REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.600 OF 2007

RAMDEV FOOD PRODUCTS PRIVATE LIMITED ... APPELLANT

VERSUS

STATE OF GUJARAT ...RESPONDENT

J U D G M E N T

ADARSH KUMAR GOEL J.

1. This appeal by special leave has been preferred against the Judgment and Order dated 17th February, 2006 of the High Court of Gujarat at Ahmedabad in Special Criminal Application No.1821 of 2005.

2. The High Court declined to interfere with the Order dated 16th August, 2005, of the Judicial Magistrate, First Class, Sanand on a complaint filed by the appellant against fourteen accused for alleged commission of offences under Sections 409, 420, 406, 467, 468, 471 read with Section

120-B and 114 of the Indian Penal Code directing the Police Sub-Inspector, Sanand, to give a report to the Court within thirty days under Section 202(1) of the Code of Criminal Procedure, 1973 (for short "the Code") instead of directing investigation under Section 156(3) of the Code, as sought by the appellant.

3. The case of the appellant-complainant in complaint filed by it before the Magistrate is that it is running business of food products and had permitted M/s. New Ramdev Masala Factory, wherein accused No.1 Mr. Jasvantbhai Somabhai Patel was one of the partners, to use the trademark "Ramdev" for seven years under agreement dated 4th June, 1990. However, M/s. New Ramdev Masala Factory was closed on 30th May, 1994. Accused No.1 executed forged partnership documents with the help of other accused and thereby committed the alleged offences.

4. The appellant sought direction for investigation under Section 156(3) of the Code. However, the Magistrate instead of directing investigation as prayed, thought it fit to conduct further inquiry under Section 202 and sought report of the Police Sub Inspector within thirty days. Grievance of

the appellant before the High Court was that in view of the allegation that documents had been forged with a view to usurp the trademark, which documents were in possession of the accused and were required to be seized, investigation ought to have been ordered under Section 156(3) instead of conducting further inquiry under Section 202. Thus, there was non application of mind by the Magistrate. It is also submitted in the alternative, that even in the course of investigation for giving report under Section 202, police is entitled to arrest the accused as arrest is part of 'investigation' but the police failed to effect the arrest.

5. The High Court did not accept the stand of the appellant. It was observed that the appellant had approached the High Court against the Order of the Magistrate after delay of four months from the date of the Order which itself disentitled it to a direction under Section 156(3). It was further observed that the Magistrate had given reasons for declining to direct investigation under Section 156(3) and the said Order did not call for any interference. The reasons given by the Magistrate, *inter alia,* are that the Police had refused to register a case.

There was civil litigation which had gone up to the Supreme Court and thus the case was of civil nature. The fact whether the documents in question were forged or not could be ascertained in civil proceedings by getting the opinion of the hand writing expert. Scope of inquiry under Section 202 was limited to find out whether a case was made out for issue of process. Suppression of material fact of pendency of civil dispute by the complainant also justified the order of the Magistrate to proceed under Section 202 instead of Section 156(3). It was further observed that a Magistrate is not justified in ordering police investigation in mechanical manner as laid down by the Gujarat High Court in ***Arvindbhai Ravjibhai Patel*** vs. ***Dhirubhai Shambhubhai Kakadiya***[1] .

6. We have heard learned counsel for the parties. When the matter came up for hearing on 11th April, 2007, this Court framed the question as follows:

> *"The question involved in the instant Special Leave Petition is as to the extent of power that may be exercised by a police officer while making an inquiry under Section 202(1) of the Code of Criminal Procedure particularly, whether he has power to arrest in course of the inquiry entrusted to him by the Magistrate. Reliance is placed on Sub-Section*

[1] 1997 (2) GLR 1572

> *3 of Section 202 to contend that the power to arrest without warrant cannot be exercised by a person not being a police officer. Impliedly it is contended that so far as the police officer is concerned that constraint is not there."*

However, in the light of submissions made during the hearing, we frame following questions for consideration:

> *"(i) Whether discretion of the Magistrate to call for a report under Section 202 instead of directing investigation 156(3) is controlled by any defined parameters?*
>
> *(ii) Whether in the course of investigation in pursuance of a direction under Section 202, the Police Officer is entitled to arrest an accused?*
>
> *(iii) Whether in the present case, the Magistrate erred in seeking report under Section 202 instead of directing investigation under Section 156(3)?"*

7. Contention on behalf of the appellant is that the Magistrate and the High Court erred in declining to order investigation under Section 156(3) which was necessary in view of the allegation of forgery of documents and stamp papers by the accused to create back dated partnership deeds by forging signatures of a dead person. Such documents being in custody of the accused could not be otherwise produced except on arrest in the course of

investigation and in accordance with Section 27 of the Evidence Act. Option of proceeding under Section 202, as against Section 156(3), has to be exercised only when evidence has already been collected and what remained to be decided was whether there was sufficient ground to proceed. Mere fact that the appellant first approached the Police and the police did not register First Information Report could not be taken against it nor the dispute being of civil nature was a bar to criminal proceedings, if a case was made out.

