

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

118

CRM-M-8281 of 2021

Date of decision :-05.03.2021

Krishan Jatana

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Rajesh Bansal, Advocate for the petitioner.

SUVIR SEHGAL, J.

The hearing of the matter has been conducted through video conferencing on account of outbreak of Covid-19 Pandemic.

Through the instant petition filed under Section 482 of the Code of Criminal Procedure, the petitioner seeks setting aside of the impugned order dated 08.01.2021, Annexure P-1, passed by the Judicial Magistrate Ist Class, Panipat, in criminal complaint No.COMI-106/2020 dated 16.10.2020, Annexure P-9, whereby directions have been issued to register an FIR and for setting aside the impugned order dated 09.02.2021, Annexure P-2, passed by the learned Additional Sessions Judge, Panipat vide which the revision petition filed by the petitioner has been dismissed by holding it as not maintainable.

Facts, in brief, leading to the filing of the present petition are that the petitioner had advanced a loan to the complainant/ respondent No.2 and an agreement, Annexure P-4, was executed in this regard. The petitioner gave a cheque, Annexure P-3, of Rs.3.50 lacs. However, the complainant and her husband did not return the amount, rather in February, 2020, they demanded Rs.2 lac more from the petitioner for starting a business of stationary items. The petitioner introduced them to a known person, who

was running a firm by the name of Sai Printers from where the complainant and her husband purchased stationary items worth Rs.4,13,000/- on credit basis and invoices, Annexure P-5, were raised for the purchase. When respondent No.3, who is the proprietor of Sai Printers, demanded the payment, the complainant prolonged the matter on one pretext or the other and eventually on persistence of respondent No.3 gave a cheque dated 09.07.2020, Annexure P-6, for an amount of Rs.4,13,000/-. On presentation, the cheque was dishonoured, with the remarks that the drawer's signature differs. After serving a legal notice, Annexure P-7, respondent No.3 filed a complaint under Section 138/142 of the Negotiable Instruments Act, 1881, (for short – "NI Act") against respondent No.2 in the Tis Hazari Court at Delhi, which is pending. As a counter blast, by taking a false defence to escape from her liability, respondent No.2 filed the complaint dated 16.10.2020, Annexure P-9, before the JMIC. Enquiry was conducted by the police in which the complainant did not participate. Report submitted by the police was not accepted by the Magistrate and the impugned order dated 08.01.2021, Annexure P-1, was passed directing the SHO Police Station Quilla, Panipat, to register an FIR forthwith and conduct investigation in the case. The order, Annexure P-1, passed by the Magistrate was challenged in a revision petition before the learned Additional Sessions Judge, Panipat, which was dismissed vide impugned order dated 09.02.2021, Annexure P-2. Both these orders are under challenge in the present petition.

Counsel for the petitioner has argued that the impugned order Annexure P-1, passed by the Magistrate is bad in law as a Magistrate has failed to record any reasons in support thereof. Counsel has argued that the revision against the order, Annexure P-1, under Section 397 Cr.P.C. was maintainable and the learned Additional Sessions Judge erred in holding it as

not maintainable. Still further, he submits that the filing of the complaint by respondent No.2 under Section 156(3) Cr.P.C. was a counter blast to the complaint under Section 138 of the NI Act instituted by respondent No.3.

I have considered the arguments advanced by the counsel for the petitioner.

Insofar as the legal position pertaining to the recording of reasons in the order passed by the Magistrate and maintainability of revision against the said order is concerned, this Court in **M/S Sujan Multiports Limited versus State of Haryana and others, 2019 (3) RCR (Criminal) 372** has held as under:-

