

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

Crl. Misc. M 41647 of 2016 (O&M)
Date of decision: August 27, 2018

Rekha Rani @ Rajni Rani

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Pawan Kumar, Senior Advocate with
Mr. Rohit Kumar, Advocate,
for the petitioner.

Ms. Seena Mand, DAG, Punjab.

JAISHREE THAKUR, J.

1. The instant Criminal Miscellaneous Petition has been filed under Section 482 of the Code of Criminal Procedure for quashing impugned order dated 05.10.2016 passed by Judicial Magistrate Ist Class, Bhatinda, in Criminal Complaint No. 11523 of 2016. titled as 'Rekha Rani alias Rajni Rani Versus Jagtar Singh and others'.

2. In brief, the facts of the case as stated are, that the petitioner who belongs to a poor strata of society was working as a housemaid in various houses along with her mother. 8 to 10 days prior to 15.07.2016, the petitioner accidentally dialed mobile number that is 9914073578 and disconnected on realising that she had dialed a wrong number. Thereafter, Jagtar Singh used to call the petitioner from that very number and kept on luring the petitioner on the pretext that he could arrange for a job as a maid

servant at the residence of his friend's wife. On 15.07/2016, respondent No.4 made numerous calls to the petitioner stating that he had arranged a job for her and he called her at Bhagu Road Bhatinda at 12 noon stating that he would take her to Model Town, Bathinda for a job. The petitioner went to meet him and she was made to sit in his vehicle from where he took her to a petrol pump, near flyover, where 2 more persons whom she did not know were standing there. The said Jagtar Singh took a sum of ₹50,000/- from them and thereafter all of them sat in the vehicle. She was taken to a room constructed on his land and respondent No.4 pushed her inside the room, forcing her to consume a cold drink. Thereafter, on the asking of Jagtar Singh the offence of rape was committed upon her by one person and Jagtar Singh and another person remained outside the room and thereafter he too tried to commit rape upon the petitioner, but she made hue and cry and managed to escape. The petitioner narrated the incident to one Simran Kaur, who took her to the Civil Hospital, Bhatinda, where she was medico legally examined at about 10.00 p.m. On 15.7.2016 itself the police recorded the statement of the petitioner. However, no F.I.R. was registered. It is submitted that instead of registering an F.I.R. as mandated by law, the police threatened the petitioner to get the matter compromised with Jagtar Singh. The petitioner also approached the SSP, Bhatinda on 17th July 2016, requesting that the criminal case be registered against the accused persons, but the police delayed the matter on one pretext or the other, which left the petitioner with no other remedy than to approach the Human Rights Commission, as well as the S.C. Commission. The petitioner also filed an application under Section 156 (3) of the Code of Criminal Procedure in the

court of Judicial Magistrate 1st Class, Bathinda, dated 26.07.2016 with a prayer that a FIR be registered against the accused persons under Sections 376, 120 B/34 IPC and the police be directed to investigate the matter. Notice was issued to the SHO, Police Station Canal Colony, Bathinda, who submitted a report dated 02.08.2016 that a false case had been registered by the petitioner and they would take action on receiving the report of the FSL. The petitioner also sought to produce an audio CD recording, which would reflect statement of the police saying that they could not register the case against the accused persons, since they are dangerous people of the area and very powerful. However, without passing any orders on the said request the JMIC directed that the complaint submitted by the petitioner be treated as a criminal complaint. Aggrieved against the said order dated 05.10.2016, the instant petition has been filed.

3. Mr. Pawan Kumar, Senior Advocate, assisted by Mr. Rohit Kumar, urges that the impugned order is liable to be set-aside as the petitioner has been subjected to rape, which is a heinous crime and, therefore, the police has no option except to register a case and then investigate the matter. It is argued that in the instant case, the cart has been put before the horse as the matter was investigated without registration of the FIR. It is further argued that the local police is in connivance with the accused persons and the audio CD would reflect that FIR is not being registered as they are powerful and influential people.

4. Per contra, Ms. Seena Mand, Deputy Advocate General Punjab, learned counsel appearing on behalf of the respondent state submits that the matter was thoroughly investigated, and since the complainant petitioner did

not come forward to identify the place of occurrence, true facts cannot surface.

5. I have heard the counsel for the parties and with their assistance have gone through the pleadings of the case and the case law relied upon.

6. The petitioner herein is aggrieved against the inaction of the police in not registering an F.I.R on the basis of a complaint made on 15th of July 2016. The petitioner claims to have been subjected to the offence of rape and she duly reported the matter to the police, while she subjected herself to a medical examination at Civil Hospital, Bhatinda. Her statement was recorded by the police and thereafter the police kept silent. On account of the inaction by the police, she preferred an application to the Magistrate under Section 156 (3) Cr. P.C. which led to the application being treated as a criminal complaint.