8. Learned counsel for the appellant also submitted that direction under Section 156(3) for investigation was all the more necessary in view of interpretation given by the Gujarat High Court in ***Sankalchand Valjibhai Patel*** vs. ***J.P. Chavda and Ors.***[2] that under Section 202, the Police Officer had no power of arrest. In such a situation calling for report under Section 202 will not serve the purpose of finding out the truth. It was also submitted that the said view was erroneous and contrary view in other judgments was sound and needs to be approved by this Court. Referring to Section 202 (3), it was pointed out that a person

[2] (1979) 1 GLR 17

other than police officer could not exercise power of arrest but police officer was not so debarred. Moreover, arrest was integral part of investigation.

9. Jasvantbhai Somabhai Patel, the alleged accused has filed an application for impleadment stating that dispute between the parties is of civil nature. His contention is that the appellant is attempting to abuse the process of law to arm-twist the accused by having him arrested by the police. In the circumstances, no interference was called for by this Court. This application has been opposed by the appellant on the ground that during the stage of inquiry under Section 202 of the Code, the accused has no right to be heard as laid down by this Court in ***Adalat Prasad*** vs. ***Rupal Jindal & Others***[3]. Having regard to the legal issue involved, we have heard learned counsel for the accused on the questions involved.

10. As already observed, the contention of the appellant is that when there is allegation of forgery and discovery of documents is necessary, a Magistrate must order investigation under Section 156(3) instead of proceeding

[3] (2004) 7 SCC 338

SUPREME COURT OF INDIA
JUDGMENT

under Section 202. Alternatively, direction to the Police to investigate and give a report under Section 202 implies arrest and discovery which under Section 157 of the Code are integral parts of investigation. Contrary view of Gujarat High Court in ***Sankalchand Valjibhai Patel (supra)*** and other High Courts was erroneous while the view taken by other High Courts to which reference will be made in later part of this Judgment is correct. Section 202 (3) expressly provides that if a person, other than police officer is required to conduct investigation under Section 202 (1), he is not authorized to arrest without warrant which implied that there is no such restriction on power of arrest available with a police officer.

11. On the other hand, contention on behalf of the alleged accused is that both the powers of the Magistrate - (i) directing investigation under Section 156(3); and (ii) direction under Section 202 to seek a report from police after investigation to enable the Magistrate to decide whether to proceed further and issue process are qualitatively different and are in different chapters of the Code. Thus, as per scheme of the Code, power of police in

SUPREME COURT OF INDIA
॥ यतो धर्मस्ततो जयः ॥
JUDGMENT

pursuance of directions under the said two provisions is not the same.

The Magistrate has discretion either to direct registration of a case under Section 156(3) or to conduct inquiry himself as the situation may warrant. This discretion is to be exercised by the Magistrate in his wisdom and having regard to the nature of material available. Direction under Section 156(3) to register a criminal case and to investigate is to be exercised where the Magistrate is satisfied that prima facie a cognizable offence has been committed. On the contrary, where he thinks it necessary to conduct further inquiry before deciding whether he should proceed further in the matter, matter has to be dealt with under Section 202. Mere allegation of forgery is not enough to require the Magistrate to pass the order under Section 156(3).

12. It is further submitted that in the present case, the civil proceedings are pending between the parties where the question of genuineness or otherwise of the partnership deed is an issue. The process of criminal law cannot be used when a dispute is primarily of civil nature.

Simultaneously initiation of criminal proceedings may be permitted where an offence is shown to have been committed. Thus, the Magistrate was entitled to satisfy himself as to whether any cognizable offence had been committed before proceeding further. The Magistrate was not satisfied from the material available that any cognizable offence had been committed and he rightly decided to conduct further enquiry under Section 202. Having regard to the limited nature of inquiry under Section 202 which option had been rightly chosen by the Magistrate, direction to the police to investigate and give a report was limited by the very purpose for which the limited inquiry was to be held, as against procedure for investigation in cases not covered under Section 202 of the Code. The purpose was to enable the Magistrate to decide whether there was ground to proceed further. The Magistrate having taken cognizance of the offence and the police having not registered a criminal case nor the Magistrate having directed registration of criminal case, procedure and power of the Police in the matter are different and in such a situation police did not have the power to arrest, without permission of the

Magistrate as was the view of the Gujarat and other High Courts.

