

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

CRM-M-3057 of 2015
Date of Decision : 30.09.2015

Sachin Mangla and others

.....Petitioners

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. **Whether reporters of local newspaper may be allowed to see judgment?**
2. **To be referred to reporters or not?**
3. **Whether the judgment should be reported in the digest?**

Present: Mr. R.S. Rai, Senior Advocate with
Mr. Kunal Dawar, Advocate
for the petitioners.

Mr. Munish Sharma, Astt. A.G. Haryana.

Mr. M.L. Sharma, Advocate
for respondent No.2.

FATEH DEEP SINGH, J.

This is a petition preferred under Section 482 Cr.P.C. seeking quashing of an order dated 20th January, 2015 (Annexure P11) passed by learned Judicial Magistrate, 1st Class, Faridabad, directing registration of an FIR on an application under Section 156(3) Cr.P.C. filed along with the private complaint No.22/2015 dated 9th January, 2015 leading to subsequent FIR No.55 dated 22nd January, 2015 under Sections 406/420/465/467/468/471/506 / 323/120 and 120-B IPC registered at Police Station Mujessar,

District Faridabad, Haryana (Annexure P 12).

The ground of this invocation stems from the allegations of the complainant present respondent No.2-Harish Kumar who at the relevant time was working with M/s. Lakhani India Limited (hereinafter referred to as “the company”). The electricity connection of the company was disconnected by the supplier Dakshin Haryana Bijli Vitran Nigam (DHBVN) regarding which a Civil Writ Petition No.11430 of 2014 was filed before this Court in which vide resolution dated 14th April 2014 (Annexure P1), the present complainant was authorized to represent the company for the purposes of filing of the writ petition and taking necessary action in pursuance of it. Due to certain misconduct as alleged the services of respondent No.2 stood terminated with effect from 7th July, 2014 (Annexure P2) along with one Vinod Yadav who is alleged to be presently practising as a lawyer. In the said writ petition a Civil Misc. No.8238 of 2014 (Annexure P4) was filed by the company for changing its authorized representative and as counter-blast the complainant in the present case respondent No.2 also filed in the said writ petition a Civil Misc. No.8052 of 2014 (Annexure P3) for withdrawing his power of attorney and wherein he levelled pre-posterous and baseless allegations. This Court vide order dated 28th August, 2014 (Annexure P5) disposed off both these Civil Miscellaneous

Applications. By another quirk of fate respondent No.2 the present complainant moved through his ex-colleague Vinod Yadav CRM-M-30130 of 2014 (Annexure P6) alleging that the resolution dated 14th April, 2014 appointing him to be the authorized representative of the company was not signed by Mr. P.D. Lakhani but in fact were forged signatures by petitioner No.1-Sachin Mangla who happens to be Chartered Accountant of the company. In the response by the Haryana State through Assistant Commissioner of Police, Faridabad (Annexure P7) to the criminal miscellaneous application of the complainant, stand was taken that proceedings under Section 107/150 Cr.P.C. had been initiated against petitioner-Sachin Mangla and Vinod Kumar and that during inquiry the allegations of forged signatures of P.D. Lakhani were found to be incorrect. The said CRM No.30130 of 2014 stood dismissed vide orders dated 17th December, 2014 by this Court (Annexure P8). At the time of passing of this order it was observed that, the then petitioner present complainant was at liberty to approach the concerned authorities regarding his allegations. It is, thereafter, the present complainant filed a private complaint (Annexure P9) before the Court at Faridabad (Annexure P9) and also filed simultaneously an application under Section 156(3) Cr.P.C. seeking directions for registration of an FIR. In pursuance of this application under Section 156(3)

Cr.P.C., the learned Magistrate sent the same for registration of the case vide impugned order dated 20th January, 2014 (Annexure P11).

It is in consequence of this situation, the petitioners have invoked the jurisdiction of this Court.

After hearing Mr. R.S. Rai, Senior Advocate assisted by Mr. Kunal Dawar, Advocate for the petitioner, Sh. Munish Sharma, Astd. Advocate General, Haryana and Mr. M.L. Sharma, Advocate for respondent No.2, as has been admitted by the contesting sides the present complainant had earlier filed a petition under Section 482 Cr.P.C. (Annexure P6) wherein he has sought directions for registration of an FIR on the basis of his complaint dated 7th July, 2014 which is the complaint preferred before the Magistrate and also forms the verbatim subject matter of the FIR.

Thus, in the light of what has sought to be argued by the two sides a moot point has arisen as to the very legality of the orders of the learned Magistrate in entertaining a complaint as well as simultaneously directing the registration of an FIR on the basis of the same occurrence and facts when this Court by virtue of order (Annexure P8) dismissed the said petition, thereby declining issuance of directions for registration of such a case by way of an FIR. Can the learned Magistrate over-run these orders or there should have been due exercise of the powers in terms of

