

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

201

CRM-M-26283-2016

Decided on : 01.09.2022

Ashok Mittal

... Petitioner

VS.

Sarvjit Singh Walia & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Tejas Bansal, Advocate for
Mr. Sanjiv Kumar Aggarwal, Advocate for petitioner

Mr. Arshdeep S Cheema, Advocate for the respondents

Sandeep Moudgil, J. (Oral)

The petitioner seeks quashing of the order dated 11.07.2016 (Annexure P1) in Criminal Revision No.40/2016 vide which learned Additional Sessions Judge, Faridabad, has allowed the application filed by respondent No.1-complainant in criminal complaint No.120/28.04.2016 under Sections 465/467/468/471 read with Section 120-B IPC and has directed the ld. JMIC to send the complaint to police for investigation under Section 156(3) CrPC after obtaining an affidavit.

The petitioner and respondent No.1 had some dispute regarding which a compromise deed was executed on 16.11.2009 (Annexure P2) which was duly signed by the witnesses. Respondent No.1 filed criminal complaint No.52/2010 before JMIC, Faridabad against the petitioner and Jitender Ahdana under Sections 420/467/468/471/506/120-B IPC in which the petitioner and the said Jitender Ahdana were discharged vide judgment dated 20.11.2014 (Annexure P3). Thereafter respondent No.1 filed suit for declaration, permanent and mandatory injunction and specific performance of

contract dated 16.07.2007 against the petitioner and the same was also dismissed vide judgment dated 05.08.2015 (Annexure P4). Thereafter, respondent No.1 filed criminal complaint against the petitioner and respondents No.2 to 7 under Sections 465/467/468/471/120-B IPC on 06.04.2016 (Annexure P5) on the allegation of tempering of the compromise deed, along with application under Section 156(3) CrPC for forwarding of the complaint to the police (Annexure P6). Vide order dated 28.04.2016, the JMIC, Faridabad dismissed the application under Section 156(3) CrPC. The respondent No.1 filed Crl.Revision No.40 of 2016 and the same has been allowed by learned Addl. Sessions Judge, Faridabad, vide order dated 11.07.2016 (Annexure P1) which prompted the petitioner to approach this Court.

It is contended that the order dated 11.07.2016 is patently illegal and perverse as the learned revisional court did not issue notice to the petitioner and other pro forma respondents No.2 to 7 in violation of Section 399 read with Section 401 CrPC which provides to give an opportunity of hearing to the accused.

It is also urged that the revisional court could only direct the Magistrate to consider the matter afresh and as such the action of the revisional court in directing the Magistrate to send the complaint for registration of the case and investigation and to obtain affidavit from the complainant/respondent No.1 is impermissible in law. Reliance has been placed on a judgment of this Court in **Rajesh Rawat vs. Karan Singh Dagar** **2006(2) RCR (Crl.) 710.**

Learned counsel for respondent No.1-revisionist submitted that Ld. JMIC failed to appreciate the fact that before filing the complaint alongwith application U/s 156(3) Cr.P.C, he had filed a complaint before the Commissioner of Police on 1.12.2015 and later-on a reminder was also sent to Commissioner of Police on 15.1.2016, which was forwarded to ACP Crime. He further submitted that Ld. JMIC failed to appreciate the fact that ACP Crime failed to look into the matter seriously and under misconception of the facts, he had not taken any action against the accused persons, which are available at page no. 26 & 27 to 30 of Trial Court Record. Ld. Counsel for the respondent No.1-revisionist further submitted that filing of any affidavit alongwith the complaint is not mandatory. He further submitted that however, if Ld. JMIC was in any doubt, then the direction could have been given to the complainant to file an affidavit in support of his averments instead of declining the request to send the complaint for investigation U/s 156 (3) Cr.P.C. He further submitted that respondent No.1-revisionist is ready to tender affidavit before Ld. JMIC in support of his averments made in the complaint and prayer was accordingly made to allow the present criminal revision.

Having heard learned counsel for the parties and after going through the record, this Court does not find any merit in this petition.

The revisional court is right in observing that the Ld. JMIC instead of wasting the precious time of the court in recording the preliminary evidence and the pre-charge evidence, it will be a better course to send the complaint for investigation U/s 156(3) CrPC because respondent No.1 has also filed a complaint before Commissioner of Police on 1.12.2015 &

15.1.2016 and is already ready to file an affidavit before Ld. JMIC regarding his averments made in the complaint. Therefore, the matter will be investigated in detail vis-à-vis complaints from both sides.

In this view of the matter, this Court does not find any fault in the order dated 11.07.2016 passed by the learned revisional court.

Dismissed.

01.09.2022
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No