

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

124

CRM-M-30800-2022

Date of Decision: 18.10.2022

Krishan Gopal

...Petitioner

Versus

Subhash Doda & another

...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Rajesh Bhateja, Advocate, for the petitioner.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner assails order dated 29.04.2022 (Annexure P-1) passed by the learned Additional Sessions Judge, Sonipat, vide which revision petition filed by the petitioner challenging order dated 29.09.2021 (Annexure P-2) passed by Judicial Magistrate Ist Class, Sonipat dismissing his application under Section 156(3) Cr.P.C, has been dismissed.
2. The matter pertains to a dispute in respect of a plot measuring 132 square yards situated within the area of Shivaji Colony, near Bus Stand Tehsil & District Sonipat. As per case of the petitioner/complainant, he is in possession of a plot measuring 132 square yards situated in Shivaji Colony, Sonipat. The possession of said plot had been handed over to complainant's father about 30 years back by its owner, who had taken an amount of Rs.25,000/- from complainant's father. The complainant's father constructed boundary wall across the same. After the death of complainant's father in 2011, the complainant came into possession of

- the same. The complainant/petitioner alleged that on 28.06.2021, one Subhash Doda (accused) attempted to take possession of the same, but was unsuccessful. When the complainant reported the matter to the police, said Subhash Doda came up with a forged agreement to sell in his favour in respect of property in question. It is alleged that the police forced him to withdraw his complaint.
3. Learned Magistrate while disposing of the application under Section 156(3) Cr.P.C. recorded its order as follows:

“Arguments heard on application u/s 156(3) Cr.P.C. heard. Record perused. In the present case, a civil suit is already pending between the parties with regard to the property in question. Further, there appears to some dispute regarding ownership which is subject matter of the civil suit. Moreover, there is nothing in the complaint stating that how it is being claimed that the agreement to sell is a forged document.

Directing investigation u/s 156(3) is a pre-cognizance stage and the need for such direction arises only when the expertise of the investigation agency is required. In case where applicant himself is in possession of evidence to prove his allegation there is no requirement to pass an order u/s 156(3) Cr.P.C. If at all investigation to some extent be needed then recourse to Section 202 Cr.P.C. can be made. The powers vested u/s 156(3) have to be exercised judiciously and not as a matter of routine.

Accordingly, this Court is of the considered view that the need for exercising the powers vested u/s 156(3) does not arise in the facts and circumstances of the present case. The application stands dismissed.

Notice case is adjourned to 31.01.2022 for pre-summoning evidence on behalf of the complainant.”

4. The petitioner being aggrieved by the aforesaid order preferred a revision petition, which was also dismissed by the learned Additional Sessions Judge, Sonapat vide order dated 29.04.2022 (Annexure P-1), which has

- been assailed by the petitioner before this Court by way of instant petition.
5. Learned counsel for the petitioner submits that the learned Additional Sessions Judge while exercising revisional jurisdiction fell in error in dismissing the revision petition while relying upon a judgment of the Allahabad High Court passed in Father Thomas Vs. State of U.P. & another (decided on 22.12.2010) to the effect that order passed in terms of Section 156(3) Cr.P.C. is an interlocutory order, whereas the position is well-settled by Hon'ble Supreme Court in a judgment reported as Amit Kapoor Vs. Ramesh Chander & others, 2012 IX AD (SC) 493, wherein it has been held that an order passed in terms of Section 156(3) Cr.P.C. is not an interlocutory order and that revision is duly maintainable.
 6. This Court has considered the aforesaid submissions and has also perused the impugned order (Annexure P-1). The contention of learned counsel for the petitioner that revisional Court dismissed his revision petition while relying upon Father Thomas's case (supra) cannot be accepted inasmuch as the revisional Court has only referred to the said judgment as having been relied upon by the counsel. The revisional Court has not relied upon said judgment.
 7. A perusal of the impugned order dated 29.04.2022 indicates that the revision petition has not been dismissed on the grounds of maintainability, but has been dismissed upon finding that the order passed by the Magistrate does not call for any interference and is a perfectly legal order. Para 9 of the said order is reproduced hereinunder:

“9. Thus, it is clear that the order of the Magistrate denying the complainant for sending his complaint to the SHO under Section 156(3) Cr.P.C. for investigation and registration of the case is perfectly legal and does not call for any interference. Therefore, the revision petition being without merit and is dismissed.”

8. Having perused the impugned orders and having considered the submissions made on behalf of the petitioner, this Court does not find any infirmity in the order dated 29.09.2021 (Annexure P-2), which has been upheld vide order dated 29.04.2022 (Annexure P-1). The instant petition being sans merit and is hereby dismissed.

18.10.2022

Vimal

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/reasoned: **Yes/No**
Whether reportable: **Yes/No**