13. We may first deal with the question as to whether the Magistrate ought to have proceeded under Section 156(3) or was justified in proceeding under Section 202(1) and what are the parameters for exercise of power under the two provisions.

14. The two provisions are in two different chapters of the Code, though common expression 'investigation' is used in both the provisions. Normal rule is to understand the same expression in two provisions of an enactment in same sense unless the context otherwise requires. Heading of Chapter XII is "Information to the Police and their Powers to Investigate" and that of Chapter XV is "Complaints to Magistrate". Heading of Chapter XIV is "Conditions Requisite for Initiation of Proceedings". The two provisions i.e. Sections 156 and 202 in Chapters XII and XV respectively are as follows :

> ***"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.

202. Postponement of issue of process.-

(1) Any Magistrate , on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him under section 192, may, if he thinks fit, [and shall in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

***Provided** that no such direction for investigation shall be made, -*

> *(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or*
> *(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.*

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

> ***Provided*** *that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.*
>
> *(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant."*

15. Cognizance is taken by a Magistrate under Section 190 (in Chapter XIV) either on "receiving a complaint", on "a police report" or "information received" from any person other than a police officer or upon his own knowledge.

Chapter XV deals exclusively with complaints to Magistrates. Reference to Sections, 202, in the said Chapter, shows that it provides for "postponement of issue of process" which is mandatory if accused resides beyond the Magistrate's jurisdiction (with which situation this case does not concern) and discretionary in other cases in which event an enquiry can be conducted by the Magistrate or investigation can be directed to be made by a police officer or such other person as may be thought fit **"for the purpose of deciding whether or not there is sufficient ground for proceeding"**. We are skipping the proviso as

SUPREME COURT OF INDIA
JUDGMENT

it does not concern the question under discussion. Clause (3) provides that if investigation is by a person other than a police officer, he shall have all the powers of an officer incharge of a police station except the power to arrest.

16. Chapter XII, dealing with the information to the police and their powers to investigate, provides for entering information relating to a 'cognizable offence' in a book to be kept by the officer incharge of a police station (Section 154) and such entry is called "FIR". If from the information, the officer incharge of the police station has reason to suspect commission of an offence which he is empowered to investigate subject to compliance of other requirements, he shall proceed, to the spot, to investigate the facts and circumstances and, if necessary, to take measure, **for the discovery and arrest of the offender** (Section 157(1).

17. In ***Lalita Kumari*** vs. ***Govt. of U.P.***[4]**,** this Court dealt with the questions :

> *"30.1. (i) Whether the immediate non-registration of FIR leads to scope for manipulation by the police which affects the right of the victim/complainant to have a complaint immediately investigated upon allegations being made; and*

[4] (2014) 2 SCC 1

30.2. (ii) Whether in cases where the complaint/information does not clearly disclose the commission of a cognizable offence but the FIR is compulsorily registered then does it infringe the rights of an accused."

18. These questions were answered as follows :

"49. *Consequently, the condition that is sine qua non for recording an FIR under Section 154 of the Code is that there must be information and that information must disclose a cognizable offence. If any information disclosing a cognizable offence is led before an officer in charge of the police station satisfying the requirement of Section 154(1), the said police officer has 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. The provision of Section 154 of the Code is mandatory and the officer concerned is duty-bound to register the case on the basis of information disclosing a cognizable offence. Thus, the plain words of Section 154(1) of the Code have to be given their literal meaning.*

"Shall"

72. *It is thus unequivocally clear that registration of FIR is mandatory and also that it is to be recorded in the FIR book by giving a unique annual number to each FIR to enable strict tracking of each and every registered FIR by the superior police officers as well as by the competent court to which copies of each FIR are required to be sent.*

*"**Information**"*

73. *The legislature has consciously used the expression "information" in Section 154(1) of the Code as against the expression used in Sections 41(1)(a)* and (g) where the expression used for arresting a person without warrant is "reasonable complaint" or "credible*

information". The expression under Section 154(1) of the Code is not qualified by the prefix "reasonable" or "credible". The non-qualification of the word "information" in Section 154(1) unlike in Sections 41(1)(a) *and (g) of the Code is for the reason that the police officer should not refuse to record any information relating to the commission of a cognizable offence on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, reasonableness or credibility of the said information is not a condition precedent for the registration of a case.*

