

(2007) 07 AHC CK 0199**Allahabad High Court****Case No:** None

Hira Lal

APPELLANT

Vs

State of U.P. and Veer Singh

RESPONDENT

Date of Decision: July 27, 2007**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 154, 156, 157, 173, 2
- Penal Code, 1860 (IPC) - Section 120B, 406, 420, 467, 468

Citation: (2008) CriLJ 113**Hon'ble Judges:** Vijay Kumar Verma, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

Vijay Kumar Verma, J.

The main question for consideration is whether investigation of a case, which has been registered on the basis of the order passed on the application u/s 156(3) of the Code of Criminal Procedure (Cr.P.C. for short) is vitiated on the ground of lack of jurisdiction to pass order for investigation.

2. The relevant facts giving rise to this revision, in brief, are that an application u/s 156(3) Cr.P.C. was moved in the Court of Chief Judicial Magistrate, Ghaziabad on 22.07.1999 by Sri Veer Singh Chauhan (opposite party No. 2 herein) impleading Rohtash and revisionist Hira Lal as opposite parties. It was prayed in the application that S.O., P.S. Sector 20, Noida be directed to register a case against the accused-opposite parties and investigate the same. On that application, Chief Judicial Magistrate, Ghaziabad passed order on the same day and directed S.O. P.S. Sector 20, Noida to register the case and investigate. In pursuance of that order, F.I.R. was lodged at P.S. Sector 20, Noida on 27.07.1999 and a case under Sections 406, 420, 467, 468, 471, 120B I.P.C. was registered at crime No. 549 of 1999 against Rohtash and Hira Lal. Aforesaid order was challenged by the revisionist in the Court

of Sessions Judge, Ghaziabad in criminal revision No. 353 of 1999, which was decided by 10th Additional Sessions Judge, Ghaziabad vide order dated 12.01.2000 (Annexure 6), whereby the revision was allowed and order dated 22.07.1999 passed by Chief Judicial Magistrate, Ghaziabad was set-aside. The order was challenged in that revision on the ground that Chief Judicial Magistrate, Ghaziabad had no jurisdiction to entertain and pass order on the application u/s 156(3) Cr.P.C, as the offences are alleged to have been committed in Noida in District Gautambudh Nagar, which started functioning w.e.f. 27.06.1999. The F.I.R. lodged pursuant to the order dated 22.07.1999 was also challenged by Sri Hira Lal (revisionist herein) in this Court in criminal misc. application No. 4846 of 1999. While issuing notice to opposite party No. 2 on 06.10.1999, this Court had stayed the arrest of the applicant Hira Lal in case crime No. 549 of 1999 till submission of the chargesheet. After investigation, chargesheet (Annexure 5) has been submitted against Rohtash, Indrajit and Ghanshyam mentioning therein that from the whole investigation, offences punishable under Sections 406, 420, 467, 468, 471, 120B I.P.C. are made out against the accused of Column No. 3 and Hira Lal S/o Nathu Singh, but since the arrest of Hira Lal has not been made, hence, action against him will be taken separately. On the basis of the chargesheet, cognizance has been taken by the Chief Judicial Magistrate, Gautambudh Nagar vide order dated 27.09.1999 passed in Crl. Case No. 2808 of 1999 and the accused named in the chargesheet viz. Rohtash, Indrajit and Ghanshyam have been summoned to face the trial. When the accused did not appear in Court below, non-bailable warrants have been issued against, them vide order dated 24/28.10.2003. Impugned order dated 27.09.1999 of taking cognizance and 24/28.10.2003 issuing non-bailable warrants have been challenged in this revision.

3. I have heard Sri Chandra Kumar Rai, learned Counsel for the revisionist and learned A.G.A. for the State. Inspite of sufficient service of notice, neither opposite party No. 2, Veer Singh Chauhan nor his counsel appeared to argue.