7. Section 156 Cr. P.C. reads as:

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

(1) Any officer in charge 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.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

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

8. The Constitutional Bench of the Hon'ble Supreme Court in

Lalita Kumari Vs Govt. Of U.P. and others, reported as 2014(2) SCC 1

formulated a question as to whether “*a police officer is bound to register a First Information Report (FIR) upon receiving any information relating to commission of a cognizable offence under Section 154 of the Code of Criminal Procedure, 1973 (in short 'the Code') or the police officer has the power to conduct a “preliminary inquiry” in order to test the veracity of such information before registering the same?*”

9. A writ petition was filed under Article 32 of the Constitution by one Lalita Kumari (minor) through her father for issuance of a writ of Habeas Corpus or direction(s) of like nature for the protection of his minor daughter who had been kidnapped. It was alleged in the writ petition that a written report was submitted by the petitioner before the officer in-charge of the police station concerned who did not take any action on the same. Thereafter, the Superintendent of Police was approached and FIR was registered. According to the petitioner, even after the registration of an FIR no steps were taken for apprehending the accused persons, or for the recovery of the minor girl child. Because of conflict of several judgments, matter was eventually referred to a Larger Bench, wherein the aforementioned question was framed. While dealing with several issues, the Hon'ble Apex Court held as under :-

“83) *In terms of the language used in Section 154 of the Code, the police is duty bound to proceed to conduct investigation into a cognizable offence even without receiving information (i.e. FIR) about commission of such an offence, if the officer in charge of the police station otherwise suspects the commission of such an offence. The legislative intent is*

therefore quite clear, i.e., to ensure that every cognizable offence is promptly investigated in accordance with law. This being the legal position, there is no reason that there should be any discretion or option left with the police to register or not to register an FIR when information is given about the commission of a cognizable offence. Every cognizable offence must be investigated promptly in accordance with law and all information provided under Section 154 of the Code about the commission of a cognizable offence must be registered as an FIR so as to initiate an offence. The requirement of Section 154 of the Code is only that the report must disclose the commission of a cognizable offence and that is sufficient to set the investigating machinery into action.

84) The insertion of sub-section (3) of Section 154, by way of an amendment, reveals the intention of the legislature to ensure that no information of commission of a cognizable offence must be ignored or not acted upon which would result in unjustified protection of the alleged offender/accused.

85) The maxim expression unius est exclusion alterius (expression of one thing is the exclusion of another) applies in the interpretation of Section 154 of the Code, where the mandate of recording the information in writing excludes the possibility of not recording an information of commission of a cognizable crime in the special register.

86) Therefore, conducting an investigation into an offence after

registration of FIR under Section 154 of the Code is the "procedure established by law" and, thus, is in conformity with Article 21 of the Constitution. Accordingly, the right of the accused under Article 21 of the Constitution is protected if the FIR is registered first and then the investigation is conducted in accordance with the provisions of law."

10. Thereafter while concluding, the Hon'ble Apex Court came to hold as under :

"119) Therefore, in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR,

what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.

Conclusion/ Directions:

120) In view of the aforesaid discussion, we hold:

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if

information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/ family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases

e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether

resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”

Further, in the case of **Mohd. Yousuf v. Afaq Jahan, (2006) 1 SCC 627**, the Supreme Court held as under:

“The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.”

In Priyanka Srivastava v. State of U.P., (2015) 6 SCC 287 the Supreme Court held as under:

“The duty cast on the learned Magistrate, while exercising power under Section 156(3) Cr.P.C, cannot be marginalised.”

“...it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order.”

11. In the case in hand, despite the fact that the petitioner had got her statement recorded regarding the offence of rape having been committed and a medical conducted as well, the police failed in its duty to get a FIR registered, as mandated by law. Even the reply filed in court is unsatisfactory to the effect that it is stated that the FIR is to be registered on the availability of the FSL report. The Supreme Court in no uncertain terms has held registration of FIR to be mandatory, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. Whereas, the police has investigated the matter without registration of an FIR in a matter where the petitioner has got her statement recorded and medical conducted regarding an offence of rape.

12. Therefore, a conjoint reading of the judgments as refereed to above, it can be held that a Magistrate has ample powers under Section 156 (3) of the Code of Criminal Procedure to direct the registration of an FIR or direct an investigation in the matter. However, this power has to be

exercised judiciously with thoughtful consideration and application of mind which ought to be reflected in the order. A mere statement that he has gone through the complaint, documents and heard the complainant would not be sufficient though a detailed expression of his views is also not required nor warranted. The Magistrate would also be required to keep in mind the category of cases where preliminary inquiry would be required as detailed in the directions laid out in ***Lalita Kumari's*** case (Supra).

13. In the case at hand, the JMIC without recording reasons as to why the request for sending the complaint for registration of an FIR has been declined. The order passed is a cryptic one and does not reflect an application of mind. This is not in consonance with the law laid down in ***Anil Kumar vs. M.K. Aiyappa (2013) 10 SCC 705***, where it has been held “*The scope of Section 156(3) Cr PC came up for consideration before this Court in several cases. This Court in Maksud Saiyed case [(2008) 5 SCC 668] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. **The application of mind by the Magistrate should be reflected in the order.** The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation*

under Section 156(3) Cr PC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation."(emphasis supplied).

14. Therefore, while setting aside the impugned order the matter is remanded back to the Judicial Magistrate 1st Class, Bathinda, for taking fresh decision in accordance with the law preferably within a period of two months on receipt of certified copy of this order.

15. The petition is accordingly allowed.

August 27, 2018
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No