**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 1377 OF 2010**
(Arising out of S.L.P. (Crl.) No. 3267 of 2010)

Srinivas Gundluri & Ors. .... Appellant (s)

Versus

M/s SEPCO Electric Power Construction .... Respondent(s)
Corporation & Ors.

**WITH**

**CRIMINAL APPEAL NO. 1378 OF 2010**
(Arising out of S.L.P.(Crl.) No. 5095 of 2010)



# J U D G M E N T

**P. Sathasivam, J.**

1) Leave granted.

2) The appeal arising out of S.L.P.(Crl.) No. 3267 of 2010 is directed against the final judgment dated 01.04.2010 passed by the High Court of Chhattisgarh at

Bilaspur in W.A. No. 281 of 2009 whereby the High Court dismissed the appeal filed by the appellants herein and the appeal arising out of S.L.P.(Crl.) No. 5095 of 2010 is preferred against the interim order dated 27.04.2010 passed by the High Court of Judicature of Andhra Pradesh at Hyderabad in Crl. R.C. M.P. No. 1307 of 2010 in Crl. R.C. No. 893 of 2010 staying the order dated 22.04.2010 passed by the Chief Metropolitan Magistrate, Hyderabad rejecting the application for extension of transit bail and also recording of the fact that fraud has been played upon the Court and resultantly, non-bailable warrant was issued against respondent No.1 in this appeal for his arrest and production before JMFC, Korba, Chhattisgrarh.

3) The facts leading to the filing of these two appeals are:

a) M/s SEPCO Electric Power Construction Corporation (in short "SEPCO") was engaged in erection of power plant at village Nariyara in Akaltara District Janjgir-Champa.

SEPCO awarded constructional work to M/s SSVG Engineering Projects Private Limited (in short "SSVG") the appellants in appeal arising out of SLP (Crl.) No. 3267 of 2010 as per the terms and conditions of the contract settled between SEPCO and SSVG. The contract value of the work was Rs. 42,92,19,800/- and the work was to be completed within a period of two months. As per the terms, 50% of the value of the contract was to be paid in advance. SSVG was required to go ahead with the project work immediately. The work order was issued by SEPCO on 16.06.2009. A cheque for a sum of Rs. 20,97,46,840/- towards payment of 50% advance was issued to SSVG on 25.06.2009. SSVG wrote a letter on 28.06.2009 to the Dy. General Manager, SEPCO complaining that despite repeated requests, SEPCO has not handed over the site for commencing the work and requested to hand over the site so as to enable it to complete the work within two months. However, SEPCO vide letter dated 29.06.2009 cancelled

the work order dated 16.06.2009 on the ground that the company has failed to mobilize requisite manpower, machinery and equipment by that date but diverted the amount for some other purpose than the one as agreed, hence demanded refund of advance money.

b) On 03.07.2009, SSVG received a letter from the Union Bank of India whereby it was apprised that the Bank has received a letter on 02.07.2009 from the Police Station Balco Nagar requesting to freeze their current account with immediate effect on the complaint of SEPCO. Subsequently, SSVG came to know that on 04.07.2009, SEPCO has filed a criminal complaint against them in the Court of Chief Judicial Magistrate, Class I Korba. The Chief Judicial Magistrate, by his order dated 04.07.2009, allowed the application of SEPCO filed under Section 156 (3) of the Code of Criminal Procedure (hereinafter referred to as 'the Code') and forwarded the original complaint along with documents to the concerned Station House

Officer (SHO) directing him to register FIR, after due enquiry, and to submit a chargesheet after investigation. Mr. Srinivas Gundluri, Managing Director & Principal Officer, SSVG also received a memo from Police Station, Balco Nagar, for recording his statement. In this background, the Managing Director and Principal Officer, Director and Promoter as well as the Company - SSVG Engineering Projects Pvt. Ltd. filed Writ Petition No. 3647 of 2009 before the High Court of Chhattisgarh praying for quashing and setting aside the order dated 04.07.2009 passed by the Chief Judicial Magistrate, Class I, Korba and the proceedings drawn by the Magistrate on the complaint of SEPCO. They also prayed for issuance of *writ of prohibition* in order to prohibit further proceedings pending in the Court of Magistrate, Class I, Korba in connection with the complaint lodged by SEPCO and quashing the communication dated 03.07.2009 by the bank relating to freezing of the SSVG's account.

