REGISTRATION OF FIR u/s 156(3) CrPC

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1(A**). Order of Magistrate u/s 156(3) CrPC for mere investigation of offence (and not registration of FIR) binds the police to first register the FIR :** To enable the police to start an investigation in a matter Magistrate can direct the police u/s 156(3) CrPC to register an FIR in that case. Even where a Magistrate do so in explicit words but directs for investigation u/s 156(3) CrPC, the police should register an FIR . See :

(i) Hemant Yashwant Dhage Vs. State of Maharashtra, (2016) 6 SCC 273

(ii) Mohd. Yousuf Vs. Afaq Jahan, (2006) 1 SCC 627.

1(B**). Magistrate to apply his mind to the allegations contained in the application u/s. 156(3) CrPC before ordering registration of FIR & investigation thereof**--- When an application u/s. 156(3) CrPC is moved before the Magistrate, the Magistrate need not at once proceed to take cognizance and before sending the same to the police for registration of FIR and investigation thereof, the Magistrate has to apply his mind to the allegations contained in the application. See---

1. **Ram Babu Gupta vs. State of U.P., 2001 (43) ACC 50 (All—F.B.)**
2. **Yogendra Singh vs. State of U.P., 2003 (46) ACC 1008 (All)**
3. **Paul George vs. State, 2002 SCC (Criminal) 340**
4. **Smt. Pushpa Devi vs. State of U.P., 2009 (6) ALJ 373 (All)**

2. Testing genuineness of allegations in the application u/s. 156(3) CrPC by evidence not to be done by Magistrate--- (A) A Magistrate u/s. 156(3) CrPC is not required to go into the factum of genuineness of allegations contained in the application. If the contents of the application disclose a cognizable offence, Magistrate has to pass order for registration of FIR and investigation thereof. Assessment of evidence and drawing of inferences not required to be done u/s. 156(3) CrPC. See---

1. **Ram Pal Singh vs. State of U.P., 2007 (1) J.Cr.C. 257 (All)**
2. **Dr. Rajendra Prasad vs. ACJM, Lucknow, 1996 JIC 5 (All—L.B.)**
3. **Roop Ram vs. State of U.P., 2009 (66) ACC 870 (All)**

(B) <u>Magistrate to apply his mind to the bare contents of the application u/s 156(3)CrPC regarding disclosure of cognizable offence and not to proceed to decide whether or not there are sufficient grounds for proceeding further to satisfy himself regarding commission of cognizable offence</u>--- While disposing of an application moved u/s 156 (3) of the CrPC, magistrate is required to apply his mind to the bare contents of the application u/s 156(3) CrPC regarding disclosure of cognizable offence and not to proceed to decide whether or not there are sufficient grounds for proceeding further to satisfy himself regarding commission of cognizable offence. See---**Srininas Gundluri Vs. Sepco Electric power construction corporation, (2010) 8 SCC 206.**

3. <u>Allegations of an application u/s. 156(3) CrPC not to be disbelieved at the time of disposal of the application</u>--- (A) While disposing of an application u/s. 156(3) CrPC , the allegations contained therein should not be disbelieved as truthless or false. Allegations contained in the application moved u/s. 156(3) CrPC cannot be treated as false prior to the investigation of the same by the police. See---

1. **C.L. No. 13/2004, dated 31.3.2004 issued by Hon'ble Allahabad High Court in compliance with the Division Bench Judgment dated 21.11.2003 passed by the Hon'ble Allahabad High Court in Criminal Misc. Writ Petition No.6417/2002 Govind & others vs. State of U.P. & others.**
2. **Roop Ram vs. State of U.P., 2009 (66) ACC 870 (All)**
3. **Ram Pal Singh vs. State of U.P., 2007 (1) J.Cr.C. 257 (All)**
   <u>Note</u>: J.Cr.C. = Judicial Criminal Cases
4. **Lallan Chaudhary vs. State of Bihar, AIR 2006 SC 3376**
5. **Savita vs. State of Rajasthan, (2005) 12 SCC 338**
6. **Balbeer Kumhar vs. State of U.P., 2001 UP Nirnay Patrika (Criminal) 172 (All)**
7. **S.M. Datta vs. State of Gujarat, AIR 2001 SC 3253**

(B-1). <u>Rejection of application u/s 156(3) CrPC on the ground of falsehoods and the dispute being of civil nature:</u> Where an application u/s. 156(3) CrPC was rejected on the ground that the alleged offence was not of heinous nature and the allegations levelled in the application were not of such a nature which could not be levelled falsely, it has been held that rejection of the application u/s. 156(3) CrPC was not erroneous. Magistrate will not work u/s. 156(3) CrPC like a postman but he has to examine whether from reading of application/complaint filed u/s. 156(3) CrPC prima facie commission of offence is disclosed or not. If the dispute is purely of civil nature, refusal to order registration of FIR is proper. See---

1. **Krishna Kumar Tiwari vs. State of U.P., 2009 (5) ALJ 1 (All—L.B.)**
2. **Chandrapal vs. State of U.P., 2009 (4) ALJ 35 (All)**

(C) <u>Magistrate to apply his mind to the bare contents of the application u/s 156(3)CrPC regarding disclosure of cognizable offence and not to proceed to decide whether or not there are sufficient grounds for proceeding further to satisfy himself regarding commission of cognizable offence</u>--- While disposing of an application moved u/s 156 (3) of the CrPC, magistrate is required to apply his mind to the bare contents of the application u/s 156(3) CrPC regarding disclosure of cognizable offence and not to proceed to decide whether or not there are sufficient grounds for proceeding further to satisfy himself regarding commission of cognizable offence. See---**Srininas Gundluri Vs. Sepco Electric power construction corporation, (2010) 8 SCC 206**

(D). Hearing accused before ordering further investigation u/s 173(8) CrPC not necessary: There is no inhibition for court to direct further investigation u/s 173(8) CrPC. Hearing of accused or co-accused before ordering further investigation u/s 173(8) CrPC is not necessary. **See: Satishkumar Nyalchand Shah Vs. State of Gujarat, (2020) 4 SCC 22**

(DD) <u>Primary police report u/s 173(2) & supplementary police report u/s 173(8) to be read conjointly</u> : Supplementary police report received from police u/s 173(8) CrPC shall be dealt with by the court as part of the primary police report received u/s 173(2) CrPC. Both these report have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the court would be expected to apply his mind to determine whether there is exists grounds to presume that the accused has committed the offence and accordingly exercise its powers u/s 227 or 228 CrPC. See : **Vinay Tyagi Vs. Irshad Ali, (2013) 5 SCC 762.**

Note : *The ruling in Vinay Tyagi case elaborately deals with the power of court regarding (i) further investigation (ii) reinvestigation (iii) supplementary police report received u/s 173(8) CrPC (iv) power of court to take second time cognizance of the offences on receipt of supplementary police report u/s 173(8) CrPC (v) mode of dealing with final report and supplementary police report received u/s 173(8) CrPC disclosing commission of offences***.**

4. <u>Magistrate not to pass cryptic orders while disposing of application u/s. 156(3) CrPC</u> --- While disposing of an application u/s. 156(3) CrPC , the Magistrate should not write only a cryptic order. The order passed by the Magistrate must reflect

that he had applied his mind to allegations contained in the application moved u/s. 156(3) CrPC. (regarding the disclosure of cognizable offence). See---

1. **Ram Babu Gupta vs. State of U.P., 2001 (43) ACC 50 (All—F.B.)**
2. **Yogendra Singh vs. State of U.P., 2003 (46) ACC 1008 (All)**
3. **Paul George vs. State, 2002 SCC (Criminal) 340**
4. **Seraj Aslam vs. State of U.P., 1992 U.P. Criminal Rulings 224 (All)**

5(A). <u>Which Magistrate is competent to pass order upon application u/s 156(3) CrPC</u> ? : A Special Judge for Prevention of Corruption is deemed to be a Magistrate under Section 5(4) of the Prevention of Corruption Act, 1988 and, therefore, clothed with all the magisterial powers provided under the Code of Criminal Procedure. When a Private complaint is filed before the Magistrate, he has two options : he may take cognizance of the offence under Section 190 CrPC or proceed further in enquiry or trial. A Magistrate, who is otherwise competent to take cognizance, without taking cognizance under Section 190, may direct an investigation under Section 156(3) CrPC. The Magistrate, who is empowered under Section 190 to take cognizance, alone has the power to refer a private complaint for police investigation under Section 156(3) CrPC. **See : Anil Kumar Vs M.K. Aiyappa, (2013) 10 SCC 705** *(para 16).*

5(B). <u>Which Magistrate is competent to pass order upon application u/s 156(3) CrPC</u> ? -- Magistrate having jurisdiction u/s. 190 CrPC to take cognizable of the offences is competent to pass order upon an application moved u/s. 156(3) CrPC. See-

(**i) Lokesh Kumar Dwivedi Vs. State of UP, 2016 (93) ACC 818 (All)**

(ii) **Mahendra Pal Jha vs. Ram Autar Sharma, 2001 (42) ACC 125 (All)**

6(A). <u>Special Judge or Magistrate to apply his mind before ordering registration of FIR u/s 156(3) CrPC</u> : *"The Scope of Secton 156(3) CrPC came up for consideration before this Court in several cases. This Court in Masksud Saiyad Case (Maksud Saiyad Vs. State of Gujarat, (2008) 5 SCC 668) 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 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." **See : Anil Kumar Vs M.K. Aiyappa, (2013) 10 SCC 705** *(para 11).*

6(B). <u>Duty of Magistrate while disposing of application u/s. 156(3) CrPC</u> --- (A) Whenever an application moved u/s. 156(3) CrPC discloses a cognizable offence, the Magistrate is bound to direct the police for registration of FIR and investigation thereof. Magistrate u/s. 156(3) CrPC is not required to go into the factum of genuineness of allegations leveled in the application. If the contents of application disclose a cognizable offence, Magistrate has to pass order for registration of FIR and investigation thereof. U/s. 156(3) CrPC the Magistrate is empowered only to see whether any cognizable offence is disclosed. Scrutiny of complaint is limited to that extent only. See---

1. **Ram Kumar Gautam vs. State of U.P., 2006 (55) ACC 763 (All)**
2. **Mobin vs. State of U.P., 2006 (55) ACC 757 (All)**
3. **Balbeer Kumhar vs. State of U.P., 2001 UP Nirnay Patrika (Criminal) 172 (All)**
4. **Ram Pal Singh vs. State of U.P., 2007 (1) J.Cr.C. 257 (All)**
   <u>Note</u>: J.Cr.C. = Judicial Criminal Cases
5. **Jai Prakash vs. State of U.P., 2007 (1) J Cr.C 141 (All)**
6. **Smt. Jamna vs. State of U.P., 1996 (33) ACC 699 (All)**
7. **Ravindra Singh vs. State of U.P., 2006 (2) JIC 364 (All)**
8. **Smt. Subhawati Giri vs. State of U.P., 2009 (5) ALJ (DOC) 176 (All)**
   Note: DOC = Digest of cases

(AA) <u>Magistrate to apply his mind to the bare contents of the application u/s 156(3)CrPC regarding disclosure of cognizable offence and not to proceed to decide whether or not there are sufficient grounds for proceeding further to satisfy himself regarding commission of cognizable offence</u>--- While disposing of an application moved u/s 156 (3) of the CrPC, magistrate is required to apply his mind to the bare contents of the application u/s 156(3) CrPC regarding disclosure of cognizable offence and not to proceed to decide whether or not there are sufficient grounds for proceeding further to satisfy himself regarding commission of cognizable offence. See---**Srininas Gundluri Vs. Sepco Electric power construction corporation, (2010) 8 SCC 206**

(B) <u>Discretion of Magistrate in the disposal of application u/s. 156(3) CrPC</u> --- Magistrate is not bound to order registration of FIR in all cases where a cognizable offence has been disclosed. Power u/s. 156(3) CrPC should be used sparingly when there is something unusual and extra ordinary like miscarriage of justice.