Section 190 read with Section 200 Cr.P.C. The learned Magistrate as is apparent to this Court from the orders (Annexure P11) was unaware of the orders (Annexure P8) passed by this Court declining such a relief ordering registering of an FIR. Besides, the fact as has sought to be argued by Mr. R.S. Rai, Senior Advocate, who has placed reliance on ***“Anil Kumar and others Vs. M.K. Aiyappa and another” 2013(4) R.C.R. (Criminal) 586,*** that the Magistrate has passed orders without reflecting what had necessitated initiation of such an action. A perusal of orders of the Magistrate (Annexure P11) shows that these are cryptic and non-speaking orders. In ***Anil Kumar’s case*** (supra), the Hon’ble Apex Court has examined the ambit of the exercise of powers under Section 156(3) of the Criminal Procedure Code and has laid down the proposition holding that where a jurisdiction is to be exercised on a complaint filed in terms of Section 156(3) or Section 200 of the Cr.P.C., the Magistrate is required to apply his mind in such a case and which application of mind needs to be reflected in the order and certainly the present order of the learned Magistrate is no exception and is totally devoid of such a requirement. Though resistance has sought to be made on behalf of the respondent sides by their counsel that it is an exercise of discretionary powers by the Magistrate, certainly does not come to the aid of the respondents. It nowhere reflects in the said order

of the learned Magistrate (Annexure P1) as to what forms the basis of the same or how or in what manner it has weighed with the Magistrate to order investigations under Sections 156(3) Cr.P.C. and which needs to be done. As per these requirements the order (Annexure P11) is reproduced as below to lay emphasis:-

“Harish Vs. Sachin

Present : Sh. Vipin Yadav, Adv. For complainant.

Arguments heard on an application under Section 156(3) Cr.P.C. As the present matter is required detailed investigation and collection of evidence therefore the present complaint is marked to concerned SHO for registration of case and for investigation under Section 156(3) Cr.P.C.

20.1.2015

SD/-

JMIC/Faridabad”

From this all the very crypticness of the order and the requirements as laid down in **Anil Kumar's case** (supra) are very much lacking, thus, the fact that the Court of learned Magistrate as the order in question reflects has not gone into the matter deeply and merely upon hearing arguments appears to have taken cognizance of the offence. In the case of “**State of West**

Bengal and others Vs. Mohd. Khalid and others 1995 (1) RCR (Crl.) 318” it has been observed that cognizance means when the Magistrate applies his judicial mind to the facts of a complaint as to the commission of an offence. In the present case, the complainant had already filed a complaint in terms of Section 200 Cr.P.C. and, thus, by applying its mind and taking cognizance of the offence the learned Magistrate apparently appears to have acted within its powers in terms of Section 190 Cr.P.C. and, therefore, was not at all legally permissible for the learned Magistrate to have embarked upon such an order in terms of Section 156 (3) Cr.P.C. Similarly, reliance is placed on ***“Devrapalli Lakshminaryanan Reddy & Ors. v. V. Narayana reddy & Ors., (1976)3 SCC 252, National Bank of Oman v. Barakara Abdul Aziz & Anr., (2013) 2 SCC 488, Madhao & Anr. v. State of Maharashtra & Anr., 2013(2) R.C.R. (Criminal) 975: 2013(3) Recent Apex Judgments (R.A.J.) 391 : (2013) 5 SCC 615, Rameshbhai Pandurao Hedau v. State of Gujarat, 2010 (2) R.C.R.(Criminal) 376 : 2010 (2) Recent Apex Judgments (R.A.J.) 356 : (2010) 4 SCC 185***”, wherein all these ratios it has been laid down that the Magistrate before taking cognizance of an offence can invoke its powers in terms of Section 156(3) Cr.P.C. the later being of the nature of pre-emptory intimation to the Police to

exercise its preliminary powers of investigation ending with filing of a chargesheet in terms of Section 173 Cr.P.C. whereas under Section 202, Cr.P.C. it is by way of post-cognizance stage and direction for investigations for the purpose of deciding if there was sufficient grounds to proceed or not and, thus, by such an endeavor the learned Magistrate it has certainly fell into an error by resorting to such a dual means simultaneously. It would not be out of place to mention here that even if the very allegations on the face of it are taken to be true and remain un-rebutted even then to the mind of this Court no offence whatsoever is made out and rather are compulsive instigation out of revenge by the two disgruntled ex-employees. It is often seen such a misuse of the process is usually adopted to attain a sinister goal, the High Court in terms of Section 482 Cr.P.C. needs to be vigilant and ensure that such a misuse does not take place as the very dispensation of justice is likely to suffer and even otherwise needs to be curbed with a heavy hand. The details spelled out before this Court sufficiently reflects and impinges upon judicial conscience how there has been not only misuse of the process of Court by the complainant but that too has been aggravated by the casual and irresponsible conduct of the Court below in the exercise of its powers. Thus, there is imminent and urgent need for the exercise of inherent powers by this Court to secure not only the ends of

justice, to prevent abuse of the process but also to put an end to *mala fide* engrafted in these allegations of the complainant. Thus, apparently there is not only procedural remiss by the Court but also the eventualities laid down in State of "***State of Haryana and others Vs. Ch. Bhajan Lal and others***" 1992 AIR (SC) 604, are sufficiently attracted to necessitate intervention.

In view of the foregoing discussions detailed and discussed above, the order of the learned Magistrate dated 20th January, 2015 directing registration of the FIR in terms of Section 156 (3) Cr.P.C. (Annexure P11) being legally unsustainable along with the FIR No.55 dated 22nd January, 2015 under Sections 406/420/465/467/468/471/506/323/120 and 120-B IPC registered at Police Station Mujessar, District Faridabad, Haryana (Annexure P12) and all subsequent proceedings arising therefrom are hereby quashed.

The petition is allowed in those terms.

September 30, 2015
Dpr

(FATEH DEEP SINGH)
JUDGE