



CRM-M-51381-2024(O&M)

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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**CRM-M-51381-2024(O&M)
Reserved on 27.01.2025
Pronounced on : 24.02.2025**

Sxxxx Sxxxxx

..... Petitioner

VERSUS

State of Punjab and others

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. P.S. Ahluwalia, Advocate for the petitioner.

Mr. Randhir Singh Thind, DAG, Punjab.

Mr. APS Deol, Senior Advocate with
Mr. HS Deol, Advocate, for respondents No.2 and 3.

KIRTI SINGH, J.

1. The instant petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking quashing of the order dated 20.09.2024 passed by the learned Sub Divisional Judicial Magistrate, Malerkotla, wherein the prayer of the petitioner for a direction to be issued under Section 156(3) Cr.P.C., for the registration of the FIR was declined and the complaint so instituted was directed to be treated as a private complaint.

Submissions made by learned counsel for the petitioner.

2. Learned counsel for the petitioner *inter alia* submits that the petitioner was subjected to harassment and heinous crimes at the instance of respondents No.2 and 3 and thereby approached respondent No.1-State, by way of multiple representations, instituted before various forums for



registration of an FIR. Upon no action having been taken, petitioner finally approached this Court whilst praying for an FIR to be registered. The petition so instituted by the petitioner was disposed of by this Court while granting liberty to the petitioner to institute an application under Section 156(3) of the Cr.P.C.

2.1 In pursuance of the order passed by this Court, the petitioner instituted an application under Section 156(3), Cr.P.C. before the Court of learned Sub Divisional Magistrate, Malerkotla, with a prayer for the registration of an FIR against the accused persons. The same was declined by way of the impugned order and the matter was directed to be treated as a private complaint.

2.2 Learned counsel for the petitioner contends that the impugned order reveals that the reliance has been placed upon a report of Special Investigation Team (hereinafter referred to as 'SIT') while declining to give a direction for registration of an FIR. However, the report of the SIT does not deal with all the allegations which had been levelled by the petitioner in the application instituted under Section 156(3) Cr.P.C.

2.3. It has further been argued that the primary accused-respondent No.2 is a highly influential and politically connected person. The petitioner in a complaint instituted under Section 156(3) Cr.P.C. has given a detailed account of how she had been exploited at the instance of respondents No.2 and No.3, including allegations with regard to various provisions of the IPC including Section 376-N, 377, 506 and 120-B of the IPC. It has also been alleged that respondent No.2 had blackmailed the petitioner with obscene photographs at various occasions and forced the petitioner to establish



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physical relationship. Whenever the petitioner insisted upon respondent No.2 to marry her, he postponed the same on one pretext or the other. Allegations have also been levelled by the petitioner with regard to the various provisions of the Information Technology Act, 2000 (hereinafter referred to as 'IT Act') including Sections 66-E, 67 and 67-A of the IT Act. There are serious cognizable offences that have been committed against the petitioner at the instance of respondents No.2 and 3 and the establishment of these offences can be conclusively done only if an FIR as regards the same is registered.

2.4 The petitioner has been exploited by the respondent No.2 through the years 2010 and 2018 under the false pretext of marriage, however, despite the seriousness of the allegations, the prayer of the petitioner for direction to register an FIR was declined in the impugned order.

2.5 Reliance has been placed upon the judgments passed by Hon'ble Supreme Court in **'Lalita Kumari vs. Govt. of Uttar Pradesh and others', (2010) 2 SCC 1, 'XYZ v. State of Madhya Pradesh & Ors.' (2023) 9 SCC 705, 'Swapan Kumar Trivedi & others vs. Amit Khera and others', Special Leave to Appeal (Crl.) No.9444/2010.**

**Submissions made by learned Senior counsel
for respondents No.2 and 3.**

3. Learned Senior counsel appearing for respondents No.2 and 3 has vehemently argued that allegations have been levelled by a mature woman of 34 years pertaining to the year 2010 when she was aged about 20 years and had approached respondent No.2 for a job as a Teacher being a graduate. It has further been contented that from the year 2010 till the year

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2018, she was in a consensual relationship with respondent No.2, however, she did not lodge any complaint before the police till 2018. On 05.05.2018, she filed a complaint before the SSP Sangrur and this complaint, in fact was filed as a counter blast to the complaint filed by respondent No.2 against petitioner on 05.04.2018 (Annexure R-2) to IGP Punjab, Ludhiana for taking action against her for extortion and black-mailing for recovery for Rs.25 lacs from respondent No.2.

