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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-30166 of 2014

Date of Decision: October 20, 2015.

Rajbala

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Surinder Gandhi, Advocate
for the petitioner.

Ms. Trishanjali Sharma, AAG Haryana.

Mr. K.S. Malik, Advocate
for respondents No.3 to 7.

SABINA, J.

Petitioner has filed this petition challenging the orders dated 16.07.2014 and 24.07.2014.

Learned counsel for the petitioner has submitted that the Magistrate has erred in directing the petitioner to lead her preliminary evidence. In fact, Magistrate should have sent the case to the police for investigation.

Learned counsel for respondents No.3 to 7 on the other hand has opposed the petition.

Petitioner had approached the Magistrate under Section 156 (3) of Code of Criminal Procedure, 1973 ('Cr. P.C.' for short) for a direction to the Station House Officer, Police Station City Rohtak to register the FIR against the accused and conduct investigation. The case of the petitioner, in brief, is that on 18.05.2014, offence of rape had been committed by the accused.

Magistrate passed the following order on the said

application on 16.07.2014:-

“Arguments on the application under Section 156 (3) Cr. P.C. Head. It is contended by the complainant that SHO P.S. City be directed to register a case for offences punishable under Sections 323, 342, 354-A, 354-B, 294, 376, 511, 120-B of Indian Penal Code against all the accused as accused have gave her injuries and accused Shri Bhagwan tried to commit rape upon her and confined her without her consent. Head. Since, in the present case, this Court is of the view that the complainant can lead the entire evidence herself as allegedly happened with her, this Court is of the view that the present case is not a fit case to be sent to police for registration of case. As such, application under Section 156 (3) Cr. P.C. is declined. Complaint be checked and registered. Now to come upon 01.08.2014 for preliminary evidence of the complainant.”

A perusal of the above order reveals that the Magistrate has declined the request of the petitioner to send the case for investigation to the police on the ground that the petitioner could lead the entire evidence herself. The said ground for dismissing the application under Section 156 (3) Cr. P.C. does not appear to be a good /sound ground.

Accordingly, this petition is allowed. Impugned order dated 16.07.2014 is set aside. The Magistrate is directed to pass a fresh order in accordance with law.

(SABINA)
JUDGE

October 20, 2015
mahavir