

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-29364 of 2018

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Date of decision:25.10.2018

Naresh Kumar Mittal

...Petitioner

v.

State of Punjab

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Rajiv Kataria, Advocate for the petitioner.

Ms. Monika Jalota, Deputy Advocate General, Punjab for the
respondent-State.

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Inderjit Singh, J.

This criminal miscellaneous petition has been filed by petitioner under Section 482 Cr.P.C. for issuance of necessary directions to the Police in FIR No.196 dated 20.12.2016 registered in Police Station Canal Colony, Bathinda for the offences under Sections 406 and 420 IPC to the effect that the police may investigate into the said FIR to the logical conclusion in finding out who is the actual culprit in the case without presuming the culpability of the petitioner simply because he had been the Branch Manager, though before the incident he had been relieved of the charge, without proceedings on the presumption of vicarious liability which is a concept alien to IPC.

Notice of motion was issued in this case and status report was

called for.

Ms. Monika Jalota, learned Deputy Advocate General, Punjab has appeared on behalf of the respondent-State and contested this petition. Status report by way of affidavit of Shri Gurjit Singh Romana, PPS, DSP, City I, Bathinda has been filed on behalf of respondent-State.

I have heard learned counsel for the petitioner as well as learned State-counsel and have gone through the record.

It has been mentioned in the status report that this Court has dismissed the bail petition of the petitioner on 23.3.2017 and the accused-petitioner is yet to be arrested in the case by the Police. The warrants of arrest against accused-petitioner have already been issued by learned Additional Chief Judicial Magistrate, Bathinda for 9.7.2018 and then on 23.8.2018, then for 10.10.2018 and now for 26.10.2018. The accused-petitioner is evading his arrest in the case and police is making all the efforts to arrest him. It has been stated that after arrest of accused-petitioner and on completion of investigation in the case, challan would be presented before the learned Area Magistrate for trial.

At the time of arguments, learned counsel for the petitioner mainly argued that the Police is not investigating the case registered vide above mentioned FIR properly and has not investigated as to who is the actual culprit. He argued that the petitioner is on the verge of retirement and he was the Manager of the Bank and the complainant got issued more than one ATM cards. It has been argued that the petitioner has no role in withdrawal of the money. On this argument, I find that it is settled law that

Courts cannot interfere in the investigation. It is for the Investigating Officer to collect evidence against any of the accused or he may find from the investigation whether he is innocent or not. Therefore, the Court cannot direct the Investigating Officer to conduct the investigation in a specific way. If the petitioner is aggrieved from the fact that investigation is not being conducted properly, then he can approach Illaqa Magistrate as per the law laid down by the Hon'ble Supreme Court in Sakiri Vasu v. State of U.P. and others, 2008 (1) RCR (Cr.) 392 (SC), in which it was observed as under:-

“11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156 (3) Cr.P.C. before the learned Magistrate concerned. If such an application under Section 156 (3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a

proper investigation.

17. In our opinion Section 156(3) Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) Cr.P.C, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154 (3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.”

The law laid down in this judgment has also been relied upon by the Hon'ble Supreme Court in T.C. Thangaraj v. V. Engammal and others, 2011 (3) R.C.R. (Cr.) 751 and held as under:-

“It should also be noted that Section 156 (3) of the Code of Criminal Procedure provides for a check by the Magistrate on the police performing their duties and where the Magistrate finds that the police have not done their duty or not investigated satisfactorily, he can direct the Police to carry out the investigation properly and can monitor the same.”

Therefore, keeping in view the law laid down by the Hon'ble Supreme Court in Sakiri Vasu v. State of U.P. and others (supra) and T.C. Thangaraj v. V. Engammal and others (supra), this petition under Section 482 Cr.P.C. is not liable to be entertained and the same is disposed of with liberty to the petitioner to avail the alternative remedy before the Magistrate etc. as held in these cases, who has enough powers under Section 156(3) Cr.P.C. to supervise the investigation. Even the Magistrate can monitor the investigation as held by the Hon'ble Supreme Court in the above mentioned cases.

October 25, 2018.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No