

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

**CRM-M No.49851 of 2017 (O&M)
Date of Decision:01.05.2018**

Ved Parkash

.....Petitioner

Vs

State of Haryana and others

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Jai Bhagwan Tobria, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this petition under Section 482 Cr.P.C., for quashing of order dated 26.04.2016 passed by the Judicial Magistrate Ist Class, Rohtak, order dated 11.09.2017 passed by the Addl. Sessions Judge, Rohtak and further seeking direction to respondents No.2 and 3 to register a case against respondents No.4 to 11.

[2]. Petitioner filed criminal complaint with prayer under Section 156(3) Cr.P.C., for issuance of necessary directions to S.H.O., PGIMS Rohtak to register and investigate the case against accused (four in number as mentioned in the complaint) for the offences under Sections 166/167/405/409/420/464/

468/470/477A/120-B IPC. The Judicial Magistrate Ist Class, Rohtak passed order dated 02.07.2015 to the following effect:-

“Present: Complainant in person with Sh. Bharat Jain, Adv.

An application u/s 156(3) Cr.P.C. as well as complaint u/s 166/167/405/409/420/464/468/470/477A/120-B IPC presented before me. Arguments on the application under section 156(3) Cr.P.C. Heard. It is contended by the complainant that SHO P.S. PGIMS, Rohtak be directed to register a case for offences punishable under Sections 166/167/405/409/420/464/468/470/477A/120-B IPC against all the accused on the grounds mentioned in the application. Heard. Since, in the present case, this court is of the view that the complainant can lead the entire evidence himself as allegedly happened with him, this court is of the view that the present case is not a fit case to be sent to police for registration of case. As such, application under Section 156(3) Cr.P.C., is declined. Complaint be checked and registered. Now to come upon 25.08.2015 for preliminary evidence of the complainant.

*Sd/-
(Vikash)
JMJC, Rohtak
02.07.2015”*

[3]. Perusal of the aforesaid order would show that the Court declined the prayer in terms of Section 156(3) Cr.P.C., and directed the complainant to bring preliminary evidence for the purposes of taking cognizance by the Court in a complaint case. Against the aforesaid order, the petitioner filed a

revision petition No.150 of 2015 before the Sessions Judge, Rohtak. The revision petition was dismissed vide order dated 04.01.2016. Thereafter, the complaint itself was withdrawn by the petitioner without seeking any permission to file fresh complaint on the same cause of action. Thereafter, the petitioner again filed criminal complaint after moving complaint before the Station House Officer, Rohtak and Sr. Supdt. Of Police, Rohtak in terms of Section 154 Cr.P.C.

[4]. According to learned counsel for the petitioner, the second attempt made by the petitioner is after removal of technical defect as earlier existed in the complaint. Judicial Magistrate Ist Class, Rohtak vide order dated 26.04.2016 dismissed the application under Section 156(3) Cr.P.C., on the ground that on same facts the earlier application was dismissed on 02.07.2015 and revision against the said order was also dismissed on 04.01.2016. However, the complainant was asked to lead preliminary evidence. A revision was filed against the order dated 26.04.2016 before the Addl. Sessions Judge, Rohtak and the same was dismissed vide order dated 11.09.2017. That is how the present petition came to be filed before this Court.

[5]. On 12.03.2018 and 27.03.2018, learned counsel for the petitioner sought time in order to argue the case on legal

proposition that second complaint on the same facts is maintainable, even if no permission was sought on earlier occasion to file fresh complaint from the Court. Learned counsel by placing reliance upon **Poonam Chand Jain and another vs. Fazru, 2005(1) R.C.R. (Criminal) 600;** **Shiv Shankar Singh vs. State of Bihar and another, 2012(1) R.C.R. (Criminal) 14** and **Babu Lal vs. State of Rajasthan & Ors., 2010(7) R.C.R. (Criminal) 285** contended that there is no bar in filing of second complaint.

[6]. I have considered the submissions made by learned counsel for the petitioner in the light of aforesaid precedents.

[7]. There is no denial to the proposition as held in the aforesaid cases. It can be noticed that second complaint on the same facts is maintainable in exceptional circumstances, where the previous order was passed on incomplete record or on account of misunderstanding of nature of the complaint, or it was manifest absurd, unjust or where new facts could not be brought on record.

