

CRM-M-45076-2016

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

**CRM-M-45076-2016 (O & M)
Date of Decision: 25.03.2019**

Miguel Alexandra Peres Ferreira Neves

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Raghav Dayal Gupta, Advocate,
for the petitioner.

Mr. Sharad Kumar Yadav, Deputy Advocate General, Haryana.

None for respondent No.2.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of the complaint bearing No.COMI/0000345/2016 dated 30.08.2016, pending before learned Additional Chief Judicial Magistrate, Gurgaon; order dated 30.11.2016 passed by learned Additional Chief Judicial Magistrate, Gurgaon, in the said complaint and the FIR No.1322 dated 08.12.2016, registered at Police Station Sadar Gurgaon, under Sections 377, 505 (2) and 506 of the IPC and Section 67 of the Information Technology Act, 2000.

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Notice of motion was issued. Learned State counsel appeared on behalf of respondent No.1-State and contested this petition.

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

From the record, I find that in the present case, complainant-respondent No.2, Syed Imran Najmi, filed a complaint before the Court under Section 156 (3) Cr.P.C. seeking registration of FIR against the present petitioner. The present petitioner is a Portuguese Citizen and Chief Operating Officer in a Company. In the complaint, allegations regarding the offence under Section 377 of the IPC etc. have been levelled. When the application under Section 156(3) Cr.P.C. was pending before the Court, the complainant gave the statement, vide Annexure P-9, that he, without any pressure and with his will, wanted to withdraw his complaint and did not want to pursue it further. Learned Additional Chief Judicial Magistrate, Gurgaon, vide order dated 30.11.2016, copy thereof is annexed herewith as Annexure P-1, rejected the said prayer and sent the complaint for registration of the FIR. Now, the petitioner has filed the instant petition.

From the perusal of record, I find that the Court before whom the complaint under Section 156 (3) Cr.P.C. was filed for sending it to the police for registration of the FIR, had not taken the cognizance, when the complainant wanted to withdraw the complaint. At that time, neither any preliminary evidence was ordered to be recorded nor the complaint was sent to the SHO for registration of the case. Before taking the cognizance by the Court, the complainant wanted to withdraw that complaint and at that stage,

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prayer of the complainant cannot be rejected. The complainant had approached the Court seeking remedy for registration of the FIR and before taking the cognizance by the Court, the complainant voluntarily wanted to withdraw that complaint. The lower Court should have accepted the prayer of the complainant for withdrawal of the complaint. Rather, the lower Court had passed the impugned order dated 30.11.2016 for registration of the FIR by giving the reasoning of serious allegations in the complaint. As already discussed, the victim/complainant levelled serious allegations, but he wanted to withdraw the said complaint before taking the cognizance by the Court or registration of FIR. Perusal of the record also shows that the petitioner-complainant has also stated before this Court in the present proceedings that he does not want to take any action on his complaint. He also got his statement recorded before the lower Court. Therefore, in such circumstances, the order dated 30.11.2016 passed by learned Additional Chief Judicial Magistrate, Gurgaon, rejecting the prayer of the complainant for withdrawal of the complaint and further ordering for registration of the FIR, is not as per law and, therefore, the same is set aside.

Keeping in view all these facts, I find that registration of the FIR in the present case, is nothing but abuse of process of law.

Therefore, finding merit in the present petition, the same is allowed. The order dated 30.11.2016 passed by learned Additional Chief Judicial Magistrate, Gurgaon, is set aside. The complaint bearing No.COMI/0000345/2016 dated 30.08.2016, pending before learned Additional Chief Judicial Magistrate, Gurgaon and the FIR No.1322 dated

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08.12.2016, registered at Police Station Sadar Gurgaon, under Sections 377, 505 (2) and 506 of the Indian Penal code and Section 67 of the Information Technology Act, 2000 and all subsequent proceedings arising out of the same, are hereby quashed.

25.03.2019
parveen kumar

(INDERJIT SINGH)
JUDGE

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