

**HIGH COURT OF JAMMU AND KASHMIR  
AT JAMMU  
(THROUGH VIRTUAL MODE)**

CRM(M) 259/2019  
CrIM No. 616/2019

Reserved on 26.11.2020  
Pronounced on 17.12.2020

Satpal Sharma

Petitioner(s)

Through :- Mr.Karman Singh Johal, Advocate

V/s

Pawan Singh Rathore, Ex Vice Chairman,  
JDA

Respondents

Through : None

**Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**JUDGEMENT**

1 Through the medium of instant petition filed under Section 561-A of J&K Cr.P.C, the petitioners are seeking quashment of judgment and order dated 01.05.2019 passed by the learned Principal Sessions Judge, Jammu whereby criminal revision petition against order dated 15.03.2019 passed by the learned Chief Judicial Magistrate, Jammu has been allowed.

2 Before coming to the instant petition, let me give a brief background of the facts leading to the filing of this petition. The petitioners claim to be the owners in possession of land measuring 30 marlas (10 marlas each) situated at Channi Rama near Railway Road Jammu. It is the further case of the petitioners that they raised construction over their respective portions of the land in question. According to the petitioners, the respondent-Jammu Development Authority raised a dispute with respect to the land in question and this resulted in filing of a civil litigation which ended in passing of a final decree in favour

of the petitioners. It is further submitted by the petitioners that when petitioner No.1 approached the Jammu Municipal Corporation for grant of building permission, it was revealed that except for a strip of land measuring 4'x6" , the whole land belonged to petitioner No.1, whereas the aforesaid strip of land belonged to Jammu Development Authority (for short 'Authority').

3 It is the case of the petitioners that on 30.09.2018, the respondents herein along with men and machinery came to the land of the petitioners and they forcibly demolished the buildings raised over there. It is the further case of the petitioners that, by this act of the respondents, not only the petitioners were deprived of their immovable property, but even their moveable belongings were also destroyed. The petitioners are stated to have approached the SHO Police Station, Trikuta Nagar, Jammu for lodging the FIR, but he refused to do so where-after they approached the learned CJM Jammu with a complaint for offences under Sections 391/427/452/506/511 RPC read with Section 149 RPC. The learned CJM, after having received a report with regard to the verification of facts stated in the application under Section 156(3) Cr.P.C from the SHO Bahu Fort, Jammu, passed an order dated 15.03.2019 directing the SHO concerned to register the FIR and conduct investigation.

4 The aforesaid order came to be challenged by the respondents before the Court of learned Principal Sessions Judge, Jammu ( hereinafter referred to as the 'Revisional Court') by way of a criminal revision petition. The learned Revisional Court vide its order dated 01.05.2019, while relying upon the judgment of the Supreme Court in the case of Anil Kumar and others vs. M.K. Aiyappa and another (Criminal Appeal No.1590/2013, decided on 1<sup>st</sup> October, 2013) came to the conclusion that the order of learned CJM whereby he had forwarded the complaint of the petitioners under Section 156(3) of Cr.P.C to SHO, Police Station, Bahu Fort, Jammu deserves to be set aside. The

revision petition was, accordingly, allowed by the learned Revisional Court. The said order is under challenge before this Court in these proceedings.

5 I have heard learned counsel for the petitioners and perused the record of the case.

6 Leaned counsel for the petitioners has primarily raised two grounds. One, that the learned Revisional Court was not within its jurisdiction to entertain the revision petition against the order passed by the learned CJM directing registration of FIR against the respondents as the said order is interlocutory in nature. The second ground urged by the learned counsel is that the sanction for prosecution in terms of Section 197 of Cr.P.C is applicable at the stage when the question of taking of cognizance of offence by a Court is under consideration and not at the time of registration of FIR.

7 The first question, which is required to be considered is, whether the order of learned CJM, Jammu directing registration of FIR while exercising his jurisdiction under Section 156(3) of Cr.P.C is an interlocutory order.

