

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-7541 of 2015 (O&M)

Date of Decision:20.03.2015

Bhupinder Singh

....Petitioner

Versus

State of Punjab

....Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. K.V. Nanda, Advocate for the petitioner.

NAVITA SINGH, J.

1. This petition is filed for quashing the order dated 21.10.2014 passed by Sub Divisional Judicial Magistrate, Derabassi, vide which the Magistrate ordered that the application filed by the petitioner under Section 156 (3) of the Code of Criminal Procedure (Cr.P.C. for short) shall be attached with the file of FIR No.178 dated 14.5.2014 under Section 302 IPC of Police Station Zirakpur. Direction is also sought that the Magistrate should decide the application of the petitioner in accordance with law.

2. The facts of the case are that the petitioner had lodged the FIR mentioned above and while investigation was going on, he filed a complaint under Section 156 (3) Cr.P.C. against mother and sister of the previous accused named in the FIR. The Magistrate at Derabassi did not decide the application and ordered that since the case by way of FIR regarding the same offence was already pending, file of the application filed later on by the petitioner would be attached with the other criminal case pending before Additional Sessions Judge-I, Mohali.

3. Counsel for the petitioner argued that the Magistrate had no power to get the file of the application attached with the file of the FIR because he was required to pass an order on the complaint made by the petitioner as at the initial stage, the matter was to be tried by him. He should have either proceeded under Section 202 or Section 204 Cr.P.C.

4. On query, counsel for the petitioner could not convince the court as to why in the first place, application under Section 156 (3) Cr.P.C. was filed and why a simple private complaint was not filed, if the petitioner was aggrieved that two of the accused persons had been left out by the police. Under Section 156 (3) Cr.P.C., Magistrate can order investigation and provisions of Section 190 Cr.P.C. are related to it. There is no provision in any of the said sections making it incumbent for the Magistrate to decide the application under Section 156 (3) Cr.P.C. as a complaint. Since the case by way of FIR was already pending, the Magistrate rightly ordered that the application be attached with that file as there was no requirement of law to decide the application as a complaint by making preliminary inquiry. If the petitioner desires the mother and sister of the other accused in the FIR case, to be summoned as accused, he will have the opportunity for making his statement before the trial Court and request for summoning of those persons under Section 319 Cr.P.C.

5. The contention on behalf of the petitioner that the impugned order was passed in defiance of the legal provisions would not hold ground for the reasons given above.

6. The petition is misconceived and is dismissed.

(NAVITA SINGH)
JUDGE

20.03.2015

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Whether to be referred to reporter: Yes