* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on: September 28, 2016
Decided on: 10th January, 2017

\+ **W.P.(CRL) 1253/2016 and Crl. M.A. No.6591/2016 (Stay)**

NISHU WADHWA ..... Petitioner
Represented by: Mr. Vikas Pahwa, Sr. Advocate with Ms. Kinnori Ghosh and Ms. Astha Sharma, Advocates.

versus

SIDDHARTH WADHWA & ANR ..... Respondents
Represented by: Ms. Geeta Luthra, Sr. Advocate with Ms. Shivani Luthra Lohiya and Mr. Altamish Siddiki, Advocates for respondent No.1. Ms. Richa Kapoor, Additional Standing Counsel for the State with Inspector Pankaj Singh, Crime Branch.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. Aggrieved by the order dated 28th November, 2015 passed by the learned Additional Sessions Judge whereby the order dated 22nd June, 2015 passed by the learned Metropolitan Magistrate directing addition of relevant sections pertaining to cognizable offences in the FIR was set aside, the petitioner prefers this petition seeking quashing of the order dated 28th November, 2015 and prays for directions to the Investigating Officer to add the relevant sections, which are made out from a bare reading of the FIR.

2. Factual matrix of the present case is that on 16th March, 2015, the petitioner filed a complaint against Respondent No. 1 and his family members with the Crime Against Women (CAW) Cell, Saket, New Delhi

seeking registration of FIR for offences punishable under Sections 120B/420/406/376/377/498A/506 IPC and Sections 3 and 4 of Dowry Prohibition Act, 1961. Since the police officials were not registering the FIR, a complaint under Section 200 Cr.P.C. along with an application under Section 156(3) Cr.P.C. was filed by the petitioner on 8th May, 2015 seeking directions to SHO, PS Defence Colony to register the FIR pursuant to the aforesaid complaint. In the action taken report filed by the SHO, PS Defence Colony, it was informed that FIR No. 220/2015 was registered at PS Defence Colony under Sections 498A/406/34 IPC against Respondent No. 1 and his family members on 17th May, 2015 on the complaint of the petitioner made to CAW Cell. On 21st May, 2015, the Petitioner filed another application under Section 156(3) Cr.P.C. seeking directions for addition of offences punishable under Sections 120B/109/420/376/377/504/506 IPC and Sections 3 and 4 of Dowry Prohibition Act, 1961. Vide order dated 22nd June, 2015, the learned Metropolitan Magistrate directed the SHO, PS Vivek Vihar to add the above mentioned sections in the FIR. Relevant extract of the order dated 22nd June, 2015 is as under:

> *"Perusal of the complaint of the complainant shows that she has levelled several allegations against the accused regarding cognizable offences and still the FIR has been registered only u/s 498A/406/34 IPC in a routine manner, neglecting the fact that other offences have also been alleged in the complaint.*
>
> *In view of the same, SHO PS Vivek Vihar is now directed to add other sections pertaining to cognizable offences in the FIR as per law and to place the copy of the same on record on next date of hearing and also file status report on next date of hearing."*

3. Aggrieved by the order of the learned Metropolitan Magistrate, dated 22nd June, 2016, Respondent No. 1 filed a revision petition on 13th July, 2015 which was allowed vide the impugned order dated 28th November, 2015. The learned Additional Sessions Judge set aside the order dated 22nd June, 2015 passed by the learned Metropolitan Magistrate clarifying that the same shall not cause any hindrance or barrier in the investigation being conducted by the concerned branch of Delhi Police or to prevent or forbid or debar the police from filing its final report in respect of all such offences, which according to its final investigation, were found to have been committed in this case after conclusion of its investigation. Hence, the present writ petition.