94. *Principles of democracy and liberty demand a regular and efficient check on police powers. One way of keeping check on authorities with such powers is by documenting every action of theirs. Accordingly, under the Code, actions of the police, etc. are provided to be written and documented. For example, in case of arrest under Section 41(1)(b) of the Code, the arrest memo along with the grounds has to be in writing mandatorily; under Section 55 of the Code, if an officer is deputed to make an arrest, then the superior officer has to write down and record the offence, etc. for which the person is to be arrested; under Section 91 of the Code, a written order has to be passed by the officer concerned to seek documents; under Section 160 of the Code, a written notice has to be issued to the witness so that he can be called for recording of his/her statement, seizure memo/panchnama has to be drawn for every article seized, etc.*

107. *While registration of FIR is mandatory, arrest of the accused immediately on registration of FIR is not at all mandatory. In fact, registration of FIR and arrest of an accused person are two entirely different concepts under the law, and there are several safeguards available against arrest. Moreover, it is also pertinent to mention that an accused person also has a right to apply for*

"anticipatory bail" under the provisions of Section 438 of the Code if the conditions mentioned therein are satisfied. Thus, in appropriate cases, he can avoid the arrest under that provision by obtaining an order from the court.

108. *It is also relevant to note that in Joginder Kumar v. State of U.P.(1994) 4 SCC 260], this Court has held that arrest cannot be made by the police in a routine manner. Some important observations are reproduced as under: (SCC pp. 267-68, para 20)*

"20. … No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do."

111. *Besides, the Code gives power to the police to close a matter both before and after investigation. A police officer can foreclose an FIR before an investigation under Section 157 of the Code, if it appears to him that there is no sufficient ground to investigate the same.*

SUPREME COURT OF INDIA
JUDGMENT

The section itself states that a police officer can start investigation when he has "reason to suspect the commission of an offence". Therefore, the requirements of launching an investigation under Section 157 of the Code are higher than the requirement under Section 154 of the Code. The police officer can also, in a given case, investigate the matter and then file a final report under Section 173 of the Code seeking closure of the matter. Therefore, the police is not liable to launch an investigation in every FIR which is mandatorily registered on receiving information relating to commission of a cognizable offence.

114. *It is true that a delicate balance has to be maintained between the interest of the society and protecting the liberty of an individual. As already discussed above, there are already sufficient safeguards provided in the Code which duly protect the liberty of an individual in case of registration of false FIR. At the same time, Section 154 was drafted keeping in mind the interest of the victim and the society. Therefore, we are of the cogent view that mandatory registration of FIRs under Section 154 of the Code will not be in contravention of Article 21 of the Constitution as purported by various counsel.*

115. *Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint.*

120.6. *As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which*

> *preliminary inquiry may be made are as under:*
> *(a) Matrimonial disputes/family disputes*
> *(b) Commercial offences*
> *(c) Medical negligence cases*
> *(d) Corruption cases*
> *(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay."*

19. Thus, this Court has laid down that while prompt registration of FIR is mandatory, checks and balances on power of police are equally important. Power of arrest or of investigation is not mechanical. It requires application of mind in the manner provided. Existence of power and its exercise are different. Delicate balance had to be maintained between the interest of society and liberty of an individual. Commercial offences have been put in the category of cases where FIR may not be warranted without enquiry.

20. It has been held, for the same reasons, that direction by the Magistrate for investigation under Section 156(3) cannot be given mechanically. In ***Anil Kumar*** vs. ***M.K. Aiyappa***[5], it was observed :

[5] (2013) 10 SCC 705

> *"11. The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed case [(2008) 5 SCC 668] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation."*

The above observations apply to category of cases mentioned in Para 120.6 in ***Lalita Kumari (supra).***

21. On the other hand, power under Section 202 is of different nature. Report sought under the said provision has limited purpose of deciding "whether or not there is sufficient ground for proceeding". If this be the object, the procedure under Section 157 or Section 173 is not intended to be followed. Section 157 requires sending of report by

the police that the police officer suspected commission of offence from information received by the police and thereafter the police is required to proceed to the spot, investigate the facts and take measures for discovery and arrest. Thereafter, the police has to record statements and report on which the Magistrate may proceed under Section 190. This procedure is applicable when the police receives information of a cognizable offence, registers a case and forms the requisite opinion and not every case registered by the police.