c) The learned single Judge, by order dated 03.09.2009, dismissed writ petition No. 3647 of 2009 and held that the Magistrate passed an order under Section 156 (3) of the Code after perusing the complaint which discloses commission of cognizable offence and has not committed any illegality by directing the police to register FIR. The learned single Judge further held that since the police authorities are investigating into the matter after registering FIR and final report is yet to be filed, therefore, challenge at this stage by SSVG is premature.

d) Questioning the order of the learned single Judge, SSVG preferred W.A. No 281 of 2009 before the Division Bench of the same High Court. The Division Bench, entirely agreeing with the reasons assigned by the learned single Judge, by order dated 01.04.2010, dismissed their writ appeal and permitted the Magistrate to proceed in accordance with law. Against the decision of the Division

Bench, SSVG preferred appeal arising out of SLP (Crl.) 3267 of 2010 before this Court.

(e) On 09.04.2010, Chhatisgrarh Police had taken Srinivas Gundluri, Managing Director and Principal Officer of SSVG into custody in Crime No. 272 of 2009 and produced him for transit warrant before CMM at Hyderabad and on the same day he applied for transit bail and the same was granted directing him to appear before Magistrate Class-I, Korba on or before 19.04.2010. On 19.04.2010, Srinivas Gundluri moved an application before the CMM, Hyderabad, for extension of the period of transit bail on the ground of his illness and of his wife and another application before the Judicial Magistrate Ist class, Korba, Chhattisgarh seeking extension of time on the ground that the S.L.P. filed against the order of the writ appeal is listed before this Court on 20.04.2010 and as such, the time to surrender be extended by a week. On 22.04.2010, when the matter was taken up for hearing

before CMM, Hyderabad, none appeared for Srinivas Gundluri, therefore, the Magistrate took cognizance of such fact and in view of the fraud played upon the court rejected the application for extension of time and issued non-bailable warrant against him for his arrest and production before the JMFC Korba, Chhattisgarh. Before this Court, on 26.04.2010, counsel for the appellant herein offered to pay a sum of Rs. 5 crores to SEPCO of which 2 crores to be paid within two days and sought four weeks' time to pay another Rs. 3 crores and this Court granted an order of interim protection of stay of arrest till 14.05.2010. On 26.04.2010, Srinivas Gundluri filed a petition before the High court of Andhra Pradesh, under Section 397 read with Section 401 read with Section 482 of the Code challenging the order dated 22.04.2010 passed by the CMM, Hyderabad. In the said petition, State of Andhra Pradesh and State of Chhattisgarh were arrayed as parties and represented through their Public

Prosecutors. SEPCO was not made a party as required under Section 397 read with Section 401. The High Court of Andhra Pradesh, on 27.04.2010, passed an interim order staying the order dated 22.04.2010 passed by the CMM Hyderabad. Aggrieved by the said order, SEPCO filed appeal @ S.L.P.(Crl.) 5095 of 2010 before this Court. On 14.05.2010, this Court after issuing notice tagged this S.L.P. along with S.L.P.(Crl.)No. 3267 of 2010. For convenience, we refer the parties as described in SLP (Crl.) 3267 of 2010.

4) Heard Dr. A. M. Singhvi, learned senior counsel for the appellants, Mr. C.A. Sundaram, learned senior counsel for the contesting respondent-SEPCO and Mr. Atul Jha, learned counsel for the State of Chhattisgarh.

5) Dr. Singhvi, learned senior counsel, at the outset, highlighted that in view of the facts and circumstances, more particularly, suit for recovery of money filed by SEPCO is pending in the civil court and counter claim of

the appellants is also pending in the same suit, proper course would be to appoint an arbitrator to resolve the dispute. However, according to him, instead of pursuing the said legal and contractual remedy, the respondent-SEPCO rushed to the Magistrate and the Magistrate committed an error in invoking jurisdiction under Section 156 (3) of the Code by directing the Investigation Officer concerned to submit a charge sheet in the Court. He also submitted that inasmuch as the appellants, as on date, have repaid Rs. 10 crores as against the claim of Rs. 21 crores and made a counter claim for Rs.10 crores, the criminal proceedings could be deferred till appropriate decision being taken in the civil proceedings. On the other hand, Mr. Sundaram, learned senior counsel for SEPCO, after taking us through the salient features in the complaint, specific allegations with reference to the criminality of the respondents, various terms of the contract and the conduct of the appellant in diverting the

entire amount received for a different purpose and in view of the Sections 156 (3) and 190 of the Code, the Magistrate is well within his powers to pass the impugned order and the same has been rightly considered and approved by the learned single Judge and Division Bench of the High Court contended that there is no merit in the appeal filed by the appellants. He also pleaded that the learned single Judge of the High Court of Andhra Pradesh committed an error in granting stay in respect of order dated 22.04.2010 passed by the CMM, Hyderabad in Crl. M.P. No. 690 of 2010 in Crime No. 272 of 2009, P.D. Balco, Korba District, Chhattisgarh pending Crl. R.C. No. 893 of 2010 on the file of the High Court.

