

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

**Criminal Misc.No.M-27907 of 2015 (O&M)
Date of Decision : 07th November, 2016**

Vishal Swara

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Bhupinder Ghai, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana
for the respondent(s)-State.

AJAY TEWARI, J. (Oral)

Petitioner has preferred the instant petition under Section 482 Cr.P.C., for quashing of order dated 05.12.2014, passed by the learned Judicial Magistrate Ist Class, Gurgaon and order dated 31.03.2015, passed in Criminal Revision by the learned Addl. Sessions Judge Gurgaon vide which the petitioner has been summoned to face trial.

It is averred that the petitioner is the Managing Director of the Private Security Agency and is accused of an offence under Section 20 (2) of the Private Security Agencies (Regulation) Act, 2005. Vide order dated 05.12.2014 (Annexure P-1), the trial Court acting on report under Section 173 Cr.P.C. framed charge against the petitioner and by the order dated 31.03.2015 (Annexure P-4), the Revisional Court dismissed his revision petition against the said charge.

The precise grievance of learned counsel for the petitioner is that an offence under this Act is non-cognizable offence and consequently, the procedure of Section 155 Cr.P.C. is applicable for the investigation and trial thereof. Section 155 Cr.P.C. reads as follows:-

“155. Information as to non- cognizable cases and investigation of such cases. -- (1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non- cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non- cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non- cognizable.”

As per learned counsel for the petitioner, in the present case the police directly investigated the case and filed a charge sheet which was illegally acted upon by the learned trial Court and the challenge thereto was also wrongly rejected.

Learned State counsel is not in a position to counter the argument that the provisions of Section 155 Cr.P.C. are applicable and that no order was obtained from a competent Magistrate to initiate the investigation.

In these circumstances, the present petition is allowed. The impugned orders are set aside. However, liberty is granted to the prosecution to take action as per law.

07th November, 2016
mamta

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	Yes/No
<i>Whether Reportable :</i>	<i>Yes/No</i>