22. Thus, we answer the first question by holding that the direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone instance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued. Cases where Magistrate takes cognizance and postpones issuance of process are cases

where the Magistrate has yet to determine "existence of sufficient ground to proceed". Category of cases falling under Para 120.6 in ***Lalita Kumari (supra)*** may fall under Section 202. Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case.

23. We now proceed to deal with the second question of power of police to arrest in the course of investigation under Section 202 with a view to give its report to the Magistrate to enable him to decide whether a case to proceed further existed. Careful examination of scheme of the Code reveals that in such situation power of arrest is not available with the police. Contention based on language of Section 202(3) cannot be accepted.

24. The maxim '*expressio unius est exclusion alterious*' (express mention of one thing excludes others) has been called a valuable servant but a dangerous master. In ***Mary Angel and others*** vs. ***State of T.N.***[6], this Court observed as follows on the scope of the maxim:

> "***19.*** *Further, for the rule of interpretation on the basis of the maxim "expressio unius est exclusio alterius", it has been considered in*

[6] (1999) 5 SCC 209

SUPREME COURT OF INDIA JUDGMENT

the decision rendered by the Queen's Bench in the case of Dean v. Wiesengrund [(1955) 2 QB 120 : (1955) 2 All ER 432]. The Court considered the said maxim and held that after all it is no more than an aid to construction and has little, if any, weight where it is possible to account for the "inclusio unius" on grounds other than intention to effect the . "exclusio alterius". Thereafter, the Court referred to the following passage from the case of Colquhoun v. Brooks [(1887) 19 QBD 400 : 57 LT 448] QBD at 406 wherein the Court called for its approval—

"... 'The maxim "expressio unius est exclusio alterius" has been pressed upon us. I agree with what is said in the court below by Wills, J. about this maxim. It is often a valuable servant, but a dangerous master to follow in the construction of statutes or documents. The exclusio is often the result of inadvertence or accident, and the maxim ought not to be applied, when its application, having regard to the subject-matter to which it is to be applied, leads to inconsistency or injustice.' In my opinion, the application of the maxim here would lead to inconsistency and injustice, and would make Section 14(1) of the Act of 1920 uncertain and capricious in its operation."

***20.** The aforesaid maxim was referred to by this Court in the case of CCE v. National Tobacco Co. of India Ltd. [(1972) 2 SCC 560]. The Court in that case considered the question whether there was or was not an implied power to hold an enquiry in the circumstances of the case in view of the provisions of Section 4 of the Central Excise Act read with Rule 10-A of the Central Excise Rules and referred to the aforesaid passage "the maxim is often a valuable servant, but a dangerous master ..." and held that the rule is subservient to the basic principle that courts must endeavour to ascertain the legislative intent and purpose, and then adopt a rule of*

construction which effectuates rather than one that may defeat these. Moreover, the rule of prohibition by necessary implication could be applied only where a specified procedure is laid down for the performance of a duty. In the case of Parbhani Transport Coop. Society Ltd. v. Regional Transport Authority– [AIR 1960 SC 801 : (1960) 3 SCR 177] this Court observed that the maxim "expressio unius est exclusio alterius" is a maxim for ascertaining the intention of the legislature and where the statutory language is plain and the meaning clear, there is no scope for applying. Further, in Harish Chandra Bajpai v. Triloki Singh–[AIR 1957 SC 444 : 1957 SCR 370, 389] SCR at p. 389 the Court referred to the following passage from Maxwell on Interpretation of Statutes, 10th Edn., pp. 316-317:

"Provisions sometimes found in statutes, enacting imperfectly or for particular cases only that which was already and more widely the law, have occasionally furnished ground for the contention that an intention to alter the general law was to be inferred from the partial or limited enactment, resting on the maxim expressio unius, exclusio alterius. But that maxim is inapplicable in such cases. The only inference which a court can draw from such superfluous provisions (which generally find a place in Acts to meet unfounded objections and idle doubts), is that the legislature was either ignorant or unmindful of the real state of the law, or that it acted under the influence of excessive caution."

