

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

108

CRM-M-40976-2020

Date of Decision: 11.01.2021

Ghaus Alam

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. G.S.Ghuman, Advocate
for the petitioner.

Mr.B.S.Virk, Deputy Advocate General, Haryana.

Amol Rattan Singh, J.

Case heard by video conferencing.

1. This petition, invoking jurisdiction under the provisions of Section 482 Cr.P.C., has been filed seeking the setting aside of the impugned order dated 16.03.2019 passed by learned Judicial Magistrate 1st Class, Faridabad (Annexure P5), whereby the application under Section 156(3) Cr.P.C.for sending the case for investigation to the police has been declined; and further for setting aside the impugned order dated 22.01.2020 (Annexure P6) passed by Additional Sessions Judge, Faridabad, whereby the revision filed by the petitioner against that order, has been dismissed.

2. A complaint filed by the petitioner before the SHO, Police Station, Suraj Kund, Faridabad (undated) has been annexed as Annexure P1 with the petition, which essentially, after giving the background of the marriage of the petitioner and respondent No.2, goes on to state that the petitioner was mentally tormented and pressurised by his in-laws who demanded Rs.10 lakhs from him with him having given Rs.2 to 3 lakhs and some jewellery of his family because in his community there is a custom of

giving *mehar*. Despite that, it was further alleged, that the accused (respondents No. 2 to 5 herein) kept on tormenting him upon which he again gave another sum of money despite which the threats etc. did not stop (as alleged).

Thereafter when another sum of Rs.10 lakhs was again demanded to start a business for the petitioner's father-in-law and he expressed his helplessness, an FIR was got registered against the petitioner alleging therein the commission of offences punishable under Sections 354-B, 204 and 509 of the IPC, at Police Station NIT Faridabad.

3. The complaint goes on to state that the petitioner got admitted his son in a good and expensive school at Faridabad and also filed a petition for custody of the child thereafter, with him having been given visiting rights; but with the said order of the Court not having been complied with, the petitioner was mentally/emotionally disturbed leading to him suffering a heart attack and with him unable to thereafter attend court proceedings and with him also therefore unable to report the ill treatment at the hands of his in-laws. When his health improved he is stated to have gone to the school where he had admitted his son and found that his son was no longer studying there and, as per the petitioner, his son was admitted to another school by respondents no.2 to 5 “after preparing fake documents and by converting his religion”.

A further accusation has been made in the complaint that the accused were not taking proper care of the son of the petitioner with his religion having been changed in connivance with the school management and Principal; and consequently the petitioner had been harmed in every

possible manner and insulted publicly with false allegations levelled against him.

4. The petitioners' wife and in-laws not allegedly having listened to reason, he eventually filed a complaint before the Commissioner of Police, Faridabad and the SHO, Police Station Suraj Kund, but no action was taken against them, despite (as per the petitioner), offences punishable under Sections 420, 467, 468, 471, 384, 499, 500, 504, 506, 195, 295-A and 120-B IPC having been committed. Thereafter he filed a criminal complaint before the learned JMIC, Faridabad, alongwith an application under the provisions of Section 156(3) Cr.P.C., (which itself is seen to be undated and a copy of which is also a part of Annexure P1), accompanied with an affidavit dated 30.01.2019.

Upon that application being filed, a status report was called for by the learned Illaqa Magistrate and such status report, dated 16.03.2019, was filed by an ASI of Police Post Ankhir, District Faridabad (Annexure P4), stating therein that both the parties were made to join proceedings with their statements recorded, and with the 'opposite side' having stated that the Crime Branch, Badhkal, Faridabad, is already investigating the earlier complaint and therefore they had requested for a transfer of the present complaint also to the same branch for investigation and consequently the complaint was being sent to that branch, with there being no other complaint submitted by the complainant.

5. On that reply being filed, the following order was passed by the Judicial Magistrate 1st Class, Faridabad, on 16.03.2019:-

“Status report filed. Heard on the application u/s 156(3) Cr.P.C. In view of the facts and circumstances mentioned in the application, no ground for sending the

case for investigation under Section 156(3) Cr.P.C. is made out. Hence, the application u/s 156(3) Cr.P.C. is hereby declined. The complaint be treated as private complaint. It be checked and registered. Now the complainant is directed to produce his preliminary evidence on 04.07.2019.”