4. Learned counsel for the Petitioner contended that the learned Additional Sessions Judge was not empowered to entertain the revision petition filed by Respondent No.1 against the order passed by the Metropolitan Magistrate under Section 156(3) Cr.P.C. Respondent No. 1 had no locus standi to challenge the order of the learned Metropolitan Magistrate as the accused has no locus standi at the investigation/pre-summoning stage and he cannot insist for hearing before process is issued against him. Reliance was placed upon the decisions reported as (2012) 10 SCC 517*Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel*, 2009 SCC OnLine Del 308 *Tata Motors Ltd. v. State*, 109 (2004) DLT 394 *Chitra Narain v. NDTV and Ors.*, (2008) 9 SCC 469 *Prabha Mathur and Anr. v. Pramod Aggarwal and Ors.*, and 2011 SCC OnLine Del 891 *Rajesh Garg v. Tata Tea Ltd. & Anr.*

5. Per contra, learned counsel for the Respondent, while placing reliance on the decision reported as 1996 CriLJ 3180 *Bhupendra Kumar v. State of*

Rajasthan and AIR 2014 SC 1745 *Sandeep Kumar Bafna v. State of Maharashtra & Anr.*, submitted that it had locus standi to file the revision petition. It was further submitted that a Magistrate has no power or role to play in the manner or method of conducting the investigation. Reliance was placed upon the decisions of the Supreme Court reported as (2003) 6 SCC 195 *Union of India v. Prakash P. Hinduja and* (1970) 1 SCC 653 *S. N. Sharma v. Bipen Kumar Tiwari & Ors.* Since the order of learned Metropolitan Magistrate directing addition of offences in the FIR was beyond its jurisdiction, the learned Additional Sessions Judge rightly interfered and set aside the same. It was further submitted that the learned Metropolitan Magistrate had no territorial jurisdiction to pass an order under Section 156 (3) Cr.P.C. as the investigation in the FIR had been transferred to PS Vivek Vihar. Relying upon the decision reported as (2014) 3 SCC 659 *State of Gujarat v. Girish Radhakrishnan Varde*, it was lastly submitted that the charges can be added at the time of framing of charge and not at the time of taking cognizance of the matter,

6. Main issues raised by the parties before this Court are:

   i. Whether revision petition filed under Section 397 Cr.P.C. against the order of the Metropolitan Magistrate passed under Section 156(3) Cr.P.C. was maintainable or not?

   ii. Whether the Metropolitan Magistrate had territorial jurisdiction to entertain the application under Section 156 (3) Cr.P.C. and pass order thereon as the investigation had been transferred?

   iii. Whether directions by the Metropolitan Magistrate to add Sections in the FIR would amount to interference during investigation?

MAINTAINABILITY OF REVISION PETITION

7. The contention of the learned counsel for the Petitioner was that since the order passed by the Metropolitan Magistrate under Section 156(3) is an interlocutory order, no revision petition against the same was permissible. What is an 'interlocutory order' has been discussed by the Apex Court in the decision reported as (1977) 4 SCC 137 *Amar Nath v. State of Haryana*:

> *6. Let us now proceed to interpret the provisions of Section 397 against the historical background of these facts. Sub-section (2) of Section 397 of the 1973 Code may be extracted thus:*
>
> > *"The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding."*
>
> *The main question which falls for determination in this appeal is as to what is the connotation of the term "interlocutory order" as appearing in sub-section (2) of Section 397 which bars any revision of such an order by the High Court. The term "interlocutory order" is a term of well-known legal significance and does not present any serious difficulty. It has been used in various statutes including the Code of Civil Procedure, Letters Patent of the High Courts and other like statutes. In Webster's New World Dictionary "interlocutory" has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide the rights and liabilities of the parties concerning a particular aspect. It seems to us that the term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court*

> *against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court.*

8. The issue whether revision petition against an order accepting an application under Section 156(3) Cr.P.C. was maintainable came up for consideration before the Full Bench of the Allahabad High Court in the decision reported as 2011 (2) ALJ 217 *Father Thomas vs. State of U.P. & Anr*. wherein it was held that a prospective accused has no locus standi to challenge direction for investigation under Section 156(3) Cr.P.C. by filing a revision petition before cognizance or issuance of process against him. Holding that a revision petition against such an order directing registration of FIR under Section 156(3) Cr.P.C. was not maintainable, the Full bench noted that the accused has a right to raise his defence only during the course of trial and even on filing of complaint, when the Magistrate proceeds to take cognizance, the prospective accused cannot intervene or raise his defence unless summons are issued. An order directing registration of FIR under Section 156(3) Cr.P.C. being an interlocutory order, a revision petition challenging such an order was barred.

