

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

CRM-M-28435-2019 (O&M)
Date of Decision:- 24.10.2019

Manisha Chhikara

... Petitioner

Versus

Shikha Thakran and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. H.N.Sahu, Advocate for the petitioner.

Mr. Manish Soni, Advocate for respondent No.1.

GURVINDER SINGH GILL, J.

1. The petitioner has approached this Court seeking setting aside of order dated 23.5.2019 (Annexure P-3) whereby the learned Additional Sessions Judge, Gurugram while accepting revision petition filed by respondent Shikha Thakran has set aside order dated 18.2.2019 passed by learned JMIC, Gurugram and has directed the JMIC, Gurugram to consider afresh the application filed by the respondent under Section 156(3) Cr.P.C.
2. A few facts, necessary to notice for disposal of this revision petition, are that respondent Shikha Thakran filed an application under provisions of Section 156(3) Cr.P.C. in the Court of JMIC, Gurugram alleging therein that she was married to Abhishek Thakran on 12.11.2017 and ever since their marriage, they had been residing together. It is alleged that in 2017, the respondent's husband received a 'friend request' from an unknown facebook ID and e-mail ID and through which various messages were sent wherein the sender

claimed to have seen the complainant with Amit Yadav and while also alleging that the complainant was of loose character. The respondent's husband immediately moved a complaint to the Commissioner of Police, Gurugram which was referred to Cyber Crime Cell and wherein Manisha Chhikara (petitioner) was found guilty and who also admitted that she had impersonated as Reema and who also admitted that by impersonating as Reema, she created a Facebook profile using photo of another woman and had levelled false allegations against character of the respondent in order to settle scores. The respondent-complainant, in her application under Section 156(3) Cr.P.C. further alleged that although during the course of inquiry, the petitioner Manisha Chhikara was found to be using Facebook ID of Reema RS through different mobile numbers 8178225016 and 8920184490, which were found to be in possession of petitioner but the police, however, did not register the FIR. The applicant/respondent, thus, prayed for lodging of FIR by way of filing application under Section 156(3) Cr.P.C. The learned JMIC, Gurugram called for the report from the police and ultimately dismissed the application vide order dated 18.2.2019, while recording the following observations :-

“This court is of the considered view that in this matter, since the present matter involved detail with respect to the allegation levelled against accused no. 1. These can be adjudicated after upon detail evidence led by the complainant for which assistant of the Police not apparently required. Prima facie no ground made out to allow the application filed by the complainant under Section 156(3) Cr.P.C. Keeping in view the entire discussion above and law discussed in abovesaid authorities, the request of the

complainant for registration of FIR under section 156(3) Cr.P.C. to the Station House Officer, Cyber Crime, Gurugram is declined.”

3. Aggrieved with the aforesaid order dated 18.2.2019, the respondent-complainant preferred revision petition in the Court of Sessions at Gurugram, which was accepted vide judgment dated 23.5.2019 and while setting aside the impugned order the learned Magistrate was directed to decide the application under Section 156(3) Cr.P.C. afresh.
4. The learned counsel for the petitioner while assailing the impugned order dated 23.5.2019 passed by Additional Sessions Judge, Gurugram has submitted that the procedure adopted by the Magistrate was perfectly in tune with the scheme of provisions of Section 156(3) Cr.P.C. and that once the Magistrate had called for the report of the police and the police having found that no offence was made out other than offence for defamation , it was only private complaint which was maintainable.
5. On the other hand, the respondent has submitted that in view of nature of offence, the matter is required to be investigated by some specialized agency of police. It has further been submitted that the observation of the learned Magistrate that only an offence of defamation was made out for which assistance of police was not required was an erroneous observation as the offence of defamation had been committed by means of social media by creating false Facebook Ids, which could be investigated effectively only by some specialized agency having requisite experience in handling offences committed through internet.

6. I have considered rival submissions addressed before this Court. The allegations in the case in hand are to the effect that the petitioner had created fictitious identities on Facebook, while using mobile nos. 8178225016 and 8920184490 and had attempted to defame the complainant- respondent and had infact been successful in breaking the marriage of respondent no.1. The trial Court, however, dismissed the application under Section 156(3) Cr.P.C. while recording the following observations in respect of the allegations :-

“These can be adjudicated after upon detail evidence led by the complainant for which assistant of the Police not apparently required. Prima facie no ground made out to allow the application filed by the complainant under Section 156(3) Cr.P.C. ”

7. This Court, however, is unable to subscribe to the aforesaid view of the Magistrate since the allegations in the case in hand pertained to use of internet and social media. The complainant on her own would not be able to collect details of the manner in which the offence was committed as the same pertains to use of social media through internet. Even the Court on its own would not be fully equipped to requisite information and the services of some specialized agency in the nature of Cyber Crime Cell would be required. In these circumstances, the matter is such which would be required to be scientifically investigated and which can be got done through the police as the complainant on her own may not be able to substantiate all the allegations and collect evidence as would be required to be collected in the present case. Consequently, this Court does not find any infirmity in the impugned order dated 23.5.2019 wherein the order of the Magistrate had

been set aside and direction has been issued to the Magistrate to decide the application afresh.

8. Finding no merit in the petition, the same is hereby dismissed.

24.10.2019

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No