6. That order having been passed, it was challenged by way of a revision, upon which a detailed order was passed by the learned Additional Sessions Judge, Faridabad, dated 22.01.2020 (Annexure P6), dismissing the petition essentially on the ground that it was the discretion of the Magistrate, as per the facts of a case, to either entertain an application filed under Section 156(3) Cr.P.C., or to proceed with the complaint otherwise.

However, what seems to have not been specifically taken notice of in the impugned order passed by the revisional court, is that an investigation was already stated to be underway with the Crime Branch.

7. Even though notice of motion has still to be issued in this petition, an advance copy of the petition having been given by learned counsel for the petitioner to the State, in fact even a reply dated 02.01.2021 has been filed thereto by the Assistant Commissioner of Police (HQ), Faridabad, in which it is admitted that the petitioner had filed a complaint in court against respondents no.2 to 5, as also the application under Section 156 (3) Cr.P.C., with a complaint also having been filed by him with the police.

It is further stated that as per the allegations made in the complaint by the petitioner, no offence was made out against respondents no.2 to 5 and consequently the complaint with the police was filed away on 23.12.2020, with the application under Section 156(3) Cr.P.C. also having

been dismissed by the learned Judicial Magistrate 1st Class, Faridabad, and with the revision also thereafter dismissed on 22.01.2020 but with the Criminal Complaint filed by the petitioner in court still pending hearing in the court of the learned Judicial Magistrate 1st Class, Faridabad, with the next date of hearing there being 02.04.2021.

8. Mr.Ghuman, learned counsel for the petitioner, has argued that since the petitioner does not have the certificate or any document showing that his sons' religion has actually been changed, he had therefore filed the aforesaid application under Section 156(3) Cr.P.C. before the learned Illaqa Magistrate for investigation by the police and for registration of an FIR, which has been erroneously dismissed as has the revision against that order and actually investigation by the police is required.

In support of his contentions Mr.Ghuman cites a judgment of the Supreme Court in the case of Mahendra Singh Dhoni vs. Yerraguntla Shyamsundar 2017(2) RCR (Criminal) 746, from which he points specifically to paragraph 7 as follows:-

“7. On a perusal of the aforesaid passages, it is clear as crystal that Section 295-A does not stipulate everything to be penalised and any and every act would tantamount to insult or attempt to insult the religion or the religious beliefs of class of citizens. It penalises only those acts of insults to or those varieties of attempts to insult the religion or religious belief of a class of citizens which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class of citizens. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to

outrage the religious feelings of that class do not come within the Section. The Constitution Bench has further clarified that the said provision only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. Emphasis has been laid on the calculated tendency of the said aggravated form of insult and also to disrupt the public order to invite the penalty.”

Mr.Ghuman submits that forcibly converting the religion of the petitioners' son amounts to a deliberate insult to the petitioner and his religion.

9. He next cites another judgment of the Supreme Court in Priyanka Srivastava versus State of U.P., 2015(2) RCR (CrI.) 1034, wherein in fact it was held that a litigant on his own whim cannot invoke the authority of the Magistrate under the provisions of Section 156(3), which warrants application of a judicial mind and only a really grieved citizen with clean hands must have free access to invoke the said power not just to harass fallow citizens (reference paragraph 26 thereof).

It of course must need be noticed that Mr.Ghuman has in fact relied upon paragraph 18 of the said judgment which in fact is a reference to a judgment of a three judge bench of the Supreme Court in Devarapalli Lakshminarayana Reddy and others vs. V. Narayana Reddy and others, 2013 (5) Recent Apex Judgments 479, wherein it was held that an order made under Section 156(3) is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1).

Learned counsel for the petitioner next relied upon a judgment of a coordinate bench of the Delhi High Court in Skipper Beverages Pvt. Limited vs. State, 2001(3) RCR (CrI.) 514, to reiterate that where a complainant is unable to obtain evidence on his own, he may invoke jurisdiction of the Magistrate under the said provision and the Magistrate may send the case for registering an FIR and investigation if the allegations are serious and evidence is beyond the reach of the complainant or if custodial interrogation appears to be necessary for the recovery of an article or discovery of a fact.

10. Mr.Virk, learned State counsel, has argued the matter in terms of the reply filed by the State.

11. Having considered the matter, I see no reason to interfere with the impugned orders in view of the fact that other than a bare assertion to the effect that his sons' religion has been forcibly changed, it is not shown to this court that any other material at all is available to even *prima facie* support that contention.