1- **Sukhwasi vs. State of U.P., 2007 (59) ACC 739 (All—D.B.)**

2- Tahseen Khan Vs. State of UP, *decision dated 19.11.2010 rendered in Criminal Misc. Writ Petition No.21083/2010 by Division Bench of Allahabad High Court & circulated amongst the Judicial Officers of the State of UP*

(C) <u>Pre-conditions for exercise of powers u/s. 156(3) CrPC</u> --- It is well settled that any person may set the criminal law in motion subject of course to the statutory interdicts. When an offence is committed, a FIR can be lodged u/s. 154 CrPC. However, in the event for some reasons or the other, the FIR is not recorded in terms of Sec. 156(1) CrPC, the Magistrate is empowered u/s. 156(3) CrPC to order an investigation into the allegations contained in the complaint petition. Thus, power to direct investigation may arise in two different situations, noted below---

(i) When an FIR is refused to be lodged.

(ii) When the statutory power of investigation for some reason or the other is not conducted. See--- **Dharmeshbhai Vasudevbhai vs. State of Gujarat, (2009) 3 SCC (Criminal) 76**

7. <u>Approaching police first before moving application u/s. 156(3) CrPC not necessary</u>--- It is not necessary for an applicant to approach police station first to lodge FIR before moving an application u/s. 156(3) CrPC before the Magistrate. See--- **Kishor Kant Singh vs. Vashishtha Singh, 1994 JIC 320 (All)**

8. <u>Magistrate not bound by the report sent by police falsifying the contents of application u/s. 156(3) CrPC</u> --- A Magistrate is not bound by the report sent by police falsifying the contents of the application moved u/s. 156(3) CrPC. On perusing the contents of the application, the Magistrate may form his own opinion and pass suitable order upon the application moved u/s. 156(3) CrPC by ignoring contrary report received from police. See---

1. **C.L. No. 13/2004, dated 31.3.2004 issued by Hon'ble Allahabad High Court in compliance with the Division Bench Judgment dated 21.11.2003 passed by the Hon'ble Allahabad High Court in Criminal Misc. Writ Petition No.6417/2002 Govind & others vs. State of U.P. & others.**
2. **Smt. Afroz Jahan vs. State of U.P., 1998 JIC 502 (All)**

9. <u>Value of report sent by police to Magistrate upon application u/s. 156(3) CrPC</u> --- Report from police upon an application moved u/s. 156(3) CrPC is called to ascertain whether any FIR has been registered or not. Report submitted by police stating that the allegations are false, has no sanction of law. Magistrate is not bound by the report of the police and may come to his own conclusion after considering the material on record. See---

1. **Ashok Yadav vs. State of U.P., 2001 (2) JIC 165 (All)**
2. **Smt. Afroz Jahan vs. State of U.P., 1998 JIC 502 (All)**

10. Effect of order of Magistrate directing only investigation & not registration of FIR--- If the Magistrate, while passing order upon an application moved u/s. 156(3) CrPC , directs the police only to investigate the matter and does not expressly direct to register the FIR, it has been held that the police is bound to first register the FIR and only then investigate the same even if there was no express direction by the Magistrate in his order to the police for the registration of the FIR because there can be no investigation unless the FIR is registered first. See---

1. **Ram Babu Gupta vs. State of U.P., 2001 (43) ACC 50 (All—F.B.)**
2. **Suresh Chand Jain vs. State of M.P., JT 2001 (2) 81 (SC)**
3. **Madhu Bala vs. Suresh Kumar, AIR 1997 SC 3104**
4. **Bhagwati Prasad vs. State of U.P., 1996 (33) ACC 639 (All)**
5. **Bimal Barua vs. State of U.P., 1997 JIC 500 (All)**

11. Magistrate competent to treat an application u/s. 156(3) CrPC as complaint--- A Magistrate is not bound to dispose of an application u/s. 156(3) CrPC or order registration of FIR and investigation thereof by police. He may treat such application as complaint within the meaning of Sec. 2(d) of the CrPC and proceed onward in accordance with the procedure laid down in CrPC for complaint cases i.e. in accordance with the procedure provided u/s. 200 to 204 CrPC. See---

1. **Ram Narayan vs. State of U.P., 2010 (2) ALJ 527 (All)**
2. **Father Thomas vs. State of U.P. 2011 (72) ACC 564 (Allahabad) (Full Bench)**
3. **Father Thomas vs. State of U.P., 2002 (1) JIC 415 (All)**
4. **Ram Babu Gupta vs. State of U.P., 2001 (43) ACC 50 (All) (Full Bench)**
5. **Sukhwasi vs. State of U.P., 2007 (59) ACC 739 (All—D.B.)**
6. **Nathoolal Gangwar vs. State of U.P., 2008 (61) ACC 792 (All)**

Note: In the cases of Shyam Lal Jaiswal vs. State of U.P., 2003 (46) ACC 1164 (All) & Dinesh Chandra vs. State of U.P., 2000 (41) ACC 831 (All), it has been held by Hon'ble Single Judge of the Allahabad High Court that a Magistrate cannot treat an application moved u/s. 156(3) CrPC as complaint. But in view of the Full Bench decision of the Allahabad High Court in the matter of Ram Babu Gupta vs. State of U.P., 2001 (43) ACC 50 (All—F.B.), the Single Judge Bench rulings in the twin cases noted above are no longer good laws.

12. Magistrate competent to treat a 'complaint' as an application u/s. 156(3) CrPC --- When a complaint within the meaning of Sec. 2(d) of the CrPC is filed before the Magistrate, instead of proceeding with the complaint in accordance with the procedure provided u/s. 200 to 204 CrPC , the Magistrate may decide such complaint treating the same as an application moved u/s. 156(3) CrPC Before taking cognizance of the offences in a complaint case, the Magistrate can order for investigation by

police u/s. 156(3) CrPC if the allegations made in the complaint disclose a cognizable offence. See---

1. **Father Thomas vs. State of U.P., 2002 (1) JIC 415 (All)**
2. **Mohd. Yusuf vs. Smt. Afaq Jahan, 2006 (54) ACC 530 (SC)**
3. **Madhu Bala vs. Suresh Kumar, AIR 1997 SC 3104**
4. **Shiv Narayan Jaiswal vs. State of U.P., 2007 (57) ACC 7 (All)**

13. <u>Magistrates granting application u/s. 156(3) CrPC to fix a time frame by which the FIR must be registered</u>--- Vide C.L. No. 8/2009 Admin.G-II, dated 07.4.2009 issued by Hon'ble Allahabad High Court in compliance with the judgment and order passed by the Hon'ble High Court, Allahabad in Criminal Misc. Application No. 3129 of 2008, Annapurna Devi vs. State of U.P. & others, the judicial officers of the State of U.P. have been directed that when an order for registering or investigating a case u/s. 156(3) CrPC is passed, the Magistrate concerned should generally fix a time frame preferably within one or two weeks by which time the FIR should be registered. The relevant portion of the directions of the Hon'ble Allahabad High Court under the above noted Circular Letter reads as under----

> "It is also made clear that when such orders for registering or investigating a case u/s. 156(3) CrPC are passed, the Magistrate concerned should generally fix a time frame preferably within one or two weeks by which time, the FIR should be registered. It is regrettable that a tendency is growing among many police officers not to file FIRs expeditiously and to keep the matters hanging for long periods of time before registering the FIR in pursuance of the Magistrate's order for investigation in a case. On some occasions the accused are even successful in obtaining orders staying arrests in proceedings u/s. 482 CrPC on the basis that FIRs have not yet been registered whereupon the matter could only be questioned by a Division Bench Writ Court."

14. <u>Investigating agency bound to investigate even when Magistrate ordering investigation u/s. 156(3) CrPC of offences committed beyond territorial jurisdiction of the local police</u>--- Where an investigation is undertaken at the instance of the Magistrate, a Police Officer empowered under Sub-section (1) of Sec. 156 is bound, except in specific and specially exceptional cases, to conduct such an investigation even if he was of the view that he did not have jurisdiction to investigate the matter. It is not within the jurisdiction of the Investigating Agency to refrain itself from holding a proper and complete investigation merely upon arriving at a conclusion that the offences had been committed beyond its territorial jurisdiction. The powers vested in the Investigating Authorities, u/s. 156(1) CrPC does not restrict the jurisdiction of the Investigating Agency to investigate into a complaint even if it did not have territorial jurisdiction to do so. It is not for the Investigating Officer in the

course of investigation to decide whether a particular Court had jurisdiction to entertain a complaint or not. The Investigating Agency was required to place the facts elicited during the investigation before the Court in order to enable the Court to come to a conclusion as to whether it had jurisdiction to entertain the complaint or not. Without conducting such an investigation, it was improper on the part of the Investigating Agency to forward its report with the observation that since the entire cause of action for the alleged offence had purportedly arisen beyond its territorial jurisdiction the investigation should be transferred to the concerned Police Station. Sec. 156(3) CrPC contemplates a stage where the Magistrate is not convinced as to whether process should issue on the facts disclosed in the complaint. Once the facts are received, it is for the Magistrate to decide his next course of action. See--- **Rasiklal Dalpatram Thakkar vs. State of Gujarat, AIR 2010 SC 715**

15. **Overlapping jurisdictions u/s. 156(3) CrPC** --- Where in furtherance of pre-planned scheme deceased was brought from place 'O' for the purpose of committing her murder, on way to place 'D', the car in which deceased was sitting was collided by the accused and its door was opened and she was pushed down in which she sustained injuries, it has been held that since part of cause of action had arisen at place 'O' also, therefore order allowing application u/s. 156(3) CrPC and lodging of FIR by police at the police station of place 'O' was proper. See--- **Manasvi Kumar vs. State of U.P., 2009 (5) ALJ (NOC) 899 (All)(D.B.)**

16. **Dis-obedience or non-compliance of order passed u/s. 156(3) CrPC & duty of Magistrate**--- **(A)** If an order passed by Magistrate u/s. 156(3) CrPC for registration of FIR is not complied with by the SHO, the Magistrate should ensure that the order is complied with and the case is registered and investigated. In case of non-compliance, the Magistrate can take action against the station officer. See--

