

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM M-42171 of 2015

Date of Decision: December 14, 2015

Vijay Kumar Janjua

.....Petitioner

Vs.

State of Punjab and ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.V.K. Janjua, petitioner in-person.

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M.M.S. BEDI, J. (ORAL)

Petitioner appearing in person has, after arguing for a long time, emphasized that his only prayer before this Court is to issue a direction to the Magistrate to determine the applicability of the judgment passed in **Lalita Kumari Vs. Govt. of UP**, (2014) 2 SCC 1.

I have heard the petitioner in person and gone through the order passed by the learned Magistrate in an application filed by the petitioner under Section 156 (3) Cr.P.C. The said application has been decided by the learned Magistrate by passing the following order:-

“Heard on the application u/s 156 (3) Cr.P.C. and have also gone through the arguments submitted by the applicant/ complainant. The main contention of the applicant is that at the time of the alleged search no FIR was registered and the FIR though registered thereafter, was antedated and had no connection with the search conducted at his residence.

Owing to the allegations made in the application, I am of the considered opinion that no ground is made out to direct the registration of FIR at this stage, and the case law titled as Lalita Kumari Vs. State of UP passed in Writ Petition (Crl.) No. 68 of 2008, of the Hon’ble Supreme Court of India is not of much help to the applicant at this stage for the reasons that the facts in the present case and the cited case are entirely different. However, the present application is treated as complaint, and the complainant may prove the allegations by leading cogent evidence in this regard. Now, for preliminary evidence of the complainant, to come up on 10.4.2015.”

The petitioner appearing in person has submitted that a direction should be given to the Magistrate to pass a speaking order as to how the parameters laid down in **Lalita Kumari’s** case (supra) for registration of FIR are not applicable in the present case.

There does not appear to be any necessity to issue any such direction, however, it is observed here that the judgment of **Lalita Kumari's** case (supra) passed in context to the scope of Section 154 Cr.P.C. to adjudicate on the point whether a police officer is bound to register a First Information Report (FIR) upon receiving any information relating to commission of a cognizable offence under Section 154 Cr.P.C. or the police officer has the power to conduct a preliminary inquiry in order to test the veracity of such information before registering the same. In context to the said proposition, the Constitutional Bench has concluded in para 111 of the judgment as to in what circumstances it is mandatory to register an FIR and the circumstances where the preliminary inquiry could be conducted by the police officer.

In the said judgment, I have carefully perused the dictum as well as the ratio decidendi and I am of the opinion that the judgment of **Lalita Kumar's** case (supra) is of no help to the petitioner as he had opted to file a complaint under Section 156 (3) Cr.P.C. It is settled principle of law that whenever a judgment of a Court is to be relied upon the context in which the said judgment is passed has to be taken into consideration. Lines picked up from the judgment cannot be taken as a ratio of the judgment. A distinction has to be made between obiter dicta and the ratio of the judgment. Following judgments can be referred to in this context:-

- i) **Mahbood Dawood Shaikh Vs. State of Maharashtra,**
(2004) 2 SCC 362;

ii) **CIT Vs. Sun Engg. Works (P) Ltd.**, (1992) 4 SCC 363;

(iii) **William Stanley Vs. State of M.P.**, AIR 1956 SC 116;

wherein it was held that a decision is available as precedent only if it decides a question of law. A judgment should be understood in the light of the facts of the case and no more should be read into it than what it actually says. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of Supreme Court delivered from the context of the question under consideration and treat it to complete law decided by the Apex Court. The judgment may be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Court.

In **Government of Karnataka Vs. Smt. Gowranama**, 2008

(1) Law Herald (SC) 483, it was observed that judgment is not to be construed as statue and that reliance on decision without looking into background of the case is clearly impermissible.

Perusal of para 1 of the judgment of **Lalita Kumari's** case (supra) would refer to the question which was under consideration. It reads as:-

“The important issue which arises for consideration in the referred matter is whether “a police officer is bound to register a First Information Report (FIR) upon receiving any information relating to commission of a cognizable offence under Section 154 of

the Code of Criminal Procedure, 1973 (in short ‘the Code’) or the police officer has the power to conduct a “preliminary inquiry” in order to test the veracity of such information before registering the same?”

The judgment answers the question framed above. The observations of the Apex Court regarding registration of case in context to Section 154 Cr.P.C. do not govern the exercise of discretion of the Court under Section 156 (3) Cr.P.C.

The Judicial Magistrate Ist Class, Mohali has not committed any error in treating the complaint under Section 156 (3) Cr.P.C. as a complaint under Section 200 Cr.P.C. requiring the complainant to prove the allegations by leading cogent evidence and adjourn the case for producing preliminary evidence.

This petition is dismissed without prejudice to the rights of the petitioner to approach the learned Magistrate for submitting list of witnesses whom he intends to examine in preliminary evidence or to avail any other remedy available under law.

December 14, 2015
sanjay

(M.M.S.BEDI)
JUDGE