

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

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CWP-2495-2023

Date of Decision: 08.02.2023

VINOD KUMAR

... Petitioners

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

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

Present: Mr. Sukhvir Singh Sahu, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

The present petition has been filed under Articles 226/227 of the Constitution of India, 1950 for issuance of a writ in the nature of Mandamus for seeking issuance of directions to respondent No.4 – Superintendent of Police, Panipat to take action on the representation dated 22.08.2022 (Annexure P-3) submitted by the petitioner and reminder dated 27.09.2022 (Annexure P-4) qua the complaint dated 19.07.2022 (Annexure P-2) submitted to respondent No.5 – the Station House Officer, Police Station Samalkha, Panipat.

Briefly summarized, the facts of the present case are that the petitioner, who is a permanent resident of village Patti Kalyan and is doing the business of Commission Agent at New Anaj Mandi, Samalkha in the name and style of “M/s Maam Raj Vinod Kumar”, is residing alongwith his family at Samalkha. The accused Manoj @ Goti son of Rameshwar was having friendly relations with the petitioner and was on visiting terms to the shop of the petitioner. The accused person used to do agricultural work on the land of the

petitioner in addition to other parcels of land taken on lease in the village. There were various financial transactions between the parties. Upon reconciliation of the account, an amount of Rs.9,00,000/- was found balance against the accused, who assured to repay the same. The petitioner claims to have visited the house of the accused on 18.07.2022 for demanding his money, however, the accused refused to repay the same and also caused injuries to him and threatened with dire consequences. The petitioner was admitted to Civil Hospital, Panipat. A complaint was also submitted to Police Chowki Haldana, however, no action was taken thereupon. Instead, an FIR No.590 dated 19.07.2022 was registered against the petitioner under Section 323, 452, 506 and 509 of the Indian Penal Code, 1860. It is also averred that thereafter, a complaint was submitted by the petitioner to the Station House Officer, Police Station Samalkha, however, no action was taken thereupon, whereafter, a representation was submitted by the petitioner to the Superintendent of Police, Panipat. Subsequent reminders were also submitted by the petitioner. It is further averred that the entry of the borrowed money is duly reflected in the ledger account of the Firm of the Petitioner and that two cheques had also been issued on 15.04.2021, however, on presentation before the Bank for encashment, the same were dishonoured with the remarks "Funds Insufficient". It is further submitted that as per the medical report of the petitioner, he has suffered as many as six injuries and that no action has been taken on the complaint submitted by the petitioner despite the respondent-Authorities being bound as per the law laid down in the judgment of **Lalita Kumari Vs. Government of U.P.** reported as **(2014) 1 SCC 524** to register FIR pursuant to occurrence of any cognizable offence.

Learned counsel for the petitioner contends that the action of the respondent-Authorities in not registering a criminal case and not taking action on the complaint and representation submitted by the petitioner is clearly in violation of the law laid down by the Hon'ble Supreme Court in the matter of ***Lalita Kumari's*** (supra), wherein it was held by the Hon'ble Supreme Court that registration of FIR is mandatory under Section 154 of the Cr.P.C. if the information received discloses the commission of any cognizable offence and no primary inquiry is permissible in such a situation. The conclusion/directions given by the Hon'ble Supreme Court in Lalita Kumari's case (supra) are extracted herein below:

“Conclusion/Directions:

111) In view of the aforesaid discussion, we hold:

- i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.*
- ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.*
- iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.*
- iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.*

- v) *The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.*
- vi) *As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:*
 - a) *Matrimonial disputes/ family disputes*
 - b) *Commercial offences*
 - c) *Medical negligence cases*
 - d) *Corruption cases*
 - e) *Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.*
- vii) *While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.*
- viii) *Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”*

Learned counsel for the petitioner was requested to refer to any provision(s) in the Code of Criminal Procedure, 1972 under which a Superintendent of Police is mandated to look into any representation submitted

by a person and is required to pass a speaking and reasoned order thereupon. He fails to refer to any such provision under which adjudication of a representation by a Superintendent of Police on receipt of every such complaint/representation is stipulated. The powers of Superior Officers of the Police are prescribed under Section 36 of the Code of Criminal Procedure, 1972, as per which a Superior Police Officer may exercise the same powers as may be exercised by the Officer Incharge of a Police Station within the limitation of his Station. Learned counsel for the petitioner, however, could not refer to any section or provision in the Code of Criminal Procedure, 1972 as per which a Higher/Superior Police Officer is competent to exercise any power over the Officer Incharge of a local jurisdiction. While exercising the writ jurisdiction, a Court issues directions to Subordinate Authority/Agency/Instrumentality of the State where they have committed dereliction in performance of their duties or what a Statute enjoins upon them to do. Since the prayer made in the present writ petition is for seeking directions to the Superintendent of Police, it was incumbent upon the petition to reflect that the Statute mandates the Superintendent of Police to consider and pass orders on every such complaint/representation received in his office and that any such failure would subject him to issuance of directions under the prerogative of Writ. On the other hand, the case was examined by this Court on merits as well.

