

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SANJIV KUMAR SHARMA
2015.02.13 12:30
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CRM No. M-34798 of 2012 (O/M)

Date of decision : 10.2.2015

Kapil Dev Arora

..... Petitioner

Versus

Rajan Parminder Singh, SHO, P.S. Sarabha Nagar,
Ludhiana

..... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vaibhav Sehgal, Advocate, for the petitioner.

None for respondent.

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

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KULDIP SINGH, J. (ORAL)

This petition is filed under Section 482 Cr.P.C. for quashing the impugned order dated 20.7.2011 (Annexure-P-5), passed by the learned Judicial Magistrate 1st Class, Ludhiana (JMJC), and the impugned order dated 23.8.2012 (Annexure-P-7), passed by the learned Additional Sessions Judge, Ludhiana.

The grievance of the petitioner is that he filed a complaint (Annexure-P-1) in the shape of application under Section 156(3) Cr.P.C. for directing the ACP/DCP, Sarabha Nagar, for registration of a criminal case against accused/respondent herein under Sections 166, 167, 217 and 218 IPC. Rajan Parminder Singh, SHO Police

Station Sarabha Nagar, Ludhiana, was mentioned as an accused in the said complaint. The facts mentioned in the said complaint need not to be repeated. The learned JMIC, vide impugned order dated 20.7.2011 (Annexure-P-5), held that FIR No. 256 dated 8.11.2010 under Section 380 IPC has already been registered against unknown persons. Therefore, the application was dismissed as infructuous. The learned Additional Sessions Judge, Ludhiana, in revision, held that the order dated 20.7.2011 (Annexure-P-5) was rightly passed by the learned JMIC and dismissed the revision.

A perusal of the complaint (Annexure-P-1) shows that certain allegations were levelled against respondent/SHO. Even if the police has registered the FIR relating to some other occurrence, it was still debatable point whether the offence mentioned in the complaint was made out or not against the respondent/SHO ? The application, which is infact a complaint to the learned Judicial Magistrate 1st Class, could not be dismissed the way it was done. Whenever a complaint is filed, the Magistrate has to record the preliminary evidence and then hear the complainant before decided to issue/not issue the process to the accused and then pass the appropriate order. The procedure adopted by the learned JMIC is illegal.

Accordingly, the impugned order dated 20.7.2011 (Annexure-P-5), passed by the learned Judicial Magistrate 1st Class, Ludhiana, and the impugned order dated 23.8.2012 (Annexure-P-7),

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passed in revision by the learned Additional Sessions Judge, Ludhiana, are set aside. The application (Annexure-P-1) is ordered to be treated as complaint and the same is ordered to be decided in accordance with the procedure laid down in the Criminal Procedure Code for trial of the complaint cases.

Accordingly, the present petition is allowed.

(KULDIP SINGH)
JUDGE

10.2.2015
sjks