6) We have carefully perused the relevant materials and considered the rival contentions.

7) Inasmuch as, admittedly, for the recovery of amount, civil suit and counter claim are pending in the civil court, we may not be justified in expressing our views in respect

of suit and counter claim of the respective parties. However, in order to answer the contentions raised by both parties, it is useful to refer certain relevant provisions of the Code which are as under:-

**"Section 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.

**Section 173 - Report of police officer on completion of investigation**

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(1A) The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station.

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170;

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under section 376, 376A, 376B, 376C or 376D of the Indian Penal Code(45 of 1860).

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report, shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceeding or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

**Section 200 - Examination of complainant**

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

**Section 201 - Procedure by Magistrate not competent to take cognizance of the case**

If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall,—

(a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;

(b) if the complaint is not in writing, direct the complainant to the proper Court.

**Section 202 - Postponement of issue of process**

(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 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 witness 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."

8) A perusal of the above provisions, particularly, Section 156 (3) and Sections 200 and 202 of the Code would reveal that Chapter XII of the Code contains provisions relating to information to the police and their powers to investigate whereas Chapter XV, which contains Section 202, deals with provisions relating to the steps which a Magistrate has to adopt while and after taking cognizance of any offence on a complaint. As rightly observed by the learned single Judge of the High Court, the provisions of the above two Chapters deal with two different facets altogether.

9) Dr. Singhvi, learned senior counsel, relying on a judgment of this Court in ***Madhavrao Jiwajirao Scindia & Ors***. vs. ***Sambhajirao Chandrojirao Angre & Ors.*** (1988) 1 SCC 692 contented that the learned Magistrate is not justified in issuing direction to the Investigation Officer and the same is

liable to be interfered with and the High Court ought to have interfered with and quashed the same. We have perused the facts of this case. The High Court, in the said decision, quashed the prosecution against two of the four accused. We have also gone through the factual details as stated in paragraphs 2, 3 and 4 as well as the submissions made by the counsel. After narrating all the events in paragraph 7, Their Lordships have held that:

> **"7.** The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

On perusal of the factual details, while agreeing with the legal principles, we are of the view that since in the said case summons were ordered to be issued by the learned

Magistrate, the said decision is distinguishable and not applicable to the case on hand.

10) Mr. Sundaram, learned senior counsel for SEPCO pressed into service the decisions rendered in ***Devarapalli Lakshminarayana Reddy & Ors.*** vs. ***V. Narayana Reddy & Ors.*** (1976) 3 SCC 252 and ***Tula Ram & Ors.*** vs. ***Kishore Singh*** (1977) 4 SCC 459.

11) In Devarapalli Lakshminarayana Reddy (supra), a bench of three Hon'ble Judges have explained the power of the Magistrate under Section 156 (3) and Sections 200 and 202. The following discussion and ultimate conclusion are relevant which reads as under:-

> **"13.** 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.

**14.** 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 to the Code of 1973, he is said to have taken cognizance of the offence within the meaning of Section 190(l)(*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.

**15.** This position of law has been explained in several cases by this Court, the latest being *Nirmaljit Singh Hoon* v. *State of West Bengal*.

**16.** The position under the Code of 1898 with regard to the powers of a Magistrate having jurisdiction, to send a complaint disclosing a cognizable offence — whether or not triable exclusively by the Court of Session — to the police for investigation under Section 156(3), remains unchanged under the Code of 1973. The distinction between a police investigation ordered under Section 156(3) and the one directed under Section 202, has also been maintained under the new Code; but a rider has been clamped by the first proviso to Section 202(1) that if it appears to the Magistrate that an offence triable exclusively by the Court of Session has been committed, he shall not make any direction for investigation.

**17. S**ection 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(l)(*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.

