

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-40817 of 2017(O&M)

Date of Decision: 29.05.2023

Anil Kumar Bansal & Anr.

...Petitioners

Versus

Sohan Lal Arora & Anr.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. H.S. Randhawa, Advocate
For the petitioners.

Mr. Pranav Chamoli, Advocate
For respondent No.1.

Mr. Rajeev Anand, APP U.T. Chandigarh
For respondent No.2.

KARAMJIT SINGH, J.

CRM-21340 of 2023

This is an application for pre-ponment of main case (CRM-M-40817 of 2017) which is fixed for 13.09.2023.

For the reasons mentioned in the application, the same is allowed and hearing of main case is pre-poned and the same is taken up for hearing today itself. Compromise, Annexure A-1 is also taken on record.

CRM-M-40817 of 2017

1. The present petition has been filed by the petitioners seeking quashing of order dated 27.10.2017 (Annexure P-6) passed by the Court of Judicial Magistrate Ist Class, Chandigarh whereby directions are issued under Section 156(3) Cr.P.C. for registration of FIR against petitioners and

one Rakesh Wadhawan on the basis of complaint lodged by respondent No.1 Sohan Lal Arora.

2. Notice of motion was issued to the respondents vide order dated 31.10.2017 and thereafter both the respondents put in appearance and during pendency of the present petition the parties have entered into a compromise and the compromise deed is Annexure A-1.

3. Today, the counsel appearing on behalf of respondent No.1 has pleaded no objection if the present petition is allowed.

4. The counsel appearing on behalf of the petitioner apprised the Court that petitioner No.1 has died and copy of his death certificate is produced on the record.

5. I have heard the counsel for the parties.

6. In the instant case it is evident that respondent No.1 filed criminal complaint against the petitioners and Rakesh Wadhawan under Section 156(3) Cr.P.C. and in the said complaint the trial Court took cognizance and examined CW.1 to CW.5 and only thereafter passed impugned order Annexure P-6 whereby direction was given to SHO to register the FIR and then to investigate the matter by invoking provisions of Section 156(3) Cr.P.C.

7. It is settled position of law that the power under Section 156(3) Cr.P.C. is exercisable at a pre-cognizance stage and once the Magistrate has taken cognizance of the offence, it is not within his competence to revert back to pre-cognizance stage and invoke provisions of Section 156(3) Cr.P.C. and once the Magistrate takes cognizance of the complaint, he is

required to embark upon the procedure embodied in Chapter XV of the Cr.P.C.

8. In the light of the above, this Court is of the view that the procedure followed by the learned trial Court while passing the impugned order, Annexure P-6 was totally against the settled position of law and thus, the impugned order is not sustainable. Consequently, the present petition is allowed and impugned order is set aside.

29.05.2023

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**(KARAMJIT SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No