8 A Full Bench of this Court in the case of **Manohar Nath Sher vs State of J&K, 1980 KLJ 1**, had an occasion to explain the interlocutory order in the following words:

*“Generally speaking, an 'interlocutory order' is one which is passed at some intermediate stage of a proceeding to advance the cause of justice, for the final determination of the rights between the parties and are procedural steps taken in an adjudication for assisting the parties in the prosecution of their cases. However, if the decision on an issue brings to an end a suit or proceedings, the order, even, if made at an intermediate stage, would be a 'final order' but if the suit or proceeding is still alive, in spite of the order, one way or the other, and has got to be tried in the ordinary way, no finality is normally attached to such*

*an order, at whatever stage during the proceedings it may have been made. Thus, an "interlocutory order made by a Court without jurisdiction, can be interfered with in division at an early stage, because an order without jurisdiction is a nullity in the eye of law and if proceedings are allowed to continue in such a case, the harassment of the litigant,- which the amendment sought to avoid, would be much greater, as he would have to face trial, which ultimately will have to end in his favour. In those cases the bar of [Section 435](#) (a)(4) Cri. P.C. would not be attracted as the acceptance of the plea of the accused would bring those proceedings to an end".*

9 From the above, it appears that an interlocutory order means an order which is not a final order. In other words, it means an order which does not terminate any proceeding or which does not determine, either provisionally or finally, the issues arising between the parties. For coming to the conclusion about the nature of an order passed under Section 156(3) of Cr.P.C, the provisions of Section 156 need to be noticed which read thus:

*"156. Investigation into 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 XV relating to the place of inquiry.*

*(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".*

10 From a perusal of aforesaid provisions, it is clear that the power conferred on the Magistrate under Section 156(3) of Cr.P.C is of the same nature as the power under Section 156(1) of Cr.P.C which is a power conferred on a Police Officer, In-charge of a Police Station to investigate any cognizable case without the orders of the Magistrate. A Police Officer records FIR in accordance with the procedure mentioned in Section 154(1) of Cr.P.C. In the event of failure of a Police Officer to record the information, the aggrieved informant is given a right to approach the Superintendent of Police under Section 154(3) of Cr.P.C for a direction for investigation and in case even the Superintendent of Police fails to exercise his jurisdiction under Section 154(3) of Cr.P.C, the power has been vested upon a Magistrate to issue directions under Section 156(3) to remind the Police Officers to exercise their powers under Section 154(1) and 154(3) of Cr.P.C. The orders for investigation issued by a Magistrate under Section 156(3) are only ancillary steps in aid of the investigation. The same, therefore, do not finally or even provisionally terminate the proceedings. A person, whose application for registration of FIR under Section 156(3) even if rejected by the Magistrate, has an option of either approaching the police directly for registration of FIR or file a criminal complaint before the Magistrate under Section 190 of Cr.P.C.

11 So far as a suspect named in an application under Section 156 (3) is concerned, he does not have a right to be heard at the time of registration of FIR, either on the basis of an information directly lodged before the police or at the time of consideration of an application under Section 156(3) of Cr.P.C. filed before the Magistrate. Having regard to the nature of proceedings under Section 156(3) of Cr.P.C, it can safely be stated that an order passed by a Magistrate under the aforesaid provision, is interlocutory in nature.

12 The question whether an order passed by a Magistrate under Section 156(3) of Cr.P.C is an interlocutory order and whether no revision lies against the said order came up for consideration before the Full Bench of High Court of Allahabad in the case titled **Father Thomas vs. State of U.P. and others, 2011 CriLJ 2278**. The Court, after discussing the law on the subject, came to the conclusion that such an order is an interlocutory order and a revision against the same does not lie. It was further held that the order of the Magistrate made in exercise of powers under Section 156(3) of Cr.P.C directing the police to register and investigate a criminal offence is not open to revision at the instance of a person against whom neither cognizance has been taken, nor any process issued and that such an order is an interlocutory order and remedy of revision against such order is barred under Section 397 (2) of Cr.P.C (Central). This Court has taken a similar view in the case of **Avtar Krishan Dewani vs. Anil Dhar, 2014 (2) JKJ 351**.

13 In the instant case, the learned Revisional Court has entertained the revision petition on the strength of judgment of Delhi High Court in the case of **Manohar Singh and another vs. State and others, decided on 10.04.2013** and the judgment of Bombay High Court in the case of **Avinash vs. State of Maharashtra, 2015 SCC online Bombay 5197**.

