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

CRM-M-43470 of 2015

Date of decision: December 22, 2015

Neetu

.....Petitioner

Versus

Ram Niwas and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Vivek Khatri, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition under Section 482 of Code of Criminal Procedure, 1973 ('Cr. P.C.' for short) challenging the order dated 12.12.2015 (Annexure -3).

Learned counsel for the petitioner has submitted that as per the complaint Annexure P-1, allegations had been levelled against the accused qua maltreatment meted out to the petitioner on account of demand/insufficiency of dowry. The Magistrate has erred in not directing the police to register FIR against the accused.

Annexure P-1 is the complaint filed by the petitioner against respondents No.1 to 3 under Sections 498A, 406, 323, 506, 120-B/34 of Indian Penal Code, 1860 ('IPC' for short).

The case of the petitioner, in brief, is that she got married to respondent No.1 on 26.02.2012. Parents of the petitioner had given sufficient dowry at the time of her marriage and had spent about ₹10,00,000/-. Respondents

No.1 to 3, however, started harassing the petitioner on account of demand of dowry and asked the petitioner to bring a motorcycle and gold ornaments from her parents. Petitioner gave birth to a male child who was about 2½/3 years old and the petitioner was presently carrying eight months pregnancy. Petitioner was given beating in the first week of May 2015 by the accused and she was pressurised to bring her share from her Uncle and Aunt in the joint family property. When the petitioner refused to do so, she was locked in a room and was not given any food. Thereafter, petitioner left the matrimonial home and started residing with her Uncle and Aunt. Petitioner had moved a complaint to the police but no action had been taken so far.

Annexure P-2 is the report of the Crime Against Women (CAW) Cell, Hisar. A perusal of the same reveals that after the complaint was received from the Women Cell, both the parties were called and were counselled. On 23.10.2015, petitioner stated that she had filed the complaint as she wanted to divorce her husband and did not want to live with him. Respondent No.1 made the statement that she wanted to keep the petitioner in the matrimonial home. Consequently, report was submitted that no cognizable offence had been committed.

Thereafter, the petitioner filed the complaint under Section 156 (3) Cr. P.C. In the said complaint, Magistrate passed the following order:-

"An application for sending the complaint under Section 156 (3) of Cr. P.C. has been moved against the alleged accused under Sections 498-A, 406, 323, 506, 120B IPC. Head. A perusal of the application as well as report received from Rachna ASI Incharge CAW Cell Hisar perused. Administration of justice cannot be used to harass a person merely on the allegations unless supported by evidence. Moreover, no prejudice is likely to be caused to the applicant if the case is not registered as if she subsequently succeeds to prove her case by convincing piece of evidence, the accused can be summoned. As at this stage, the Court is not satisfied to register a case against the accused, the request of applicant through the instant application is hereby declined.

Now, the case stands adjourned to 18.1.2016 for preliminary evidence of the complainant at own responsibility."

Section 156(3) Cr. P.C. reads as under:-

"Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned."

The Magistrate had the jurisdiction either to send the complaint to the police for registration of the FIR or itself take cognizance of the matter. It is not in every case that on an application moved by the complainant, the Magistrate is duty bound to order registration of FIR.

Section 2(d) Cr.P.C. reads as under:-

"'Complaint' means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this code, that some person, whether

known or unknown, has committed an offence, but does not include a police report”.

Thus, as per the above provision, whenever an application is addressed to the Magistrate containing an allegation that an offence has been committed and the accused persons were liable to be punished under the relevant provision of law, it can be said that a complaint has been filed before the Magistrate.

In the present case, when the matter was inquired by the police, it transpired that no cognizable offence could be said to have been committed by the accused. The Magistrate after considering the police report as well as the contents of the complaint found that the allegations levelled by the petitioner were with a view to harass the accused without any supporting evidence. Moreover, the Magistrate has directed the petitioner to lead evidence in support of her case. Thus, the Magistrate while passing the impugned order has exercised jurisdiction vested with him.

In the facts and circumstances of the present case, the impugned order cannot be said to be illegal and calls for no interference.

Dismissed.

(SABINA)
JUDGE

December 22, 2015
mahavir