

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

CRM No.M-27179 of 2013 (O&M)

Date of Decision: June 01, 2016

Sabar Hassan

...Petitioner

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.J.S.Uppal, Advocate
for the petitioner.

Ms.Shivali, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.G.S.Bhatia, Advocate
for respondent No.2.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. against respondents State of Haryana and Abdul Jabbar for setting aside the judgment dated 12.08.2013 passed by learned Addl. Sessions Judge, Sangrur, whereby the order dated 30.04.2013 passed by learned Sub Divisional Judicial Magistrate, Malerkotla, in an application under Section 156(3) Cr.P.C. filed by the petitioner for issuing directions to Illaqa Police for registration of case, was set aside.

Notice of motion was issued and learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petition.

I have heard learned counsel for the parties as well as learned

State counsel and have gone through the record.

From the record, I find that learned SDJM, Sangrur passed following order on the application filed before him under Section 156(3) Cr.P.C.:-

“Heard from the perusal of the record it has been revealed that the applicant/complainant has filed the present application under Section 156(3) Cr.P.C. for issuing directions to SHO, P.S. City-2, Malerkotla, to hold an inquiry and registered a criminal case against the accused. So, the SHO, P.S. City-2 MLK, is directed to hold an inquiry and to submit his report under Section 202 Cr.P.C. on 03.07.2013.”

The above order has been challenged before learned Addl. Sessions Judge, Sangrur, who set aside the order passed by learned SDJM, vide detailed impugned judgment dated 12.08.2013 and the matter was remanded back with directions to learned Magistrate to reconsider the matter afresh in accordance with the provision of the Code of Criminal Procedure.

I have gone through the judgment dated 12.08.2013 passed by learned Addl. Sessions Judge, Sangrur and the order dated 30.04.2013 passed by learned SDJM, Sangrur.

In the application under Section 156(3) Cr.P.C., it is the discretion of the Court, in the facts and circumstances, to pass an order for registration of the case or to take the cognizance itself in the complaint and if the Magistrate takes the cognizance himself and does not send the complaint for registration of a case under Section 156(3) Cr.P.C., the Magistrate can ask for the report from the police under Section 202 Cr.P.C. after recording the statement of the complainant or any witness present on that day. In the present case, it looks that learned SDJM, Sangrur, was not clear about the matter in dispute. In the order, at one time, he has given the directions to the

SHO to hold enquiry and register criminal case against the accused and at the same time, he also asked the SHO, P.S. City-2 to hold the enquiry and to submit the report under Section 202 Cr.P.C., which means that the Court passed one order for registration of the case under Section 156(3) Cr.P.C. and second order for holding enquiry and then to submit report under Section 202 Cr.P.C. It is clear that in a complaint case, either Magistrate has the power to send the complaint under Section 156(3) Cr.P.C. or he can refuse in the facts and circumstances to send the complaint to the police for registration of FIR and take the cognizance himself. The perusal of the order passed by learned SDJM, Sangrur, shows that he has also sent the complaint under Section 156(3) Cr.P.C. for registration of case and also took the cognizance himself by calling the report under Section 202 Cr.P.C. Both these orders, cannot be passed simultaneously.

Therefore, on the face of it, the order dated 30.04.2013 passed by learned SDJM, Sangrur, is not as per law and the same is liable to be set aside. Learned Addl. Sessions Judge, Sangrur, has discussed in detail about this fact and revision petition was allowed and the matter was remanded back for re-consideration. No illegality has been committed by learned Addl. Sessions Judge, Sangrur, while passing the impugned judgment dated 12.08.2013 and the same is not liable to be set aside.

Therefore, finding no merit in the present petition, the same is dismissed.

June 01, 2016
Vgulati

(INDERJIT SINGH)
JUDGE