

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

119

CRM-M-37402-2021

Date of decision: 21.03.2022

HEMANT @ HEMANT KOHLI

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Arjun Dhingra, Advocate for the petitioner.

VINOD S. BHARDWAJ. J. (Oral)

This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

1. The instant petition has been filed under Section 482 Cr.P.C., raising a challenge to the order dated 19.02.2021 (Annexure P-1) passed by the learned Additional Sessions Judge, Faridabad whereby the revision petition filed by the petitioner against the order passed on application under Section 156 (3) Cr. P.C has been dismissed on account of the same being not maintainable.

2. Learned counsel for the petitioner assails the said order and contends that the Additional Sessions Judge, Faridabad ought to have adjudicated the case on merits instead of dismissing the said application as being not maintainable.

3. The facts of the instant case disclose that the petitioner claimed himself to be a long term investor in equity and that the respondent-accused persons introduced themselves as Director(s) in a company named Indo Global Financial Services and Consultancy Services. It has been alleged that

the respondent-accused persons portrayed themselves as a Investment Advisory Service providers and claimed to have all statutory approval/consent from the competent authority. Upon such assurances made by the respondent-accused persons, an agreement dated 07.09.2013 was executed by the petitioner with the said accused persons-respondents for dealing in equity. He contends that the petitioner suffered heavy losses on account of the investments made by them based upon the professional advice rendered by the respondent-accused. He then enquired with respect to the approvals by the respective departments whereupon it transpired that the accused persons did not possess the alleged approval. The complaint and application under Section 156 (3) Cr. P.C. was also moved for directing the police for registration of the FIR against the respondent-accused persons.

4. The Trial Court, declined to exercise the power vested in it under Section 156 (3) Cr.P.C. and directed cognizance of the complaint to be taken vide its order dated 17.08.2019. The said order was challenged by the petitioner by means of filing the revision petition before the Court of Sessions Judge, Faridabad. Vide order dated 19.02.2021, the Additional Sessions Judge, Faridabad dismissed the said revision petition by placing reliance upon the judgment in **“M/s Sujan Multiparts Ltd. Versus State of Haryana and others”**. It was held that the order passed on an application under Section 156 (3) Cr. P.C. refusing to direct registration of the case is an interlocutory order and a revision against the same would not be maintainable. The relevant part of the judgment passed by the learned Additional Sessions Judge is reproduced as under:

“In **M/s Sujan Multiparts Ltd. Versus State of Haryana and others, CRM-M-12329-2018 (O&M) decided on 12.03.2019,**
the Hon’ble High Court of Punjab and Haryana had held:

“The next question which is under consideration of this Court is whether a revision lies under Section 397/401 Cr.P.C against an order passed by the Magistrate under Section 156(3) Cr.P.C. This Court finds the answer to be, generally, in negative. A Constitution Bench judgment of the Hon'ble Supreme Court rendered in a case reported as Pranab Kumar Mitra vs. The State of West Bengal and another;1959 supp(1) SCR 63 has held that to file revision is not any right of a party. It is only a discretion of the Court which is vested with power of revision. Further, the revisional power is not to be invoked merely because some error is alleged in the order of the Court below. This judgment has been duly followed by the Hon'ble Supreme Court in recent judgments rendered in Girish Kumar Suneja vs. C.B.I;2017(3) RCR(CR.) 665 and Bir Singh vs. Mukesh Kumar;2019(2)RCR(CR.)1. In the later judgments, the Hon'ble Supreme Court has gone to the extent of holding that power of revision can be exercised only if there is any jurisdictional error in the order of the Court below and it is not to be exercised merely because order of the Court below is wrong. By any stretch of interpretation of language and scope of Section 156(3) Cr.P.C it cannot be said that when the Magistrate passes an order under Section 156(3) Cr.P.C, it suffers from jurisdiction error, unless he is prohibited from taking cognizance of the offence by some other provision of law. Otherwise also, provision of revision is contained in Section 397 Cr.P.C. It authorises revision in case of illegality or impropriety of the order of the Court below or irregularity of procedure. It also prohibits revision against interim order, despite any alleged illegality or impropriety in the same.....