In pursuance to the said complaint when the petitioner was summoned by ACP, Ludhiana on 21.04.2018 in order to counter these serious allegations levelled against her for extortion and black-mailing, the petitioner as counter-blast instituted a complaint dated 05.05.2018 before the SSP Sangrur against respondents No.2 and 3. Another complaint dated 31.05.2018 was filed by petitioner before the Chairman, Punjab State Human Rights Commission (hereinafter referred to as 'PSHRC') against respondent No.2 seeking registration of FIR and taking action for physically exploiting on the promise of marriage. The PSHRC took cognizance of the said complaint and while exercising its power relating to complaint considered it appropriate to send a copy of the order dated 19.06.2018 along with the complaint to SSP Sangrur to look into the matter and dispose of the complaint at his end in accordance with law. The SSP Patiala marked the complaint to SP Patiala for report into the complaint made by the petitioner as per the PSHRC order. The SP Patiala vide his letter No.3809/C/SP, Patiala dated 13.07.2018 sent his report to SSP Patiala. In this report, SP Patiala has clearly stated that victim is an educated lady/Lecturer/Major who is aware of her good and bad. She by her own will visited Mohd. Owais



(respondent No.2) and kept contact with him. However, the victim failed to produce any evidence to reveal that respondent No.2 had ever promised to marry her. No offence is made out as the victim and respondent No.2 used to call each other on a regular basis and were sending messages on Whatsapp. Moreover, both parties had not produced any mobile phones to authenticate the Whatsapp chats by sending the same to the FSL. Thus, in view of the evidence produced by the parties, the police officer was of the opinion that no further action is required. True copy of report dated 13.07.2018 was submitted by SP Patiala to SSP Patiala, on the directions of PSHRC. The SSP Patiala vide letter No.3860/PP dated 25.07.2018 forwarded a reference to Registrar, PSHRC with endorsement that no further action is required to be taken against respondent No.2 in view of the report submitted by the SP Patiala.

3.1 On perusal of report dated 25.07.2018 submitted by SSP Patiala and the rejoinder dated 13.08.2018 filed by complainant and considering the nature of allegations, PSHRC directed DGP Punjab, Chandigarh to constitute a SIT headed by an officer not below the rank of ADGP and submit report. The DGP, Punjab in response to the order dated 12.09.2018 constituted a SIT consisting of Sh. Parbodh Kumar, IPS Director, BOI, Punjab, Chandigarh, Sh. Parveen Kumar Sinha IPS, Inspector General of Police, Crime-I BOI, Punjab, Chandigarh (Member) and Sh. Amrit Brar IPS, Assistant Inspector General of Police, Commission, BOI Punjab, Chandigarh (Member). The SIT conducted the enquiry and in its detailed report dated 28.02.2019 observed that no truth has been found in the complaint and recommended to file the complaint and sent copy to the PSHRC.



3.2 Thereafter, no action was taken by the petitioner/victim from the year 2018 till 2021. After 3 years, the petitioner filed a petition under Section 482 Cr.P.C. before this Court seeking registration of FIR under Sections 376, 377, 506, 228-A and 120 IPC and under Section 65 of IT Act against Mohd. Owais (respondent No.2-herein). This Court after hearing the counsel for the petitioner dismissed the petition under Section 482 Cr.P.C. seeking registration of FIR with liberty to petitioner to file an appropriate petition under Section 156(3) Cr.P.C. The petitioner availed remedy of filing petition under Section 156(3) Cr.P.C. before learned Illaqa Magistrate/SDJM Malerkotla dated 15.05.2024 impleading both respondents No.2 and 3 as accused.

