

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

CRM-M-26175 of 2016

Date of Decision: January 19, 2023

Palwinder Singh

...Petitioner

Versus

Tripta Rani and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Vipin Mahajan, Advocate for the petitioner.

DEEPAK GUPTA, J.(Oral)

By way of this petition, prayer is made to quash order dated 26.05.2016 (Annexure P.6) passed by learned Additional Sessions Judge, Pathankot, whereby revision filed by the respondent- accused has been accepted.

It is revealed that criminal complaint bearing CIS No. COML/45/2014 titled “Palwinder Singh Vs. Tripta Rani and others” was filed by the petitioner to prosecute the respondents- accused under various provisions of IPC. After recording preliminary evidence, learned Magistrate vide order dated 21.10.2015 (Annexure P2) directed the summoning of the accused- respondents to face prosecution under Sections 204/355/384/420/423/427/435/506/342/148/149 IPC read with Section 120-B IPC. Against that order, respondents filed revision before learned Additional Sessions Judge, Pathankot which has been accepted vide impugned order dated 26.05.2016.

It is contended by learned counsel that the only ground for accepting the revision by learned Additional Sessions Judge is that Magistrate had not called for the report under Section 210 Cr.P.C. It is contended that since no inquiry or investigation was pending before the Police so the complaint could not have been dismissed for want of any

report under Section 210 Cr.P.C.

There is merit in the revision.

Notice of motion was issued to the respondent. Despite service, there was no representation on behalf of the respondents. Section 210 Cr.P.C. provides the procedure to be followed when there is a complaint case and the police investigation in respect of the same offence. In the present case, contention of the petitioner is that he had earlier moved the police authorities but they did not take any action due to which he had to file complaint before the Court. Thus neither any inquiry nor any investigation was pending before the Police and so Section 210 Cr.P.C was not attracted at all. In **Wazir Singh Vs. Ram Kumar, 2007(1) RCR (Criminal) 784**, a co-ordinate Bench of this Court held as under:-

“10. The recording of FIR and Daily diary report are two different stages of the investigation. In the investigation of a complaint if some evidence is collected and the complaint is filed on the same facts, the investigation of which is pending, the Judicial Magistrate is bound to follow the procedure as envisaged under Section 210 of the Code of Criminal Procedure but in the instant case the police only recorded the DDR entry and the recording of an entry in the DDR register ipso facto did not make out a case for following the procedure as has been laid down in Section 210 of the Code. Through the present petition, the petitioners have challenged the impugned order passed by the Judicial Magistrate, only on the ground that while passing the impugned order, the judicial Magistrate has not followed the procedure laid down under Section 210 of the Code of Criminal Procedure. It is not disputed that DDR was recorded by the police but no action was taken nor any investigation was conducted. Thus at the time of filing of complaint

the police was not conducting any investigation on similar facts which were raised in the complaint. It was on this count that the learned trial Magistrate did not resort to provisions of Section 210 Criminal Procedure Code. Thus, the order passed by the Magistrate for summoning the accused as well as passed by the Additional Sessions Judge, do not suffer from any illegality except the commission of offence under Section 326 Indian Penal Code. No interference is called for under Section 482 Criminal Procedure Code.”

In the present case also, as observed earlier, that no inquiry or investigation was pending before the Police. As such, in view of the legal position explained above, the impugned order passed by learned Additional Sessions Judge, cannot be sustained and the same is hereby set aside. Petition is allowed accordingly.

January 19, 2023

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**(DEEPAK GUPTA)
JUDGE**

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