1. Ram Saroj Tiwari vs. State of U.P., 2000 (41) ALR 91 (All)

2. Bhagwati Prasad vs. State of U.P., 1996 (33) ACC 639 (All)

(B) **Magistrate to report to SSP/DGP/Govt./RG alongwith quarterly statements in the event of dis-obedience of orders u/s. 156(3) CrPC** --- If the SHO fails to register FIR and investigates the same in compliance with any order of the Magistrate passed 156(3) CrPC , following duty has been cast by the Hon'ble Allahabad High Court (judgment delivered by Hon'ble Sudhir Agarwal, J.) upon the Magistrates of the State of U.P.:- When a Police Officer-in-Charge of the police station or any other Police Officer, acting under the directions of the Officer-in-charge of police station, refused to register an information disclosing a cognizable offence, the informant may either approach the Superintendent of Police u/s. 154(3) or the Magistrate concerned u/s. 156(3) of the Code. If the Informant approaches the Superintendent of Police, who finds that the refusal of registration of FIR by the police

Officer-in-Charge of the police station was unjust or for reasons other than valid, and where he directs for investigation, he shall initiate disciplinary proceedings against the Officer-in-charge of the police station for such non observance of statutory obligation treating the same to be a serious misconduct justifying a major penalty and complete the proceedings within three months from the date he passes an order for investigation into the matter. Where, the informant approaches the Magistrate concerned u/s. 156(3) of the Code and the Magistrate ultimately finds that information discloses a cognizable offence and directs the police to proceed for investigation, he shall cause a copy of the order to be sent to Superintendent of Police/Senior Superintendent of Police (hereinafter referred to as the SP/SSP) of the concerned district and such SP/SSP shall cause a disciplinary inquiry into the matter to find out the person guilty of such dereliction of duty i.e. failure to discharge statutory obligation i.e. registration of an information disclosing cognizable offence treating the said failure as a serious mis-conduct justifying major penalty and shall complete the disciplinary proceedings within three months from the date of receipt of the copy of the order from the concerned Magistrate. After completing the disciplinary proceedings, the SP/SSP concerned shall inform about the action taken against the concerned police Officer-in-Charge of the police station to the Magistrate concerned within 15 days from the date of action taken by him but not later than four months from the date of receipt of the copy of the order from the Magistrate concerned. The Magistrate concerned shall review the cases in which the copy of the orders passed u/s. 156(3) of the Code has been sent to concerned SP/SSP quarterly and when it is found that the concerned SP/SSP has also failed to comply with the above directions of his Court, he shall sent a copy of his order alongwith the information about non-compliance of this Court's order/direction by the concerned SP/SSP to the Director General of Police, U.P., Lucknow and the Principal Secretary (Home), U.P., Lucknow who shall look into the matter and take appropriate action as directed above against the Police Officer-in-charge of the police station concerned for his inaction into the matter within three months and communicate about the action within next one month to the Magistrate concerned. The Principal Secretary (Home), U.P., Lucknow and the Director General of Police, U.P., Lucknow shall also submit a report regarding number of the cases informed by the concerned Magistrate in a calendar year and also the action taken, by them as directed above by the end of the February of every year to the Registrar General of this Court. Besides above, non compliance of the above directions of this Court shall also be treated to be a deliberate defiance by the concerned authorities above mentioned constituting contempt of this Court and may be taken up before the Court concerned having jurisdiction in the matter, whenever it is brought to the notice of this Court. The Registrar General of this Court is directed to send a copy of this order forthwith to the Principal Secretary (Home), U.P., Lucknow, the Director

General of Police, U.P., Lucknow so that they may issue necessary instructions in respect of the compliance of the various directions contained in the judgment to the concerned SP/SSP of the concerned districts of the State of U.P. and also to the various Police Officers-in-charge of the concerned police stations apprising them about the directions of this Court and for compliance thereof. See--- **Roop Ram vs. State of U.P., 2009 (5) ALJ 211 (All)**

17. **Gulab Upadhyaya's case overruled**--- **(A)** In the case of Gulab Chand Upadhyaya vs. State of U.P., 2002 (1) JIC 853 (All), it was held by a Single Hon'ble Judge (Hon'ble Sushil Harkauli J.) that a Magistrate can direct the registration of FIR and investigation u/s. 156(3) CrPC only when full details of accused is not known to the complainant or recovery of abducted person or stolen property is required and evidence is required to be collected and preserved and in the absence of above requirements Magistrate should adopt the procedure of a complaint case on an application moved u/s. 156(3) CrPC but taking contrary view (in the cases noted below) it has been held by other benches of the Hon'ble Allahabad High Court that whenever an application u/s. 156(3) CrPC discloses a cognizable offence, Magistrate is bound to direct for registration of the FIR. In the cases noted below the case of Gulab Chand Upadhyaya vs. State of U.P. has been expressly quoted, discussed and dissented from by taking the view as noted above. See---

1. **Ram Kumar Gautam vs. State of U.P., 2006 (55) ACC 763 (All)**
2. **Mobin vs. State of U.P., 2006 (55) ACC 757 (All)**
3. **Sukhbeer Singh vs. State of U.P., 2006 (55) ACC 889 (All)**

(B) **Application u/s. 156(3) CrPC not to be rejected merely because accused is known to the victim**--- Where a lady Judicial Magistrate of District Saharanpur had rejected an application moved u/s. 156(3) CrPC by a lady victim/appellant alleging therein that her father-in-law had committed rape on her and the Judicial Magistrate had also opined that since the accused and the witnesses are known to the victim, it has been held by the Allahabad High Court that the Judicial Magistrate has done gravest injustice to the victim. It has further been observed that the said Magistrate even though being a lady, she could not think the outcome of ravishing the chastity of the daughter-in-law by her father-in-law and the crime committed by the accused. Copy of the order of the Hon'ble High Court has also been ordered to be sent to the Judicial Magistrate concerned for her further guidance. See---- **Smt. Shabnam vs. State of U.P., 2009 (67) ACC 410 (All)**

18. **Masuriyadin's Case regarding 'not to arrest the accused without prior permission of Magistrate' overruled**--- In the reported case of Masuriyadin @ Nate & others vs. Addl. Sessions Judge, Allahabad, 2002 (44) ACC 248 (All), it was held

by a Single Hon'ble Judge of the Allahabad High Court that if a Magistrate passes an order upon an application moved u/s. 156(3) CrPC directing the police to register FIR and investigate the same, then such Magistrate must direct the police not to arrest the accused without prior permission of the Magistrate. But the aforesaid decision of the Single Judge now stands overruled vide a Division Bench Judgment dated 21.11.2003 passed by the Hon'ble Allahabad High Court in the matter of Criminal Misc. Writ Petition No. 6417/2002, Govind vs. State of U.P. See--- **C.L. No. 13/2004, dated 31.3.2004 issued by Hon'ble Allahabad High Court in compliance with the Division Bench Judgment dated 21.11.2003 passed by the Hon'ble Allahabad High Court in Criminal Misc. Writ Petition No.6417/2002 Govind & others vs. State of U.P. & others.**

19. **A proposed accused in an application u/s. 156(3) CrPC not entitled to hearing**--- A person proposed as an accused in an application moved before Magistrate u/s. 156(3) CrPC is not entitled to hearing. Before the process is issued, an accused has no locus standi to be heard. See---

1. **Mangalsen vs. State of U.P., 2009 (6) ALJ (NOC) 993 (All)**
2. **Ramwati vs. State of U.P., 2008 (61) ACC 884 (All)**
3. **Father Thomas vs. State of U.P., 2002 (1) U.P.Cr. Rulings 51 (All)**
4. **Brijesh vs. State of U.P., 1997 (34) ACC 687 (All)**
5. **Shri Ram Chandra Mission vs. State of U.P., 2007 (57) ACC 979 (All)**

20. **Third party's right of hearing in criminal matters**--- Where the court has taken cognizance of offences on police report, the right of a private party/complainant does not get eclipsed. See--- **M/s. J.K. International vs. State Govt. of NCT of Delhi, 2001 JIC 815 (SC)**

21. **Application u/s. 156(3) CrPC to be accompanied by an affidavit**--- As a matter of abundant precaution, an application moved u/s. 156(3) CrPC should be required to be accompanied by an affidavit of the applicant. See--- **Dinesh Chandra vs. State of U.P., 2000 (41) ACC 831 (All)**

22. **Cross version & registration of FIR u/s. 156(3) CrPC** --- Merely because a cross version has been given, the Magistrate should not refuse to get the matter registered and investigated. Where two parties come with their cross versions regarding happening of the same incident, it is in the interest of justice that both versions should be investigated and then further proceedings should take place in the case. See---

1. **Surender Kaushik Vs. State of UP, (2013) 5 SCC 148**
2. **Rameshwar vs. State of U.P., 2008 Cr.L.J. (NOC) 1006 (All)**
3. **Jai Prakash vs. State of U.P., 2007 (1) J Cr.C 141 (All)**

4. Ajeet Singh vs. State of U.P., 2006 (6) ALJ 110 (All-F.B.)

5. Ram Milan Singh vs. State of U.P., 2001 (42) ACC 906 (All)

23(A). <u>Second FIR of same occurrence whether possible?</u>--- An information given under sub-section (1) of Sec. 154 of CrPC is commonly known as First Information Report (FIR) though this term is not used in the Code. It is a very important document and as its nick name suggests, it is the earliest and the first information of a cognizable offence recorded by an officer-in-charge of a police station. It sets the criminal law into motion and marks the commencement of the investigation which ends up with the formation of opinion u/ss. 169 or 170 of CrPC , as the case may be, and forwarding of a police report u/s. 173 of CrPC It is quite possible and it happens frequently that more informations than one are given to a police officer-in-charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Sec. 154 of CrPC apart from a vague information by a phone call or cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer-in-charge of police station is the First Information Report—F.I.R. postulated by Sec. 154 of CrPC All other information made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the First Information Report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling u/s. 162 of CrPC No such information/statement can properly be treated as an FIR and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of the CrPC. Take a case where an FIR mentions cognizable offence u/ss. 307 or 326 IPC and the investigating agency learns during the investigation or receives a fresh information that the victim dies, no fresh FIR u/s. 302 IPC need be registered which will be irregular, in such a case alteration of the provision of law in the first FIR is the proper course to adopt. Let us consider a different situation in which having killed W, his wife, informs the police that she is killed by an unknown person or knowing that W is killed by his mother or sister, H owns up the responsibility and during investigation the truth is detected, it does not require filing of fresh FIR against H the real offender-who can be arraigned in the report u/s. 173(2) or 173(8) of CrPC as the case may. It is of course permissible for the investigating officer to send up a report to the concerned Magistrate even earlier that investigation is being directed against the person suspected to be the accused. The scheme of the CrPC is that an officer-in-charge of a Police Station has to commence investigation as provided in Sec. 156 or 157 of CrPC on the basis of entry of the First Information Report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of evidence collected he has to form

opinion u/ss. 169 or 170 of CrPC , as the case may be, and forward his report to the concerned Magistrate u/s. 173(2) of CrPC. However, even after filing such a report if he comes into possession of further information or material, he need not register a fresh FIR, he is empowered to make further investigation, normally with the leave of the Court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Sec. 173 CrPC. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfied the requirements of Sec. 154 CrPC thus there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer-in-charge of a Police Station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Sec. 173 of the CrPC . See--- **T.T. Antony vs. Damodaran P., AIR 2001 SC 2637**