[8]. In the present case, no new fact has been pleaded except to demonstrate that now the complainant after approaching the SHO and the SSP has filed the complaint. In **Babu Lal's** case (supra) the question for consideration was only

to the effect that the application under Section 156(3) Cr.P.C., in pending complaint whether would amount a complaint or not. In the present case, no such analogy is involved, rather on the complaint filed by the petitioner, the Court has granted liberty to the complainant to bring preliminary evidence by declining the prayer under Section 156(3) Cr.P.C.

[9]. In case of complaint, two options were available before the trial Court. The trial Court could have referred the case for registration or could have asked for leading preliminary evidence by the complainant. The trial Court vide order dated 02.07.2015 dismissed the application under Section 156(3) Cr.P.C. and registered the case. Thereafter the complainant was asked to lead preliminary evidence. Complaint was never dismissed. The revision which was only against the order passed in terms of Section 156(3) Cr.P.C., and the same was dismissed on 04.01.2016. Thereafter complaint was withdrawn from the trial Court without seeking any permission to file fresh complaint on the same cause of action/facts.

[10]. In **Madhao and Anr. vs. State of Maharashtra and Anr., 2013(2) R.C.R. (Criminal) 975**, it was held that when a Magistrate receives a complaint, he is not bound to take cognizance in every case. The Magistrate has discretion in the matter. If on reading of the complaint, he finds that allegations

therein disclose a cognizable offence, then he can forward the same to the police under Section 156(3) Cr.P.C., but if the Magistrate considers that the complaint requires leading of preliminary evidence in terms of Section 190 Cr.P.C., then he is justified in asking the complainant to lead preliminary evidence so as to take cognizance of the offence on the basis of preliminary evidence. Both the aforesaid courses are available to the Magistrate. If the Magistrate after perusal of the complaint is satisfied that sufficient grounds for proceeding exist, then he can straightway issue process to the accused after complying with the requirement of Section 200 Cr.P.C., and recording of evidence of the complainant/witnesses. In any case, the Magistrate is not bound to pass order on every application under Section 156(3) Cr.P.C. in a stereo typed manner.

[11]. In **Radhey Shyam vs. State of Haryana and others, 2014(7) R.C.R. (Criminal) 521**, it was held that the Judicial Magistrate can exercise judicial discretion in the matter and pass appropriate order for treating the application as a complaint or reject the same. It is a settled principle that it is not incumbent upon a Magistrate to allow every application under Section 156(3) Cr.P.C. The Magistrate has the discretion to treat the same as a complaint. The Magistrate is well within its jurisdiction to take cognizance of the complaint as per Section

190 Cr.P.C.

[12]. The earlier complaint along with application under Section 156(3) Cr.P.C., was withdrawn by the petitioner. The application under Section 156(3) Cr.P.C. was dismissed by the trial Court and the complaint was registered for leading preliminary evidence by the complainant vide order dated 02.07.2015. Revision petition was filed against the dismissal of application under Section 156(3) Cr.P.C. and the same was dismissed on 04.01.2016. Thereafter petitioner even got the original complaint dismissed as withdrawn from the Court of Judicial Magistrate Ist Class and then ventured to file another complaint on the same facts after approaching SHO and SSP. No permission was granted to file fresh complaint on the same facts. Therefore, even if there is no bar for successive application under Section 156(3) Cr.P.C., the Magistrate is not obliged to pass order in stereo typed manner without application of mind. The trial Magistrate in his wisdom registered the complaint and asked the complainant to lead preliminary evidence in terms of Section 190 Cr.P.C. In my considered opinion, the judicial discretion exercised by the Magistrate cannot be interfered with. Even otherwise, petition under Section 482 Cr.P.C., under the garb of revision petition is not maintainable. The jurisdiction under Section 482 Cr.P.C., has to

be exercised very sparingly and that too in order to prevent abuse of process of law and to achieve ends of justice.

[13]. The complaint filed by the petitioner was not dismissed in *toto*, rather the same was registered and only prayer in terms of Section 156(3) Cr.P.C., was declined. The petitioner was well within his right to lead preliminary evidence and satisfy the trial Court to issue process on the basis of preliminary evidence so led by him. In my considered opinion, the petitioner cannot rake up the issue under Section 482 Cr.P.C. under the garb of second revision petition.

[14]. For the reasons as mentioned above, this petition is accordingly dismissed.

May 01, 2018

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No