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

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Date of Decision : 29.07.2025

Bhagiawan

... Petitioner

Versus

State of Punjab and others

.. Respondents

**CORAM : HON'BLE MR. JUSTICE H.S.GREWAL**

Present:- Mr. Arun Kumar Gupta, Advocate for the petitioner.

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**H.S. Grewal, J.**

1. This petition has been filed under Sections 482 & 483 Cr.P.C. for setting aside the order dated 23.08.2023 (Annexure P-3) passed by the learned Chief Judicial Magistrate, Pathankot in COMI/105/2023, titled as 'Bhagiawan versus Prem Singh and another' under Sections 417, 420, 447, 120-A, 463, 464, 465, 511 and 506 IPC whereby the petitioner/complainant has been directed to lead preliminary evidence at own responsibility. Further prayer has also been made to direct the concerned SHO to register the FIR, to send the report to the learned Court and in view of the prayer made in the complaint, this complaint be forwarded to Police Station Sujampur under Section 156(3) Cr.P.C. for registering the FIR and the proceedings before the trial Court be stayed till disposal of the present petition.

2. Learned counsel for the petitioner has contended that the private respondents, in collusion with the revenue officials, had hatched a criminal



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conspiracy by making an entry in the revenue record in their names and had prepared forged and fabricated documents by claiming themselves to be the owner of the land while there is no sale deed in their favour. Therefore, they have committed serious cognizable offence punishable under the IPC and the petitioner had filed an application under Section 156(3) Cr.P.C. (Annexure P-1) titled as 'Bhagiawan versus Prem Singh and another' for registration of FIR against the respondents therein under Sections 417, 420, 447, 120-A, 463, 464, 465, 511 & 506 IPC and handing over investigation to the senior police officers or through an independent Central agency. However, the Court of CJM, Pathankot has not issued direction for registration of the FIR and while passing the impugned order (Annexure P-3), the petitioner/complainant has been called upon to lead preliminary evidence at own responsibility which is against the law laid down by Hon'ble the Supreme Court in the case of '**Lalita Kumari versus State of Uttar Pradesh**', (2014) 2 SCC 1.

3. I have heard learned counsel for the petitioner and have carefully gone through the record.

4. Hon'ble the Supreme Court in the case of **Kailash Vijayvargiya versus Rajlaksjmi Chaudhri and others**, passed in Criminal Appeal No.1581 of 2021, decided on 04.05.2023 has held as under:-

*"The State of West Bengal has drawn our attention to the judgment of this Court in **Gopal Das Sindhi and Others v. State of Assam and Another**, AIR 1961 SC 986 to the effect that even when a private complaint is filed, the Magistrate is not bound to take cognizance under Section 190 as the word used therein is 'may', which should not be construed as*



*'must' for obvious reasons. The Magistrate may well exercise discretion in sending such complaint under Section 156(3) to the police for investigation. However, when a Magistrate chooses not to proceed under Section 156(3), he cannot simply dismiss the complaint if he finds that resorting to Section 156(3) is not advisable. Reference in this regard can also be made to [Suresh Chand Jain v. State of M.P. and another](#), (2001) 2 SCC 628 which distinguishes between the power of the police to investigate under Section 156, the direction of the Magistrate for investigation under Section 156(3) and post-summoning inquiry and investigation after cognizance under Section 190 and Section 202 of the Code. When a Magistrate orders investigation under Section 156(3), he does so before cognizance of the offence. If he takes cognizance, he needs to follow the procedure envisaged in Chapter XV (see [Afaq Jahan](#) (supra)).*

*The decision in [Mona Panwar v. High Court of Judicature of Allahabad through its Registrar and Others](#), (2011) 3 SCC 496 is rather succinct. This Court held that when a complaint is presented before a **Magistrate**, he has two options. One is to pass an order contemplated by Section 156(3). The second one is to direct examination of the complainant on oath and the witness present, and proceed further in the manner provided by Section 202. An order under Section 156(3) is in the nature of a peremptory reminder or intimation to the police to exercise its plenary power of investigation under Section 156(1). However, once the **Magistrate** has taken cognizance under Section 190 of the Code, he cannot ask for an investigation by the Police. After cognizance has been taken, if the **Magistrate** wants*



*any investigation, it will be under Section 202, whose purpose is to ascertain whether there is prima facie case against the person accused of the offence and to prevent issue of process in a false or vexatious complaint intended to harass the person named. Such examination is provided, therefore, to find out whether there is or not sufficient ground for proceeding further.*

37. *We do not intend to go into the question of the merits of the allegations, and what procedure the **Magistrate** should follow as this is an aspect which the **Magistrate** must first consider and decide judiciously and as per the law. What is impermissible and contrary to law is an adjudication on merits of the allegations and determination of the facts as baseless, without further scrutiny and examination. Therefore, the High Court was correct in remitting the matter to the judicial **magistrate** for further examination.*

38. *We were informed that the **Magistrate**, on remand, has passed an order under Section 156(3) directing **registration** of the **FIR**. He has misread the **order** and directions given by the High **Court**. In terms of the judgments of this **Court**, the **Magistrate** is required to examine, apply his judicious mind and then exercise discretion whether or not to issue directions under Section 156(3) or whether he should take cognizance and follow the procedure under Section 202. He can also direct a preliminary inquiry by the Police in terms of the law laid down by this Court in *Lalita Kumari (supra)*.”*

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5. In view of the above, it is clear that the Magistrate, in the given circumstances, can order under Section 156 Cr.P.C for registration of the FIR or he can also proceed in the manner provided under Section 202 Cr.P.C. and therefore, it is the judicial discretion of the Magistrate as to what procedure he chooses to adopt under the given circumstances of the case.

6. In the present case, the Magistrate has exercised its discretion to call for preliminary evidence to prove the allegations against the respondents, which is a just and reasonable course of action. Therefore, this Court do not find any illegality or infirmity in the order of the trial Court for recording preliminary evidence of the complainant/petitioner at his responsibility.

7. Consequently, the petition stands dismissed.

**(H.S.GREWAL)**  
**JUDGE**

**29.07.2025**  
A.Kaundal

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No