

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2574/2024  
(@Special Leave Petition (Crl.) No. 2123/2024)

M/S SAS INFRATECH PVT. LTD.

Appellant(s)

VERSUS

THE STATE OF TELANGANA & ANR.

Respondent(s)

O R D E R

1. Leave granted.

2. The present Appeal filed by the appellant - complainant is directed against the Judgment and order dated 14-9-2023 passed by the High Court for the State of Telangana at Hyderabad, in Criminal Petition No.8938 of 2023, whereby the High Court has allowed the said petition filed by Respondent No.2 - accused herein under Section 482 of the Code of Criminal Procedure, 1973 and set aside the docket order dated 30-6-2023 passed by the Principal Junior Civil Judge-cum-XI Additional Metropolitan Magistrate, Medchal-Malkajgiri District, Kukapally (hereinafter, referred to as "Trial Court") in S.R. No.3297/2023.

3. The Trial Court had passed the following docket order on 30-6-2023:-

"Complainant called present. The learned counsel for the complainant is present. Heard the learned counsel for the complainant. Perused the complaint and on scrutiny of the complaint, documents and also the submission made by the learned counsel for the complainant, this court found prima-facie case, hence this complaint is referred to SHO, PS

Bachupally U/sec. 156(3) of Cr.P.C. for investigation and report."

4. The Respondent No.2 - accused, being aggrieved with the same, had preferred the aforesaid Criminal Petition before the High Court, in which the High Court while allowing the same, has held as under:-

"Para 7 Therefore, this court is of the considerable view that the docket order, dated 30.06.2023 is made without any proper reasons and therefore, it is liable to be set aside.

Para 8 - In view of the same, the docket order dated 30.06.2023, passed in S.R. No.3297 of 2023 by the Principal Junior Civil Judge-cum-XI Additional Metropolitan Magistrate, Medchal-Malkajgiri District, Kukapally, is hereby set aside and if any FIR has been registered consequential to the docket order, dated 30.06.2023 that FIR shall also stand set aside and the matter is remanded back to the trial Court to follow the procedure as contemplated under the Code of Criminal Procedure, 1973 and pass appropriate orders."

5. Heard the learned counsels for the parties and perused the material placed on record.

6. At the outset, it may be noted that the law with regard to powers of the Magistrate under Section 156(3) Cr. P.C. is quite well settled.

7. In "Devarapalli Lakshminarayana Reddy And Others Versus V. Narayana Reddy And Others" (1976) 3 SCC 252, this Court while distinguishing the powers of the Magistrate under Sections 156 (3) and 200 of Cr. P.C. held as under:-

"It is well settled that when a Magistrate receives a complaint, he is not bound to take cognizance if the facts alleged in the complaint, disclose the commission of an

offence. This is clear from the use of the words "may take cognizance" which in the context in which they occur cannot be equated with "must take cognizance". The word "may" gives a discretion to the Magistrate in the matter. If on a reading of the complaint he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence, himself.

This raises the incidental question: What is meant by "taking cognizance of an offence" by a Magistrate within the contemplation of Section 190? This expression has not been defined in the Code. But from the scheme of the Code, the content and marginal heading of Section 190 and the caption of Chapter XIV under which Sections 190 to 199 occur, it is clear that a case can be said to be instituted in a court only when the Court takes cognizance of the offence alleged therein. The ways in which such cognizance can be taken are set out in clauses (a), (b) and (c) of Section 190(1). Whether the Magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which the case is sought to be instituted, and the nature of the preliminary action, if any, taken by the Magistrate. Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding under Section 200 and the succeeding sections in Chapter XV of the Code of 1973, he is said to have taken cognizance of the offence within the meaning of Section 190(1)(a). If, instead of proceeding under Chapter XV, he has, in the judicial exercise of his

discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police under Section 156(3), he cannot be said to have taken cognizance of any offence.

Section 156 (3) occurs in Chapter XII, under the caption: "Information to the Police and their powers to investigate"; while Section 202 is in Chapter XV which bears the heading: "Of complaints to Magistrates". The power to order police investigation under Section 156 (3) is different from the power to direct investigation conferred by Section 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156 (3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3). It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156 (1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173. On the other hand, Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under

Section 202 to direct, within the limits circumscribed by that section an investigation "for the purpose of deciding whether or not there is sufficient ground for proceeding". Thus the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him."

8. In view of the above, it is clear that when the Magistrate in exercise of his judicial discretion directs investigation under Section 156(3) of Cr. P.C., he cannot be said to have taken cognizance of any offence. It is only when the Magistrate after applying his mind prefers to follow the procedure under Chapter XV of Cr.P.C. by resorting to Sections 200, he can be said to have taken cognizance of the offence.

9. The learned counsel for Respondent No.2 has placed reliance of the decision of this Court in "Priyanka Srivastava And Another Versus State of Uttar Pradesh And Others" (2015) 6 SCC 287 to submit that the complaint filed by the appellant - complainant was not supported by an affidavit. In our opinion, the said observation has been made in the said case by way of abundant caution to see that frivolous complaints are avoided.

10. In the instant case, as transpiring from the order passed by the Trial Court, the said Court had perused the complaint and the documents in support thereof, and also the submissions made by the learned counsel for the appellant - complainant and after having been *prima facie* satisfied, it had exercised its judicial discretion directing investigation under Section 156(3) of Cr. P.C. Such order being just, legal and proper, the High Court should not

have interfered with the same, more particularly while exercising limited powers under Section 482 of Cr. P.C.

11. In that view of the matter, the impugned order passed by the High Court is set aside and the order dated 30-6-2023 passed by the Trial Court is restored .

12. The appeal stands allowed accordingly.

.....J  
(BELA M. TRIVEDI)

.....J  
(PANKAJ MITHAL)

NEW DELHI  
14TH MAY, 2024.

ITEM NO.29

COURT NO.14

SECTION II

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G SPetition for Special Leave to Appeal (Crl.) No.2123/2024

(Arising out of impugned final judgment and order dated 14-09-2023 in CRLP No. 8938/2023 passed by the High Court for the State of Telangana at Hyderabad)

M/S SAS INFRATECH PVT. LTD.

Petitioner(s)

VERSUS

THE STATE OF TELANGANA &amp; ANR.

Respondent(s)

Date : 14-05-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE BELA M. TRIVEDI

HON'BLE MR. JUSTICE PANKAJ MITHAL

For Petitioner(s)

Mrs. Adwaita Sharma, Adv.  
Mr. Abhay Anand Jena, AOR  
Mrs. Shraddha Chandel, Adv.

For Respondent(s)

Ms. Devina Sehgal, AOR  
Mr. S Uday Bhanu, Adv.

Mr. Krishna Dev Jagarlamudi, AOR  
Ms. Inderdeep Kaur Raina, Adv.  
Mr. Shresth Mukharya, Adv.  
Ms. Jagriti Pandey, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

1. Leave granted.
2. The appeal stands allowed, in accordance with law.

(VISHAL ANAND)  
ASTT. REGISTRAR-cum-PS

(MAMTA RAWAT)  
COURT MASTER (NSH)

(Signed Order is placed on the file)