23(B). <u>Registration of second FIR valid where offences are distinct and not committed during the course of the same transaction</u> : Second FIR was registered for offence of murder subsequent to the first FIR for offence of abduction. The Supreme Court held that as offences under two FIRs are distinct and different and second offence committed during investigation of the first, second FIR cannot be said to be lodged in course of the same transaction. Registration of separate or second FIR was legal and proper. See: **Pattu Rajan Vs. State of Tamil Nadu, AIR 2019 SC 1674 (Three- Judge Bench).**

24.<u>Power u/s. 156(3) CrPC not to be invoked for registration of FIR for offences enumerated u/s 195 CrPC</u> : Where an offence is alleged to have been committed as enumerated u/s. 195 of the CrPC , registration of FIR and investigation thereof u/s. 156(3) CrPC cannot be ordered. The appropriate remedy in such matters is that only the court where such a proceeding was pending or was decided can prosecute an accused after adhering to the due process of law as enshrined in Sec. 340 CrPC. See : **Imtiyaz Ahmad vs. State of U.P., 2001 Indian Law Reports, Vol. II at page 15 (All)**

25. <u>Power of Special Judge vs. Magistrate u/s. 156(3) CrPC</u> --- Where there was disclosure of scheduled offences under the UP Dacoity Affected Areas Act, 1983 & the Magistrate had granted the application moved u/s. 156(3) CrPC for registration of FIR in respect of the scheduled offences in that area, it has been held that in view of

Sec. 7 of the UP Dacoity Affected Areas Act, 1983, the Magistrate had no jurisdiction to take cognizance of any scheduled offences and only the special court constituted under the aforesaid Act could have taken cognizance of the offences and as such only the special court can grant application moved u/s. 156(3) CrPC. See---

1. **Rajjan Prasad vs. State of U.P., 2009 (64) ACC 62 (All)**
2. **Mahendra Pal Jha vs. Ram Avtar Sharma, 2001 (42) ACC 125 (All)**

26(A). <u>Special Judge under P.C. Act, 1988 competent to pass order upon application u/s 156(3) CrPC</u> ---A Special Judge for Prevention of Corruption is deemed to be a Magistrate under Section 5(4) of the Prevention of Corruption Act, 1988 and, therefore, clothed with all the Magisterial powers provided under the Code of Criminal Procedure. When a private complaint is filed before the Magistrate, he has two options : he may take cognizance of the offence under Section 190 CrPC or proceed further in enquiry or trial. A Magistrate, who is otherwise competent to take cognizance, without taking cognizance under Section 190, may direct an investigation under Section 156(3) CrPC. The Magistrate, who is empowered under Section 190 to take cognizance, alone has the power to refer a private complaint for police investigation under Section 156(3) CrPC. See : **Anil Kumar & Others Vs. M.K. Aiyappa and Another, (2013) 10 SCC 705** *(para 16)* and **Mahipal vs. State of U.P., 2008 (63) ACC 692 (All)**

26(B). <u>Special Judge cannot order registration of FIR u/s 156(3) CrPC for offences under P.C. Act, 1988 without prior sanction order of competent authority u/s 19(1) of the P.C. Act, 1988</u>.--- Relying upon its two earlier decisions reported in (i) State of UP Vs. Paras Nath Singh, (2009) 6 SCC 372 (Three-Judge Bench) and (ii) Army Headquarters Vs. CBI, (2012) 6 SCC 228 and (iii) Subramanian Swamy Vs. Manmohan Singh, (2012) 3 SCC 64, it has been held by the Hon'ble Supreme Court that Special Judge cannot order registration of FIR u/s 156(3) CrPC for offences under P.C. Act, 1988 without prior sanction order of competent authority u/s 19(1) of the P.C. Act, 1988. See :

(i) **Anil Kumar Vs M.K. Aiyappa, (2013) 10 SCC 705** *(paras 17 to 22).*

(ii) **Lokesh Kumar Dwivedi Vs. State of UP, 2016 (93) ACC 818 (All).**

26(C). <u>Requirement of sanction for ordering registration of FIR by Special Judge u/s 156(3) CrPC for offences under P.C. Act, 1988 referred to Lager Bench</u> : In view of conflicting decisions in two cases reported in Suresh Chand Jain Vs. State of M.P., (2001) 2 SCC 628 and Mohd. Yousuf Vs. Afaq Jahan, (2006) 1 SCC 627, a Two-Judge Bench, in the case noted below, has referred the question of requirement of sanction before ordering registration of FIR u/s 156(3) CrPC by the Special Judge (Anti-Corruption) for offences under the P.C.

Act, 1988 to a Larger Bench. See **: Manju Surana Vs. Sunil Arora & Others, (2018) 5 SCC 557.**

27(A). **Civil & criminal proceedings may go on simultaneously** : If the same set of facts gives rise to both civil and criminal liability, both the proceedings i.e. civil and criminal may go on simultaneously. See---

(i) Atique Ahmad vs. State of U.P., 2002 (2) JIC 844 (All)

(ii) Medchi Chemicals and Pharma (P) Ltd. vs. Biological E. Ltd., 2000 (2) JIC 13 (SC)

(iii) Lalmani Devi vs. State of Bihar, 2001 (1) JIC 717 (SC)

(iv) Ajeet Singh vs. State of U.P., 2006 (6) ALJ 110 (All)(Full Bench)

27(B-2).No FIR when civil suit to decide alleged forgery of document already pending in civil court: When genuineness of document, forgery of which was the basis of the criminal proceedings, was pending consideration in civil suit, FIR ought not to have been allowed to continue u/s 482 CrPC. **See: Rajeshbhai Muljibhai Patel Vs. State of Gujarat, (2020) 3 SCC 794.**

27(B-2). **Pendency of civil suit not to bar criminal proceedings**--- Where the accused was being prosecuted for the offence of fabrication of certain document and a civil suit wherein that document was filed was already pending, it has been held that the pendency of civil suit is no bar to prosecution for an offence of fabrication of document. See--- **Amar Pal Singh vs. State of U.P., 2002 (1) JIC 798 (All)**

27(C). **Pendency of civil suit not to bar application u/s. 156(3) CrPC** --- Where an application u/s. 156(3) CrPC was moved before the Magistrate for registration and investigation of FIR for offences u/s. 419, 420, 464, 465, 470, 471, 472 IPC on the basis of allegations that some forged sale deed in respect of land was got executed and registered and a civil suit for cancellation of the same deed was also pending, it has been held that the judgment of civil court in civil suit shall not be relevant u/s. 40, 41, 42 of the Evidence Act. Objection that scrutiny of the document i.e. the sale deed, is pending in civil suit before civil court, cannot be maintainable. The nature and standard of proof in civil and criminal proceedings are different. See---

(i) Jhinkoo vs. State of U.P., 2002 (45) ACC 63 (All)

(ii) Kamladevi vs. State of W.B., 2001 (43) ACC 1106 (SC)

(iii) S.W. Palanitkar vs. State of Bihar, 2002 (1) JIC 232 (SC)

27(D1). **Breach of contract & criminal prosecution therefor**--- Where a person was being prosecuted for offences u/s. 420, 418 r/w. Sec. 34 of the IPC for causing loss to the complainant by breach of agreement by non-supply of raw material as per the agreed terms of the agreement, it

has been held that simply because there is a remedy provided for breach of contract, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy available to the complainant. Both criminal law and civil law remedy can be pursued in diverse situations. As a matter of fact they are not mutually exclusive but clearly co-extensive and essentially differ in their content and consequence. The object of criminal law is to punish an offender who commits an offence against a person, property or the state for which the accused on proof of the offence is deprived of his liberty in some case even of life. This does not, however, affect the civil remedies at all for suing the wrong doer in cases like Arson, Accidents etc. It is anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import. (Note—In this complaint case ruling, there was narration in the complaint that the accused add from the very beginning of the transaction a criminal intent to cheat the complainant.) See--- **Medchi Chemicals and Pharma (P) Ltd. vs. Biological E. Ltd., 2000 (2) JIC 13 (SC).**

27(D2). **Breach of contract does not give rise to criminal prosecution:** Breach of a contract/ agreement does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intension is shown right at the beginning of the transaction. Merely on allegation of failure to keep up promise will not be enough to initiate criminal proceedings for the offences u/s 420, 120-B of the IPC. See:

(i)Tusharbhai Rajnikantbhai Shah Vs. Kamal Dayani, (2025)1 SCC 753

(ii) Sarabjeet Kaur Vs. State of Punjab, (2023) 5 SCC 360.

27(E-1). **<u>Tendency to convert purely civil disputes into criminal cases disapproved</u>:** There is growing tendency in business circles to convert purely civil disputes into criminal cases. There is an impression that civil law remedies are time-consuming and do not adequately protects the interests of lenders/creditors. It is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process particularly when matters are essentially of civil nature. See :

(i) Tusharbhai Rajnikantbhai Shah Vs. Kamal Dayani, (2025)1 SCC 753

(ii) Chandran Ratnaswami Vs. K.C. Palanisamy & Others, (2013) 6 SCC 740.

27(EE-1). **Complaint case involving dispute of only civil nature liable to be quashed u/s 482 CrPC :** In the present case, the High Court quashed the complaint against the respondent-accused filed for the alleged offences u/s 420, 406 read with Section 34 IPC. Ingredients of offences of Sections 406 and 420 IPC were found not satisfied. Averments and allegations made in the complaint did not disclose any criminality on the part of the accused and civil dispute was tried to be converted into a criminal dispute. The Supreme Court held that the criminal proceedings were rightly quashed by the High Court u/s 482 CrPC. **See:**

(i) R Nagender Yadav Vs. State of Telangana, (2023) 2 SCC 195

(ii)Vinod Natesan Vs State of Kerala and others (2019) 2 SCC 401

27(E-2). **Dispute as to sale and purchase of land is purely of civil nature and not a criminal act** : Where allegations of cheating & fraud etc. u/s 406, 419, 420, 120B IPC were made by the party regarding sale and purchase of land, it has been held by the Supreme Court that the dispute was purely of civil nature and not a criminal act. The case was fit to be quash u/s 482 CrPC by the High Court. See :

(i) S.P. Gupta Vs. Ashutosh Gupta, (2010) 6 SCC 562.

(ii) Ram Biraji Devi Vs. Umesh Kumar Singh, 2006 (55) ACC 560 (SC)

27(E-3). **Mere breach of contract not actionable in criminal side :** Where complaint was filed for the offences u/s 378, 403, 405, 415, 425 of the IPC r/w Section 405, 420, 403, 425 IPC, it has been held by the Supreme Court that since the dispute had arisen from breach of contract, hence civil remedy was available and criminal proceeding cannot go on. If the allegations disclose a criminal offence and ingredients of the offence are available, remedy under criminal law would not be barred. In this case the Supreme Court upheld the order of the High Court passed u/s 482 CrPC to the extent of quashing of proceedings for the offences u/s 415 and 425 of the IPC and set aside the remaining offences u/s 405, 403, 378 IPC on the basis of analyzing their ingredients. The Supreme Court also held that the Magistrate must proceed u/s 250 CrPC when frivolous complaints are made without foundation. See :

(i) Sarabjit Kaur Vs. State of Punjab (2023) 5 SCC 360

(ii) Indian Oil Corporation Vs. NEPC India Ltd., (2006) 6 SCC 736.

