

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRM No.M-31281 of 2013 (O&M)
Date of decision: January 21, 2016.

Randhir Singh

... **Petitioner**

v.

State of Punjab and others

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE KULDIP SINGH**

Present: Mr. S.S. Malik, Advocate for the petitioner.

Mr. Varun Sharma, Assistant Advocate General, Punjab.

Mr. Karan Garg, Advocate for respondent No.2.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *Whether to be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral):

CRM No.2084 of 2016 is allowed, as prayed for. Reply
filed by respondent No.2 is taken on record.

Impugned in the present petition is the order dated
9.7.2013 (Annexure P-4) passed by learned Sub Divisional Judicial
Magistrate (SDJM), Dera Bassi vide which the application filed by the
petitioner under Section 156(3) Cr.P.C. for directing the SHO, Police
Station Dera Bassi to register the FIR, was dismissed.

I have heard Learned Counsel for the parties.

Word “complaint” is defined in Section 2(d) of the Code of
Criminal Procedure as under:-

“(d) “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.”

Present petitioner has filed an application which is in fact a criminal complaint before the SDJM, Dera Bassi in which request was made under Section 156(3) Cr.P.C. for directing the SHO to register the FIR. It was the prerogative of the Magistrate to pass appropriate directions for registration of FIR. However, a perusal of the said application, which is in fact a criminal complaint, though mentioned as application, shows that the applicant levelled allegations of commission of criminal offences. In these circumstances, if the Magistrate decides not to forward the same to the SHO for registration of a case, then he is required to follow the procedure for trial of cases instituted otherwise than on police report. In that eventuality, the Magistrate is to comply with the provisions of Chapters XIX or XX of Cr.P.C. It is evident from the impugned order that such procedure was not followed. After going through the application, which is in fact a criminal complaint, and hearing the counsel for the complainant, the impugned order was passed, observing as under:-

“This Court has heard the submissions made by learned counsel for the complainant. The matter involved in this case is purely of civil nature and for the purpose of enforcement of alleged agreement to sell dated 17.5.2012, the applicant has the remedy to go for enforcement of the agreement by way of civil suit for specific performance or he can file a suit for recovery of amount that he has

allegedly already paid to the respondent/accused persons. This Court has not found any ground for the purpose of recommending the registration of FIR/criminal case by police. Therefore, this application is found meritless and the same is hereby dismissed. However, complainant is at liberty to file private complaint if so desired. Application is ordered to be consigned to the record room after due compliance.”

I am of the view that the said order is against the provisions laid down in the Code of Criminal Procedure. The Magistrate granted the liberty to the complainant to file a private complaint ignoring the fact that the present application, though mentioned as an application, is in fact a criminal complaint before the Magistrate.

It being so, the impugned order is not sustainable in the eyes of law and is set aside. The Magistrate is directed to follow the procedure for disposal of the cases instituted otherwise than on police report, i.e., complaint cases and after recording preliminary evidence, pass appropriate order. The petitioner is directed to appear before the SDJM, Dera Bassi on 24.2.2016 at 10 AM.

The petition stands allowed accordingly.

January 21, 2016.
kadyan

[Kuldip Singh]
Judge