

## Manorama Patel and Others Vs Subhash Khoobchand Soni

**Court:** Madhya Pradesh High Court

**Date of Decision:** April 7, 1999

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 156(3), 173(2), 190(1), 200, 201  
Penal Code, 1860 (IPC) â€” Section 294, 323, 506

**Citation:** (1999) 2 MPLJ 99

**Hon'ble Judges:** S.P. Khare, J

**Bench:** Single Bench

**Advocate:** R.P. Tiwari and Nitin Agrawal, for the Appellant; K.P. Soni, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

S.P. Khare, J.

This is a revision by the accused persons against the order by which their application for dismissal of the complaint has been rejected.

On 10-1-1995 respondent Subhash Soni filed a complaint before the Judicial Magistrate First Class, Jabalpur. He sent this complaint to the Police

u/s 156(3) of the Code of Criminal Procedure, 1973 (hereinafter to be referred to as the Code ) for investigation. On receipt of the police report

he took cognizance of the offences under Sections 323 294 and 506 Part I, Indian Penal Code and issued process against the petitioners.

The contention of the petitioners is that the cognizance of the offences has been taken on the basis of complaint u/s 190(1)(a) of the Code and

therefore it was necessary for the Magistrate to examine the complainant and his witnesses on oath as required by Section 200 of the Code and

then alone summons could be issued for the attendance of the accused if there was sufficient ground for proceeding against them. It is further

argued that the Magistrate had no jurisdiction to issue the process against the accused without following the procedure laid down in Sections 200,

202 and 204 of the Code.

On the other hand it has been pointed out that the complaint was sent for investigation to the police u/s 156(3) of the Code at the pre-cognizance

stage and on receipt of the police report the cognizance has been taken u/s 190(1)(b) of the Code and therefore it was not necessary to follow the

procedure prescribed for complaint case.

After hearing the learned counsel for both the sides this Court is of the opinion that there is no legal infirmity in the impugned order. Section 190(1)

(a) of the Code provides that the Magistrate may take cognizance of any offence upon receiving a complaint of facts which constitute such offence.

This does not mean that once a complaint is filed, the Magistrate is bound to take cognizance if the facts stated in the complaint disclose the

commission of an offence. The word "may" cannot be construed as "must". A complaint disclosing a cognizable offence may well justify a

Magistrate in sending the complaint, u/s 156(3) of the Code, to the Police for investigation. That would be the pre-cognizance stage. There is no

reason why the time of the Magistrate should be wasted when the duty to investigate the cases involving cognizable offences is primarily with the

police. The report submitted by the police consequent upon the investigation u/s 156(3) of the Code would be treated as "police report" for

purposes of taking cognizance u/s 190(1)(b) of the Code. Even if the police report u/s 173(2) of the Code states that no offence appears to have

been committed the Magistrate disagreeing with the conclusion of the police may issue process to the accused if in his opinion there is sufficient

ground for proceeding on the basis of the material available before him. On the other hand, there may be occasions when the Magistrate may

exercise his discretion and take cognizance of a cognizable offence, on receipt of a complaint, without police investigation and if he does so he

would be required to follow the procedure laid down in Sections 200 to 204 of the Code.

In *H.S. Bains, Director, Small Saving-Cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State (Union Territory of Chandigarh)*, the

Supreme Court has held that the Magistrate instead of taking cognizance of the offence may order an investigation u/s 156(3). The police will then

investigate and submit a report u/s 173(2). On receiving the police report the Magistrate may take cognizance of the offence u/s 190(1)(b) and

straightaway issue process. This he may do irrespective of the view expressed by the police in their report whether an offence has been made out

or not. A Magistrate who on receipt of a complaint, orders investigation u/s 156(3) and receives a police report u/s 173(2), may thereafter, do one

of the three things; (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of

offence u/s 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion

arrived at by the police in their report; (3) he may take cognizance of the offence u/s 190(1)(a) on the basis of the original complaint and proceed

to examine upon oath the complainant and his witnesses u/s 200. If he adopts the third alternative he may hold or direct an enquiry u/s 202 if he

thinks fit. Thereafter, he may dismiss the complaint or issue process, as the case may be.

The decision of the Supreme Court referred above has recently been relied upon by this Court in *Shyamlal v. Lavkush*, 1999 MPLJ 260 while

dealing with a case where the complaint was dismissed u/s 203 without following the procedure prescribed under Sections 200 and 202 of the

Code.

In *India Carat Pvt. Ltd. Vs. State of Karnataka and Another*, also the Supreme Court has expressed the same view. It has been observed that

even if the appellant had preferred a complaint before the learned Magistrate and the Magistrate had ordered investigation u/s 156(3) the police

would have had to submit a report u/s 173(2). If the police officer after making an investigation, sends a report that no case was made out against

the accused, the Magistrate could ignore the conclusion drawn by the police and take cognizance of a case u/s 190(1)(b) and issue process or in

the alternative, he can take cognizance of the original complaint and examine the complainant and his witness and thereafter issue process to the

accused, if he is of the opinion that the case should be proceeded with.

Again in *Madhu Bala Vs. Suresh Kumar and others*, it has been reiterated that when a written complaint disclosing a cognizable offence is made

before a Magistrate, he may take cognizance upon the same u/s 190(1)(a) of the Code and proceed with the same in accordance with the

provisions of Chapter XV. The other option available to the Magistrate in such a case is to send the complaint to the appropriate police station u/s

156(3) for investigation. Once such a direction is given under sub-section (3) of Section 156 the police is required to investigate into that

complaint under sub-section (1) thereof and on completion of investigation to submit a "police report" in accordance with Section 173(2) on which

a Magistrate may take cognizance u/s 190(1)(b). The complaint, as soon as an order u/s 156(3) is passed thereon, transforms itself into a report

given in writing within the meaning of Section 154 of the Code which is known as the first information report (FIR). When an order for

investigation u/s 156(3) of the Code is to be made the proper direction to the police would be "to register a case at the police station treating the

complaint as first information report and investigate into the same.

In view of the foregoing discussion of the legal position on the question of law which has been raised in this revision petition the Magistrate has

followed the correct procedure in taking cognizance of the offences on the basis of police report u/s 190(1)(b) of the Code and issuing process to

the accused having found sufficient ground to proceed against them. Having done so it was not necessary to take recourse to the other option of

reverting back to the complaint and take cognizance u/s 190(1)(a) after following the procedure under Sections 200 to 204 of the Code. This

revision petition is, therefore, dismissed. The point which has been raised and answered in this revision petition is of day-to-day occurrence and

therefore a copy of this order be circulated to all the Judges and Magistrates in the State.