

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

**CRR No.1161 of 2015 (O&M)
Date of Decision: August 23, 2016**

Arvind Bansal and another

...Petitioners

VERSUS

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.S.Bedi, Senior Advocate with
Mr.Sunil Sihag, Advocate
for the petitioners.

Mr.Vikramjit Singh, Addl. Advocate General, Haryana
for the respondent-State.

Mr.S.K.Jain and Mr.Akshay Jain, Advocate
for respondent No.2.

INDERJIT SINGH, J.

The present revision has been filed by the petitioners Arvind Bansal and Mahender Partap under Section 401 Cr.P.C. against respondents State of Haryana and Kulwant Rai Jindal, challenging the impugned judgment dated 04.03.2015 passed by learned Addl. Sessions Judge, Sirsa, vide which the revision petition filed by respondent No.2 was allowed and the order dated 17.04.2014 passed by learned Chief Judicial Magistrate, Sirsa 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 revision

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 earlier a complaint was filed by complainant Kulwant Rai Jindal against accused Arvind Bansal and Dr.Mahender Partap under Section 156(3) Cr.P.C. before the Court of learned Chief Judicial Magistrate, Sirsa. Learned CJM, Sirsa, vide order dated 20.03.2014, by holding that already a case is pending in that Court between the parties, found no justification for sending the complaint to the police under Section 156(3) Cr.P.C. and the complaint was ordered to be treated as private complaint and fixed the same for preliminary evidence. A revision was filed by the complainant (present respondent No.2) against that order dated 20.03.2014 and learned Addl. Sessions Judge, Sirsa, vide judgment dated 27.03.2014, without giving any notice to the respondent-accused in the revision petition, accepted the same and set aside the order dated 20.03.2014 and remanded the matter back to learned CJM, Sirsa to pass the order in view of the law laid down in ***Lalita Kumari vs. Govt. of U.P. and others, AIR 2014 SC 187.***

The perusal of the judgment dated 27.03.2014 passed by learned Addl. Sessions Judge, Sirsa, itself shows that this judgment is illegal, firstly because no notice was given to the accused while accepting the revision and secondly, ***Lalita Kumari's case (supra)*** does not deal with the matters relating to 156(3) Cr.P.C.

As the matter was remanded back, learned CJM, Sirsa again passed a detailed order while discussing the law and dismissed the application under Section 156(3) Cr.P.C. vide order dated 17.04.2014.

Again, a revision petition was filed by the complainant against order dated 17.04.2014 and learned Addl. Sessions Judge, Sirsa, again accepted the revision petition and set aside the order dated 17.04.2014 passed by learned CJM, Sirsa and the matter was remanded back to pass fresh order vide impugned judgment dated 04.03.2015.

Aggrieved from the judgment dated 04.03.2015, present revision petition has been filed by the accused-petitioners.

From the record, I find that learned CJM, Sirsa, while passing order dated 17.04.2014, discussed the facts of the case as well as the law. Learned CJM, Sirsa has rightly held that Magistrate is not under obligation and it is not mandatory for the Magistrate to send the complaint under Section 156(3) Cr.P.C. to the police for registration of the case. The view taken by learned CJM, Sirsa, is correct and as per law. It is for the Magistrate to look into the facts of the case and then to decide whether that is to be sent to the police for registration of case under Section 156(3) Cr.P.C. or it should be treated as private complaint. In ***Lalita Kumari's case (supra)***, the findings were that where a cognizable offence is committed, the police is to register the case, though in some cases after holding preliminary enquiry. Learned CJM, Sirsa, discussed the provisions of Section 199 Cr.P.C. and held that as the accused also stated to have committed the offence of defamation, therefore, Section 199(1) Cr.P.C. provides that no court shall take cognizance of an offence under Chapter 21 of the Indian Penal Code, 1860 except on a complaint made by some person aggrieved by the offence, which means that offence punishable under Chapter 21 IPC debars the Court to get the case registered under Section

provisions in detail and also relied upon the law.

In my view, the findings given by learned CJM, Sirsa, are correct and as per law. Learned CJM, Sirsa further held that if the Court find from the facts that it warrant a thorough and detailed investigation, then the Magistrate should refer the matter to police for investigation under Section 202 Cr.P.C.

The perusal of the order dated 17.04.2014 passed by learned CJM, Sirsa, shows that no illegality has been committed by learned Magistrate while passing the order. In the revision petition, this Court is only to see whether the lower Court has committed any illegality while passing the order. I find that no illegality has been committed by learned CJM, Sirsa, while passing the order dated 17.04.2014.

In view of the above discussion, I find that the impugned judgment dated 04.03.2015 passed by learned Addl. Sessions Judge, Sirsa, is not as per law and the same is set aside.

Therefore, finding merit in the present revision petition, the same is allowed.

The order dated 17.04.2014 passed by learned CJM, Sirsa, is upheld and the judgment dated 04.03.2015 passed by learned Addl. Sessions Judge, Sirsa, is set aside. The trial Court is directed to proceed further with the case, as per law.

August 23, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes