

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

**Criminal Misc. No. M-25748 of 2017
Date of Decision:-21.7.2017**

Babita Rani

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Kuldeep V. Singh Ahluwalia, Advocate
for the petitioner.

HARI PAL VERMA J.

Petitioner Babita Rani wife of Prince Kumar has filed the present petition under Section 482 Cr.P.C. seeking quashing the judgment dated 10.4.2017 passed by learned Additional Sessions Judge, SAS Nagar, Mohali (Annexure P-3) whereby her revision petition filed against the order dated 17.1.2017 passed by Additional Chief Judicial Magistrate, SAS Nagar, Mohali, was dismissed. Learned Magistrate has dismissed her complaint filed under Section 156(3) Cr.P.C. and declined to summon the accused.

Briefly stated, petitioner had filed an application under Section 156(3) Cr.P.C. before the learned Magistrate seeking direction to the respondent-State to register an FIR under Sections 379, 420, 406, 417, 465,

467, 468, 471 and 120-B IPC against respondent No.5. As per the complaint, in the year 2007 a DDR bearing No.46 dated 6.9.2007 at Police Station Phase VIII, Mohali was lodged by Prince Kumar, the husband of the petitioner regarding loss of his hand bag containing documents, which include signed cheques of Indian Overseas Bank, Zirakpur Branch, blank stamp papers, letter-pad papers and other relevant papers somewhere in Sector 68, Mohali. But till date those documents have not been found. After the aforesaid DDR, the applicant found that a summoning order dated 21.1.2010 has been issued by the Sub Divisional Magistrate, Amloh, whereby in proceedings under Section 138 of Negotiable Instruments Act (hereinafter called 'the Act') a cheque bearing No.585752 dated 6.6.2009 for an amount of Rs.67,64,019/- was issued for discharge of liability. On presentation, the said cheque, it was dishonoured by the bank. The applicant found that respondent No.5 has prepared a false and fabricated documents while misusing the stolen blank signed cheques of the applicant. On the basis of this cheque, respondent No.5 filed a complaint under Section 138 of the Act. The petitioner appeared before the police authority and submitted a representation of her false implication in the case by misusing blank signed cheques. Moreover, the account from which the cheque in question was issued, was already closed in the year 2004, but no action thereof was taken by the police authority on the representation. Accordingly, the petitioner filed CRM No.M-35290 of 2010, before this Court, wherein this Court had permitted the petitioner to withdraw his petition, so as to enable the petitioner to avail alternative remedy and to file

the present application under Section 156(3) Cr.P.C.

The application filed by the petitioner under Section 156(3) Cr.P.C. has been dismissed by learned Magistrate as the DDR dated 06.9.2007, which has been placed on file only mentions loss of some cheques of Indian Overseas Bank, Zirakpur and it is neither in the statement of complainant nor her husband that the prosecution lodged under Section 138 of the N.I. Act at Fatehgarh Sahib Court is qua cheques issued by the said Bank i.e. Indian Overseas Bank, Zirakpur. The petitioner has neither placed on record the copy of cheque qua which she has been summoned, nor any order of the Court that any bank official has been examined to show that the said cheque, which as per the complaint at Fatehgarh Sahib dated 6.6.2009 was part of cheque book containing the said series, which was issued by the bank prior to lodging the DDR dated 6.9.2007.

Against the dismissal of the complaint filed under Section 156 (3) Cr.P.C., petitioner preferred a revision petition against the order dated 17.1.2017 passed by learned Additional Chief Judicial Magistrate, SAS Nagar, Mohali, but the same was also dismissed by learned Additional Sessions Judge, SAS Nagar, Mohali on the ground that the contents of complaint and evidence led on record by the complainant does not disclose any offence on the face of it and the learned Magistrate has rightly held that no sufficient grounds are made out to summon the accused to face trial in any offence. Reference of **Pepsi Food Ltd. vs. Special Judicial Magistrate, 1988 Vol.5 CCC 749** has also been made wherein the Hon'ble Apex Court has held that summoning of an accused in a criminal case is a

serious matter and the criminal Law cannot be set into motion as a matter of course in order to summon an accused in the complaint, the prosecution is required to establish a prima facie case.