Thereafter, the Court of learned Illaqa Magistrate after considering the contents of the complaint sought the status report from SHO P.S. City-1 Malerkotla, who while relying upon the conclusion drawn by SIT consisting of 3 senior most officers of the rank of IPS conducting enquiry on the directions of PSHRC in complaint No.4966/18/2018, filed status report dated 06.07.2024. The status report based upon the conclusion drawn by SIT as well as enquiry report dated 13.07.2018 on complaint No.309/FR dated 30.05.2018 verified the contents of the same and found that no cognizable offence is made out against the accused.

3.4 It has also been argued that there is an unexplained delay of 08 years for lodging first complaint by victim i.e. from the year 2010 till 05.05.2018 and that too after respondent No.2 had filed a complaint for black-mailing and extortion against her on 05.04.2018.



3.5 Further reliance has been placed on the observations made by Hon'ble Supreme Court in case of '**Raju and others vs. State of Madhya Pradesh' 2009 (3) SCC (Crl) 75**. Reference has been made to Para-11 which would be applicable to the facts of the present case which are reproduced below for ready reference:-

“11. It cannot be lost sight of that rape causes are the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness for assuming not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.”

Submissions made by learned State counsel

4. Learned State counsel has opposed the prayer made in the petition and submits that there is no infirmity in the order passed by the learned Magistrate. It is a well reasoned order, passed after thorough appreciation of facts and therefore, the present petition, challenging the same, is liable to be dismissed.

Analysis

5. Heard the rival submissions made by learned counsel for the parties and have given my thoughtful consideration to the contentions raised in the light of the facts and circumstance of the case.



6. Criminal jurisprudence provides that when a criminal complaint is filed before the Magistrate, and upon perusal it is found to disclose a cognizable offence having been committed, two courses are open to the Magistrate. He can either chose to inquire into the complaint by taking cognizance in exercise of his powers under Section 190 Cr.P.C. and proceed in accordance with the procedure laid down in Sections 200 and 202 Cr.P.C.; or in the alternative, he may refer the complaint to the police under Section 156(3) Cr.P.C. for investigation. In the later case, the Magistrate, having given such direction, would stay his hand till report under Section 173 Cr.P.C. is submitted by the police, on which further process of law would follow.

7. The law governing the course which a Magistrate may adopt when the wheels of criminal justice system are set in motion by way of a complaint, was discussed by the High Court of Delhi in *M/s. Skipper Beverages Pvt. Ltd. v. State, 2001 IV AD (Delhi)*. In the said case it was held that a magistrate must apply his mind before passing an order under Section 156(3) Cr.P.C. and must not pass these orders mechanically on the mere asking by the complainant. These powers ought to be exercised primarily in those cases where the allegations are quite serious or evidence is beyond the reach of the complainant, or custodial interrogation appears to be necessary for some recovery of articles or discovery of facts.

8. In *Gulab Chand Upadhyay v. State, (2002) Crl.L.J. 2907*, it was observed that the use of the word 'may' in Section 156(3) Cr.P.C. in contradistinction to the word 'shall' in Section 154 Cr.P.C. clearly indicates that the Magistrate has the discretion to refuse registration of FIR.



9. In “**Ramdev Food Products Pvt. Ltd. V. State of Gujrat**” **2015 (2) RCR (Criminal) 372**, Hon’ble Supreme Court, while considering whether discretion of the Magistrate to call for a report under Section 202 Cr.P.C. instead of directing investigation under Section 156 (3) Cr.P.C. is controlled by any defined parameters, placed reliance on Sections 156, 190 & 202 Cr.P.C., as also the law enunciated by the Hon'ble Constitutional Bench in the case of ‘**Lalita Kumari vs. State of U.P.**’ **2014(1) SCC (Crl) 524**, wherein, certain categories were enumerated when preliminary inquiry can be conducted before ordering registration of the FIR, which read thus:-

“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.”

