

CRM-M-38345-2016 (O&M)

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

**CRM-M-38345 of 2016 (O&M)
Date of Decision: October 26, 2016.**

Rakesh

.. Petitioner(s)

VERSUS

Dinesh and others

.. Respondent(s)

*** * ***

CORAM: HON'BLE MR.JUSTICE M.M.S.BEDI

*** * ***

**PRESENT Mr.Satya Vir Singh Yadav, Advocate,
for the petitioner.**

M.M.S. BEDI, J. (ORAL)

Petitioner is facing trial in FIR No.255 dated 12.9.2013, under Sections 323 and 452 read with Section 34 IPC, registered at Police Station, Farrukh Nagar, District Gurgaon.

The petitioner filed a complaint under Section 156 (3) Cr.P.C., for offences under Sections 323, 392 and 506 read with Section 34 IPC, in the Court of Judicial Magistrate First Class, Pataudi against respondents. The said application under Section 156 (3) Cr.P.C. appears to have been treated as a private complaint in which the statements of complainant as CW1, Jagdish as CW2 and Satish as CW3 have been recorded. The Magistrate vide order dated 26.4.2014, sent for

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a report under Section 202 Cr.P.C. which was submitted on 29.9.2014. The Judicial Magistrate First Class, Pataudi, on appreciation of the material before it dismissed the complaint vide order dated 4.12.2014.

Aggrieved by the said order, the petitioner file a revision petition before the Additional Sessions Judge, Gurgaon. The revisional Court after going through the preliminary evidence, the documents and the report under Section 202 Cr.P.C., affirmed the order of dismissal of complaint vide order dated 31.8.2016.

Counsel for the petitioner-complainant through the present petition under Section 482 Cr.P.C., has challenged the order dated 31.8.2016, mainly on the ground that the complaint of the petitioner has been wrongly dismissed as the petitioner-complainant being an Army person had been treated by the Medical Officer at the Base Hospital, Delhi Cantt. where the injury suffered by the petitioner had been treated.

Counsel for the petitioner has submitted that the said document has not been taken into consideration before dismissing the complaint by the Judicial Magistrate First Class, Pataudi.

I have heard the learned counsel for the petitioner and I am of the opinion that the petitioner had opted to file a complaint under Section 156 (3) Cr.P.C., which is meant for seeking a direction for registration of FIR. The Judicial Magistrate First Class, Pataudi, in his discretion had not ordered the registration of FIR but had opted to treat the same as a complaint under Section 156 (3) Cr.P.C. and gave

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opportunity to the petitioner to produce preliminary evidence. It was required from the petitioner to summon the relevant medical report. It appears that no report had been tendered or summoned as is apparent from the order passed by the revisional Court.

Counsel for the petitioner has submitted that the medical report was already with the police and it was incumbent upon the Court to summon the same.

After hearing the counsel for the petitioner, I am of the opinion that since an FIR had been registered against the petitioner and the provisions of law made it mandatory for the Illaqua Magistrate to ask for a report. The learned Judicial Magistrate First Class, Pataudi, has not committed any error in exercising jurisdiction under Section 202 Cr.P.C. for calling for a report. On the basis of the material available on the record, the objective satisfaction of the learned Judicial Magistrate cannot be interfered with especially when the entire material has been looked into by the revisional Court. It appears that in order to create a defence in the criminal case registered against him, the petitioner had filed the complaint.

No ground is made out for interference in the order passed by the Courts below.

The petition is dismissed.

(M.M.S. BEDI)
JUDGE

October 26, 2016.

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Whether speaking / reasoned
Whether reportable:

Yes / No
Yes / No