14 In Manohar Singh's case (supra), Delhi High Court has observed that a direction by a Magistrate to the police under Section 156 (3) of Cr.P.C to register and investigate a criminal offence does not amount to an interlocutory order, but it could be described as an intermediate order. On this ground, it has been observed that such an order is amenable to revisional jurisdiction. In this behalf, the Court has relied upon the judgments of Supreme Court in the case of **Amit Kapoor v. Ramesh Chander & anr., (2012) 9 SCC 460** and **Krishan Lal vs. Dharmendra Bafna and another, (2009) 7 SCC 685**.



15 In Amir Kapoor's case (supra), the Supreme Court has primarily dealt with the scope of the power under Section 482 of Cr.P.C in contradistinction to revisional power under Section 397 of the Cr.P.C. In that context, the Court held that there may be orders which may not either be termed as 'interlocutory orders' or 'final orders'. These types of orders, according to the Supreme Court, can be termed as 'intermediate orders' and the bar contained under Sections 397 (2) and 397(3) of Cr.P.C would not apply to such cases. Thus, the High Court would be well within its jurisdiction to exercise its power under Section 482 Cr.P.C in respect of such orders. In Krishan Lal's case (supra), the issue before the Supreme Court was not with respect to the nature of an order passed by a Magistrate under Section 156 (3) of Cr.P.C.

16 So far as the judgment of Bombay High Court in Avinash's case (supra), is concerned, in that case, the learned Single Judge of the Court, on the basis of his observation that an order under Section 156(3) CrPC is a final order terminating the proceedings under Section 156(3) of the Code, concluded that such an order is a final order and, as such, a revision would lie against the same. I respectfully beg to disagree with the conclusion arrived at by the learned Judge for the reason that a direction for investigation by a Magistrate is an incidental step in aid of investigation. Even if, such an order is set aside, it would not terminate the proceedings as it would be open to a complainant to file a complaint under Section 190 of the Cr.PC.

17 The Supreme Court has, in the case of Devarapalli Lakshminarayana vs V.Narayana Reddy & others, 1976 AIR 1672 observed 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 powers of investigation under [Section 156\(1\)](#) CrPC.

18 In **HDFC Securities Ltd and others vs. State of Maharashtra and another, (2017) 1 SCC 640**, the Supreme Court has observed that an order under Section 156(3) CrPC regarding investigation by the police, cannot be said to cause an injury of irreparable nature as the stage of cognizance would arise only after the investigation report is filed before the Magistrate. On this ground, the Court termed 'the challenge' to an order under Section 156(3) Cr.PC as nothing, but premature.

19 From the foregoing enunciation of law on the subject, it is clear that orders for investigation are only ancillary steps in aid of investigation and are clearly interlocutory in nature. Such orders do not infringe upon the valuable rights of the prospective accused and, as such, are not amenable to challenge in criminal revision in view of the bar contained in Section 435 of J&K Cr.P.C which is in *pari materia* with Section 397 of Central Cr.P.C.

20 Thus, the learned Revisional Court has landed into an error by entertaining the revision petition against the order of learned Magistrate whereby directions were issued to the police to investigate the complaint of petitioners under Section 156(3) of Cr.PC. While entertaining the Revision Petition, the learned Sessions Judge has relied upon the judgments delivered by the High Courts of Bombay and Delhi without following the binding precedent of our own High Court in Avtar Krishan Deewani's case (supra). The impugned order, therefore, deserves to be set aside.

21 Accordingly, the petition is allowed and order dated 01.05.2019, whereby the learned Revisional Court has set aside the order dated 15.03.2019 passed by the learned Magistrate, is set aside. Since the petition has been allowed on the first ground urged by the petitioner, therefore, this Court is not



making any observation with regard to the merits of the order passed by the learned CJM, Jammu.

The petition along with connected applications stands disposed of.

**(Sanjay Dhar)**  
**Judge**

Jammu  
17.12.2020  
Sanjeev

Whether order is speaking: Yes  
Whether order is reportable: Yes

