

Criminal Misc. No. M-20989 of 2016**IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH****Criminal Misc. No. M-20989 of 2016
Date of decision: November 12, 2018**Neeraj Sharma

....Petitioner

Versus

State of Haryana and others

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present: Mr. Manish Verma, Advocate, for the petitioner
Mr. Munish Sharma, AAG, Haryana for the
State/respondents Nos. 1 to 3
Mr. L.M. Gulati, Advocate, for respondents no. 4 to 7

Fateh Deep Singh, J.

Through the instant petition under Section 482 of the Code of Criminal Procedure (in short, Cr.P.C.), a prayer has sought to be made by the complainant-wife whereby she has sought quashment of orders dated 3.5.2016 Annexure P/2 of the learned Additional Chief Judicial Magistrate, Panchkula which has merged in orders dated 3.6.2016 Annexure P/4 of the court of learned Additional Sessions Judge, Panchkula in revision upholding the orders of the trial court thereby refusing the prayer of the present petitioner-complainant for referring the matter to the police for investigations

Criminal Misc. No. M-20989 of 2016

and registration of FIR by resorting to the provisions of Section 156(3) of the Cr.P.C.

Heard Mr. Manish Verma, Advocate, for the petitioner; Mr. Munish Sharma, AAG, Haryana for the State/respondents Nos. 1 to 3 and Mr. L.M. Gulati, Advocate, for respondents no. 4 to 7 and perused the records.

Section 190 of the Cr.P.C. by way of sub-section (1) provides that any Magistrate of the first class or any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence either on receiving a complaint of facts which constitute such offence; on a police report of such facts or upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. Thus, a plain reading of these provisions emphatically enlighten the fact that it is a total discretion to be exercised by Magistrate and which of course is to be done judiciously. Furthermore under Section 156 (1) of the Cr.P.C., any officer incharge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII and sub-section (3) of the same enlists that any Magistrate empowered under Section 190 of the Cr.P.C. may order such an investigation.

Criminal Misc. No. M-20989 of 2016

Reverting back to the instant case it is the own stand of the petitioner's counsel during the course of his arguments that a written complaint was moved by the complainant before the court of learned ACJM, Panchkula and the learned trial Magistrate has clearly discussed the three options available to it under the provisions of Section 190 of the Cr.P.C. Section 202 of the Cr.P.C. provides that in case of receipt of a complaint of an offence of which sole discretion vests in the learned Magistrate, either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding and by virtue of sub-section (2) of Section 202 of the Cr.P.C. the court is within its power to take evidence of the witnesses on oath and decide which process to follow.

Learned counsel for the petitioner could not convince this Court how a mere prayer by a complainant to the learned Magistrate for referring the matter for investigation to a police officer can be acceded as per the dictates of the complainant. Learned counsel for the petitioner though has sought to place reliance on **Lalita Kumari vs Govt. of U.P. and others, 2014(1) SCC (CrI) 524** but the present factual scenario is at much variance as in this case a complaint has been made to the Magistrate and it is not an information provided to the police officer incharge of a police station. In the impugned order as has sought to be convinced by the counsel for the respondents,

Criminal Misc. No. M-20989 of 2016

the court has rightly considered that the Magistrate has discretionary power either to accept or to send the complaint under Section 156(3) of the Cr.P.C. or decline any such request and therefore, there is no mandatory provisions that the Magistrate is bound to send the complaint for registration of the FIR. As is evident from the orders of the learned Magistrate, in the present case it has rightly drawn the conclusion that there is no justification to exercise powers under Section 156(3) of the Cr.P.C. and has treated the same as a complaint before it and asked the complainant to lead her preliminary evidence. It is not on the whims and fancies of the complainant, the learned Magistrate has to act and can exercise its own discretion. In this regard, counsel for the petitioner could not pin point any illegality or infirmity of such a consequence which could impel this Court to exercise its inherent powers under Section 482 of the Cr.P.C. necessitating so in the interest of justice. The cited ratio does not come to the aid of the petitioner on account of factual disparity. Thus, to the mind of this Court, no illegality can be found in the impugned orders. The same is upheld. The petition being hopelessly without any merit, stands dismissed.

(Fateh Deep Singh)
Judge

November 12, 2018
'tiwana'

<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>

Criminal Misc. No. M-20989 of 2016

Criminal Misc. No. M-20989 of 2016