

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

CRMC No. 134/2018
IA No. 01/2018

Pronounced on: 23rd.06.2020

.... Petitioner(s)

Tanveer Ahmed Zargar and another

Through:- Mr. F. S. Butt, Advocate

V/s

Surinder Kumar and another

.....Respondent(s)

Through:- Mr. Koshal Parihar, Advocate

Coram : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. Petitioners seek quashing of the complaint bearing File No. 71/Complaint dated 08.11.2017 titled, 'Surinder Kumar V/s Tanveer Ahmed Zargar and others' and the order dated 08.11.2017, passed by the learned Chief Judicial Magistrate, Kishtwar directing the Senior Superintendent of Police, Crime Branch, Jammu to investigate the case under section 156(3) Cr.PC. The operative portion of the order reads as under:-

“.....This being so, SSP, Crime Brach, Jammu is directed to investigate the case u/s 156(3) Cr. PC. Copy of this order alongwith the copy of the complaint and the documents annexed with the complaint shall be forwarded to SSP Crime Branch Jammu through I/C C.P.O for compliance. Put up on 19-12-2017”.

02. It is not necessary to refer to all the grounds of challenge except ground No. 6 which is quite elaborate and comprehensive because it alleges that:

- (i) The order is illegal, arbitrary and against the law;
- (ii) The demarcation report which is subject matter of challenge and bone of contention in the complaint has been so carried as per the order of

the Sub-Judge, Kishtwar dated 04.08.2017 passed in Civil Suit titled, 'Ravi Kumar V. Jagdish Raj and others', the Chief Judicial Magistrate, Kishtwar, who has directed the Senior Superintendent of Police, Crime Branch, Jammu to investigate the complaint.

- (iii) That for investigation of the case, registration of the FIR is necessary but there is no commission of offence disclosed in the complaint except para 8 which shows "that accused have committed offence under sections 109, 167, 504 and 506 RPC as such are required to be dealt under law"

03. Barring this statement, there is nothing on the file that ingredients of the offence mentioned have not been disclosed much less the ingredients and how and against whom these offences are made out.

04. No offence is made out against petitioner No. 1, because what abuse was huried at respondents is not disclosed. These are some of the grounds of challenge.

05. Learned counsel for the petitioners has argued that there is no application of mind by the Trial Court in the absence of offence, section 156(3) Cr. PC is not applicable. He has also argued that the Trial Court has simply translated the complaint and not taken into account the said fact before directing the Senior Superintendent of Police, Crime Branch, Jammu to investigate the matter, as such, the said order is illegal.

06. Learned counsel for the respondent-Surinder Kumar has argued that petition is not maintainable in view of the law laid down by Hon'ble the Supreme Court in '**HDFC Securities Ltd. Vs State of Maharashtra and another**' 2017(1) SCC 640.

07. After hearing the learned counsel for the parties, I am of the opinion that the order impugned is illegal being without jurisdiction in view of the law laid

down by Hon'ble the Supreme Court in '**Kolakkadan Mossa Haji V. State of Kerala and others**', (2001) 3 SCC 340 holding that:

“.....In our view, the High Court has rightly held that the Magistrate, was not competent to give such direction to cause inquiry by the Inspector General of Police (Crimes) while exercising powers under sub-section 156(3) of the Code of Criminal Procedure because sub-section (3) of Section 156 indicates that the Magistrate may order such investigation as mentioned in sub-section (1) of Section 156 of the Code of Criminal Procedure. Sub-section (1) of Section 156 of the Code of Criminal Procedure contemplates that any officer in charge of a police station may without the order of a Magistrate investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII. Sub-section (1) of Section 156, in our view, only indicates that a police officer in charge of the police station within the local limits of the jurisdiction of the Magistrate, may cause investigation without any direction from the Magistrate and the Magistrate under sub-section (3) of Section 156 may direct such police officer to cause inquiry. Such power of the Magistrate under sub-section (3) does not authorize the Magistrate to give direction to any other superior officer to cause inquiry even though under Section 36 of the Code of Criminal Procedure, a superior police officer, can make investigation in respect of the complaint where an officer in charge of the police station may make inquiry. Therefore, no interference is called for in this appeal and the same is disposed of.....”

08. The judgment has been relied by Hon'ble the Supreme Court in case titled, '**Central Bureau of Investigation V. State of Rajasthan and another**, (2001) 3 SCC 333, para 12 of which reads as under:

“12. In a decision rendered by the Kerala High Court the complaint was forwarded by a Magistrate to the Inspector General of Police (Crimes) for investigation under section 156(3) of the

Code. When the State challenged the said order of the Magistrate the High Court held that a Magistrate cannot order any police officer, other than one who is in charge of a police station to conduct the investigation, though the Government in exercise of their executive powers can authorize any superior police officer to investigate a case and such direction can be issued by the higher officer to his subordinate officer in the police department. The said decision is reported in State of Kerala Kolakkacan Moosa Haji. A two-Judge Bench of this Court(G.N. Ray and G. B. Pattanaik, JJ). Has affirmed the said decision of the Kerala High Court as per order dated 8-4-1997 in Criminal Appeal No. 410 of 1994. The principle involved in the said case would as well be applicable when the Magistrate is approached to direct CBI for conducting investigation.”

09. So, the judgment of Hon’ble the Supreme Court in ‘**HDFC Securities Ltd. Vs State of Maharashtra and another**’ 2017(1) SCC 640 cannot applied to this case because impugned order is illegal and without jurisdiction. Since the order of Chief Judicial Magistrate, Kishtwar dated 08.11.2017 directing the SSP, Crime Branch, Jammu to investigate the case under section 156(3) Cr.P.C is without jurisdiction and, as such, illegal and it is accordingly quashed.

10. Disposed of alongwith IA.

(Sindhu Sharma)
Judge

JAMMU
23rd.06.2020
SUNIL-II

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