**18.** In the instant case the Magistrate did not apply his mind to the complaint for deciding whether or not there is sufficient ground for proceeding; but only for ordering an investigation under Section 156(3). He did not bring into motion the machinery of Chapter XV. He did not examine the complainant or his witnesses under Section 200 CrPC, which is the first step in the procedure prescribed under that chapter. The question of taking the next step of that procedure envisaged in Section 202 did not arise. Instead of taking cognizance of the offence, he has, in the exercise of his discretion, sent the complaint for investigation by police under Section 156."

12) In ***Tula Ram & Ors.*** vs. ***Kishore Singh*** (supra) again this Court considered order for investigation under Section

156 (3) on a complaint. After considering various earlier decisions, the Court on a careful consideration of the facts and circumstances of the case propounded the following legal propositions:-

> "…. 1. That a Magistrate can order investigation under S. 156 (3) only at the pre-cognizance stage, that is to say, before taking cognizance under Sections 190, 200 and 204 and where a Magistrate decides to take cognizance under the provisions of Chapter 14 he is not entitled in law to order any investigation under Section 156 (3) though in cases not falling within the proviso to Section 202 he can order an investigation by the police which would be in the nature of an enquiry as contemplated by Sec. 202 of the Code.
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> 2. Where a Magistrate chooses to take cognisance he can adopt any of the following alternatives:
>
> (a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightaway issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.
>
> (b) The Magistrate can postpone the issue of process and direct an enquiry by himself.
>
> (c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.
>
> 3. In case the Magistrate after considering the statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceeding he can dismiss the complaint.

4. Where a Magistrate orders investigation by the police before taking cognizance under S. 156 (3) of the Code and receives the report thereupon he can act on the report and discharge the accused or straightaway issue process against the accused or apply his mind to the complaint filed before him and take action under Section 190 as described above."

13) With these legal principles, we also verified the allegations in the complaint made by SEPCO as well as the order of the Magistrate dated 04.07.2009. The order of the Magistrate reads as under:-

"IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, KORBA
(CHHATISGARH)

COMPLAINT CASE NO. OF 2009

M/s Sepco Electric Power Construction Corporation
Vs.
Mr. Srinivas Gundluri and Ors.

04.07.2009

Present case was produced before me because Smt. Saroj Nand Das, Judicial Magistrate 1st Class, Korba, is on leave. Complainant present along with his counsel Shri B.K. Shukla, Advocate. Complaint under Section 200 Cr.P.C. has been filed against Respondents-accused praying for taking cognizance against them under Sections 405, 406, 418, 420, 427, 503, 504, 506/34 and 120B of Indian Penal Code. It has been further prayed that case be sent to the concerned Police Officer under Section 156 (3) Cr.P.C.

Heard on the application. Perused Complaint under Section 200 Cr.P.C. According to this complaint, a prayer has been made to take cognizance against Accused-Mr. Srinivas Gundluri and Smt. Bharati Devi, Director and others under Sections 405, 406,

418, 420, 427, 503, 504, 506/34 and 120B of Indian Penal Code. All these are cognizable offences.

Therefore, application filed on behalf of the Complainant under Section 156 (3) Cr.P.C. is allowed and original complaint and other documents are sent to concerned Station House Officer and he is directed to register a first information report and conduct investigation in the matter on the basis of facts mentioned in the and after completion of investigation, to submit a charge sheet in the Court.

Sd/- Illegible

Chief Judicial Magistrate

Korba (Chhatisgarh)"

From the above, it is clear that the Magistrate only ordered investigation under Section 156 (3) of the Code. It also shows that the Magistrate perused the complaint without examining the merits of the claim that there is sufficient ground for proceeding or not, directed the police officer concerned for investigation under Section 156 (3) of the Code. As rightly observed by the learned single Judge of the High Court, the Magistrate did not bring into motion the machinery of Chapter XV of the Code. He did not examine the complainant or his witnesses under Section 200 of the Code which is the first step in the procedure prescribed

