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

CRM-M-17804 of 2014

Date of Decision: October 13, 2015

Poonam Arora

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. R.S. Bajaj, Advocate
for the petitioner.

Mr. J.S. Sekhon, AAG Punjab.

Ms. Gagandeep Grewal, Advocate
for respondent No.2.

SABINA, J.

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No.143 dated 24.05.2011, under Sections 376 (2) (G)/120 of the Indian Penal Code, 1860 ('IPC' for short), registered at Police Station Division No.5, District Jalandhar and all consequential proceedings arising therefrom, on the basis of compromise.

Learned counsel for the petitioner has submitted that the FIR in question was registered at the instance of respondent No.2. The matter was duly investigated by the police on three occasions and cancellation report was submitted. The Magistrate did not accept the cancellation report and send the case back for re-investigation/further investigation. Thereafter, again cancellation report was

submitted by the investigating agency. Vide the impugned order, the Magistrate had taken cognizance of the matter.

Learned State counsel has submitted that the matter was duly investigated by the police and after thorough investigation of the case, cancellation report was submitted by the investigating agency.

Learned counsel for respondent No.2 has submitted that respondent No.2 did not want to continue with the proceedings before the trial Court and had no objection, if the FIR in question was ordered to be quashed. Respondent No.2 has filed her reply by way of an affidavit.

In the present case, FIR in question was registered at the instance of respondent No.2. The matter was duly inquired by the police and cancellation report was submitted. A perusal of the impugned order reveals that respondent No.2 had appeared before the Magistrate and had made a statement that she did not agree with the investigation conducted by the police.

When a cancellation report is presented before the Magistrate, the Magistrate can either accept the cancellation report or can send the matter back to the investigating agency for reinvestigation/further investigation or can itself take cognizance of the matter. In case, the Magistrate wants to take the cognizance of the matter, it is necessary for the Magistrate to record preliminary evidence before ordering the summoning of the accused.

A perusal of the impugned order dated 02.03.2013 (Annexure P-3) reveals that the Magistrate has proceeded to

summon the accused without recording the statement of the complainant. Hence, the impugned order is liable to be set aside as the Magistrate has ordered the summoning of the accused without following due procedure of law.

Accordingly, the impugned order dated 02.03.2013 (Annexure P-3) is set aside. The Magistrate is directed to pass a fresh order in accordance with law.

Petition stands disposed of, accordingly.

**(SABINA)
JUDGE**

October 13, 2015
mahavir