

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

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CRM-M-7313-2022

Date of decision : 21.02.2022

MALKEET RAM

.....Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

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

Mr. Amreek Singh Narwal, DAG, Haryana

SANT PARKASH, J.

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure for setting aside of impugned order dated 29.07.2019 (Annexure P-2) passed by learned Sub Divisional Judicial Magistrate, Guhla in Criminal Complaint No. 217/2016 and impugned order 06.12.2021 (Annexure P-4) passed by learned Additional Sessions Judge, Kaithal whereby Criminal Revision preferred by the complainant/revisionist challenging order dated 29.07.2019 has been dismissed.

The petitioner has further made a prayer for issuance of directions to respondents No. 2 and 3 to take appropriate legal action on the complaint dated 09.06.2016 (Annexure P-1) moved by the

petitioner and to conduct the fair and impartial investigation of the case by deputing a senior police officer or be transferred to some other investigating agency like crime branch etc.

The petition has been filed on the averments that marriage of one Manjeet Kaur daughter of Zile Singh was solemnized with Maninder Singh. Due to quarrel between husband and wife, parents of Manjeet Kaur i.e. Zile Singh along with his family members went to in-laws of Manjeet Kaur to solve the dispute but in-laws of Manjeet Kaur attacked Zile Singh and his family members with deadly weapons due to which Zile Singh and others were got admitted at Guhla Hospital. Thereafter, the present petitioner went to the police station as Panchayati from the girl's side but he has been falsely implicated in case FIR No. 21 dated 06.02.2016 registered under Sections 148/149/323/452/506 IPC at Police Station Cheeka to put pressure on the parents of Manjeet Kaur.

It is further pleaded that ASI Ram Niwas demanded Rs.30,000/- from the parents of Manjeet Kaur and on refusal to give the same, ASI Ram Niwas due to grudge in his mind had taken custody of three persons on 08.04.2016 and 3-4 ladies were turned out from the police station by pushing. In the night, respondents No. 4 to 6 under the influence of liquor gave severe beatings to the present petitioner with dandas, fists blows and kicks. The present petitioner was got medico legally examined from Ghula Hospital on 09.04.2016 before producing him before the Court and he got 5-6 injuries on his person and swelling came on his body. The petitioner moved various applications regarding

summoning of the accused before C.M. window, S.P. Kaithal, I.G. Chandigarh, DGP Ambala but all in vain.

The present petitioner approached before the Sub Divisional Judicial Magistrate, Guhla by filing a criminal complaint under Sections 166, 323, 324, 325, 506, 34 of the IPC against respondents No.4 to 6 and summoning of the accused and the same was dismissed vide order dated 29.07.2019. Feeling aggrieved, the petitioner filed Criminal Revision challenging the dismissal of his complaint which was also dismissed vide order dated 06.12.2021 passed by learned Sessions Judge, Kaithal.

Being not satisfied with the aforesaid orders, the petitioner has filed the present petition for setting aside the orders passed by the Courts below.

Learned Counsel for the petitioner while referring to observations passed by Hon'ble Supreme Court in case '**Lalita Kumari Vs. Govt. of U.P.' and others decided on November 12, 2013** has submitted that registration of the FIR is mandatory under Section 154 of the Cr.P.C., if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. The orders passed by the Court below are illegal, arbitrary and against the settled principle of law and be set aside.

Learned Counsel for the petitioner has further submitted that the role of respondents No. 4 to 6 is dubious and suspicious which amount to delinquency in their service and they are liable to be prosecuted and direction be issued to the official respondents No. 2 and

3 to register an FIR against respondents No. 4 to 6 as per the law laid down by Hon'ble Supreme Court in case **Lalita Kumari (Supra)**.

In case **Lalita Kumari Vs. Govt. of U.P. and others : 2013(4) R.C.R.(Criminal) 979** Hon'ble Supreme Court has held as under :-

“.....110) Therefore, in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.

