

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-8792-2022 (O/M)
Date of decision : 3.3.2022

Vikas Kasliwas

..... Petitioner (s)

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr Akshay Bhan, Senior Advocate with
Mr. A.S. Talwar, Advocate
for petitioner.

Mr. Saurabh Girdhar, AAG Haryana.

Mr. R.S. Rai, Senior Advocate with
Ms. Rubani Virmani, Advocate
for respondent No. 2.

(Through Video Conferencing)

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HARINDER SINGH SIDHU, J.

This petition has been filed under Section 482 Cr.P.C. assailing the order dated 15.2.2022 (Annexure P-11) passed by learned Additional Sessions Judge, Gurugram whereby revision petition preferred by respondent No.2 against the order dated 14.9.2021 (Annexure P-8) of Learned JMIC, Gurugram directing the complainant/ respondent No.2 to lead preliminary evidence instead of directing investigation by police has been allowed and the matter has been remanded back to Ld. JMIC with a direction to pass a fresh order.

An application under Section 156 (3) Cr.P.C. was filed by respondent No.2 before the Chief Judicial Magistrate, Gurugram seeking directions for registration of FIR under Sections 406, 420, 467, 468, 471, 120 B IPC against the petitioner and respondents No.3 to 11 who were arrayed as accused in the said application/complaint. The allegations pertained to default and other irregularities in the repayment of the loans availed of by them from the complainant/ respondent No.2. The Ld. Magistrate passed order dated

sending the complaint for investigation under Section 156 (3) Cr.P.C. Instead the complainant was directed to lead preliminary evidence. On request of the counsel for the complainant the case was adjourned to 27.10.2021 for recording preliminary evidence of complainant. The said order was assailed by respondent No.2 by filing a criminal revision petition. The revision petition was disposed of by the impugned order. The order dated 14.9.2021 of JMIC, Gurugram was set aside. It was observed that the order was non-speaking and thus could not be sustained. The order was also held to be un-sustainable on various other factual and legal grounds. The complainant was directed to appear before Ld. JMIC, Gurugram on 18.2.2022 and learned Magistrate was directed to pass a fresh order within one week from the date of receipt of case file.

Mr. Akshay Bhan, Learned senior counsel for petitioner has raised a number of contentions to assail the impugned order. Mr. Rai, Ld. Senior counsel for respondent No.2 countered his submissions. However, both Learned Counsel agreed that the order of the Ld. JMIC being non - speaking was liable to be set aside.

In view thereof, with the consent of Ld. Counsel, this petition is disposed of by upholding the order of the Ld. Additional Sessions Judge, Gurugram to the extent of setting aside the order of Ld. JMIC, Gurugram on the ground of it being a non-speaking order and directing the Magistrate to pass a fresh order. All other observations on facts or law in the impugned order of Ld. Additional Sessions Judge, Gurugram are set aside.

The Magistrate may pass a fresh order in accordance with law wholly uninfluenced by any such observation in the order of the Ld. Additional Sessions Judge.

(HARINDER SINGH SIDHU)
JUDGE

3.3.2022
sjks

Whether reasoned order : Yes

Whether reportable : Yes / No