

**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH**

Sr. No.: 255

**Criminal Miscellaneous No.M-29129 of 2014 (O & M)**

**Date of Decision:** *March 27, 2015*

**Nasho**

..... PETITIONER

*VERSUS*

**State of Punjab & others**

..... RESPONDENTS

. . .

**CORAM:**    **HON'BLE MR. JUSTICE JASPAL SINGH**

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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?

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**PRESENT:** -    Mr. B.S. Baath, Advocate, for the petitioner.

Mr. R.P.S. Sidhu, Assistant Advocate General, Punjab.

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**Jaspal Singh, J**

1.                This petition has been preferred under Section 482 Cr.P.C. by Ms. Nasho – petitioner seeking direction to respondent Nos.1 to 3 to register a case against respondent Nos.4 to 13 for her kidnapping, subjecting her to atrocity and rape after she was forcibly taken away by aforesaid respondents from Dera/house established by her father at Gurdaspur.

2. Briefly stated, facts contained in petition are that petitioner was married with one Liquat Ali, but, due to matrimonial dispute, she left her matrimonial home and started living with her father. Respondent No.4, who is closely related to respondent Nos.5 to 13, started visiting her place with an evil eye on her. He allured petitioner and put-forth a proposal of his marriage with her stating that he is still unmarried. Since, her father did not accept the proposal, respondent No.4, with assistance of respondent Nos.5 to 13, forcibly kidnapped her at night in month of June 2014. Though, her father lodged a complaint against respondent Nos.4 to 13 at Police Station, Tibber, with a request to register a case against above said respondents but neither FIR was registered nor any other action against any of respondents was taken. Infact, respondent No.4 has taken an advantage of performance of her marriage with him, which was otherwise under threat and coercion. When she raised her voice to send her back after the alleged marriage, respondent No.4 called his relatives and friends namely Liquat Ali son of Isrile, Gani son of Murid, Jakood son of Masoom, Maskeen son of Alamdeen and Sher Ali son of Murid (respondent Nos.10 to 13), and she was sexually abused and raped by them including respondent No.4. She was kept there in custody for about 10 days. Somehow or other, finding an opportunity, she slipped away from there, contacted her father and reached her parental house, and disclosed entire incident. She also moved a complaint to respondent No.2 – Senior Superintendent of Police,

Gurdaspur on July 22, 2014 but neither it fetched any reply nor any action was taken against any of the culprits which necessitated filing of petition.

3. Upon notice, petition has been resisted by respondent Nos.1 to 3 and detailed reply in the shape of affidavit of Mr. G.S. Toor, IPS, Senior Superintendent of Police, Gurdaspur, was filed which was taken on record.

4. Relying upon pronouncement of Hon'ble Apex Court, captioned as Lalita Kumari vs. State of U.P. & others, 2014(1) SCC (Criminal) 524, it has been ebulliently argued by learned counsel for petitioner that if information discloses commission of cognizable offence then no preliminary enquiry is permissible and in such situation, registration of FIR is mandatory under Section 154 Cr.P.C.

5. While referring to facts of the case in hand, contention of learned counsel for petitioner is that complaint dated July 22, 2014 (Annexure P-1) lodged to Senior Superintendent of Police, Gurdaspur – respondent No.2 clearly discloses commission of cognizable offence i.e. kidnapping & rape, and it was obligatory upon respondent No.2 – Senior Superintendent of Police as well as Station House Officer of concerned police station to immediately register FIR and put investigating agency into motion. But in the case in hand, police, in connivance with private respondent Nos.4 to 13, conducted an enquiry which is just an eye wash, that too, without associating either petitioner or her father or

respondents. Enquiry report is nothing but a waste paper. In view of serious and grave nature of allegations unfolded by petitioner, FIR would have been registered. Moreover, it is not the job of Senior Superintendent of Police, or concerned Station House Officer to see whether information is falsely given or whether information is genuine or credible etc. Such issues have to be verified during investigation of FIR.

6. While concluding his arguments, learned counsel for petitioner submits that non-registration of FIR by police invades the rights of petitioner and as such, a direction be given to respondent Nos.1 to 3 to register FIR and then to take necessary steps to conduct investigation.