9. However, the Full Bench of Allahabad High Court in the decision reported as AIR 2014 All 214 *Jagannath Verma v. State of U.P.*

Distinguishing the decision in *Father Thomas* (supra) dealing with the issue of maintainability of a revision petition against the order rejecting an application under Section 156(3) Cr.P.C. held:

> *58. xxx*
>
> *In view of the discussion above and for the reasons which we have furnished, we have come to the following conclusion:*
>
> *(i) Before the Full Bench of this Court in Father Thomas, the controversy was whether a direction to the Police to register a First Information Report in regard to a case involving a cognizable offence and for investigation is open to Revision at the instance of a person suspected of having committed a crime against whom neither cognizance has been taken nor any process issued. Such an Order was held to be interlocutory in nature and, therefore, to attract the bar under sub-section (2) of Section 397. The decision in Father Thomas does not decide the issue as to whether the rejection of an application under Section 156(3), would be amenable to a Revision under Section 397, by the Complainant or the informant, whose Application has been rejected;*
>
> *(ii) An Order of the Magistrate rejecting an Application under Section 156(3) of the Code for the registration of a case by the Police and for investigation is not an Interlocutory Order. Such an Order is amenable to the remedy of a Criminal Revision under Section 397; and*
>
> *(iii) In proceedings in Revision under Section 397, the prospective Accused or, as the case may be, the person, who is suspected of having committed the crime is entitled to an opportunity of being heard before a decision is taken in the Criminal Revision.*
>
> *The reference to the Full Bench is, accordingly, disposed of. The proceedings shall now be placed before the appropriate*

Bench in accordance with the roster of work for disposal in light of the principles laid down in this decision.

10. In *Raghu Raj Singh Rosh Vs. Shivam Sundram Promotors Pvt. Ltd. & Anr*. (2009) 2 SCC 363while dealing with the right of an accused to be heard in a criminal revision petition, it was observed that indisputably if the learned Magistrate had taken cognizance of the offence and merely issuance of summons upon the accused had been postponed, the accused was entitled to be heard before the High Court in a criminal revision petition filed on behalf of the complainant. It was further held that since the Magistrate refused to exercise his jurisdiction under Section 156(3) Cr.P.C. and came to the conclusion that the dispute was a private dispute in relation to an immovable property, Police investigation was not necessary and directed examination of the complainant, having taken cognizance of the offence even though the accused had not been summoned, he had a right to be heard in the revision petition. Thus the Supreme Court recognized the right of an accused to be heard in a revision petition once cognizance of the offence was taken even though the accused had not been summoned.

11. The Division Bench of Bombay High Court in the decision reported as 2015 SCC OnLine Bom 5197: 2016 ALLMR (Cri) 985 *Avinash and Ors. v. The State of Maharashtra and Ors* held that the order passed directing police to investigate under Section 156(3) of the Code is not an interlocutory order, but in the nature of a final order terminating the proceedings under Section 156 (3) of the Code which would be revisable under the revisional powers of the Sessions Court or the High Court.

12. It is trite law that once directions are passed by the learned Magistrate under Section 156(3) Cr.P.C. directing registration of FIR he becomes functus-officio. [See (2016) SCConline Del 5490 *M/s. Gabrani Infrastructure Pvt. Ltd. Vs. M/s. Unitech Hi-Tech Developers Limited & Ors* and MANU/GJ/7486/2007 *Randhirsinh Dipsinh Parmar vs. State of Gujarat & Ors.*]. Thus, disposing of an application under Section 156(3) Cr.P.C. amounts to adjudication of a valuable right whether in favour of accused or the complainant.