The facts noticed above clearly reveal that there was a monetary dispute between the parties. The petitioner claims that the accused owes an amount of Rs.9,00,000/- to him and two cheques of Rs.5,00,000/- have also been issued in his favour. However, on presentation, the same were dishonoured on 15.04.2021 with remarks "Funds Insufficient". There was thus

no occasion for the petitioner to have any cordial relations with the accused. It is also the case of the petitioner that on 18.07.2022, he had gone to the house of accused purportedly on the pretext of demanding his money. It is thus clear that the petitioner was not called by the accused. The incident in question thus took place in the premises of the persons stated to be the accused by the petitioner. Besides, the Medico-Legal Report dated 18.07.2022 relied upon by the petitioners mentions the following injuries:

Sr. No.	Injuries	Marked	Inquiry No.
1.	TWO LINEAR CUT INCISED WOUNDS OF 4.5*2 CM OVER BORDER OF FUPPER 1/3 RD AND LOWER 2/3 RD OF RIGHT LEG AND 3.6*2 CM OVER MIDDLE OF LEG OF SKIN DEPTH WITH REGULAR MARGINS AND SHARP EDGES.	NO	1
2.	MULTIPLE LINEAR CUT INCISED WOULD PRESENT TOW OVER LEFT DELTOID REGION OF 3.5*2 CM EACH AND THREE OVER LEFT FOREARM LARGEST OF 3.5*2 CM OF SKIN DEPTH WITH REGULAR MARGINS AND SHARP EDGES.	NO	2.
3.	RED COLOURED BRUISE OF 6*2 CM PRESENT OVER LEFT DELTOID REGION AND 5*2 CM IN MIDDLE OF LEFT FOREARM	NO	3
4.	C/O PAIN OVER LEFT FOOD AND ANKLE OR SWELLING PRESENT IN MIDDLE O/E LEFT FOOT. ADVISE X-RAY LEFT FOOT AND ORTHO OPINION	NO	4
5.	C/O PAIN OVER LEFT HIP O/E NO INJURY SEEN	NO	5
6.	C/O PAIN OVER UPPER LIP O/W SMALL	NO	6.

	ABRASION 6*1.6 CM OVER INNER SURFACE OF UPPER LIP RIGHT SIDE WITH MILD SWELLING ADVISE DENTAL OPINION		
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A perusal of the aforesaid injuries shows that the injury No.3 is a bruise while the injuries No.4, 5 and 6 are complains of pain with mild swelling. Injuries No.1 and 2 are stated to be linear cuts. The said injuries are stated to be simple in nature. The same may at best attract an offence punishable under Section 323 of the Indian Penal Code, 1860. The aforesaid offence is not a cognizable offence and as such it cannot be said that there is no breach or violation of the statutory mandate as prescribed under Section 154 of the Code of Criminal Procedure, 1972. The institution of the present petition seems to be an attempt to put pressure on the Investigating Agency, so as to influence the investigation being conducted against the petitioner and also to harass the accused by submission of the present complaint especially when it is undisputed that the petitioner had himself entered the house of the accused. Significantly, the petitioner chose not to append the FIR No.590 dated 19.07.2022 registered against him at Police Station Samalkha and has also not impleaded the persons, against whom action is being sought, as party in the present petition. This clearly shows that the petitioner has filed the present petition mischievously by not placing the complete information and documents on record. Furthermore, the petition in hand also appears to be bad on account of non-joinder of necessary parties as well.

Apparently, by way of filing present petition, the petitioner has mischievously and impliedly sought a relief that could not have been asked for directly from the Court. Filing of such frivolous petitions not only puts

undesirable burden on the system of judicial administration but it also wastes the precious judicial time. Ordinarily, this Court would have inclined to dismiss such petition with heavy costs, however, taking a lenient view into the matter, this Court abstains from imposing any costs.

The petition in hand stands dismissed accordingly.

08.02.2023

rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No