under the said Chapter. The question of taking next step of the procedure envisaged in Section 202 did not arise. As rightly pointed out by Mr. Sundaram, instead of taking cognizance of the offence, the learned Magistrate has merely allowed the application filed by the complainant/SEPCO under Section 156(3) of the Code and sent the same along with its annexure for investigation by the police officer concerned under Section 156 (3) of the Code. To make it clear and in respect of doubt raised by Mr. Singhvi to proceed under Section 156 (3) of the Code, what is required is a bare reading of the complaint and if it discloses a cognizable offence, then the Magistrate instead of applying his mind to the complaint for deciding whether or not there is sufficient ground for proceeding, may direct the police for investigation. In the case on hand, the learned single Judge and Division Bench of the High Court rightly pointed out that the Magistrate did not apply his mind to the complaint for deciding whether or not there is sufficient ground for

proceeding and, therefore, we are of the view that the Magistrate has not committed any illegality in directing the police for investigation. In the facts and circumstances, it cannot be said that while directing the police to register FIR, the Magistrate has committed any illegality. As a matter of fact, even after receipt of such report, the Magistrate under Section 190 (1) (b) may or may not take cognizance of offence. In other words, he is not bound to take cognizance upon submission of the police report by the Investigating Officer, hence, by directing the police to file chargesheet or final report and to hold investigation with a particular result cannot be construed that the Magistrate has exceeded his power as provided in sub-section 3 of Section 156.

14) Neither the chargesheet nor the final report has been defined in the Code. The chargesheet or final report whatever may be the nomenclature, it only means a report under Section 173 of the Code which has to be filed by the police officer on completion of his investigation. In view of our

discussion, in the case on hand, we are satisfied that the Magistrate in passing the impugned order has not committed any illegality leading to manifest injustice warranting interference by the High Court in exercise of extraordinary jurisdiction conferred under Article 226 of the Constitution of India. We are also satisfied that learned single Judge as well as the Division Bench rightly refused to interfere with the limited order passed by the Magistrate. We also hold that challenge at this stage by the appellants is pre-mature and the High Court rightly rejected their request.

15) It is true that Dr. Singhvi, learned senior counsel for the appellants, highlighted that out of the claim of Rs. 21 crores, Rs. 10 crores have already been paid, the appellants have also laid counter claim for Rs. 10 crores and in such a factual scenario, there is no need to continue the criminal proceedings and prayed for deferment of the same till the outcome of the civil proceedings. However, Mr. Sundaram for SEPCO, by taking us through various allegations in the

complaint highlighted that SSVG by misappropriating the advance money for the purpose other than for which it was granted submitted that the Magistrate correctly exercised his jurisdiction under Section 156 (3) and referred the matter for investigation. He also submitted that the complaint very much discloses cognizable offence under Sections 405, 406, 418, 420, 427, 503, 504, 506/34 and 120B of IPC. Whatever may be, we are not here to find out the truth or otherwise of those allegations but the Magistrate is justified in asking to register FIR, conduct investigation on the facts mentioned in the complaint and after completion of the investigation submit a report in the Court. We do not find any illegality either in the course adopted by the Magistrate or in ultimate direction to the police.

16) Dr. Singhvi has also brought to our notice that the respondent - SEPCO has made another complaint in respect of the same issue before the Chief Metropolitan Magistrate, Hyderabad. According to him, the same is not permissible

and the stay granted by the High Court in Crl. M.P. 1307 of 2010 in Crl. R.C. No. 893 of 2010 is justifiable. However, we are not expressing anything on the said complaint and it is for the appropriate Court to consider about the merits of the claim made by both the parties.

17) In the light of what has been stated above, we are in agreement with the order dated 20.07.2009 passed by the learned single Judge of the High Court of Chhattisgarh in W.P. No. 3647 of 2009 as well as the order dated 01.04.2010 passed by the Division Bench of the High Court of Chhattisgarh in WA No. 281 of 2009. As on date there is no impediment for the police to investigate and submit report as directed in the order dated 04.07.2009 by Chief Judicial Magistrate, Korba District, Chhattisgarh. Interim orders in respect of all the proceedings including the order dated 27.04.2010 passed by the High Court of Andhra Pradesh in Crl. M.P. No. 1307 of 2010 in Crl. R.C. No. 893 of 2010 are

vacated and both parties are at liberty to pursue their remedy in the pending proceedings in accordance with law.

18) In the result, the appeal arising out of SLP (Crl.) 3267 of 2010 of Srinivas Gundluri and others (SSVG) is dismissed and the appeal arising out of SLP (Crl.) No. 5095 of 2010 filed by SEPCO is allowed to the extent indicated above.



.....J.
**(P. SATHASIVAM)**

.....J.
**(ANIL R. DAVE)**

NEW DELHI;
JULY 30, 2010.