4. The main and only submission made by learned Counsel for the revisionist was that the entire investigation of case crime No. 549 of 1999 is vitiated, because the Chief Judicial Magistrate, Ghaziabad had no jurisdiction to pass order for investigation on the application u/s 156(3) Cr.P.C. moved on 22.07.1999. The contention of the learned Counsel was that the alleged offences disclosed in the application u/s 156(3) Cr.P.C. are said to have been committed within the limits of District Gautambudh Nagar, which started functioning w.e.f. 27.06.1999 and hence, Chief Judicial Magistrate, Ghaziabad could not entertain and pass any order on that application and since the order dated 22.07.1999 passed by the Chief Judicial Magistrate, Ghaziabad was without jurisdiction, hence, entire investigation of the case of crime No. 549 of 1999 and subsequent charge sheet are vitiated and order dated 27.09.1999 of taking cognizance by Chief Judicial Magistrate, Gautambudh Nagar is illegal.

5. On the contrary, it was submitted by learned A.G.A. that neither the investigation of the case of crime No. 549 of 1999 nor the charge sheet, which has been submitted in that case, are vitiated, because investigation was continued and completed in pursuance of the order passed by this Court on 06.10.1999 in criminal misc. application No. 4846 of 1999. It was further submitted by learned A.G.A. that charge sheet will not be vitiated merely because the investigation has been carried out pursuant to the order passed by a Magistrate who has no jurisdiction to entertain application u/s 156(3) Cr.P.C.

6. Having given my thoughtful consideration to the rival submissions of the learned Counsel for the parties, I am of the considered view that investigation of the case of crime No. 549 of 1999 will not be vitiated merely because the F.I.R. was lodged pursuant to the order dated 22.07.1999 passed by the Chief Judicial Magistrate, Ghaziabad. It is true that the Chief Judicial Magistrate, Ghaziabad had no jurisdiction to pass order for investigation of the case on the application moved by Sri Veer Singh Chauhan on 22.07.1999 u/s 156(3) Cr.P.C, because, the alleged offences were committed in District Gautambudh Nagar, which started functioning w.e.f. 27.06.1999 and it was for this reason that aforesaid order dated 22.07.1999 was set-aside in criminal revision No. 353 of 1999, but in my view, on this ground, the investigation of the case and consequent charge sheet will not be vitiated. The main reason for my coming to this conclusion is that from the F.I.R. lodged at P.S. Sector 20, Noida on 27.07.1999, pursuant to the order dated 22.07.1999 passed by Chief Judicial Magistrate, Ghaziabad, cognizable offence is disclosed, and hence, the police of P.S. Sector 20, Noida was fully competent to investigate the case.

7. First information is lodged under the provisions of Section 154(1) Cr.P.C. The legal mandate enshrined in Section 154(1) is that every information relating to the commission of a "cognizable offence" (as defined u/s 2(c) of the Code) if given orally (in which case it is to be reduced into writing) or in writing to "an officer in charge of a police station" (within the meaning of Section 2(o) of the Code) and signed by the informant should be entered in a book to be kept by such officer in such form as the State Government may prescribe which form is commonly called as "First Information Report" and which act of entering the information in the said form is known as registration of a crime or a case.

8. Section 157(1) Cr.P.C. requires an Officer in charge of a Police Station who "from information received or otherwise" has reason to suspect the commission of an offence - that is a cognizable offence - which he is empowered to investigate u/s 156 Cr.P.C, to forthwith send a report to a Magistrate empowered to take cognizance of such offence upon a police report and to either proceed in person or depute anyone of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed to the spot, to investigate the facts and circumstances of the case and if necessary, to take measures for the discovery and arrest of the offender.

