

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

Criminal Misc. No.M-23805-2022

Date of Decision: July 26, 2022

Anil

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr. Rajnikant Upadhyay, Advocate for the petitioner.

HARINDER SINGH SIDHU, J.

This petition has been filed for quashing the order dated 30.09.2021 passed by the learned Judicial Magistrate, Sonapat whereby the application of the petitioner under Section 156(3) Cr.P.C. seeking direction for registration of FIR against the private respondents has been dismissed. The petitioner has been asked to lead preliminary evidence. Challenge is also to the order dated 17.11.2021 passed by the learned Additional Sessions Judge, Sonapat, whereby, the revision petition filed by the petitioner against the aforesaid order has been dismissed.

It is the case of the petitioner that on 16.03.2021 at about 4:20 p.m he alongwith his cousin Amarjit was going to Sonapat for some personal work. When they reached near the stadium of village Tihar the private respondents blocked their way. They attacked the petitioner and his cousin with *dandas*. The petitioner and his cousin sustained injuries. They

were rescued by the brother of the petitioner and his nephew. The petitioner and his cousin were medico- legally examined. The copies of the MLR have been annexed as Annexure P-1 and P-2. The injuries suffered by petitioner- Anil as per the Medical Legal Report are as under:

“1. Abrasion of size approx 3x1 cm present over right leg anterior aspect ADV.XRAY right leg AP and LAT and ortho opinion
2.Pain over left foot. No external injury makr seen. Adv. XRAY left foor AP, LAT and ortho opinion.
3. Bruise of size approx 15x1 cm present over back side of right shoulder. Adv. Ortho opinion.
4. Abrasion over right shoulder of size 1x1 cm present. Adv. Ortho opinion.”

The injuries suffered by Amarjeet as per the Medical Legal Report are as under:

“1.Two bruise of size approx 6x1 cm and 5x1 cm present over right side of lower back. Adv. LS spine AP Lateral view and ortho opinion.
2. Bruise of size approx sixe 5x4 cm present over right Arm Posterior Aspect Adv. XRAY right arm with shoulder AP and vie and ortho opinion.
3. Bruise of size Approx size 4x3 cm present over left arm posterior aspect. Adv. XRAY left Arm wth shoulder AP and view and ortho opinion.
4. Pain and diffuse swelling present over left hand dorsal aspect. Adv. XRAY left hand AP and LAT view and ortho opinion.”

The matter was reported to the police on 16.03.2021. It is alleged that instead of taking action on the complaint of the petitioner, FIR

No.121 dated 18.03.2021 under Section 148, 149, 323, 241, 427, 506 IPC and Section 25 of the Arms Act was registered against the petitioner and his cousin. As no action was taken on their complaint, the petitioner submitted an application (P-3) to SSP Sonapat for taking action against the private respondents. No action was taken on that as well.

Aggrieved of the inaction of the police, the petitioner filed an application under Section 156 (3) Cr.P.C. read with Section 200 for registration of FIR against the private respondents. The learned Magistrate declined the request for registration of FIR. It was observed that the complaint filed by the petitioner before the police had been inquired into, but no FIR had been filed. The Ld. Magistrate opined that the complaint could be proved by leading preliminary evidence and there was no need for direction to register an FIR under Section 156(3) Cr. P.C.

The petitioner assailed the order by filing revision petition before the learned Additional Sessions Judge, Sonapat which has been dismissed vide the impugned order (P-7).

Learned counsel for the petitioner has argued that the order of learned Judicial Magistrate First Class, Sonapat is non-speaking. As per the allegations in the complaint a cognizable offence is made out against the private respondents. In these circumstances the Magistrate was not justified in declining the prayer of the petitioner for directing registration of an FIR and proceeding with the complaint by asking the petitioner to lead evidence.

I have perused the order dated 30.09.2021 of learned Magistrate as also the order dated 17.11.2021 of learned Additional Sessions Judge,

Sonepat. Learned Magistrate in his order recorded that the complaint submitted by the petitioner in the Police Station had been thoroughly enquired into but no FIR had been registered. The Ld. Magistrate noticed that a copy of the MLR had been annexed with the complaint. The Magistrate was of the opinion that the complaint can be proved by leading preliminary evidence instead of directing registration of FIR under Section 156(3) Cr.P.C.

It is well settled that it is not in every case where an application under Section 156(3) Cr.P.C. is filed and the allegations disclose commission of cognizable offence that a direction has to be issued to register an FIR. It is open to the Magistrate to treat the application as a complaint and proceed accordingly.

In *M/s. Skipper Beverages Pvt. Ltd. v. State, (Delhi)*, CrI.M. (M) No.579 of 2001 decided on 24.04.2001, the Delhi High Court observed:

“9. In the case in hand the allegations in regard to the theft of the cheque could be proved by oral or other evidence. The allegations regarding the forging of the cheque by typing out certain portions therein could also be proved by summoning the original cheque from the bankers and leading required evidence. Therefore, it was not at all a case where the police assistance was required for breaking the case and discovering some evidence which the complainant was unable to collect of his own. This Court, therefore, is of the considered view that learned trial Judge was justified in declining the request of the complainant to issue directions to Police under Section 156(3) of the code as prayed.

10. Section 156(3) of the Code aims at curtailing and controlling the arbitrariness on the part of the police authorities in the matter of registration of FIRs and taking up investigations, even in those cases where the same are warranted. The Section empowers the Magistrate to issue directions in this regard but this provision should not be permitted to be misused by the complainants to get police cases registered even in those cases which are not very serious in nature and the Magistrate himself can hold enquiry under Chapter XV and proceed against the accused if required. Therefore a Magistrate, must apply his mind before passing an order under Section 156(3) of the Code and must not pass these orders mechanically on the mere asking by the complainant. These powers ought to be exercised primarily in those cases where the allegations are quite serious or evidence is beyond the reach of complainant or custodial interrogation appears to be necessary for some recovery of article of discovery of fact.”

In view of above, there is no illegality or infirmity in the impugned orders.

The petition is dismissed.

July 26, 2022

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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No