13. The issue that since the accused has not been summoned as an accused and has no right to file a revision petition is alien, while deciding an application under Section 156(3) Cr.P.C. The said issue crops up when the Magistrate entertains the complaint and on taking cognizance proceeds as a complaint case. In case directions are issued for registration of FIR immediately, on registration of FIR, the person against whom allegations are made in the FIR attains the status of an accused. His rights in so far as the Police can summon him for investigation, arrest him without warrants for allegations of cognizable offences are duly affected. In a situation where the fundamental right of freedom and liberty of a person is affected, it cannot be held that he has no right to be heard at that stage. Thus to hold that since directions only have been issued under Section 156(3) Cr.P.C. and no cognizance has been taken thus no revision would lie would be an erroneous reading of the decisions of the Supreme Court. Therefore, an order dismissing or allowing an application under Section 156 (3) Cr.P.C. is not an interlocutory order and a revision petition against the same is maintainable.

TERRITORIAL JURISDICTION OF THE MAGISTRATE TO ENTERTAIN THE APPLICATION UNDER SECTION 156 (3) CR.P.C.

14. The above noted FIR was registered at PS Defence Colony pursuant to the recommendations of the CAW Cell, South District. Through an administrative order, the investigation thereof was transferred first to District Investigating Unit (DIU), South East District and thereafter to PS Vivek Vihar where the investigation was pending when the learned Metropolitan Magistrate passed the order dated 22nd June, 2016 directing addition of offences punishable under Sections 120B/109/420/376/ 377/504/506 IPC and Sections 3 and 4 of the Dowry Prohibition Act in the FIR No.220/2015 already registered. The learned Metropolitan Magistrate, who passed the order dated 22nd June, 2015 was looking after the territorial jurisdiction of PS Defence Colony and was a Magistrate in the South East District, Saket Court. When the order dated 22nd June, 2015 was passed, the Magistrate was informed of the fact that the investigation had since been transferred to PS Vivek Vihar.

15. Learned counsel for the petitioner justifying the order passed by the learned Metropolitan Magistrate, relies upon the decision of the Supreme Court reported as 1999 (8) SCC 728 *Satvinder Kaur vs. State (Govt. of NCT of Delhi) & Anr.* wherein in respect of territorial jurisdiction to try an offence, the Hon'ble Supreme Court held that the SHO has statutory authority under Section 156 (3) Cr.P.C. to investigate any cognizable case for which the FIR is lodged and at the stage of investigation there is no question of interference under Section 482 Cr.P.C. on the ground that the Investigating Officer has no territorial jurisdiction. After the investigation is

over, if the Investigating Officer arrives at a conclusion that the cause of action for lodging the FIR had not arisen within his territorial jurisdiction, he is required to submit a report accordingly under Section 170 Cr.P.C. and to forward the case to the Magistrate empowered to take cognizance of the offence.

16. The issue in the present petition is not whether the SHO concerned or the Investigating Officer investigating the offence had the territorial jurisdiction to investigate the offences but whether the learned Metropolitan Magistrate who passed the order dated 22nd June, 2015 had the jurisdiction to pass directions on an application under Section 156 (3) Cr.P.C. to the SHO of a police station which did not fall within its territorial jurisdiction.

17. Section 154 Cr.P.C. casts a duty on the officer in-charge of a police station to register the first information, if the same discloses the commission of a cognizable offence, even if the offence is not committed within its territorial jurisdiction. However, a Magistrate exercises its jurisdiction under Section 156 (3) Cr.P.C. Section 156 Cr.P.C. provides as under:

> *156. Police officer's power to investigate cognizable case.-(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.*
>
> *(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.*
>
> *(3) Any Magistrate empowered under section 190 may order such an investigation as above- mentioned.*

18. Therefore, Section 156 (1) Cr.P.C. requires 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. Further sub-section (3) of Section 156 Cr.P.C. is qualified by sub-section (1) of Section 156 Cr.P.C. Thus though Section 154 Cr.P.C. does not qualify the territorial jurisdiction of the officer in-charge who receives the information to register the same, however, Sections 155 and 156 Cr.P.C. qualify the territorial jurisdiction of the officer in-charge to investigate offences within the limits of such station. Therefore, a Magistrate can direct the officer in-charge of a police station to investigate a cognizable offence which is within the jurisdiction of its local area. Thus a Magistrate is required to adhere to the territorial jurisdiction and in case it is not empowered to try the said offence, it has no jurisdiction to pass order under Section 156 (3) Cr.P.C.