9. Section 156(1) which is to be read in conjunction with the Section 157(1) Cr.P.C. states that any officer in-charge of the police station may without an order of Magistrate investigate any cognizable case. Therefore, in instant case, the police of P.S. Sector 20, Noida was fully competent to investigate the case of crime No. 549 of 1999. Merely because the order dated 22.07.1999 passed by the Chief Judicial Magistrate, Ghaziabad on the application u/s 156(3) Cr.P.C. has been set-aside by the Revisional Court, the power of the police to investigate the case cannot be whittled away. The Division Bench of this Court in the case of Om Prakash Singh and Anr. v. State of U.P. and Ors. (XIX)2004 ACC 341 has held that the power of police under Chapter-XII of Cr.P.C. cannot be whittled away even after rejection of the application u/s 156 Cr.P.C. for directing the police to investigate the offence. It is further held that once the information relating to the commission of cognizable offence is received, it is within the power of police to submit a report u/s 173 Cr.P.C. The Hon"ble Apex Court in the case of S.N. Sharma v. Bipin Kumari and Ors. (Vii)1970 ACC 210 held that the power of the police to investigate has been made independent of any control by the Magistrate.

10. Therefore, merely the fact that the order of the Chief Judicial Magistrate, Ghaziabad was set-aside by the Revisional Court, cannot be a ground for quashing the order of taking cognizance on the chargesheet, which has been submitted after investigation of case crime No. 549 of 1999. If information relating to the commission of the cognizable offence whether orally or in writing is received by the Officer Incharge of Police Station, then he is statutorily bound to lodge the F.I.R. The Hon"ble Apex Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, has held that "if an information disclosing a cognizable offence is laid before an Officer Incharge of the Police Station satisfying the requirements of Section 154(1) Cr.P.C, the said police officer had no other option except to enter the substance thereof in the prescribed form that is to say, to register a case on the basis of such information." In my view, it is hardly material from which source the information relating to the commission of cognizable offence is received by the officer in-charge of the police station. Hence, in instant case also, no illegality was committed by the police of P.S. Sector 20, Noida in investigating the case of crime No. 549 of 1999 after lodging F.I.R. on the basis of the application u/s 156(3) Cr.P.C, which was sent by Chief Judicial Magistrate, Ghaziabad with order dated 22.07.1999 endorsed thereon.

11. The Chief Judicial Magistrate, Gautambudh Nagar is fully competent to take cognizance on the basis of the chargesheet, which has been submitted by the Police of P.S. Sector 20, Noida after investigation of the case of crime No. 549 of 1999. Therefore, the impugned order dated 27.09.1999 passed by the Chief Judicial Magistrate, Gautambudh Nagar cannot be said to be illegal merely because the First Information Report was lodged on the basis of the order of Chief Judicial Magistrate, Ghaziabad on application u/s 156(3) Cr.P.C.

12. So far as the impugned order dated 24/28-10-2003 issuing non-bailable warrants against the accused persons named in the chargesheet is concerned, revision against that order is not maintainable, because the order issuing non-bailable warrant comes in the category "interlocutory order" within the meaning of Section 397(2) Cr.P.C. This Court in the case of Mohd. Usman v. State of U.P. (XXXX)2000 ACC 901 , has held that issuing of non-bailable warrant is purely interlocutory order, revision against which is not maintainable.

13. For the reasons mentioned herein-above, neither the investigation of the case of crime No. 549/1999 nor the chargesheet of that case are vitiated on the ground of lack of jurisdiction to Chief Judicial Magistrate, Ghaziabad to pass order for registration of case and investigation on the application u/s 156(3) Cr.P.C. Hence, interference by this Court in any of the impugned orders is not warranted.

14. There is one reason more for not making interference by this court in the impugned orders. The revisionist is not affected by any of the impugned orders, because neither the cognizance has been taken against the revisionist vide order dated 27.09.1999, nor the warrant has been issued against him vide impugned order dated 24/28-10-2003.

15. Consequently, the revision lacks merit and is hereby dismissed. Interim order dated 16.01.2004 stands vacated.

The office is directed to send a copy of this order to the Chief Judicial Magistrate, Gautambudh Nagar for further necessary action in criminal case No. 2808 of 1999 State v. Rohtash and Ors. under Sections 406, 420, 467, 468, 471, 120B I.P.C., P.S. Sector 20, Noida.