It is against the order dated 10.4.2017 passed by learned Additional Sessions Judge, whereby revision petition filed by the petitioner was dismissed, petitioner has filed the instant petition.

Learned counsel for the petitioner while placing reliance on the judgment of **Sakiri Vasu vs. State of U.P. and others 2008(1) RCR (Criminal) 392** has argued that the Magistrate has power under Section 156 (3) Cr.P.C. to order police to register FIR, though such power is not expressly mentioned in Section 156(3) Cr.P.C. The Magistrate is legally bound to direct the police to register the FIR.

I have heard learned counsel for the parties.

So far as CRM-M-35290 of 2010 is concerned, there is no dispute about the aforesaid order but, that order is of no help to the petitioner. The controversy as to whether the Magistrate is bound to direct the police to register FIR in a mechanical manner, has been considered by this Court in various judgments. In the case of **Radhey Shyam vs. State of Haryana and others 2014(17) RCR (Criminal) 521** this Court while placing reliance upon **Sukhwasi vs. State of U.P. 2008 (1) RCR (Crl.) 520 (Allahabad)** has held that when the learned Magistrate comes to the conclusion that on the facts no cognizable offence is made out, he can opt not to send the complaint to the police authorities for registration of the case. Relevant extract of **Sukhwasi's** case (supra) is as under :-

“8. The matter may be looked into from another angle, and that is, in Section 154(3) Criminal Procedure Code where the Superintendent of Police has been given the authority for registration of First Information Report, the word used is 'Shall'. Section 154(3) Criminal Procedure Code is as hereunder :

"154. Information in cognizable cases.-

(1)

(2)

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing, and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence shall either investigate the case himself or direct an investigation to be made, by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer incharge of the police station in relation to that offence."

In Section 156(3) Criminal Procedure Code, the word used is 'May' Section 156(3) Criminal Procedure Code is as follows :

156. Police officer's power to investigate cognizable case-

(1)

(2)

(3) Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned.

9. The use of the word 'Shall' in Section 154(3) Criminal Procedure Code and the use of word 'May' in Section 156 (3) Criminal Procedure Code should make the intention of the legislation clear. If the legislature intended to close options for the Magistrate, they could have used the word 'Shall' as has been done in Section 154(3) Criminal Procedure Code Instead, use of the word 'May' is, therefore, very significant, and gives a very clear indication, that the Magistrate has the discretion in the matter, and can, in appropriate cases, refuse to order

registration.

On the basis of the aforesaid judgment, this Court in the case of **Radhey Shyam vs. State of Haryana and others** (supra) has held that in appropriate cases the Magistrate has got the jurisdiction to decline the prayer of the complainant for referring the case to the Station House Officer for registration of the FIR. The aforesaid proposition has also been dealt by the Hon'ble Apex Court in **Madhao and another vs. State of Maharashtra and another 2013(2) RCR (Criminal) 975** wherein the Apex Court has observed that while considering the statements of complainant and the witnesses, if the Magistrate is not satisfied that there are sufficient grounds for proceeding in the complaint, he can dismiss the complaint. Relevant extract of paras 14, 15 and 16 are reproduced hereunder :-

“14. Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives :-

(a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightaway issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.

(b) The Magistrate can postpone the issue of process and direct an enquiry by himself.

(c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.

15. In case the Magistrate after considering the

statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceeding he can dismiss the complaint.

16. Where a Magistrate orders investigation by the police before taking cognizance under Section 156(3) of the Code and receives the report thereupon he can act on the report and discharge the accused or straightaway issue process against the accused or apply his mind to the complaint filed before him and take action under Section 190 of the Code.”

Moreover, in the case in hand the DDR was registered on 6.9.2007 whereas cheque in question was issued on 6.6.2009 i.e. more than two years after the said DDR, coupled with the fact that neither in the statement of the complainant nor her husband there is any mention that the prosecution lodged under Section 138 of the N.I. Act is qua the same cheque which was subject matter of the DDR, this Court finds that the orders passed by the Courts below does not warrant any interference.

Dismissed.

July 21, 2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No