IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **C.R.M-M No.18988-2014 (O&M)**
Date of Decision : 18.11.2015

Mahima Kadiyan

..... Petitioner

Versus

Ajay Bansal

..... Respondent

2. **C.R.M-M No.36705-2014 (O&M)**

Mahima

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

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Present : Mr. N.S.Shekhawat, Advocate for the petitioner.

Mr. Surinder Singh Pannu, DAG, Haryana.

Mr.Kanwaljit Singh, Senior Advocate with
Mr. Mohinder Nain, Advocate and
Mr. S.K.Liberhan, Advocate
for respondent No.2.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

CRM-M-18988-2014, has been filed challenging the order dated 03.12.2013 passed by the Court of JMIC, Yamuna Nagar (Annexure P-1) directing the police to make an investigation into the allegations.

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It is submitted that the petitioner had made a criminal complaint under Section 202 Cr.P.C. interalia, complaining of an offence under Section 376 IPC. It is also apposite to mention here that for the same allegations an FIR was also lodged and the police had found the allegations made by the petitioner to be wrong and false and proceedings under Section 182 IPC have been initiated against the petitioner for having made these false allegations. In the second petition i.e. CRM-M-36705-2014 the petitioner has claimed that the trial pending against her before the Sessions Court be stayed till decision on her private complaint is taken.

As regards the first case the learned counsel has argued that under Section 202 Cr.P.C. Magistrate can make further inquiry into the matter but could not order further investigation. As a corollary, he has argued that the trial in the Sessions case is proceeding at a very fast pace and if proceedings there are concluded earlier, the complaint filed by the petitioner may be pre-judged.

The plea raised in the context of Section 202 Cr.P.C. is no more *res intergra.* The Hon'ble Supreme Court in **Rosy vs. State of Kerala, 2000(1) RCR (Criminal) 110** while dealing with this identical aspect held as follows :-

> "*46. II (b) However, where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions, the direction of investigation by the police officer is not permissble and he is required to hold inquiry by himself. During that inquiry he may decide to examine the witnesses on oath. At that stage, proviso further gives mandatory directions that he shall call upon the complainant to produce all his*

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> *witnesses and examine them on oath. The reason obviously is that in a private complaint, which is required to be committed to the Sessions Court for trial, it would safeguard the interest of the accused and he would not be taken by surprise at the time of trial and it would reveal the version of the witnesses whose list is required to be filed by complainant under Section 204 (2) before issuance of the process."*

In this view of the matter, it has to be held that the order of the Magistrate is un-sustainable and consequently the same is set aside leaving it to the Magistrate to proceed further in accordance with law.

As regards the second prayer of staying the trial, learned senior counsel for the respondent has argued that the stay of the trial is not a fair solution and the trial should be allowed to proceed. Having considered the rival view points, I find some merit in both the arguments. The apprehension of the learned counsel for the petitioner could be true; for instance if in the Sessions trial the petitioner is convicted it may have a prejudicial effect on the decision of the complaint and on the other hand the argument of the learned senior counsel for the respondent, that it can not be the intention of law that a trial can be hostage to what may turn out to be a frivolous complaint, also carries considerable weight.

In these circumstances even while setting aside the impugned order of the Magistrate, the Magistrate is directed to proceed further and take a decision on the complaint within a period of two months from the date of receipt of certified copy of this order. It may be mentioned that the learned counsel for the petitioner has stated that the petitioner would conclude her preliminary evidence within 3 hearings. As regards the

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Sessions trial, it is directed that during this interregnum the proceedings therein may go on but final order be not passed.

Both the petitions are disposed of.

Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

November 18, 2015
Pooja Sharma-I

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