We are of the view that the maxim does not apply for interpretation of Section 202 (3) for the reasons that follow. In our view, the correct interpretation of the provision is that merely negating the power of arrest to a person other than police officer does not mean that police could exercise such

power. The emphasis in the provision is to empower such person to exercise other powers of incharge of a police station than the power of arrest. As regards the power of police to arrest, there are express provisions dealing with the same and power of police to arrest is not derived from or controlled by Section 202 (3). The said power is available under Section 41 or under a warrant. The power remains available subject to conditions for exercise thereof. For example it can be exercised if cognizable offence is committed in the presence of a police officer (Section 41(1) (a). Under Section 202, since the Magistrate is in seisin of the matter and has yet to decide "whether or not there is sufficient ground for proceeding", there is no occasion for formation of opinion by the police about credibility of available information necessary to exercise power of arrest as the only authority of the police is to give report to Magistrate to enable him to decide whether there is sufficient ground to proceed. Power of arrest is not to be exercised mechanically. In ***M.C. Abraham*** vs. ***State of Maharashtra***[7]**,** it was observed :

[7] (2003) 2 SCC 649

SUPREME COURT OF INDIA
JUDGMENT

> *"14. ......In the first place, arrest of an accused is a part of the investigation and is within the discretion of the investigating officer. Section 41 of the Code of Criminal Procedure provides for arrest by a police officer without an order from a Magistrate and without a warrant. The section gives discretion to the police officer who may, without an order from a Magistrate and even without a warrant, arrest any person in the situations enumerated in that section. It is open to him, in the course of investigation, to arrest any person who has been concerned with any cognizable offence or against whom reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned. Obviously, he is not expected to act in a mechanical manner and in all cases to arrest the accused as soon as the report is lodged. In appropriate cases, after some investigation, the investigating officer may make up his mind as to whether it is necessary to arrest the accused person. At that stage the court has no role to play. Since the power is discretionary, a police officer is not always bound to arrest an accused even if the allegation against him is of having committed a cognizable offence. Since an arrest is in the nature of an encroachment on the liberty of the subject and does affect the reputation and status of the citizen, the power has to be cautiously exercised. It depends inter alia upon the nature of the offence alleged and the type of persons who are accused of having committed the cognizable offence. Obviously, the power has to be exercised with caution and circumspection."*

25. Nature of cases dealt with under Section 202 are cases where material available is not clear to proceed further. The Magistrate is in seisin of the matter having taken the

cognizance. He has to decide whether there is ground to proceed further. If at such premature stage power of arrest is exercised by police, it will be contradiction in terms. As regards denial of opportunity to record confession under Section 27 of the Evidence Act, it has to be kept in mind that admissibility of such confession cannot guide exercise of power of arrest. Source of power of arrest is governed by other provisions and not by Section 27. It is only if arrest is otherwise permissible that provision of Section 27 may be invoked. If exercise of power of arrest is not otherwise warranted, admissibility of confession under Section 27 cannot facilitate such exercise. We, thus, hold that the police of its own cannot exercise its power of arrest in the course of making its report in pursuance of direction under Section 202.

SUPREME COURT OF INDIA
JUDGMENT

26. We may now proceed to deal with the conflict in decisions which has been pointed out to us. Bombay, Gujarat and Delhi High Courts in ***Sankalchand Valjibhai Patel (supra)***, ***Emperor*** vs. ***Nurmahomed Rajmahomed***[8], ***Mahendrasinh Shanabhai Chauhan and***

[8] (1929) 31 BOMLR 84

Ors. vs. ***State of Gujarat and Anr.***[9] ***and Harsh Khurana*** vs. ***Union of India***[10] have held that in the course of investigation directed under Section 202 (1) the police cannot exercise the power of arrest. Reasoning is by and large similar. Cases covered by Section 202 are such where Magistrate is yet to decide whether the material was sufficient to proceed. Till formation of such opinion, arrest will be incongruous. We may only refer to the observations of M.P. Thakker, J. (as he then was) in ***Sankalchand Valjibhai Patel (supra) :***

> *"2. The question that has surfaced in the back drop of the aforesaid facts and circumstances is: when upon receipt of a complaint of an offence a Magistrate instead of issuing process postpones the issue of process against the accused and direct? a police officer to make an investigation for the purpose of deciding whether or not there is sufficient ground for proceeding, can the police officer in charge of the investigation on his own, place the accused under arrest? Section 202 (1) in so far as material reads as under:*
>
> > *202. (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or*

[9] (2009) 2 GLR 1647
[10] 121 (2005) DLT 301 (DB)

> *direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding."*

SUPREME COURT OF INDIA

27. On the other hand in ***Emperor*** vs. ***Bikha Moti***[11] and ***Asha Das and others*** vs. ***The State***[12]**,** Sind and Assam High Courts respectively have taken a contrary view by holding that when direction for investigation issued under Section 202 (1) is issued, the police is to investigate precisely in the same manner and arrest the accused in precisely the same manner as they would have done if they had recorded First Information Report.