[As regards the change of his school etc. and alleged ill treatment, that matter is already subject matter of FAO No.416 of 2019 (as not denied by learned counsel on query to him), filed by the petitioner before this court in the context of proceedings initially filed by him seeking the custody of the child, with there stated to be yet another appeal, filed by respondents no.2 to 4 before this court, bearing FAO-M-2750 of 2018, qua a divorce decree having been refused to the petitioners' wife.]

Hence, as regards the issue of the alleged forcible change of the religion of the petitioners' son, in my opinion, rather than straightway subjecting respondents no.2 to 5 to police investigation on an FIR being

registered, simply on an oral allegation in that regard made by the petitioner, the learned Magistrate would first satisfy herself/himself, *prima facie* at least, as regards the aforesaid allegation made in the criminal complaint filed by the petitioner before that court, and if that court considers necessary to do so, naturally it would inquire into the matter under the provisions of Section 202 of the Cr.P.C. and thereafter, if process is issued by that court on the merits of the case, any evidence as is required to be obtained/summoned to prove or disprove the aforesaid allegation, naturally, that court would be within its jurisdiction to call for such evidence as it considers necessary, by invoking such jurisdiction under the provisions of Chapter VII of the Code of Criminal Procedure, 1973 (including Section 91 contained therein), as also if necessary, under the provisions of Section 311 or/and any applicable provision of the said Code.

12. Hence, the rejection of the petitioners' application under the provisions of Section 156 (3) of the Cr.P.C. by the learned Magistrate, vide the impugned order dated 16.03.2019, is not found to be erroneous, at this stage by this court, with possibly the petitioner actually wanting police interference by way of an FIR registered to bring pressure on his wife and in-laws, i.e. respondents no.2 to 5, though of course that is only an observation made by way of a possibility, with this court not holding to that effect.

Of course, it needs to be noticed that other than on merits of the case, the learned revisional court has also held in the impugned order that the revision was not maintainable in the first place against an interlocutory order passed in an application filed in a criminal complaint already pending in the court of the learned Magistrate; and therefore in fact if the petitioner was aggrieved of the order passed by the Magistrate on that application, (moved under the provisions of Section 156 (3) of the Cr.P.C.), his remedy was only

by way of invoking the jurisdiction of this court under the provisions of Section 482 of the Cr.P.C.

That aspect need not be gone into by this court in view of the fact that on merits this court has already held hereinabove that the impugned order passed by the learned Magistrate rejecting the application filed under the provisions of Section 156(3) of the Cr.P.C. does not require to be interfered with and consequently, the revision before the learned Addl. Sessions Judge having been also dismissed on grounds of its non-maintainability, loses its meaning, with the present petition in any case being one invoking jurisdiction of this court under the provisions of Section 482 of the Cr.P.C.

It also needs to be observed here that though the order of the learned Magistrate is rather cryptic but be that as it may, I would see no reason to set aside the order in view of what has been held hereinabove.

It also needs to be noticed here that though at the time when the learned JMIC, Faridabad, was seized of the application in March 2019, the reply/status report filed on 16.03.2019 on behalf of the respondent State before that court actually stated that the matter was being looked into by the Crime Branch, Barkhal, Faridabad (as noticed in paragraph 4 hereinabove), however, with a reply to this petition having been filed on behalf of the respondent State (thereby waiving notice), it has been stated a complaint filed by the petitioner before the police has been filed away (as also noticed earlier in this judgment).

Hence, in fact now I would see, even more, no reason to direct registration of an FIR, with the learned Magistrate already seized of the criminal complaint filed by the petitioner before that court, with that court,

after applying its mind to it, to thereafter proceed with the complaint in terms of Chapter XV and other relevant provisions contained in the Code of 1973.

13. As regards the judgments cited by the learned counsel for the petitioner, though the ratio as regards the issues pointed to by Mr. Ghuman from those judgments, obviously cannot be denied, even so, I do not see how the order passed hereinabove is in contravention to those judgments as have been referred to in paragraphs 8 and 9 hereinabove.

14. Having held and observed as hereinafore, it is made absolutely clear that whether or not any offence at all is made out, or whether process is even required to be issued or not, by the learned Magistrate, in the criminal complaint filed by the petitioner before that court, is not something which this court is making any comment on, with naturally the Magistrate alone to apply his/her judicious mind and thereafter proceed as per law.

15. Consequently, this petition is dismissed in the light of the aforesaid observations.

11.01.2021

neenu/pk/vcgarg

**(AMOL RATTAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No