27(E-4). **Mere breach of agreement amounts to only civil dispute and not a criminal act :** Dispute about cancellation of agreement for sale is a civil

dispute. Institution of criminal proceeding for the offences u/s 420, 120-B, 467 of the IPC is abuse of process of court to seek private vendetta or to pressurize the accused. It has to be shown that accused had fraudulent or dishonest intention at the time of making of promise. Merely because the promisor could not keep the promise it cannot be presumed that he had culpable to breach promise from beginning. See **:**

(i) Sarabjit Kaur Vs State of Punjab, (2023) 5 SCC 360

(i) Inder Mohan Goswami Vs. State of Uttarakhand, AIR 2008 SC 251.
(ii) B. Suresh Yadav Vs. Sharifa Bee, AIR 2008 SC 210
(iii) All Cargo Moovers (I) Pvt. Ltd. Vs. Dhanesh Badarmal Jain, AIR 2008 SC 247.

27(E-5).<u>Criminal proceedings on breach of agreement when can be initiated</u> ? : Nature of the agreement reached between the parties and the terms and conditions incorporated therein would be the determining factor whether the dispute is of civil or criminal nature. FIR u/s 482 CrPC can be quashed by the High Court only where the matter is of such a nature that it can be decided only by a civil court and no element of criminal law is involved. See :

(ia) Sarabjit Kaur Vs State of Punjab, (2023) 5 SCC 360
(i) Ajeet Singh Vs. State of UP, 2006 (6) ALJ 110 (Full Bench)
(ii) K.A. Mathai alias babu Vs. Kora Bibbikutty, 1996 (7) SCC 212
(iii) Jagdish Chandra Nijhawan Vs. S.K. Saraf, (1999) 1 SCC 119
(iv) Charanjit Singh Chandra Vs. Sudhir Mehra, (2001) 7 SCC 417
(v) Lalmuni Devi (Smt.) Vs. State of Bihar, (2001) 2 SCC 17
(vi) M. Krishnan Vs. Vijai Singh, (2001) 8 SCC 645.

28. <u>Stricture against CJM consigning records without ensuring compliance of order passed u/s. 156(3) CrPC</u> : Where SHO did not register FIR in compliance with the order passed by the Chief Judicial Magistrate, Ghaziabad, Sri V.S. Patel, fresh application by the applicant was moved with the prayer to issue directions to the SHO concerned to register the FIR and investigate the case, call for progress report in the investigation made, but the CJM instead of ensuring the compliance of his order and calling for the progress report in the investigation rejected the application on the ground that application u/s. 156(3) CrPC had already been allowed and ordered the consignment of the file of the case u/s. 156(3) CrPC to the record room and then a petition u/s. 482 CrPC was filed, the Hon'ble Allahabad High Court rejected the order passed by the CJM, Ghaziabad consigning the record to the record room and also passed

severe strictures against the CJM by directing to send a copy of the order to the then Administrative Judge, Ghaziabad for action against the CJM, Ghaziabad.

Note: The then CJM, Ghaziabad had thereafter filed a writ petition before the Hon'ble Allahabad High Court for expunction of the strictures recorded against him in the aforesaid order. See--- **Smt. Durgesh Sharma vs. State of U.P., 2006 (56) ACC 155 (All).**

29(A). <u>Principles of natural justice not violated if accused is not provided hearing before filing of court complaint u/s 340 CrPC</u>: Where in a land acquisition proceedings, the claimants/land owners after playing chicanery on the court had wangled a bumper gain as compensation and the reference court which granted a quantum leap in awarding compensation to the land owners/claimants later found that they had used forged documents of sale deeds inveigling such a bumper gain as compensation and hence the court ordered some of the claimants/landowners to face prosecution proceedings in a criminal court. The court is not under a legal obligation to afford an opportunity to be heard to claimant/landowner before ordering such prosecution. The scheme underlying Section 340, 343, 238, 243 of the Code of Criminal Procedure clearly shows there is no statutory requirement to afford an opportunity of hearing to the persons against whom that court might file a complaint before the Magistrate for initiating prosecution proceedings. Once the prosecution proceedings commence, the person against whom the accusation is made has a legal right to be heard. Such a legal protection is incorporated in the scheme of the Code of Criminal Procedure itself. Principles of natural justice would not be hampered by not hearing the person concerned at the stage of deciding whether such person should be proceeded against or not. The court at the stage envisaged in Section 340 of the Code is not deciding the guilt or innocence of the party against whom proceedings are to be taken before the Magistrate. At that stage, the court only considers whether it is expedient in the interest of justice that an inquiry should be made into any offence affecting administration of justice. See: Pritish Vs. State of Maharashtra, AIR 2002 SC 236 (Three-Judge Bench).

29(B). <u>Section 195/340 CrPC when not attracted</u> : Where forged document (sale deed) was produced in evidence before court and the same was relied on by the party for claiming title to property in question, it has been held by the Supreme Court that since the sale deed had not been forged while it was in custodial egis, therefore, bar in Section 195 CrPC against taking of cognizance of offences u/s 468, 471 of the IPC was not attracted. See :

C.P. Subhash Vs. Inspector of Police, Chennai, 2013 CrLJ 3684 (SC). Ruling relied upon (i) **Iqbal Singh Marwah vs. Minakshi Marwah, AIR 2005 SC 2119 (Constitution Bench).**

29(C).<u>Difference of procedure in cases instituted on police report u/s 173(2) CrPC and u/s 340 CrPC</u> : Distinguishable feature in procedures to be adopted for cases instituted on police report and those instituted otherwise than on police report, lies in fact that in former, there is no scope for prosecution to examine any witness at stage where Magistrate is to consider whether charge is to be framed or not, in cases instituted otherwise than on police report, after accused appears or is brought before Magistrate, prosecution is required to adduce all such evidence in support of his case, whereupon Magistrate may discharge accused, if he is of view, for reasons to be recorded on basis of such evidence, that no case had been made out against him, which if unrebutted, would warrant his conviction. However, if Magistrate is of opinion, in view of such evidence, or also at any previous stage of case, that there is ground for presuming that accused has committed offence triable under Chapter and which he is competent to try and adequately punish, he shall frame charge against accused. Subsequently, if accused refuses to plead guilty or does not plead so or claims to be tried, vis-à-vis charge, he would be offered opportunity to cross-examine any of witnesses of prosecution, whose evidence had been taken and on which charge is founded and if accused elects to avail this opportunity, witnesses named by him would be recalled and after cross-examination and re-examination, they shall be discharged. Thus, not only prosecution, in cases instituted otherwise than on police report, would have opportunity to adduce all such evidence in support of its case on which, on consideration whereof, accused may be charged or discharged, as case may be, later can avail opportunity of cross-examining witnesses only after charge is framed. As Section 246(6) would authenticate, prosecution would thereafter have another chance of examinating remaining witnesses, who understandably, if examined, would be subjected to cross-examination and re-examination before their

discharge. Section 200, 202, 204, 238 to 243, 340 and 343(1), when juxtaposed to each other, would endorse availability of discretion in Trial Magistrate to conduct semblance of inquiry, if considered indispensable for proceeding with complaint in accordance with law. This is more so, amongst others, as complaint under Section 340 to 341 may be filed even without holding preliminary inquiry into facts, on which it appears to complainant Court prima facie that offence, as contemplated, had been committed and that it is expedient in interests of justice that inquiry should be made into such offence by Magistrate. In event of complaint being made after preliminary inquiry, in which sufficient materials are obtained following which complaint is filed, to reiterate, it may not be necessary for Trial Magistrate to embark upon any further inquiry to complement same. However, if no such preliminary inquiry is held and complaint is filed, in interest of justice and to obviate unwarranted prosecution, Trial Magistrate may, to be satisfied, feel necessity of some inquiry, summary though, to decide next course of action in law. In other words, if Trial Court on receipt of complaint is satisfied that materials on record are adequate enough, it shall, as per mandate contained in Section 343(1), deal with case as if instituted on police report. On other hand , if complaint has been filed without preliminary inquiry, having regard to inbuilt flexibility in text of Section 343(1), which cannot by any means be construed to be unnecessary appendage or surplusage, introduced by legislature, it would be open for Trial Magistrate to hold summary inquiry before proceeding further with complaint. As in any case, cause of justice would be paramount, mandate in Section 343(1) to Trial Magistrate to deal with complaint under Section 340 or 341 CrPC, as case instituted on police report, if construed to be inexorably absolute, would tantamount to neutering expression "as far as may be", which is impermissible when judges on touchstone of fundamental principles of justice, equity and good conscience as well as of interpretation of statutes. Though expected, complaint under Section 340 or 341 CrPC would be founded on materials in support thereof and would also be preceded by prima facie satisfaction of

complaining Court with regard to commission of offence and expediency of inquiry into same in interests of justice, plea of unavoidable compulsion of Trial Magistrate to treat same, as case as if instituted on police report, by totally disregarding necessity, even if felt, for further inquiry, does not commend acceptance. True it is that text of Section 343(1) otherwise portrays predominant legislative intent of treating complaint under Section 340, 341 to be case, as if instituted on police report, presence and purport of expression "as far as may be" by no means can be totally ignored. This, acknowledged discretion of Trial Magistrate to obtain further materials by way of inquiry even if summary in nature, if genuinely felt necessary in interest of justice for generating required satisfaction to proceed in matter as ought to be in law. However, in exercising such discretion, Trial Magistrate has to be cautiously conscious of fact that complaint pertains to offence affecting administration of justice and is preceded by prima facie satisfaction of complaining Court that same might have been committed and that it was expedient in interests of justice to inquire into same. In other words, discretion, as endowed to Trial Magistrate under Section 343(1) has to be very sparingly exercised and only if it is genuinely felt that further materials are required to be collected through an inquiry by him only to sub-serve ends of justice and avoid unwarranted judicial proceedings. Thus, Trial Magistrate, on receipt of complaint under Section 340 and/or 341 of Code, if there is preliminary inquiry and adequate materials in support of considerations impelling action under above provisions are available, would be required to treat such complaint to constitute case, as if instituted on police report and proceed in accordance with law. However, in absence of any preliminary inquiry or adequate materials, it would be open for Trial Magistrate, if he genuinely feels it necessary, in interest of justice and to avoid unmerited prosecution to embark on summary inquiry to collect further materials and then decide future course of action as per law. In both eventualities, Trial Magistrate has to be cautious, circumspect, rational, objective and further informed with overwhelming caveat that offence alleged

in one affecting administration of justice, requiring responsible, uncompromising and committed approach to issue referred to him for inquiry and trial, as case may be. In no case, however, in teeth of S. 343(1), procedure prescribed for cases instituted otherwise than on police report would either be relevant or applicable in respect of complaints under Sections 340 & 341 of Code. ***Criminal P.C. (2 of 1974), Sections 343, 244, 195(1)(b)--Penal Code (45 of 1860) Section 193--Cognizance by Magistrate--Procedure--Applicability of Section 244--Offence of false evidence--Trial Magistrate examining other witnesses before framing charge against accused--High Court setting aside charge framed by Trial Court on ground that procedure under Section 244 not followed--Case though registered on complaint under Section 340, to be dealt as if instituted on police report--In such case, procedure under Section 244 not applicable. 2013 (3) Bom CR (Cri) 163. Reversed. (paras 59 & 60).*** See : **State of Goa Vs. Jose Maria Albert Vales Alias Robert Vales, AIR 2018 SC 140.**

