

234+116

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

CRM-M-29867-2014 (O&M)

Date of decision: 21.08.2015

Nanak Singh

... Petitioner

Vs.

Prabhjot Kaur @ Rakhi and ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Subhashish Kukreti, Advocate
for the petitioner.

Ms. Manju Arora, Advocate for
Ms. Aditi Girdhar, Advocate
for respondents No.1 & 3.

Mr. B.S. Sewak, Advocate
for respondents No.2 & 4.

RAMESHWAR SINGH MALIK, J. (ORAL)

CRM-26952-2015

Applicant seeks permission to place on record the short reply by way of affidavit on behalf of respondent No.1.

Application is allowed, as prayed for.

CRM stands disposed of.

CRM-M-29867-2014

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks quashing of the impugned order dated 08.07.2014 passed by learned Chief Judicial Magistrate, Patiala, whereby complaint titled as Nanak Singh Vs. Prabhjot Kaur and others under Sections 323, 324, 351, 451, 452, 148, 149, 120-B IPC (wrongly recorded as

Prabhjot Kaur and others Vs. Nanak Singh in the impugned order), pending in the Court of Ms. Krishanuja Mittal, Judicial Magistrate 1st Class, Rajpura was withdrawn and the same was transferred to the Court of Sh. Jagmeet Singh, Judicial Magistrate 1st Class, Patiala.

Notice of motion was issued and pursuant thereto, reply on behalf of respondent No.1 has been filed. Other respondents have chosen to adopt the reply filed on behalf of respondent No.1.

Learned counsel for the petitioner submits that the impugned order is an order without jurisdiction. The learned Chief Judicial Magistrate, Patiala could not have passed such an order on judicial side because it was the exclusive domain of the learned District & Sessions Judge to pass such an order. He further submits that the respondents have taken misleading averments in the petition for transfer (Annexure P-1). Since no such complaint was pending on 08.07.2014 as the same already stood decided on 13.06.2014, the impugned order is based on a factually incorrect approach as well as patently illegal and the same is liable to be set aside. He prays for setting aside the impugned order, by allowing the present petition.

On the other hand, learned counsel for respondents No.1 & 3 as well as learned counsel for respondents No.2 & 4 jointly pray for dismissal of the present petition, contending that the learned Chief Judicial Magistrate, Patiala committed no error of law, while passing the impugned order. They submit that the impugned order was passed on administrative side and the learned Chief Judicial Magistrate was very much competent to do so in view of his powers under Section 410 Cr.P.C.

Having heard the learned counsel for the parties at considerable

length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in the given fact situation of the case, noticed hereinabove, instant petition deserves to be allowed, as the present one has been found to be a fit case, warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C., for the following more than one reasons.

During the course of hearing, when confronted by the Court as to how the impugned order can be treated to be an administrative order, learned counsel for the respondents had no answer and rightly so, it being a matter of record. Further, a bare perusal of the impugned order would show that the learned Chief Judicial Magistrate has not even made a passing reference about the administrative powers under Section 410 Cr.P.C., while passing the impugned order. Having said that, this Court feels no hesitation to conclude that the impugned order is an order without jurisdiction and the same cannot be sustained.

It has also gone undisputed on record before this Court that the impugned order passed by learned Chief Judicial Magistrate, Patiala was based on a factually incorrect approach. It is so said because no complaint, as stated to have been pending, was, as a matter of fact, pending decision before the learned Court of competent jurisdiction, on the date of passing of the impugned order. Learned counsel for the parties are ad idem that said complaint had already been decided on 13.06.2014 itself. Under these circumstances, it can be safely concluded that the learned Chief Judicial Magistrate failed to apply his judicious mind, while passing the impugned order and the same cannot be sustained, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found to be suffering from patent illegality, besides it being an order without jurisdiction, instant petition deserves to be allowed. Consequently, impugned order dated 08.07.2014 passed by the learned Chief Judicial Magistrate, Patiala is hereby set aside.

Resultantly, with the abovesaid observations made, instant petition stands allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

21.08.2015
vishnu