19. While deciding the issue whether Magistrate has power under Section 156(3) Cr.P.C. to direct CBI to conduct investigation into any offence, the Supreme Court in the decision reported as (2001) 3 SCC 333 *Central Bureau of Investigation Vs. State of Rajasthan & Anr*. held:

> *"5. For deciding the present question we may refer to the powers of the Magistrate in ordering an investigation. There are three provisions in the Code of Criminal Procedure (for short "the Code") by which a Magistrate can order investigation to be conducted. They are Sections 155, 156 and 202 of the Code. Among them Section 155 concerns only with the investigation into non-cognizable offences whereas Section 202 only enables a Magistrate to have the assistance of an*

investigation conducted either by the police or by any other person, for the limited purpose of deciding whether or not there is sufficient ground for proceeding with the complaint. Hence we need not vex our mind with those two provisions. It is Section 156 of the Code which is relevant for the present purpose as it deals with investigation into cognizable offences. The section reads thus:

> *"156. Police officer's power to investigate cognizable cases.—(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.*
>
> *(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.*
>
> *(3) Any Magistrate empowered under Section 190 may order such an investigation as abovementioned."*

6. If the power of a Magistrate to order an investigation by CBI in non-cognizable cases cannot be traced in the above provision, it is not possible to trace such power in any other provision of the Code. What is contained in sub-section (3) of Section 156, is the power to order the investigation referred to in sub-section (1), because the words "order such an investigation as abovementioned" in sub-section (3) are unmistakably clear as referring to the other sub-section. Thus the power is to order an "officer in charge of a police station" to conduct investigation.

7. The two expressions "police station" and "officer in charge of a police station" have been given separate

definitions in the Code. Section 2(o) of the Code defines "officer in charge of a police station" as under:

> *" 2. (o) 'officer in charge of a police station' includes, when the officer in charge of the police station is absent from the station house or unable from illness or other cause to perform his duties, the police officer present at the station house who is next in rank to such officer and is above the rank of Constable or, when the State Government so directs, any other police officer so present;"*

8. Section 2(s) defines a "police station" as under:

> *"2. (s) 'police station' means any post or place declared generally or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf;"*

9. It is clear that a place or post declared by the Government as police station, must have a police officer in charge of it and if he, for any reason, is absent in the station house, the officer who is next in the junior rank present in the police station, shall perform the function as officer in charge of that police station. The primary responsibility for conducting investigation into offences in cognizable cases vests with such police officer. Section 156(3) of the Code empowers a Magistrate to direct such officer in charge of the police station to investigate any cognizable case over which such Magistrate has jurisdiction."

[Emphasis Added]

20. Sections 177 to 184 Cr.P.C. provides for territorial jurisdiction to try the offence which qualification is not prescribed under Section 154 Cr.P.C. but under Sections 155 and 156 Cr.P.C. Hence the Magistrate cannot pass directions under Sections 155 and 156(3) Cr.P.C. to an officer in-charge of a

police station beyond the territorial jurisdiction of the area which has the power to inquire into or try under the provisions of Chapter XIII.

ROLE OF THE MAGISTRATE WHILE INVESTIGATION IS PENDING

21. While discussing the scope of interference by a Magistrate during investigation the Supreme Court in the decision reported as 2008 (2) SCC 409 *Sakiri Vasu vs. State of Uttar Pradesh & Ors.* held that if after taking recourse to Sections 154 and 154 (3) Cr.P.C., FIR is not registered or no proper investigation is carried out it is open to the aggrieved person to file an application under Section 156 (3) Cr.P.C. before the learned Magistrate concerned. If such an application under Section 156 (3) is filed before the Magistrate, he can direct the FIR to be registered and also direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure proper investigation. Following the decision in *Sakiri Vasu* (supra) the Supreme Court in the decision reported as 2011 (12) SCC 328 *T.C. Thangaraj vs. V. Engammal and Ors.* held that Section 156 (3) Cr.P.C. provides for a check by the Magistrate on the police performing their duties and where the Magistrate finds that the police officer investigating the offence has not done his duty or not investigated satisfactory, he can direct the police to carry out the investigation properly and can monitor the same.