28. We may only refer to the observations of **Devis, CJ** in ***Bikha Moti (supra)*** as follows:

JUDGMENT

> *"Now S. 202(1) refers not only to an enquiry but also to an investigation : and Section 202(2) confers upon a person other than a Magistrate or a police officer all powers conferred upon a police officer in charge of a police station except the power of arrest without warrant. Surely this implies that a police officer to whom a complaint has been referred for investigation has the power to arrest without warrant under S.54, Criminal P.C. and all other powers which may be exercised by a police officer in the course of an investigation. To us, the scheme of the section appears to be that when a complaint*

[11] AIR (1938) Sind 113
[12] AIR (1953) Assam 1

> *is sent to the police for investigation and report, they are to investigate in precisely the same manner and to arrest in precisely the same way as they would have done if their powers had been first invoked by a first report under S. 154, their being only this difference, that in the one case the police embody the result of their investigation to the Magistrate in a report which the Magistrate proceeds to consider under S.203, while in the other case the police embody the result of their investigation in what is called a challan or charge-sheet, but which is really a police report under S.190(b), the term challan or charge sheet not occurring in the section, the accused person, in any case, if arrested by the police, being produced before the Magistrate in the ordinary way. To hold otherwise would be to leave the proceedings started by the Magistrate under S.202, Criminal P.C. unfinished, and in the air; for, he would not have, as the law contemplates, a report of the investigation but he would have a refusal by the police to report as in this case, and other and independent proceedings in the same matter initiated by them. But the law contemplates that proceedings, begun by the acceptance by a Magistrate of a complaint under S.200, Criminal P.C. and sent to the police for investigation under Section 202, should be terminated by the Magistrate as set out in Section 203 and the following sections. The proceedings are not terminated when the Magistrate's authority is defied, his jurisdiction in effect denied and the order to investigate and report disobeyed. The law does not contemplate this, and we cannot see that this aspect of the case has been considered in any of the judgments which have been cited to us in support of the case of this Court in 27 SLR 67."*

29. For the reasons already discussed above, we approve the view taken in ***Sankalchand Valjibhai Patel (supra),***

Nurmahomed Rajmahomed (supra), Mahendrasinh Shanabhai Chauhan (supra) and Harsh Khurana (supra) and overrule the rule taken in ***Bikha Moti (supra)*** and ***Asha Das (supra).***

30. We now come to the last question whether in the present case the Magistrate ought to have proceeded under Section 156(3) instead of Section 202. Our answer is in the negative. The Magistrate has given reasons, which have been upheld by the High Court. The case has been held to be primarily of civil nature. The accused is alleged to have forged partnership. Whether such forgery actually took place, whether it caused any loss to the complainant and whether there is the requisite *mens rea* are the questions which are yet to be determined. The Magistrate has not found clear material to proceed against the accused. Even a case for summoning has not yet been found. While a transaction giving rise to cause of action for a civil action may also involve a crime in which case resort to criminal proceedings may be justified, there is judicially acknowledged tendency in the commercial world to give

colour of a criminal case to a purely commercial transaction. This Court has cautioned against such abuse.

31. In ***Indian Oil Corpn.*** vs. ***NEPC India Ltd.***[13], it was observed :

> ***"13.*** *While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636] this Court observed: (SCC p. 643, para 8)*
>
> > *"It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent*

[13] (2006) 6 SCC 736

abuse of the process of any court or otherwise to secure the ends of justice.”

32. In ***Pepsi Foods Ltd.*** vs. ***Special Judicial Magistrate***[14], it was observed :

> ***“28.*** *Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”*

33. In view of above, we find that the Magistrate and the High Court rightly held that in the present case report under Section 202 was the right course instead of direction under Section 156(3). The question is answered accordingly.