“However, the provision of Section 156(3) Cr.P.C., 1973 does not cast any duty upon the Magistrate to record the reasons, and this omission in language of Section 156(3) Cr.P.C., 1973 is deliberate and for good reasons. The Magistrate can apply his mind to the facts disclosed in the complaint and documents attached therewith for limited purpose to see if cognizable offence is disclosed, and if it is so disclosed; whether an investigation by police is required. But he need not put-out his thinking on order sheet. The Hon'ble Supreme Court in the case of Anil Kumar (supra), has observed that the Magistrate would be required to dilate upon the matter in such a manner which reflects upon the application of mind. However, in considered opinion of this Court, such application of mind can be reflected even by a terse and telling language; giving indication of application of mind, though not directly recording

reasons. In such a situation, of course, the Magistrate; while acting under Section 156(3) Cr.P.C., 1973 may be required to record a few line; which might reflect upon application of mind, however, he is not required to record the detailed reasons for passing the order; either way.”

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“Hence, the order of the Magistrate under Section 156(3) Cr.P.C., 1973 which only leads to registration of FIR against a person, cannot be taken as an 'final' order, finally determining any rights of a person. At the best, it can be taken as an 'interim' or 'interlocutory' order, if at all it is to be taken as an order passed in 'judicial proceedings'; as defined under section 2 of Cr.P.C., 1973 Otherwise, this order is more in the nature of administrative direction; flowing from the controlling and supervisory powers of the Magistrate; over the Police authorities in the matter of investigation of offences. Otherwise also, if no reasons are required to be recorded by the Magistrate then there would not be anything to be appreciated by the Revision Court.

Therefore, unless the Magistrate himself is prohibited from or not authorised to take cognizance of the offence, his order passed under Section 156(3) Cr.P.C., 1973 is not amenable to challenge in revision. Revision can be maintained only on one ground; that the Magistrate himself was not competent to take cognizance

of the offences qua which he has ordered investigation under Section 156(3) Cr.P.C., 1973.

However, this not to say that person affected by Order of Magistrate would be remediless. He can still approach the High Court for quashing of the FIR, like any other FIR, on the grounds for which an FIR can be quashed. But in such petition as well, the challenge has to be to the FIR on merits and not to the order of the Magistrate.”

In view of the above dictum of a Co-ordinate Bench of this Court, no fault can be found in the impugned orders passed by the JMIC, Panipat and Additional Sessions Judge, Panipat.

Coming to the next argument of the counsel for the petitioner, the allegations levelled in the complaint filed by respondent No.2 deserve to be noticed. She has alleged that the petitioner is running the business of lending finance. Her husband had borrowed money from him which was repayable in installments. The petitioner had taken five blank signed cheques of the complainant/respondent No.2, her daughter and her husband in lieu of security of the aforesaid amount. Due to financial difficulty, when the husband of respondent No.2 could not repay the installments, the petitioner misused a blank signed cheques. The complainant has alleged that she had no business dealings with Sai Printers and had never issued the cheque of Rs.4,13,000/- in the name of the said firm. Rather the petitioner and the proprietor of Sai Printers-respondent No.3, hatched a conspiracy, forged some documents and by showing a huge outstanding against the complainant/respondent No.2 presented the said cheque fraudulently. The complainant claims that she reported the matter to the police and sent

complaints to various officials. When no action was taken thereon, she instituted the complaint under Section 156(3) Cr.P.C. after responding to the legal notice served by respondent No.3 and denying her liability.

The pendency of the complaint by respondent No.3 under Section 138 of NI Act cannot preclude the complainant/respondent No.2 from initiating proceedings against the accused persons under Sections 420, 467, 468, 471, 120-B IPC, if the ingredients of such offence are attracted. In a case under the provisions of Indian Penal Code, the only requirement is that a cognizable offence should be made out. The complainant/respondent No.2 had lodged complaint with the concerned police station; however, the same was not registered as an FIR. Therefore, there was no option with her but to approach the Magistrate by filing the complaint case, who in turn recorded his satisfaction that application discloses commission of cognizable offence and directed the police to register the complaint as FIR and conduct investigation.

In view of this position, no error has been committed by the learned JMIC, Panipat while passing the impugned order. As a result, there is no merit in the instant petition, which is ordered to be dismissed.

It is clarified that nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

05.03.2021
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No