22. In the decision reported as (2008) 3 SCC 542 *Divine Retreat Centre Vs. State of Kerala & Ors.* after noting various decisions, the Supreme Court held that though the investigation of an offence is a field exclusively

reserved for police officer however the unfettered discretion does not mean any unaccountable or unlimited discretion. It was held-

> *"39. The sum and substance of the above deliberation and analysis of the law cited leads us to an irresistible conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions under Chapter XII of the Code. However, we may hasten to add that unfettered discretion does not mean any unaccountable or unlimited discretion and act according to one's own choice. The power to investigate must be exercised strictly on the condition of which that power is granted by the Code itself."*

23. Discussing the power of a Magistrate to direct the police concerned to investigate into the offence under Chapter XII of the Code, Supreme Court in the decision reported as (2004) 7 SCC 768 *Gangadhar Janardan Mhatre Vs. State of Maharashtra & Ors.* held-

> *"13. When the information is laid with the police, but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been*

highlighted by this Court in All India Institute of Medical Sciences Employees' Union (Regd.) v. Union of India [(1996) 11 SCC 582 : 1997 SCC (Cri) 303] . It was specifically observed that a writ petition in such cases is not to be entertained."

[Emphasis Added]

24. A bare reading of Section 156(3) Cr.P.C. shows that the Magistrate is empowered to direct investigation into the allegation of cognizable offence which he has jurisdiction to enquire into or try if after taking recourse to Sections 154 and 154(3) Cr.P.C., no FIR is registered. If Section 156(3) Cr.P.C. empower the Magistrate to direct the police officer concern to register FIR and investigate the offences alleged, the same would mean all the offences mentioned in the complaint. The police officer who registers FIR and enter into investigation cannot decline to investigate some offences and leave other if on the allegations in the FIR, the same are found to be made out. The veracity of the allegations has to be seen during investigation and at this stage investigation into each of the offences mentioned in the FIR is required to be done. Thus, when a Magistrate on an application under Section 156(3) Cr.P.C. directs that all the offences mentioned in the complaint be investigated into, the Magistrate is not exercising its power illegally or beyond its jurisdiction. No doubt, once certain offences though made out on the face of the complaint are not mentioned in the copy of the FIR, the same cannot be added because there cannot be any tempering in the FIR but on being pointed out and if on the face of it, it is found that the discretion exercised by the investigating officer is contrary to law, the Magistrate would be within its jurisdiction to direct invoking of sections

made out in the FIR during course of investigation so that proper investigation thereon can be carried out.

25. Similar view was expressed by the High Court of Andhra Pradesh and Telangana in the decision reported as 2015 SCC OnLine Hyd 83 *Aknuri Kankaraj and others v. State of Telangana*, upholding the order of the Magistrate. It was observed that :

> *"The prerogative of police to investigation has been kept intact, but they were only asked to investigate whether the accused have in fact committed the offences under the newly added sections including the ones which are already referred."*

26. In view of the aforesaid discussion, this Court holds that the revision petition filed by respondent No.1 before learned Additional Sessions Judge was maintainable and though the Magistrate could have directed invoking of offences alleged in the FIR/complaint but not invoked in the case diary during investigation but it lacked the territorial jurisdiction to direct SHO, PS Vivek Vihar to add sections to the FIR.

27. With the above observations, the petition and application are disposed of with directions to the investigating agency to investigate all the offences alleged in FIR No.220/2015 even though not invoked while registering the FIR.

(MUKTA GUPTA)
JUDGE

JANUARY 10, 2017
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