

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.29468 of 2015
and
Criminal Revision No.3365 of 2015

.....

Date of decision:9.9.2015

Sudarshan Kumar Goyal

...Petitioner

v.

Prem Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Anil Shukla, Advocate for the petitioner.

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Inderjit Singh, J.

Cr. Misc.29468 No. of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 56 days in filing the criminal revision petition is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Rev. No.3365 of 2015:

This criminal revision petition has been filed under Section 401 Cr.P.C. challenging the impugned order dated 23.4.2015 passed by learned Additional Chief Judicial Magistrate, Ludhiana, whereby the petition filed under Section 156 (3) Cr.P.C. for directions to the S.H.O. of Police Station Division No.5, Ludhiana to register the FIR for tampering with the judicial

record, planting fabricated and forged affidavit dated 7.2.2009 and for forgery and fraud against the respondent and to submit the investigation report has been dismissed.

I have heard learned counsel for the petitioner and have gone through the record.

The present petitioner filed the complaint under Section 156 (3) Cr.P.C. for directions to the S.H.O., Police Station Division No.5, Ludhiana to register the FIR against the accused persons in the Court. The learned Additional Chief Judicial Magistrate vide the impugned order dated 23.4.2015 directed the complainant to lead the evidence in the Court and it was also held by the Court that even if at any stage it is required, the report under Section 202 Cr.P.C. can be called. The Court has passed the detailed order by stating that by taking the cognizance by itself, it is the discretion of the Court under Section 156 (3) Cr.P.C. either to take cognizance himself by treating it as a complaint or to send the same to the Police for registration of the case. No illegality has been committed by the learned Additional Chief Judicial Magistrate, Ludhiana, while passing the impugned order in view of the law laid down by the Hon'ble Supreme Court in Madhao and another v. State of Maharashtra and another, 2013 (2) R.C.R. (Cr.) 975, wherein it was observed that where Magistrate choose to take cognizance he can adopt any of the following alternatives:-

“(a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightway issue process to the accused but before he does so he must comply

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with the requirements of Section 200 and record the evidence of the complainant or his witnesses.

(b) The Magistrate can postpone the issue of process and direct an enquiry by himself.

(c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the Police.

It has been further held in the case as under:-

(i) In case the Magistrate after considering the statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceedings he can dismiss the complaint.

(ii) Where a Magistrate orders investigation by the Police before taking cognizance under Section 156(3) of the Code and receives the report thereupon he can act on the report and discharge the accused or straightway issue process against the accused or apply his mind to the complaint filed before him and take action under Section 190 of the Code.”

After going through the above law laid down by the Hon'ble Supreme Court, and in view of the above discussion, I find no merit in the present criminal revision petition and the same is dismissed.

September 9, 2015.

(Inderjit Singh)
Judge

hsp