IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-17348-2017 (O & M)
Date of Reserve : 03.03.2025
Date of Pronouncement : 12.03.2025

Sandeep alias Sarandeep

... Petitioner

Versus

State of Haryana and others

.. Respondents

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

Present:- Mr. Gautam Diwan, Advocate for the petitioner.

Mr. Aditya Pal Singla, AAG, Haryana.

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H.S. Grewal, J.

The petitioner has challenged the order dated 04.02.2017 (Annexure P-5) passed by the Judicial Magistrate Ist Class, Shahabad in case bearing complaint No.6 of 2017, whereby the application under Section 156(3) Cr.P.C. (Annexure P-4) moved against the inaction of the respondents-police authorities and for monitoring of the investigation by the Magistrate has been illegally treated as a complaint by the trial Court and the petitioner/complainant has been directed to lead preliminary evidence on 30.05.2017 which, as per the petitioner, is in contravention of 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** and reiterated in the similar case of **'Sangeeta Rani versus SSP Chandigarh' (SLP No.1908 of 2008)** wherein registration of the FIR has been held to be mandatory on disclosure of cognizable offence.

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2. Learned counsel for the petitioner has contended that the private respondents had trespassed and interfered in the peaceful possession of the petitioner over the suit land. He further contended that the private respondents had also forcibly cut the crop of the petitioner with a combine machine and therefore, they have committed serious cognizable offence punishable under the IPC. He also contended that although the commission of the cognizable offence was made out but the Court of JMIC, Shahabad had not issued direction for registration of the FIR under Section 156(3) Cr.P.C. The trial Court, while passing the impugned order (Annexure P-5), had observed that the complainant/petitioner had given the full details of the accused in the complaint and it could not be said that the accused/respondents were not known to the complainant/petitioner and it could also not be said that the full details of the accused can be determined only as a result of investigation. It had also been observed by the Court below that the matter is not such as elaborated in the complaint, which needs and requires investigation on the part of the police and it is not a fit case for registration of FIR under Section 156(3) Cr.P.C. and therefore, the prayer of the complainant/petitioner had been dismissed by the impugned order (Annexure P-5).

3. I have carefully gone through the record.

4. It is manifest that the case in hand relates to a land dispute and a Civil Suit No.1158 dated 14.07.2016 along with a stay application under Order 39 Rule 1 & 2 of CPC is stated to have been filed by the petitioner.

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5. The Hon'ble 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).*
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> *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*

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*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)."*

6. 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

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therefore, it is the judicial discretion of the Magistrate as to what procedure he chooses to adopt under the given circumstances of the case.

7. In the present case, the Magistrate has exercised the jurisdiction to decline the application under Section 156(3) Cr.P.C. as it was not found to be a fit case for registration of the FIR and the petitioner was asked to lead preliminary evidence.

8. Therefore, I do not find any illegality or infirmity in the order of the trial Court dismissing the complaint of the petitioner and directing him to lead preliminary evidence.

9. Consequently, the petition stands dismissed.

(H.S.GREWAL)
JUDGE

12.03.2025
A.Kaundal

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

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