

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

**Crl. Revision No.1301 of 2011 (O&M)
Date of Decision: 19.02.2015**

Sukhdev Singh and othersPetitioners
Versus

Avinash Mohindru and othersRespondents

CORAM: HON'BLE MRS. JUSTICE JITENDRA CHAUHAN

Present: Mr. Bipan Ghai, Senior Advocate with
Mr. Mandeep Kaushik, Advocate
for the petitioners.

Mr. Mayank Mathur, Advocate
for respondent No.1.

Mr. Karanjit Singh, Advocate
for respondents No.2 and 4.

Mr. Shekhar Verma, Advocate
for respondent No.3.

Mr. Luvinder Sofat, AAG, Punjab.

JITENDRA CHAUHAN, J (ORAL)

Present revision petition under Section 397/401 read with Section 482 Cr.P.C. is directed against the order dated 31.01.2011 (Annexure P-1) passed by the learned District Judge, Amritsar whereby orders dated 17.02.2010 and 04.03.2010 passed in relation to a private complaint No.61/5.11.2009 under Section 156(3) were set aside.

A criminal complaint under Section 156(3) Cr.P.C. was preferred by the petitioners wherein allegation of hatching conspiracy to fabricate their records by introduction of an imposter

Sai Dass who died about 25 years ago, was filed against respondents. The learned Additional Chief Judicial Magistrate on the application filed by the petitioners, passed the following order on 15.01.2010:-

“The complaint, in original, alongwith its enclosures is ordered to be forwarded to the S.S.P., Amritsar for conducting detailed investigation and for taking appropriate action as per law. Due opportunity be given to the opposite party and report be sent to this Court. Ahlmad is directed to keep this order sheet with him and send its photocopy alongwith said original complaint to S.S.P., Amritsar and its enclosures. The file to come up on 02.03.2010 for awaiting the said police report. Ahlmad is directed to keep with him a photocopy of complaint and photocopies of the other enclosures.”

However, the petitioners moved another application for registration of the case against the accused and other persons under Sections 419, 420, 467, 468, 471 wherein on 17.02.2010, the SSP was directed to register FIR and start investigation as per law. The petitioners moved another application for issuance of directions to the SSP Amritsar/concerned SHO Police Station Sadar, Amritsar to comply with the order dated 17.02.2010 which was allowed on 04.03.2010. In compliance with the order dated 17.02.2010, a report from the police was received, which revealed that FIR had not so far been registered. Accordingly, the Commissioner of Police, Amritsar was directed to register an FIR in terms of the order dated 17.02.2010. The respondents preferred a revision against the order dated 17.02.2010 and 04.03.2010, which was

allowed by the learned revisional Court by holding that once the Magistrate had taken cognizance of evidence/complaint under Section 202 Cr.P.C. in that case the Magistrate could not have directed the police to register the application to make an investigation and further holding that the learned Magistrate had taken cognizance of the complaint under Section 202 Cr.P.C. From the case file it emerges that in the complaint it was ordered to be forwarded to SSP for conducting detail investigation and for taking appropriate action as per law by affording due opportunities to the parties. The orders dated 17.02.2010 and 04.03.2010 were set aside by the revisional Court primarily on the ground that those were passed under Section 202 Cr.P.C. In this context, order dated 15.01.2010 is clear and unambiguous. However, subsequent orders dated 17.02.2010 and 04.03.2010, whereby, the directions were given to SSP to register the case without waiting for next date to arrive and subsequent order dated 04.03.2010, directing the Commissioner to comply with the order dated 17.02.2010. The order dated 17.02.2010, directing the SSP to register a case and the order dated 04.03.2010 again directing the Commissioner to comply with the order is an expression of the concern to get the order of the Court i.e. 15.01.2010 executed. Order dated 15.01.2010 is clear and unambiguous. Subsequent orders dated 17.02.2010 and 04.03.2010 could be irregularity but the revisional Court erred in holding that the orders were passed under Section 202 Cr.P.C. Relevant extract

of order dated 15.01.2010 reads as under:-

“.....Perusal of the complaint and documents on the file reveals that some one had falsely personated the dead person namely Sain Dass and got certain documents forged with the intent to cause damage to the complainant. Thus, there are cognizable offences allegedly committed by some persons in connivance with each others which require detailed investigation on the following points:-

- i) Who had falsely personated the dead person namely Sain Dass and got the false documents forged.*
- ii) Who are the persons with whose connivance such false personation and forgery were made.*
- iii) Where and by whom such documents was used.”*

As per order dated 15.01.2010 a cognizable offence was made out. The reference points are clearly indicated that orders dated 17.02.2010 and 04.03.2010 are held to be irregularity and these orders were not passed under Section 202 Cr.P.C.

Therefore, the impugned order dated 31.01.2011, passed by the revisional Court setting aside the orders dated 17.02.2010 and 04.03.2010 are set aside. It is clarified that the order dated 15.01.2010 was essentially order passed in a complaint under Section 156(3) of the code. The State is now free to investigate the matter in the light of the order dated 15.01.2010.

Disposed of.

19.02.2015
Vinay

[JITENDRA CHAUHAN]
JUDGE