

CRM-M-7937-2018

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

CRM-M-7937-2018

Judgment reserved on: 18.10.2022

Date of decision: 29.10.2022

Harvinder Singh

...Petitioner

Versus

Rajinder Singh Kohli @ Parvinder Singh Kohli and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Nilesh Bhardwaj, Advocate,
for the petitioner.

HARNARESH SINGH GILL, J.

Challenge in the present petition is to the order dated 02.02.2015 (Annexure P-2) passed by learned Addl. Chief Judicial Magistrate, Jagadhari, in COM-500-2015, titled as 'Harvinder Singh vs. Rajinder Singh Kohli and others', whereby request of the petitioner for sending the complaint to the police station under Section 156(3) Cr.P.C., was rejected and the complainant was directed to lead preliminary evidence, and the order dated 05.12.2017 (Annexure P-7) passed by learned Addl. Sessions Judge, Yamuna Nagar, vide which revision against the order dated 02.02.2015, had been dismissed.

Learned counsel for the petitioner has contended that both the Courts below have erred in law while passing the impugned orders; that when the cognizable offence is made out, the Magistrate ought to have directed registration of an FIR instead of treating the application as a

CRM-M-7937-2018

private complaint. He further submitted that the impugned orders were in utter negation of the law laid down by the Hon'ble Supreme Court. He further contended that respondent No.1-Rajinder Singh filed a petition before this Court in connection with FIR No.7/12, Police Station Sadar Jagadhari, wherein he had appended a forged compromise and it was also mentioned that articles of antique nature, were lying with Yamin and if the complaint was sent to the police under Section 156(3) Cr.P.C., antique articles having national importance could be recovered.

Learned counsel for the petitioner has further submitted that vide order dated 05.12.2017 (Annexure P-7), learned Additional Sessions Judge dismissed the revision petition filed against the order dated 02.02.2015 passed by the learned Magistrate, by drawing a conclusion that facts as projected by the complainant in the complaint, prima facie, appear to be hypothetical in nature.

I have heard the learned counsel for the petitioner.

Section 156 of the Code of Criminal Procedure reads as under:-

“156. Police officer’s power to investigate cognizable case.—

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

CRM-M-7937-2018

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.”

The learned Magistrate while passing the order dated 02.02.2015 after taking into consideration the averments made in the application as well as the material placed on record, treated the application under Section 156(3) Cr.P.C. as a private complaint, instead of issuing directions to register an FIR. Hence, it cannot be said that the impugned order is against the law.

Similar challenge was negated by this Court in CRM-M-24454-2022 titled as Tajinder Singh Panesar vs State of Punjab and Others decided on 31.05.2022 and in CRM-M-9700-2021 titled PD Sharma vs State of Punjab and others decided on 23.08.2021.

In my considered view, the Magistrate is required to apply his mind as to whether the First Information Report, to be lodged has any substance or not and after that, the Magistrate can refuse to issue directions for registration of the FIR. In the present case, the learned Magistrate has decided to treat the application of the complainant as a private complaint. Thus, it is the sole domain of the Magistrate to deal with the complaint either to keep it for evidence or to pass any appropriate order. If complaint is kept for evidence, then the petitioner-complainant can prove the allegation by leading evidence.

It is the sole discretion of the Magistrate, who may in his wisdom, keep the complaint for evidence or send the same for registration of an FIR under Section 156(3) Cr.P.C.

In view of the above, I do not find any illegality in the impugned orders, which warrant interference of this Court.

CRM-M-7937-2018

Therefore, finding no merit in the present petition, the same is hereby dismissed.

29.10.2022

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No