29(D).<u>Unconditional apology for perjury can be accepted by the Court u/s 195/340 CrPC</u> : Where an accused had made false statements before the company court and proceedings against him for the offence of perjury was initiated u/s 195/340 CrPC and the accused had filed affidavit before the Hon'ble Supreme Court tendering unconditional apology and humbly begged to be pardoned by stating that he never had intention to show any disrespect or dishonor to court and the alleged false statements were unintentional and he would not indulged in any such adventures in future, the Hon'ble Supreme Court accepted the unconditional apology of the accused and exonerated him of the said offence of perjury. It has also been held that other parallel proceedings under the provisions of the Contempt of Courts Act, 1971 and u/s 21 of the Company Secretaries Act, 1980 would not be proper. See : **Dhiren Dave Vs. Surat Dyes & Others, (2016) 6 SCC 253.**

29(E). **Stricture against Sessions Judge for misunderstanding the provisions of Sec. 156(3) CrPC r/w. Sec. 195/340 CrPC :** Where the Sessions Judge had recorded findings in the judgment in a sessions trial that the informant had lodged false FIR against the accused and, contrary to the provisions u/s. 195/340/344 CrPC, directed the SSP in his judgment for registration of FIR against the informant u/s. 182 of the IPC, the Allahabad High Court quashed the directions of the Sessions Judge as being illegal and without jurisdiction and directed the Registrar General of the High Court to send a copy of the judgment of the High Court to the Sessions Judge concerned for his guidance in future. See---**Lekhraj vs. State of U.P., 2008 (61) ACC 831 (All)**

30. **Magistrate not competent to recall his order passed u/s. 156(3) CrPC** : Powers of Magistrate are limited and he has no inherent powers. Ordinarily he has no power to recall his order. An order passed by Magistrate u/s. 156(3) CrPC cannot be recalled by him. High court has duty to exercise continuous superintendence over the courts of Judicial Magistrate under Article 227 and 235 of the Constitution. See--- **Dharmeshbhai Vasudevbhai vs. State of Gujarat, (2009) 3 SCC (Criminal) 76**

31(A). **Magistrate not to interfere or to have control over investigation of crimes by police** : Investigating agency and the adjudicatory authority are the two inseparable wings of the criminal justice system. Crime detection, which is exclusive function of the State has been entrusted to the police. Rights and duties of the police in the matter of investigation of a cognizable offence are enumerated in Chapter XII of the code under caption "information to the police and their powers to investigate". The legislature, in its wisdom, has not conferred any power upon the Magistrate to interfere with or to have control over the investigation of the crime by the police. See---

1. **C.L. No. 13/2004, dated 31.3.2004 issued by Hon'ble Allahabad High Court in compliance with the Division Bench Judgment dated 21.11.2003 passed by the Hon'ble Allahabad High Court in Criminal Misc. Writ Petition No.6417/2002 Govind & others vs. State of U.P. & others.**
2. **Union of India vs. Prakash P. Hinduja, JT 2003 (5) SC 300**

31(B). <u>Police have no unlimited powers of investigation</u> : Powers of police to investigate crimes are not unlimited. Power should be exercised within limits prescribed by the CrPC and should not result in destruction of personal freedom guaranteed by Article 21 of the Constitution. See : **2013 CrLJ 2938 (SC)**

32. <u>Magistrate ordering registration of FIR & investigation thereof can monitor the investigation</u>--- The Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition u/s. 482 CrPC simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies u/ss. 36 and 154(3) before the concerned police officers, and if that is of no avail, u/s. 156(3) CrPC before the Magistrate or by filing a criminal complaint u/s. 200 CrPC and not by filing a writ petition or a petition u/s. 482 CrPC. In Union of India vs. Prakash P. Hinduja and another, 2003 (6) SCC 195 (vide para 13), it has been observed by this Court that a Magistrate cannot interfere with the investigation by the police. However, in our opinion, the ratio of this decision would only apply when a proper investigation is being done by the police. If the Magistrate on an application u/s. 156(3) CrPC is satisfied that proper investigation has not been done, or is not being done by the officer-in-charge of the concerned police station, he can certainly direct the officer-in-charge of the police station to make a proper investigation and can further monitor the same (though he should not himself investigate). See :

(i) Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage, (2016) 6 SCC 277 (paras 2 & 3).

(ii) Sakiri Vasu Vs. State of UP, (2008) 2 SCC 409.

<u>Note</u>: Correctness of the decision in Sakiri Vasu vs. State of U.P., 2008 (60) ACC 689 (SC) = (2008) 2 SCC 409 has been doubted by a bench of equal strength of the Supreme Court in the case of Kishan Lal vs. Dharmendra Bafna, 2009 (66) ACC 936 (SC) & Dharmeshbhai Vasudevbhai vs. State of Gujarat, 2009 Cr.L.J. 2969 (SC)

33(A). <u>Police are bound to register FIR u/s 154 CrPC if the information discloses commission of cognizable offences</u> : A **Constitution Bench** of the Hon'ble Supreme Court, in the case noted below, has ruled that registration of FIR is mandatory u/s 154 CrPC if the information discloses commission of cognizable offence and no preliminary enquiry is permissible in such a situation. See :

(i). Mukesh Singh Vs State NCT of Delhi, (2020) 10 SCC 120(Five-Judge Bench)

(ii). Lalita Kumari Vs. Govt. of UP, AIR 2014 SC 187 (Five-Judge Bench) *(para 111).*

33(B-1).<u>Action must be taken against erring Police Officer not registering FIR if the information received disclosed a cognizable offence</u> : The Police Officer cannot avoid his duty of registering FIR 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. See : **Lalita Kumari Vs Govt. of UP, AIR 2014 SC 187 (Five-Judge Bench)** *(para 111).*

33(B-2).If the information discloses a cognizable offence committed under the SC/ST Act, 1989, registration of FIR is mandatory: If the information discloses a cognizable offence committed under the SC/ST Act, 1989, registration of FIR is mandatory. See**: Union of India Vs. State of Maharashtra, (2020) 4SCC 761 (Three-Judge Bench)**

33(C-1).<u>Preliminary enquiry may be conducted by police only when the information received does not disclosed a cognizable offence</u> : If information received does not disclosed a cognizable offence but indicates the necessity for enquiry, a preliminary enquiry may be conducted only to ascertain whether cognizable offence is disclosed or not. See : **Lalita Kumari Vs Govt. of UP, AIR 2014 SC 187 (Five-Judge Bench)** *(para 111).*

33(C-2).<u>CBI and not the regular State Police can conduct preliminary enquiry before registering FIR u/s 154 CrPC</u> : It is true that the concept of "preliminary enquiry" is contained in Chapter IX of the Crime Manual of the CBI. However, this Crime Manual is not a statute and has not been enacted by the legislature. It is a set of administrative orders issued for internal guidance of the CBI officers. It cannot supersede the Code. Moreover, in the absence of any indication to the contrary in the Code itself, the provisions of the CBI Crime Manual cannot be relied upon to import the concept of holding of preliminary inquiry before registration of FIR in the scheme of the Code of Criminal Procedure. In view of the above specific provisions in the Code, the powers of the CBI under the DSPE Act, cannot be equated with the powers of the regular State Police under the Code. See : **Lalita Kumari Vs Govt. of UP, AIR 2014 SC 187 (Five-Judge Bench)** *(para 79 & 82).*

32 (C-3). Investigation by CBI can be conducted only on recommendation of the State Government to the Centre or under orders of Writ Courts: As per Section 435(1) of the Code of Criminal Procedure, the power of the State Government to remit or

commute the sentence under Section 432 and 433 CrPC should not be exercised in the cases investigated by the Central Agency like the CBI except after due consultation with the Central Government. The expression "consultation" occurring in Section 435(1)(a) of the Code of Criminal Procedure ought to be read as "concurrence" of the Central Government and primacy must be given to the opinion of the Central Government in the matters covered under clauses (a), (b) and (c) of Section 435(1) of the CrPC. Section 435(1)(a) CrPC deals with the cases which are investigated by the Delhi Special Police Establishment i.e. the Central Bureau of Investigation or by any other agency empowered to make investigation into an offence under any Central Act. The investigation by the CBI in a matter may arise as a result of express consent or approval by the State Government concerned under Sections 5 and 6 of the Delhi Special Police Establishment Act, 1946 or as a result of directions by a superior Court in exercise of its writ jurisdiction. In a case where the investigation is handed over to the CBI, the entire conduct of the proceedings including the decision as to who shall be the public prosecutor, how the prosecution will be conducted and whether appeal be filed or not are all taken by the CBI and at no stage the State Government concerned has any role to play. It has been laid down by the Supreme Court in Lalu Prasad Yadav Vs. State of Bihar, (2010) 5 SCC 1 that in the matters where investigation was handed over to the CBI, it is the CBI alone which is competent to decide whether appeal be filed or not and the State Government cannot even challenge the order of acquittal on its own. In such cases could the State Government then seek to exercise powers of remission etc. under Sections 432 and 433 of the Code of Criminal Procedure on its own? The answer to this question is that in such cases the benefit under Section 432 or 433 CrPC can be given by the Central Government and not by the State Government. Merely because the State Government happens to be the appropriate Government in respect of such offences, if the prisoner were to be granted benefit under Section 432 or 433 CrPC by the State Government on its own, it would in fact defeat the very purpose. See: (i) Union of India Vs. V. Sriharan alias Murugan, (2016) 7 SCC 1 (Five-Judge Bench) (paras 155 to 159 and 235 to 240).

33(C-3). **Scope of preliminary enquiry by police in the matter of information relating to non-cognizable offence :** The scope of preliminary enquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence. See : **Lalita Kumari Vs Govt. of UP, AIR 2014 SC 187 (Five-Judge Bench)** *(para 111).*

33(D). **Preliminary enquiry must not exceed 07 days :** While ensuring and protecting the rights of the accused and the complainant, a preliminary enquiry should be made time bound and in any case it should not exceed 07 days. The fact of such delay and the causes of it must be reflected in the General Diary entry. See : **Lalita Kumari Vs Govt. of UP, AIR 2014 SC 187 (Five-Judge Bench)** *(para 111).*

33(E).<u>Copy of preliminary enquiry must be supplied to the first informant latest within one week</u> : If the preliminary enquiry discloses the commission of a cognizable offence, FIR must be registered. In cases where preliminary enquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further. See : **Lalita Kumari Vs Govt. of UP, AIR 2014 SC 187 (Five-Judge Bench)** *(para 111).*

33(F).<u>Certain category of offences where preliminary enquiry may be conducted by police before registering FIR u/s 154 CrPC</u> : As to what type and in which cases preliminary enquiry is to be conducted will depend on facts and circumstances of each case. The category of cases in which preliminary enquiry may be made are as under :

(a) matrimonial disputes/family disputes

(b) commercial offences

(c) medical negligence cases

(d) corruption cases

(e) cases where there is abnormal delay/latches in initiating criminal prosecution, for example, over three months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary enquiry. See : **Lalita Kumari Vs Govt. of UP, AIR 2014 SC 187 (Five-Judge Bench)** *(para 111).*