7. These arguments have been controverted by learned State counsel submitting that detailed enquiry was conducted into allegations levelled by petitioner in her unsigned/un-thumb marked complaint dated July 22, 2014 which was received in office of respondent No.2 on August 28, 2014, and allegations were found to be false and could not be established. Moreover, petitioner has other efficacious remedies in case she is not satisfied with enquiry got conducted by respondent No.2 - Senior Superintendent of Police, Gurdaspur. Since, other efficacious remedies are available with petitioner, instant petition under Section 482 Cr.P.C. is not maintainable and deserves to be dismissed.

8. This Court has given an anxious thought to rival submissions made by learned counsel for parties and perused the record.

9. Undoubtedly, registration of FIR is mandatory under Section 154 Cr.P.C. if information discloses commission of a cognizable offence and no preliminary enquiry is permissible to ascertain whether information is falsely given or is genuine or credible, and further that these issues have to be verified during investigation of FIR as has been observed by Hon'ble Apex Court in Lalita Kumari's case (supra).

10. Learned counsel for petitioner has also laid much stress upon observations made in above referred authority and it would be in fitness of things to reproduce the conclusion/directions given by Hon'ble Apex Court which are relevant for disposal of instant petition. The same read as under:-

**“Conclusion/Directions:**

111. In view of the aforesaid discussion, we hold:

- i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
- ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.
- iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- a) Matrimonial disputes/ family disputes
- b) Commercial offences
- c) Medical negligence cases
- d) Corruption cases
- e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”

11. A glance at the aforesaid paragraph transpires that though registration of FIR is mandatory if an information discloses commission of a cognizable offence but at the same time, category of cases in which preliminary enquiry may be made have also been reflected. In category

of cases depicted above, preliminary enquiry could be conducted when it pertains to matrimonial/family disputes.

12. Analyzing averments made in this petition as well as in reply preferred in the shape of affidavit of Mr. G.S. Toor, IPS, Senior Superintendent of Police, Gurdaspur, it clearly emerges that an unsigned complaint, stated to have been filed by petitioner Ms. Nasho, was received in his office on August 28, 2014. It was marked to DSP City, Gurdaspur for enquiry. During enquiry, it revealed that said complaint was lodged by Ms. Nasho under pressure and coercion of her relatives (father & others) who have taken her back from custody of respondent No.4, her husband with mutual consent. However, later on, they refused to send her back to matrimonial home and lodged the said complaint. Even otherwise, it also emanates from documents available on file that petitioner solemnized a marriage with respondent No.4 and apprehending threat at the hands of her parents and other relatives (respondent Nos.4 to 8 in that petition), she and her husband Mr. Mashkeu Ali, respondent No.4 preferred a petition under Section 482 Cr.P.C. seeking protection to their life and liberty which was disposed of vide order dated July 2, 2014 by a coordinate Bench of this Court. Subsequently, petitioner was brought from house of respondent No.4 but was not sent back by her father and other relatives. Thereafter, instant petition was preferred by petitioner seeking direction to register FIR against respondent Nos.4 to 13 including her husband. Since dispute

involved in the petition was matrimonial or family dispute, an enquiry conducted prior to registration of case cannot be termed to be illegal, without jurisdiction or against principles of natural justice. It also cannot be termed to be violative of other provisions contained in Section 154 Cr.P.C. or observations/ conclusions & directions given in Lalita Kumari's case (supra).

13. Here it would be pertinent to mention that during enquiry, allegations have been found to be false. Moreover, present petition is also not legally maintainable in the given circumstances as petitioner has other efficacious remedies available under law. Moreover, in view of enquiry got conducted by Senior Superintendent of Police, Gurdaspur, it would not be legally justified to order registration of FIR. However, petitioner shall be at liberty to have recourse to the remedies available under law.

14. In the light of what has been discussed above, this Court does not find any merit in the instant petition and same is accordingly dismissed.

**March 27, 2015**  
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**(Jaspal Singh)**  
**Judge**