

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-25873-2022
Date of decision: 04.07.2022

Savitri Devi and another

.....Petitioners

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Gurmohan Singh Bedi, Advocate, for the petitioners.

HARNARESH SINGH GILL, J.

Challenge in the present petition is to the orders passed by the Courts below, where while allowing an application under Section 156(3) Cr.P.C. filed by respondent No.2-complainant (Kanta Malik), directions for registration of an FIR, were issued to the police.

Learned counsel for the petitioners vehemently argues that while passing an order under Section 156(3) Cr.P.C., the learned Magistrate must apply his judicious mind and take into consideration the consequences arising out of such order. It is further argued that such an order must not be passed in a mechanical way as such a process would result into a manifest injustice to the person affected. Reliance is placed upon the judgment of the Hon'ble Apex Court in Suresh Kankra Vs. State of U.P. & another, 2022(1) RCR (Criminal) 757. He has also commended me to the judgment of the Hon'ble Apex Court in Mrs. Priyanka Srivastava and another Vs. State of U.P. and

others, 2015(2) RCR (Criminal) 1034, to argue that before passing an order under Section 156(3) Cr.P.C., the Magistrate is required to verify the veracity of the allegations contained in the application filed under Section 156(3) Cr.P.C. and that such process has not been adopted in the present case.

Having heard learned counsel for the petitioner and after going through the orders passed by the Courts below, this Court finds the present petition bereft of any merit.

In the instant case, the learned Magistrate before passing the impugned order, had sent for the status report and after having received such report, directions for registration of an FIR were issued to the police. The learned Additional Sessions Judge, Gurugram, vide order dated 13.05.2022, while dismissing the revision petition against the order dated 4.3.2022, has observed that the fraud alleged against, needs to be thoroughly investigated as the husband of respondent No.2-complainant, who had been impersonated, had already died and he had been in USA and under treatment, at the time of the commission of the alleged crime.

A perusal of the facts on record would go to show that family of respondent No.2-complainant is settled at USA. Her husband died on 1.12.2008 at USA. It is the case of respondent No.2-complainant that she came to know in July, 2018 that property of her husband had been sold by the accused by impersonating someone as her husband and thereafter, the said property had been sold to many persons and that a

complaint filed by her to the SHO, Sector-10, Gurgaon, was filed without taking any action thereon.

A perusal of the order dated 06.09.2019 passed by the learned Judicial Magistrate, Ist Class, Gurugram, would show that the amended complaint along with the relevant mutation and revenue record, was taken on record. Though, the learned Magistrate, while passing the order dated 04.03.2022, ought to have passed a detailed/speaking order, yet as the learned Additional Sessions Judge, Gurugram, has passed a detailed order dated 13.05.2022, while dismissing the revision petition, the said aspect stands already dealt with.

In Suresh Kankra's (supra), the Hon'ble Apex Court, took into consideration the previous litigation between the parties and the fact the complaint filed by the complainant being the house help of one Smt. Asha, was false and motivated; that Asha had earlier registered an FIR against the son of the petitioner therein, which was found false and accordingly, quashed. It was under these circumstances after having dealt with the peculiar facts of the said case, the Hon'ble Apex Court was pleased to hold that before passing the order, the Magistrate was required to be conscious of the consequences of passing an order under Section 156(3) Cr.P.C. The factual position of the present case is entirely different and hence, the said judgment is of no help to the petitioner.

In Priyanka Srivastava's case (supra), it was held by the Hon'ble Apex Court that the Magistrate would be well advised to verify the truth and also can verify the veracity of the

allegations. As noticed above, the learned Magistrate while passing the impugned order, has taken into consideration the 'Action Taken Report' and then issued the directions for registration of the FIR. However, in revision, the learned Additional Sessions Judge, has passed a detailed speaking order. Thus, as the facts of the present case need investigation, the same can only be done by the police and, therefore, the impugned order cannot be treated to be unwarranted and untenable.

In Hemant Yashwant Dhage Vs. State of Maharashtra, (2016)6 SCC 273, the Hon'ble Apex Court, while examining the competence of a Magistrate to direct registration of an FIR in an application under Section 156(3) Cr.P.C., has held that even where a Magistrate does not do so explicitly, but directs investigation, the police should register an FIR. It was held as under:-

“10. In view of the aforesaid broad consensus amongst the counsel for the various parties, it is not necessary for us to go deeper into the relevant issue of law as to whether the earlier order of this Court dated April 12, 2010 warranted registering of F.I.R. by the police before commencing investigation. But we would like to only indicate in brief the law on this subject expressly stated by this Court in the case of ***Mohd. Yousuf v. Afaq Jahan (Smt.) and another, 2006(1) RCR (Criminal) 450 : (2006) 1 SCC 627***. This Court explained that registration of an F.I.R. involves only the process of recording the substance of information relating to commission of any cognizable offence in a book kept by the officer incharge of the concerned police station. In paragraph 11 of the aforementioned case, the law was further elucidated by pointing out that to enable the police to start

investigation, it is open to the Magistrate to direct the police to register an F.I.R. and even where a Magistrate does not do so in explicit words but directs for investigation under Section 156(3) of the Code, the police should register an F.I.R. Because Section [156](#) falls within chapter XII of the Code which deals with powers of the police officers to investigate cognizable offences, the police officer concerned would always be in a better position to take further steps contemplated in Chapter XII once F.I.R. is registered in respect of the concerned cognizable offence.”

Thus, keeping in view the nature of allegations levelled by the complainant, the orders passed by the Courts below do not call for any interference.

Dismissed.

(HARNARESH SINGH GILL)
JUDGE

04.07.2022
ds

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No