33(G).<u>Preliminary enquiry necessary before lodging of FIR where a public servant is charged with acts of dishonesty amounting to serious misdemeanour or misconduct</u> : The appellant P. Sirajuddin was a Chief Engineer of the Highways & Rural works, Madras. An FIR against him was lodged for the offences under the Prevention of Corruption Act, 1947. The Hon'ble Supreme Court ruled thus **:** "In our view the procedure adopted against the appellant before the laying of the first information report though not in terms forbidden by law, was so unprecedented and outrageous as to shock one's sense of justice and fairplay. No doubt when allegations about dishonesty of a person of the appellant's rank were

brought to the notice of the Chief Minister it was his duty to direct an enquiry into the matter. The Chief Minister in our view pursued the right course. The High Court was not impressed by the allegation of the appellant that the Chief Minister was moved to take an initiative at the instance of a person who was going to benefit by the retirement of the appellant and who was said to be a relation of the Chief Minister. The High Court rightly held that the relationship between the said person and the Chief Minister, if any, was so distant that it could not possibly have influenced him and we are of the same view. Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general. If the Government had set up a Vigilance and Anti-Corruption Department as was done in the State of Madras and the said department was entrusted with enquiries of this kind, no exception can be taken to an enquiry by officers of this department but any such enquiry must proceed in a fair and reasonable manner. The enquiring officer must not act under any preconceived idea of guilt of the person whose conduct was being enquired into or pursue the enquiry in such a manner as to lead to an inference that he was bent upon securing the conviction of the said person by adopting measures which are of doubtful- validity or sanction. The means adopted no less than the end to be achieved must be impeccable. In ordinary departmental proceedings against a Government servant charged with delinquency, the normal

practice before the issue of a charge-sheet is for someone in authority to take down statements of persons involved in the matter and to examine documents which have a bearing on the issue involved. It is only thereafter that a charge-sheet is submitted and a full-scale enquiry is launched. When the enquiry is to be held for the purpose of finding out whether criminal proceedings are to be resorted to the scope thereof must be limited to the examination of persons who have knowledge of the affairs of the delinquent officer and documents bearing on the same to find out whether there is prima facie evidence of guilt of the officer. Thereafter the ordinary law of the land must take its course and further inquiry be proceeded with in terms of the Code of Criminal Procedure by lodging a first information report." See : **P. Sirajuddin v. State of Madras, AIR 1971 SC 520** ***(para 17)***

33(H-1). <u>Information received by the police must be entered into the G.D. :</u> Since the General Diary/Station Diary/Daily Diary is the record of all information received in a Police Station, all the information relating to cognizable offences, whether resulting in registration of FIR or leading to an enquiry must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary enquiry must also be reflected as mentioned above. See : **Lalita Kumari Vs Govt. of UP, AIR 2014 SC 187 (Five-Judge Bench)** *(para 111).*

33(H-2).<u>Entries made in G.D. not to be treated as FIR registered u/s 154 CrPC</u> : What is recorded in General Diary cannot be considered as compliance of requirement of Section 154 CrPC of registration of FIR. See : **Lalita Kumari Vs Govt. of UP, AIR 2014 SC 187 (Five-Judge Bench).**

33(H-3).<u>Only gist of information received required to be recorded in general diary (GD)</u> : What is to be recorded in general diary as per Section 44 of the Police Act, 1861 in general diary is only gist of information received and not the whole of information received. It cannot, therefore, be said that what is recorded in general diary is to be considered as compliance of requirement of Section 154 CrPC for

registration of FIR. See : **Lalita Kumari Vs. Govt. of UP, AIR 2014 SC 187 (Five-Judge Bench).**

33(I). <u>Police has jurisdiction to make preliminary enquiry before registering FIR</u> : Although the officer in charge of police station is legally bound to register a first information report in terms of Sec. 154 if the allegations made gives rise to an offence which can be investigated without obtaining any permission from the Magistrate concerned; the same by itself, however, does not take away the right of the competent officer to make a preliminary enquiry, in a given case in order to find out as to whether the first information sought to be lodged had any substance or not. See--- **Rajinder Singh Katoch vs. Chandigarh Administration, AIR 2008 SC 178.**

Note : *Decision in Rejinder Singh Katoch's has now to be understood in the light of the law propounded by Constitution Bench of the Hon'ble Supreme Court in Lalita Kumari Vs Govt. of UP, AIR 2014 SC 187 (Five-Judge Bench).*

33(J). <u>Police has jurisdiction to make preliminary enquiry before registering FIR</u> : "*If an information is given to the police and we believe that the officers of the Vigilance Department are also police officers for purposes of instituting a case and investigating the same, then the police has statutory duty to investigate into the allegations. If the information is very categorical which was making out a clear case of commission of cognizable offence then in that case the police is required to draw up the First Information Report and investigate the case as per the provisions of section 157 or 172 CrPC. Else as we have already noted, it may hold a preliminary inquiry so as to verify the allegations by looking into some aspects of it and it may choose to register the FIR or may choose not to register it and make a report to the nearest Magistrate as per the provisions of Section 157(1) proviso (b) CrPC. In case it initiates a preliminary inquiry as appears from the scheme of CrPC then it has power to issue notice to persons who may be acquainted with the facts and circumstances of the case to appear before it. It is plainly clear from the provision of section 160 CrPC that such power, which is vested in the police, could be exercised only for facilitating the collection of materials, may be an explanation from the person, who is alleged to have committed the offence so as to deciding whether there was any necessity of registering a case.*" See : **Dr. Rakesh Dhar Tripathi Vs. State of UP & Others, 2013 (82) ACC 494 (All) (DB)** *(para 14).*

Note : *Decision in Rejinder Singh Katoch's has now to be understood in the light of the law propounded by Constitution Bench of the Hon'ble Supreme Court in Lalita Kumari Vs Govt. of UP,* ***AIR 2014 SC 187 (Five-Judge Bench).***

34. <u>Police bound to register FIR u/s. 154 CrPC on receiving information of cognizable offence</u>--- Police is duty bound to register a case u/s. 154 CrPC on receiving information of cognizable offence. Reliability of information is not condition precedent for registration of FIR. See---

1. **Lallan Chaudhary vs. State of Bihar, AIR 2006 SC 3376**
2. **Ravindra Singh vs. State of U.P., 2006 (2) JIC 364 (All)**

35. <u>Police to follow procedure prescribed u/s. 154(1) CrPC on receiving order u/s. 156(3) CrPC for registration of FIR & investigation thereof</u>--- On receiving an order from Magistrate passed u/s. 156(3) CrPC for registration of FIR and investigation thereof, the police has to follow the procedure prescribed u/s. 154(1) CrPC before it takes on its investigation. See--- **Dinesh Chandra vs. State of U.P., 2000 (41) ACC 831 (All)**

36. <u>FIR through telegram or telephone call with vague information & its value</u>--- An information given under sub-section (1) of Sec. 154 of CrPC is commonly known as First Information Report (FIR) though this term is not used in the Code. It is a very important document. And as its nick name suggests it is the earliest and the first information of a cognizable offence recorded by an officer-in-charge of a police station. It sets the criminal law into motion and marks the commencement of the investigation which ends up with the formation of opinion u/ss. 169 or 170 of CrPC , as the case may be, and forwarding of a police report u/s. 173 of CrPC It is quite possible and it happens not infrequently that more informations than one are given to a police officer-in-charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Sec. 154 of CrPC apart from a vague information by a phone call or cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer-in-charge of police station is the First Information Report—F.I.R. postulated by Sec. 154 of CrPC. All other information made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the First Information Report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling u/s. 162 of CrPC. No such information/statement can properly be treated as an FIR and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of the CrPC. Take a case where an FIR mentions cognizable offence u/ss. 307 or 326 IPC and the investigating agency learns during the investigation or receives a fresh information that the victim dies, n o fresh FIR u/s. 302 IPC need be registered which will be irregular, in such a case alteration of the provision of law in the first FIR is the proper

course to adopt. Let us consider a different situation in which having killed W, his wife, informs the police that she is killed by an unknown person or knowing that W is killed by his mother or sister, H owns up the responsibility and during investigation the truth is detected, it does not require filing of fresh FIR against H the real offender- who can be arraigned in the report u/s. 173(2) or 173(8) of CrPC as the case may. It is of course permissible for the investigating officer to send up a report to the concerned Magistrate even earlier that investigation is being directed against the person suspected to be the accused. The scheme of the CrPC is that an officer-in-charge of a Police Station has to commence investigation as provided in Sec. 156 or 157 of CrPC on the basis of entry of the First Information Report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of evidence collected he has to form opinion u/ss. 169 or 170 of CrPC , as the case may be, and forward his report to the concerned Magistrate u/s. 173(2) of CrPC. However, even after filing such a report if he comes into possession of further information or material, he need not register a fresh FIR, he is empowered to make further investigation, normally with the leave of the Court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Sec. 173 CrPC. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfied the requirements of Sec. 154 CrPC thus there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer-in-charge of a Police Station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Sec. 173 of the CrPC. See--- **T.T. Antony vs. Damodaran P., AIR 2001 SC 2637**

37. <u>Police competent to investigate a cognizable offence even if the same is not mentioned in the FIR</u>--- Police empowered to investigate cognizable offences and it is not necessary that it should be mentioned in the FIR. See--- **Ram Prakash Vyas vs. State of U.P., 2007 (1) J.Cr.C. 143 (All)**

38. <u>Investigation u/s. 156 CrPC is different than investigation u/s. 202 CrPC</u> --- Sec. 156 Cr.P.C falling within Chapter XII, deals with powers of police officers to investigate cognizable offences. Investigation envisaged in Sec. 202 CrPC contained

in Chapter XV is different from the investigation contemplated u/s. 156 CrPC. See--- **Mohd. Yusuf vs. Smt. Afaq Jahan, 2006 (54) ACC 530 (SC)**

39. Plea of sanction not relevant at the time of disposal of application u/s. 156(3) CrPC --- Bar of sanction will not apply against registration of FIR or investigation by police agency. Such sanction is necessary only for taken cognizance of the offence by the court. Plea of sanction cannot be taken at the stage of registration of FIR, arrest of the accused, remand or bail. See--- **State of Karnataka vs. Pastor P. Raju, 2006 Cr.L.J. 4045 (SC)**

40(A). Police competent to investigate cognizable offence u/s. 155 (2) CrPC While investigating a cognizable offence and presenting charge sheet for cognizable offence the police are not debarred from investigating any non-cognizable offence arising out of the same facts and including them in their final report. See--- **State of H.P. vs. Sat Pal Singh, 2009 (67) ACC 46** (Summary of cases)

(AA) Police competent to investigate cognizable offence on NCR even without permission from magistrate u/s 155(2) Cr PC---Where initially NCR for offences u/s 323,504 IPC was registered but subsequently on the basis of injury report the case was converted by the police u/s 323,324,325 IPC and later on even Sec. 308 IPC was also added , it has been held that since there were cognizable offences as well, therefore the police could have investigated the case even without permission from magistrate u/s 155(2) Cr PC . See---

1. **Dharam Pal Vs. State of UP, 2006 Cr LJ 1421 (All)**
2. **Brij Lal Bhar vs. State of U.P., 2006 Cr LJ 3334 (All)**
3. **State of Orissa Vs. Sharat Chandra Sahu, (1996) 6 SCC 435**

