 641** has stated what is taking cognizance by the Magistrate and distinction between section 156 (3) and 202 Cr.P.C. and at paras 17 and 18, it is held as under:-

17. Section 156 reads as follows:

"156. Police officer's power to investigate cognizable cases. - (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

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

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

18. "6. Section 156 falling within Chapter XII, deals with powers of police officers to investigate cognizable offences. Investigation envisaged in Section 202 contained in Chapter XV is different from the investigation contemplated under Section 156 of the Code.

7. Chapter XII of the Cr.P.C. contains provisions relating to "information to the police and their powers to investigate",

whereas Chapter XV, which contains Section 202, deals with provisions relating to the steps which a Magistrate has to adopt while and after taking cognizance of any offence on a complaint. Provisions of the above two chapters deal with two different facets altogether, though there could be a common factor i.e. complaint filed by a person. Section 156, falling within Chapter XII deals with powers of the police officers to investigate cognizable offences. True, Section 202, which falls under Chapter XV, also refers to the power of a Magistrate to "direct an investigation by a police officer". But the investigation envisaged in Section 202 is different from the investigation contemplated in Section 156 of the Code.

8. The various steps to be adopted for investigation under Section 156 of the Code have been elaborated in Chapter XII of the Code. Such investigation would start with making the entry in a book to be kept by the officer in charge of a police station, of the substance of the information relating to the commission of a cognizable offence. The investigation started thereafter can end up only with the report filed by the police as indicated in Section 173 of the Code. The investigation contemplated in that chapter can be commenced by the police even without the order of a Magistrate. But that does not mean that when a Magistrate orders an investigation under Section 156(3) it would be a different kind of investigation. Such investigation must also end up only with the report contemplated in Section 173 of the Code. But the significant point to be noticed is, when a Magistrate orders investigation under Chapter XII he does so before he takes cognizance of the offence.

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11.xxx

20. By referring to other judgment of the Hon'ble Supreme Court in **Mona Panwar v. High Court of Judicature of Allahabad Through its Registrar and Others**, in **(2011) 3 SCC 496**, again the Hon'ble Supreme Court considered the scope of section 200 and 156(3) Cr.P.C. and the object of adoption of the Court suggested under section 200 Cr.P.C. when justified and also dealt what is the meaning of taking cognizance and at para 20, 22 and 23 has stated when a recourse to section 201 and 156(3) is to be held:-

20. Taking cognizance is a different thing from initiation of the proceedings. One of the objects of examination of complainant and his witnesses as mentioned in Section 200 of the Code is to ascertain whether there is prima facie case against the person accused of the offence in the complaint and to prevent the issue of process on a complaint which is either false or vexatious or intended only to harass such person. Such examination is provided, therefore, to find out whether there is or not sufficient ground for proceeding further.

22. The judicial discretion exercised by the appellant was in consonance with the scheme

postulated by the Code. There is no material on the record to indicate that the judicial discretion exercised by the appellant was either arbitrary or perverse. There was no occasion for the learned Single Judge of the High Court to substitute the judicial discretion exercised by the appellant merely because another view is possible. The appellant was the responsible judicial officer on the spot and after assessing the material placed before her she had exercised the judicial discretion. In such circumstances this Court is of the opinion that the High Court had no occasion to interfere with the discretion exercised judiciously in terms of the provisions of Code.

23. Normally, an order under Section 200 of the Code for examination of the complainant and his witnesses would not be passed because it consumes the valuable time of the Magistrate being vested in inquiring into the matter which primarily is the duty of the police to investigate. However, the practice which has developed over the years is that examination of the complainant and his witnesses under Section 200 of the Code would be directed by the Magistrate only when a case is found to be serious one and not as a matter of routine course. If on a reading of a complaint the Magistrate finds that the allegations therein disclose a cognizable offence and forwarding of the complaint to the police for investigation under Section 156(3) of the Code will not be conducive to justice, he will be justified in adopting the course suggested in Section 200 of the Code."

21. The Hon'ble Supreme Court in the case of **Madhao and Another v. State of Maharashtra and Another, (2013) 5 SCC 615** has stated what are the courses open

to the Magistrate when a complaint is presented to him. The provisions of sections 190(1)(a), 156(3), 200, 202 to 204 and 484 Cr.P.C. are dealt by the Hon'ble Supreme Court and at paras 17, 18, 19, 20, 21 and 23 relying on the earlier decision of the Hon'ble Supreme Court has held as under:-

17) In CREF Finance Ltd. vs. Shree Shanthi Homes (P) Ltd. and Another, (2005) 7 SCC 467, while considering the power of a Magistrate taking cognizance of the offence, this Court held:

"10. Cognizance is taken at the initial stage when the Magistrate peruses the complaint with a view to ascertain whether the commission of any offence is disclosed. The issuance of process is at a later stage when after considering the material placed before it, the court decides to proceed against the offenders against whom a prima facie case is made out. It is possible that a complaint may be filed against several persons, but the Magistrate may choose to issue process only against some of the accused. It may also be that after taking cognizance and examining the complainant on oath, the court may come to the conclusion that no case is made out for issuance of process and it may reject the complaint. It may also be that having considered the complaint, the court may consider it appropriate to send the complaint to the police for investigation under Section 156(3) of the Code of Criminal Procedure...."

It is clear 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.

18) 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 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).

19) Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives:

(a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding, he can straightaway issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.

(b) The Magistrate can postpone the issue of process and direct an enquiry by himself.

(c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.

20) In case the Magistrate after considering the statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceeding he can dismiss the complaint.

21) Where a Magistrate orders investigation by the police before taking cognizance under Section 156(3) of the Code and receives the report thereupon he can act on the report and discharge the accused or straightaway issue process against the accused or apply his mind to the complaint filed before him and take action under Section 190 of the Code.

22. xxxxxxxxxxxx

23) Keeping the above principles, if we test the same with the direction issued by the magistrate for investigation under Section 156(3) of the Code and facts of these cases, we are satisfied that the magistrate has not exceeded his power nor violated any of the provisions contained in the Code. As observed earlier, the magistrate need not order any investigation if he pre-supposes to take cognizance of the offence and once he takes cognizance of the offence, he has to follow the procedure provided in Chapter XV of the Code. It is also settled position that any judicial magistrate before taking cognizance of the offence can order investigation under Section 156(3) of the Code. "

22. In view of these principles stated by the Hon'ble Supreme Court in the above referred decision, if the order passed by learned JMFC is considered, then it is evident that the said order cannot be said as illegal or arbitrary. The method and the recourse adopted by the learned Magistrate cannot be set-aside stating that he has not exercised the power judiciously.

23. The grievance of the complainant is that he cannot ascertain the name of wife of first accused and the other person who were also involved in the alleged incident. Ofcourse, section 202 Cr.P.C. also provides that if the Magistrate decides postponement of issue of process under certain circumstances, he can order for investigation if the material placed before him falls under section 202 Cr.P.C for enquiry. It is not that the Magistrate is totally handicapped to proceed further against a person who is stated to be unknown. By considering the statement of the complainant and his witnesses, if any, before the Court and the material placed before the Court, the Court can proceed to pass orders under Sections 202, 203 and 204 Cr.P.C. I

find no error or illegality in the order passed by learned JMFC. The order needs no interference by this Court.

Accordingly, I proceed to pass the following:-

ORDER

- I. The petition is rejected.

- II. The learned Judicial Magistrate to proceed further in the light of the observations made in the above order.

**Sd/-
JUDGE**

*MN/-