Conclusion/Directions:

111) In view of the aforesaid discussion, we hold:

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.....”

Hon'ble Supreme Court in case titled **M/s Pepsi Foods Limited Vs. Special Judicial Magistrate, 1998-1 CJ 49** has held that the order of Magistrate summoning the accused must reflect application of mind. Mere examination of two witnesses to support the allegations

in the complaint is not enough. Magistrate has to carefully scrutinize the evidence on record.

In **Sonu Gupta Versus Deepak Gupta and others 2015 (2) RCR (CrI) 32 (SC)**, it has been held that at the stage of cognizance and summoning the accused, Magistrate is to find out whether prima facie case has been made out for summoning the accused persons.

Further, Co-ordinate Bench of this Court in case titled as **Gurdeep Kaur Vs. Balbir Singh and others, 2005(2) RCR (Criminal) P & H 205** has held that the learned trial Magistrate has to be, prima facie, satisfied as to whether there are sufficient grounds for proceeding against the accused named in the complaint or not. It is not the duty of trial Magistrate to enter into detailed discussion on the merits or demerits of the case.

Section 203 of the Cr.P.C., which is relevant in the present case is reproduced as under :-

203. Dismissal of complaint. If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

In view of the above referred judicial precedents, and provision of Section 203 Cr.P.C., it has become clear that Magistrate merely on the basis of some statements of the alleged witnesses should not issue process/summon the accused and has to carefully examine the nature of allegations made in the complaint and scrutinize the evidence on record for issuance thereof. Also, if the Magistrate is of the opinion

that there is no sufficient ground for proceeding, he shall dismiss the complaint, and shall briefly record his reasons for the same.

In the present case, the petitioner filed complaint before the concerned Magistrate against the accused persons to summon them for facing trial for the alleged offences. The complainant examined four witnesses including himself as CW1 and closed the preliminary evidence vide separate recorded statement on 08.05.2018. The Magistrate after discussing the evidence in detail observed that no prima facie case was made out against the accused persons to summon them for facing trial of the offence and has dismissed the said complaint. Therefore, the judgment **Lalita Kumari (Supra)** as relied upon by learned Counsel for the petitioner is of no help to the case of the present petitioner.

The learned trial Court in para 9 of its judgment has observed that if the complainant was beaten merciless on 08.04.2016 by the accused persons then he should have filed the present complaint immediately after 08.04.2016 and should have filed the complaint in this regard before the police. However, no such complaint was filed. The present complaint was filed by the complainant on 09.06.2016 i.e. after two months which clearly shows that present complaint is counter blast to the FIR which was already registered against the petitioner and his co-accused, only to create pressure upon the police officials.

Further, the trial Court has rightly observed that if the complainant was beaten by the accused persons on 08.04.2016 as alleged then there was no reason for the police officials to produce the

petitioner before the medical officer for his medical examination particularly when the petitioner and his co-accused were to be produced before the Court in case FIR No. 21. Also opinion of the doctor Ex. CW4/B is regarding all the accused of FIR No. 21 and it was not clear in the opinion as to the said injuries belonging to the petitioner/complainant only.

The lower Appellate Court in the revision has held that the petitioner has alleged that he was assaulted by the respondents/accused but he has neither disclosed the said fact to the learned Area Magistrate on production in the case registered against him(petitioner) nor he filed any complaint to the higher police officials. The allegations of the petitioner are not believable. Also on perusal of medical record Ex. CW4/B no external mark of injury or bruises or abrasions or swelling or tenderness or dis-colouration was observed by the doctor corresponding to parts of injuries where pain was complained by the petitioner.

On perusal of the record, it appears that the petitioner has filed the complaint only to put pressure upon the respondents/accused and to hinder the investigation in case registered against him.

In view of the above, I do not find any illegality and infirmities in the orders passed by the Court below.

The petition being devoid of any merit is dismissed accordingly.

21.02.2022
kavneet singh

(SANT PARKASH)
JUDGE

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