(B) Police not competent to investigate NCR without permission from Magistrate u/s. 155(2) CrPC --- Without prior permission of the Magistrate, police are not competent to investigate into a non-cognizable report and they cannot present a challan u/s. 173 CrPC. Investigation carried out by police without prior permission from Magistrate u/s. 155 (2) CrPC would vitiate the entire proceeding, Magistrate is not empowered to take cognizance of the offences on the basis of such charge sheet submitted by the police. See---

1. **State of H.P. vs. Sat Pal Singh, 2009 (67) ACC 46** (Summary of cases)
2. **Kunwar Singh vs. State of U.P., 2007 (57) ACC 331 (All)**

(C) Conversion of NCR into FIR by police--- Officer-in-charge of police station is under obligation to reduce in writing every information relating to commission of cognizable offence. If the report was earlier registered as NCR, the SHO himself is empowered to register it as cognizable one on receipt of material. There is no requirement for taking permission u/s. 155(2) CrPC for investigation from the

Magistrate concerned. See--- **Brij Lal Bhar vs. State of U.P., 2006 (55) ACC 864 (All)**

(D) **Complainant may also seek permission u/s 155(2) CrPC for investigation of NCR by police**--- Apart from the SHO, the first informant or any other aggrieved person is also a competent person to move an application u/s. 155(2) CrPC to obtain order for police to make investigation. See---

1. **Ram Narayan vs. State of U.P., 2010 (2) ALJ 527 (All)**
2. **Kunwar Singh vs. State of U.P., 2007 (57) ACC 331 (All)**
3. **Brij Lal Bhar vs. State of U.P., 2006 (55) ACC 864 (All)**

41. **Magistrate not competent to order investigation by the CBI**--- A Magistrate while ordering u/s. 156(3) CrPC registration of FIR and investigation thereof, cannot order investigation to be conducted by the CBI. See---

1. **Appeal (Criminal) 1685/2007, Sakiri Vasu vs. State of U.P. Copy of this judgment has been directed by the Hon'ble Supreme Court to be sent to the Registrar Generals of all the High Courts with the direction to circulate the same amongst all the Hon'ble Judges of all the High Courts.**
2. **CBI vs. State of Rajasthan, 2001 (3) SCC 333**
3. **R.P. Kapoor vs. S.P. Singh, AIR 1961 SC 1117**

42. **Revision not maintainable against order granting application u/s. 156(3) CrPC** --- **(A)** An accused does not have any right to be heard before he is summoned by the Court under the Code of Criminal Procedure and he has got no right to raise any objection till the stage of summoning and resultantly he can not be conferred with a right to challenge the order passed against him u/s. 156(3) CrPC prior to his summoning. If the Magistrate has allowed an application u/s 156(3) CrPC directing the police to register FIR and investigate, revision against such order is not maintainable u/s 397 CrPC. See—

1. **Uma Shankar Pandey Vs. State of UP, 2012 (76) ACC 484 (All)**
2. **Father Thomas vs. State of U.P. 2011 (72) ACC 564 (All...FB)**
3. **Shyam Lal Vs. State of U.P, 2010 (70) (ACC) 802(ALL)**
4. **Gulam Mustafa @ Jabbar vs. State of U.P., 2008 (61) ACC 922 (All)**
5. **Prof. Ram Naresh Chaudhary vs. State of U.P., 2008 (60) ACC 476 (All)**
6. **Rakesh Kumar vs. State of UP, 2007(57) ACC 489(All)**
7. **Smt. Gulista vs. State of UP, 2007 (59) ACC 876 (All)**
8. **Manish Tiwari vs. State of UP, 2007 (59) ACC 599 (All)**
9. **Union of India vs. W.N. Chaddha, 1993 SCC (Cri) 1171**
10. **Ram Dhani vs. State of U.P., 2009 Cr.L.J. (NOC) 754 (All)**
11. **Chandan vs. State of UP, 2007 (57) ACC 508(All)**

Note 1: *The judgment in the case of Chandan has been circulated by the High Court amongst the Judicial Officers of the State of UP for compliance.*

Note 2: *Earlier C.L. No. 51/2006, dated 15.11.2006 issued in relation to disposal of application u/s. 156(3) CrPC has now been withdrawn by the Hon'ble High Court vide C.L. No.:5/08/Admin 'G' Section, dated 21.1.2008.*

(B) **Revision maintainable against grant of application u/s. 156(3) CrPC** --A division bench of the Allahabad High Court, in the case noted below, has held that an order passed by Magistrate u/s. 156(3) CrPC directing the police to register FIR and investigate is amenable to revisional jurisdiction u/s. 397 CrPC See------- **Ajai Malviya vs. State of U.P., 2001 Cr.L.J. 313 (All—D.B.)**

(C) **Revision against rejection of application u/s. 156(3) CrPC maintainable**--- Criminal revision u/s. 397 CrPC is maintainable against an order rejecting application moved u/s. 156(3) CrPC. Such order is revisable at the instance of victim or aggrieved person. See--- **Mangalsen vs. State of U.P., 2009 (6) ALJ (NOC) 993 (All)**

(D) **Session Judge in revision not to direct registration of FIR u/s. 156(3) CrPC** --- Where in a revision filed before Sessions Judge against rejection of application by Magistrate u/s. 156(3) CrPC , the Sessions Judge himself had directed the police for registration of FIR, it has been held that the Sessions Judge could not have directed the police to register FIR u/s. 156(3) CrPC. See--- **Hari Prakash Kasana vs. State of U.P., 2009 (5) ALJ 750 (All)**

43(A). Words "informant" and "complainant" are different words in law : In many of the judgments, the person giving the report under Section 154 of the Code is described as the "complainant" or the "de facto complainant" instead of "informant", assuming that the State is the complainant. These are not words of literature. In a case registered under Section 154 of the Code, the State is the prosecutor and the person whose information is the cause for lodging the report is the informant. This is obvious from sub-section (2) of Section 154 of the Code which, inter alia, provides for giving a copy of the information to the "informant" and not to the "complainant". However the complainant is the person who lodges the complainant. The word "complaint" is defined under Section 2(d) of the Code to mean any allegation made orally or in writing to a Magistrate and the person who makes the allegation is the complainant, which would be evident from Section 200 of the Code, which provides for examination of the complainant in a complaint case. Therefore, these words carry different meanings and are not interchangeable. In short, the person giving information, which leads

to lodging of the report under Section 154 of the code is the informant and the person who files the complaint is the complainant. See : **Ganesha Vs. Sharanappa & Another, (2014) 1 SCC 87** *(para 14).*

43(B). **<u>Word "inquiry" means judicial inquiry u/s 2(g) of the CrPC</u> :** The term inquiry as per Section 2(g) CrPC reads thus : "*Inquiry means every inquiry other than a trial conducted under this Code by a Magistrate or Court. Hence, it is clear that inquiry under the Code is relatable to a judicial act and not to the steps taken by the Police which are either investigation after the stage of Section 154 of the Code or termed as "preliminary Inquiry' and which are prior to the registration of FIR, even though, no entry in the General Diary/Station Diary/Daily Diary has been made. Though there is reference to the term 'preliminary inquiry' and 'inquiry' under Section 159 and Sections 202 and 340 of the Code, that is a judicial exercise undertaken by the Court and not by the Police and is not relevant for the purpose of the present reference.*" See : **Lalita Kumari Vs Govt. of UP, AIR 2014 SC 187 (Five-Judge Bench)** *(para 77 & 78).*

44. **<u>Rs. 5 lacs imposed as cost on MLA for filing PIL on false ground of rape by RaGa on a girl aged 22 years</u> :** Rs. 5 lacs was imposed as cost on MLA Kishore Samrite for filing Writ Petition (PIL) before the Lucknow Bench of the Hon'ble Allahabad High Court for directions of registration of FIR against Shri Rahul Gandhi, MP from Amethi, for alleged rape on a young girl aged 22 years. See : **Kishore Samrite Vs. State of M.P., 2014 (84) ACC 990 (SC).**

45(A). **<u>Primary police report u/s 173(2) & supplementary police report u/s 173(8) to be read conjointly</u>** : Supplementary police report received from police u/s 173(8) CrPC shall be dealt with by the court as part of the primary police report received u/s 173(2) CrPC. Both these report have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the court would be expected to apply his mind to determine whether there is exists grounds to presume that the accused has committed the offence and accordingly exercise its powers u/s 227 or 228 CrPC. See : **Vinay Tyagi Vs. Irshad Ali, (2013) 5 SCC 762.**

Note : *The ruling in Vinay Tyagi case elaborately deals with the power of court regarding (i) further investigation (ii) reinvestigation (iii) supplementary police report received u/s 173(8) CrPC (iv) power of court to take second time cognizance of the offences on receipt of supplementary police report u/s 173(8) CrPC (v) mode of dealing with final report and supplementary police report received u/s 173(8) CrPC disclosing commission of offences***.**

45(B).<u>Two case diaries submitted by two different investigating agencies after two investigations to be read conjointly</u> : Supplementary police report received from police u/s 173(8) CrPC shall be dealt with by the court as part of the primary police report received u/s 173(2) CrPC. Both these report have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the court would be expected to apply his mind to determine whether there is exists grounds to presume that the accused has committed the offence and accordingly exercise its powers u/s 227 or 228 CrPC. See : **Vinay Tyagi Vs. Irshad Ali, (2013) 5 SCC 762.**

Note : *The ruling in Vinay Tyagi case elaborately deals with the power of court regarding (i) further investigation (ii) reinvestigation (iii) supplementary police report received u/s 173(8) CrPC (iv) power of court to take second time cognizance of the offences on receipt of supplementary police report u/s 173(8) CrPC (v) mode of dealing with final report and supplementary police report received u/s 173(8) CrPC disclosing commission of offences***.**

46(A).<u>Magistrate having ordered registration & investigation of FIR u/s 156(3) CrPC has power to change the investigating officer</u>: This Court has held in *Sakiri Vasu Vs. State of UP*, that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) CrPC. If such an application under Section 156(3) CrPC is made and the Magistrate is, prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a

proper investigation is done in the matter. We have said this in Sakiri Vasu case because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156(3) CrPC and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation**.** See :

(i) Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage, (2016) 6 SCC 277 *(paras 2 & 3).*

(ii) Sakiri Vasu Vs. State of UP, (2008) 2 SCC 409=AIR 2008 SC 907.

46(B).<u>Writ Petition under Article 226 not maintainable before High Court for registration & investigation of FIR as alternate remedy available before the Magistrate u/s 156(3) CrPC</u> : This Court has held in *Sakiri Vasu Vs. State of UP*, that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) CrPC. If such an application under Section 156(3) CrPC is made and the Magistrate is, prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in Sakiri Vasu case because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation. We are of the opinion that if the High Courts entertain

such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156(3) CrPC and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation**.** See :

(i) Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage, (2016) 6 SCC 277 *(paras 2 & 3)*.

(ii) Sakiri Vasu Vs. State of UP, (2008) 2 SCC 409=AIR 2008 SC 907.

46(C).<u>Magistrate has no power to select/choose/change investigating agency</u> : Magistrate has no power to select/choose/change the investigating agency. Only superior court can issue such direction and not the magistrate. See : **Chandra Babu Vs. State, (2015) 8 SCC 774.**

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