

In the High Court of Punjab and Haryana at Chandigarh

Crl. Misc.-M No. 26733 of 2015

Date of Decision: 17.8.2015.

G.S.Rathaur (Ghanshyam Singh Rathaur)

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. R.S.Sihota, Senior Advocate with
Mr. Rajesh Arora, Advocate
for the petitioner.

SABINA, J.

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) challenging the order dated 14.7.2015 whereby application moved by the petitioner under Section 156(3) Cr.P.C., was dismissed.

Learned senior counsel for the petitioner has submitted that a perusal of the complaint (Annexure P-1) moved by the petitioner under Section 156(3) Cr.P.C. revealed that a cognizable offence was made out against respondent No. 2. Hence, the Trial Court had erred in declining the application moved by the petitioner and by treating the complaint as a complaint case. Learned senior counsel has further submitted that civil litigation was pending between the parties with regard to adoption deed in question. In support of his arguments, learned senior counsel for the petitioner has placed reliance on '**Lalita Kumari versus Govt. of U.P. and others, 2013(4) RCR (Criminal) 979**', wherein it was held as under:-

"Therefore, in view of various counter claims regarding

registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR. ”

In the present case, petitioner had moved the complaint (Annexure P-1) for taking action against respondent No. 2. The case of the petitioner was that his grandfather had three sons namely Todar Mal, Harphool Singh and Rattan Lal. Todar Mal had

died unmarried and issueless whereas Harphool Singh had four sons including respondent No. 2. Rattan Lal had one son i.e. the petitioner. Todar Mal died on 9.12.1993. On 29.6.2014, respondent No. 2 had come to invite the petitioner to attend the marriage of his son. At that time, a quarrel took place and respondent No. 2 stated that he had killed Todar Mal by giving him poison. He further stated that he had got a decree in his name and stated that Todar Mal had executed an adoption deed on 29.6.2014.

Section 156(3) Cr.P.C. reads as under:-

“Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned.”

The Magistrate had the jurisdiction either to send the complaint to the police for registration of the FIR or itself take cognizance of the matter. It is not in every case that on an application moved by the complainant, the Magistrate is duty bound to order registration of FIR.

Section 2(d) Cr.P.C. reads as under:-

“‘Complaint’ means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this code, that some person, whether known or unknown, has committed an offence, but does not include a police report.”

Thus, as per the above provision, whenever an application is addressed to the Magistrate containing an allegation that an offence has been committed and the accused persons were liable to be punished under the relevant provision of law, it can be said that a complaint has been filed before the Magistrate.

In the present case, although, the petitioner vide

complaint (Annexure P-1) had prayed that FIR be got registered against respondent No. 2 but it was not binding on the Magistrate to have sent the case for registration of the FIR. Rather, it was within the powers of the Magistrate to have asked the complainant to lead evidence before proceeding further with the matter. A perusal of the order reveals that the Magistrate, after perusing the file and allegations contained in the complaint, formed an opinion that there was no reason to send the complaint directly for registration of FIR and investigation. Rather the Magistrate felt that the cognizance of the matter was liable to be taken by the Court and the case was adjourned for recording of the statements of the complainant and its witnesses.

In the facts and circumstances of the present case, the impugned order cannot be said to be illegal and, therefore, calls for no interference.

Dismissed

**(SABINA)
JUDGE**

**August 17, 2015
Gurpreet**