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A constructive reading of this provision, in light of the abovesaid judgments of the Hon'ble Supreme Court, would make it clear that the 'impropriety' mentioned in the Section has the reference to the jurisdictional error or procedural

impropriety. An order of Court below, which is otherwise legally passed; cannot be re-appreciated by revisional court on the ground of 'impropriety', if there is no lack of jurisdiction or any overwhelming disregard for procedure. 'Legality' of an order of Court below can also be re-appreciated in revision only if it is a 'final' order and not merely an 'interim' or 'interlocutory' order. Whereas all intermediary orders passed by the Court during the trial may not be the interim orders, but if such an intermediary orders does not finally decide a right of an accused, it has to be treated only as an interlocutory or interim order. No person has a right not to be accused of an offence, although he has constitutional and statutory rights to defend the same and also to be protected against self incrimination and repeated prosecution. Hence, the order of the Magistrate under Section 156(3) Cr.P.C, which only leads to registration of FIR against a person, cannot be taken as an 'final' order, finally determining any rights of a person. At the best, it can be taken as an 'interim' or 'interlocutory' order, if at all it is to be taken as an order passed in 'judicial proceedings'; as defined under Section 2 of Cr.P.C. Otherwise, this order is more in the nature of administrative direction; flowing from the controlling and supervisory powers of the Magistrate; over the Police authorities in the matter of investigation of offences. Otherwise also, if no reasons are required to be recorded by the Magistrate then there would not be anything to be appreciated by the Revision Court Therefore, unless the Magistrate himself is prohibited from or not authorised to take cognizance of the offence, his order passed under Section 156(3) Cr.P.C is not amenable to challenge in revision. Revision can be maintained only on one ground; that the Magistrate himself was not competent to take cognizance of the offences qua which he has ordered investigation under Section 156(3) Cr.P.C. However, this not to say that person affected by Order of Magistrate would be remediless. He can still approach the High Court for quashing of the FIR, like any

other FIR, on the grounds for which an FIR can be quashed. But in such petition as well, the challenge has to be to the FIR on merits and not to the order of the Magistrate.”

10. In light of this judgment of Hon’ble High Court of Punjab and Haryana, I would hold this revision petition not maintainable before the Sessions Court. More so, the allegations pertaining to misrepresentations are based on certain documents, to substantiate which the complainant can lead evidence at pre-summoning stage. Thus, even otherwise and considering arbitration clause in the agreement, I am of the considered view that learned Magistrate after applying her judicious mind and giving cogent reasons has rightly come to the conclusion that the case does not warrant investigation by the police under Section 156 (3) Cr. P.C.”

5. The power of revision under Section 397 Cr.P.C. which reads as under:

“397. Calling for records to exercise powers of revision.

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,- recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the acc used is in confinement, that he be released on bail or on his own bond pending the examination of the record. Explanation.- All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub- section and of section 398.

(2) The powers of revision conferred by sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

6. A perusal of the same would shows that there is prohibition contained against exercising the power of a revision in the event of the order being an interlocutory order under Section 397 (2) Cr.P.C.

7. Learned counsel for the petitioner has fairly acknowledged that the order would be in the nature of interlocutory order in as much as it does not foreclose the right of the petitioner and does not finally decide the case. The trial Court, having directed to take cognizance of the complaint itself, cannot be said to violate any vested right accrued in favour of the petitioner. Since the right of the petitioner remains open to prosecute the respondents, the order passed on an application under Section 156 (3) Cr.P.C. refusing to direct registration of a case would be an interlocutory order. The counsel for the petitioner also does not dispute the fact that the order passed by the trial Court was in the nature of an interlocutory order. The counsel also does not dispute the ratio of the judgment in the matter of M/s Sujan Multiparts (Supra). I find no infirmity, illegality or perversity in the order passed by the Additional and Sessions Judge, Faridabad.

The instant petition is dismissed.

(VINOD S. BHARDWAJ)
JUDGE

MARCH 21, 2022
Vishal Sharma

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