10. After analyzing the legal position, Hon'ble Supreme Court thus concluded in **Ramdev Food Products Case (supra)** that for cases falling under the various categories enunciated in **Lalita Kumari’s case**, the Magistrate instead of issuing directions under Section 156(3) of Cr.P.C. may proceed with the matter as a complaint case and call for a report U/s 202 of Cr.P.C. The relevant reasoning given in case of **Ramdev’s case (supra)** is reproduced as under:-

"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."

11. As is enunciated in the law cited herein above, it is trite that directions for investigation under section 156 (3) of the Code cannot be given by the Magistrate mechanically. Such a direction can be given only on application of mind by the Magistrate. The Magistrate is not bound to direct investigation by the police even if all allegations made in the complaint disclose ingredients of a cognizable offence. Each case has to be weighed on its own merits. If after sifting the grain from chaff, the Magistrate arrives at the conclusion that the complainant can prove the facts alleged in the complaint without the assistance of the police, then in such cases, the Magistrate may proceed with the complaint under Section 200 of the Code and examine witnesses produced by the complainant. Alternately, if the facts and circumstances of the case so warrant, and the Magistrate feels that the evidence is required to be collected with police assistance, he can direct for investigation to be conducted by the police. All the facts and evidence which are already within the knowledge of the petitioners, they can also adduce



during the inquiry conducted by the learned Magistrate under Section 200 of the Code.

12. Reliance placed by the petitioner counsel upon the judgment rendered by Hon'ble Supreme Court in case of '*XYZ vs. State of Madhya Pradesh and others*' 2023(9) SCC 705 is misplaced, since the facts therein are distinct from those of the present case. The accused in that case was in a position of authority and tried to remove vital evidence in the form of audio/video captured in the CCTV footage of his chamber, where the alleged mis-conduct had occurred; whereas in the instant case, the circumstances are varied, and thus need to be adjudged independently.

13. In the case at hand, the alleged incident is stated to be of the year 2010 whereas the complaint was given in this regard for the first time in the year 2018. A perusal of the records clearly indicates that the matter was duly enquired into and a report was submitted by the SSP Patiala on 25.07.2018 wherein it was stated that no further action was required to be taken against respondent No.2, in view of the report submitted by the SP (HQ), Patiala. Furthermore, even a SIT, headed by ADGP, Punjab was constituted, with AIGP and IGP, Punjab as its members, which in its report submitted that there was no truth found in the complaint. It was thereafter that the petitioner availed the remedy of filing an application under Section 156(3) of the Cr.P.C. before the learned Court of the Sub Divisional Magistrate, Malerkotla who, after considering the detailed reports forwarded by the SIT, held that since proper investigation has already been conducted by the police, there is no ground to interfere with the same. The case was therefore ordered to be registered as private complaint and the petitioner was directed to lead preliminary evidence in support of the allegations.



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14. The decision of the trial Court in declining to register an FIR does not mean that the petitioner has been deprived of her right to avail justice. The matter, at this stage, has simply been directed to be treated as a private complaint and the trial Court has initiated an enquiry under sections 200 and 202. A fair opportunity would be granted to the petitioner to present evidence to substantiate her allegations, as is evident from the impugned order. In case the magistrate is of the opinion that there exist sufficient grounds for proceeding further, he would issue process as per section 204, allowing law to take its own course.

15. As a fallout of the afore-said discussion, made in light of the above-contained judicial precedents, this Court is of the view that there exists no infirmity or illegality in the impugned order passed by the learned Magistrate, which requires to be corrected or set right by this Court, in exercise of its inherent jurisdiction under Section 482 Cr.P.C.. Hence, the present petition is hereby dismissed.

16. It is however clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

(KIRTI SINGH)
JUDGE

24.02.2025

Kapil

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No