

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

CRM No.M-36291 of 2014 (O&M)
Date of decision: February 12, 2016.

Manpreet Singh

... **Petitioner**

v.

State of Punjab and others

... **Respondents**

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

Present: Mr. Amit Jhanji, Advocate for the petitioner.

Mr. Amritpal Singh Gill, Asstt. Advocate General, Punjab.

Mr. Maharaj Kumar, Advocate for respondent No.5.

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):

In the present petition, the petitioner seeks quashing of order dated 8.9.2014 (Annexure P-7) passed by learned Judicial Magistrate 1st Class, Patiala wherein, in a complaint filed by the petitioner making request under Section 156(3) Cr.P.C. for giving direction to the police to register the case, the Magistrate decided to proceed with the complaint and directed the complainant to lead preliminary evidence.

The short facts which are required to be considered for the disposal of the present petition are that it is alleged that in a criminal investigation, the complainant – present petitioner, along

with Satpal Singh made a joint statement in the office of Vigilance Bureau on 26.11.2016 that they do not want to proceed the matter further. This is alleged to have been done in connivance with Birbal Singh, Deputy Superintendent of Police. The complainant stated that he never appended his signatures over the alleged joint statement and same are forged. After availing other remedies, ultimately the present complaint was filed in which the said request was made.

I have heard Learned Counsel for the parties.

Contention of learned counsel for the petitioner is that in view of Lalita Kumari v/s Govt. of U.P., 2013(4) RCR (Cr.) 979, the Magistrate should have directed the registration of the case and failure on the part of the Magistrate to do so shows non application of mind. The Magistrate has given following reasoning while refusing to give directions to the Police for registration of the case :-

"Now in view of the facts and circumstances of the case and from the material on record, it is very much clear that the offence which complainant allege to have been committed by accused is not of such a nature, for which an investigation is needed as the same is based upon documentary evidence. Furthermore the accused no.2 involved in the present is also a higher police official and complainant has already showed dissatisfaction against investigating agency. As such in such an eventuality, it is expedient in the interest of justice that the present application moved by the complainant be treated as private complaint for just and proper conclusion of the case. As far as judgment cited by the complainant is concerned, in the case of Lalita Kumari vs Government of U.P. & Ors., Hon'ble Supreme Court has though

observed that in cases in which some of cognizable offence is found, then police is bound to register FIR but no where it has been directed by the Hon'ble Supreme Court that in case an application is filed u/s 156(3) Cr.P.C., then Magistrate is bound to give direction for registration of the FIR against the accused. ...”

It shows that Lalita Kumari's case (supra) was considered by the Magistrate. In Lalita Kumari's case, it was nowhere directed by the Apex Court that in case an application is filed under Section 156(3) Cr.P.C., then the Magistrate has no other option but to send the same to the police for registration of the case. The Magistrate has the power to send it to the police or treat the same as a private complaint and can himself try the same. However, in this case, Magistrate exercised the second option. In this case, in view of the allegations, the complainant is required to summon the complaint, joint statement and then examine the expert witness. For this purpose, no investigation is required to be conducted by the police. Since a police official is allegedly involved in the crime, therefore, fair investigation by the police is not expected. In these circumstances, no illegality or perversity is found in the impugned order.

Accordingly, the present petition is dismissed with the observation that it shall be open to the petitioner to summon the joint statement from the police file and prove his case. However, if for one or the other reason, the police does not produce original statements, the petitioner shall be at liberty to move an application for leading secondary evidence and then lead the secondary evidence to further

prove that his signatures on said statement are forged. The case is already fixed for preliminary evidence. The petitioner is free to lead further preliminary evidence before the trial court accordingly.

February 12, 2016.
kadyan

[Kuldip Singh]
Judge