[14] (1998) 5 SCC 749

34. We may now also refer to other decisions cited at the bar and their relevance to the questions arising in the case.

In ***Smt. Nagawwa*** vs. ***Veeranna Shivalingappa Konjalgi & Ors.***[15], referring to earlier Judgments on the scope of Section 202, it was observed :

> ***"3.*** *In Chandra Deo Singh v. Prokash Chandra Bose [AIR (1963) SC 1430 this Court had after fully considering the matter observed as follows:*
>
> > *"The courts have also pointed out in these cases that what the Magistrate has to see is whether there is evidence in support of the allegations of the complainant and not whether the evidence is sufficient to warrant a conviction. The learned Judges in some of these cases have been at pains to observe that an enquiry under Section 202 is not to be likened to a trial which can only take place after process is issued, and that there can be only one trial. No doubt, as stated in sub-section (1) of Section 202 itself, the object of the enquiry is to ascertain the truth or falsehood of the complaint, but the Magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made*

[15] (1976) 3 SCC 736

> *by the complainant and the statements made before him by persons examined at the instance of the complainant."*

Indicating the scope, ambit of Section 202 of the Code of Criminal Procedure this Court in Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker [AIR (1960) SC 1113] observed as follows:

> *"Section 202 says that the Magistrate may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against and direct an inquiry for the purpose of ascertaining the truth or falsehood of the complaint; in other words, the scope of an inquiry under the section is limited to finding out the truth or falsehood of the complaint in order to determine the question of the issue of process. The inquiry is for the purpose of ascertaining the truth or falsehood of the complaint; that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at that stage; for the person complained against can be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial."*

SUPREME COURT OF INDIA
JUDGMENT

Same view has been taken in ***Mohinder Singh*** vs. ***Gulwant Singh***[16], ***Manharibhai Muljibhai Kakadia & Anr.*** vs. ***Shaileshbhai Mohanbhai Patel & Ors.***[17], ***Raghuraj Singh Rousha*** vs. ***Shivam Sunadaram Promoters Pvt. Ltd.***[18], ***Chandra Deo Singh*** vs. ***Prokas Chandra Bose***[19].

In ***Devrapalli Lakshminaryanan Reddy & Ors.*** vs. ***V. Narayana Reddy & Ors.***[20], ***National Bank of Oman*** vs. ***Barakara Abdul Aziz & Anr.***[21], ***Madhao & Anr.*** vs. ***State of Maharashtra & Anr.***[22], ***Rameshbhai Pandurao Hedau*** vs. ***State of Gujarat***[23], the scheme of Section 156(3) and 202 has been discussed. It was observed that power under Section 156(3) can be invoked by the Magistrate before taking cognizance and was in the nature of pre-emptory reminder or intimation to the police to exercise its plenary power of investigation beginning Section 156 and ending with report or chargesheet under

[16] (1992) 2 SCC 213
[17] (2012) 10 SCC 517
[18] (2009) 2 SCC 363
[19] (1964) 1 SCR 639
[20] (1976) 3 SCC 252
[21] (2013) 2 SCC 488
[22] (2013) 5 SCC 615
[23] (2010) 4 SCC 185

Section 173. On the other hand, Section 202 applies at post cognizance stage and the direction for investigation was for the purpose of deciding whether there was sufficient ground to proceed.

35. These aspects have already been discussed above and are indeed undisputed.

36. In ***H.N. Rishbud and Inder Singh*** vs. ***The State of Delhi***[24], this Court explained the scope of investigation by the police and held that investigation included power to arrest. There is no dispute with this legal position.

37. In the light of above discussion, we are unable to find any error in the view taken by the Magistrate and the High Court that direction under Section 156(3) was not warranted in the present case and the police may not be justified in exercising power of arrest in the course of submitting report under Section 202.

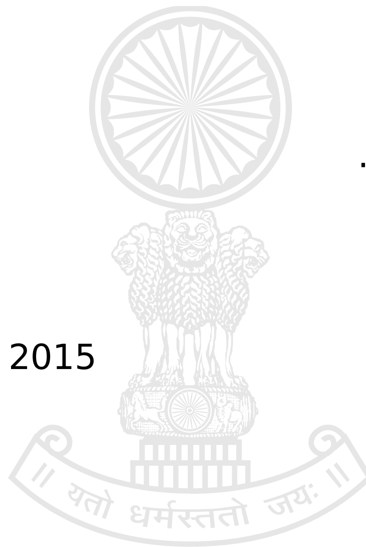
38. The questions framed for consideration stand answered accordingly.

[24] (1955) 1 SCR 1150

39. The appeal is dismissed.

………..…………………………….J.
[T.S. THAKUR]

…………………………………….J.
[ADARSH KUMAR GOEL]



………..…………………………….J.
[R. BANUMATHI]

NEW DELHI
MARCH 16, 2015

SUPREME COURT OF INDIA
JUDGMENT