

CRM-M-26923-2020(O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-26923-2020 (O&M)

Date of decision: August 07, 2023

Kuldeep Sharma

....Petitioner

versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Dinesh Ghai, Advocate,
Mr. Nikhil Ghai, Advocate for petitioner.

Ms. Guramrit Kaur, DAG Punjab.

None for respondent No.2, despite service.

ARUN MONGA, J. (ORAL)

The instant petition has been filed under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') seeking quashing of impugned show cause notice dated 22.06.2020 (Annexure P-1/B) issued by learned Additional Chief Judicial Magistrate, Fazilka and also for quashing order dated 17.06.2020 (Annexure P-1/C) to the extent of ordering issuance of show cause notice for registration of FIR under Section 166A of IPC against the petitioner, in view of order dated 31.08.2020 (Annexure P-1) passed by this Court in CRM-M-25300-2020.

2. Learned counsel for the petitioner submits that petitioner had earlier approached this Court by way of CRM-M-25300-2020 seeking same relief as is being sought in the present petition. Vide order dated 31.08.2020 (Annexure P-1), the said petition was dismissed as withdrawn with liberty to file a fresh one.

2.1. Learned counsel contends that petitioner received impugned notice dated 22.06.2020 (Annexure P-1/B) from the Court of learned Additional Chief Judicial Magistrate, Fazilka to show cause as to why FIR under Section 166A of IPC be not registered against the petitioner stating therein that an information was received by petitioner regarding alleged rape committed upon the complainant 'X' against accused Rajinder Kumar son of Hakam Chand, but inspite of getting the FIR registered in view of provisions of

of U.P.¹, the petitioner conducted preliminary inquiry and thereby disobeyed the directions of law regulating the manner in which investigation shall be conducted and have thereby prima facie committed an offence under Section 166A(b)(c) of IPC.

2.2. Learned counsel further submits that matter relates back to the period when petitioner was serving as Superintendent of Police (HQ), Fazilka. He further contends that petitioner joined as Superintendent of Police (Head Quarter), Fazilka on 19.02.2019 and was transferred to Ludhiana as ADCP (IV) for Ludhiana, vide order dated 25.05.2020 and he joined as such on 27.05.2020. Petitioner did not conduct any sort of preliminary enquiry on the representation/ information of the complainant at any time. He also contends that in the application under Section 156(3) of Cr. P.C., the complainant made no allegation against the petitioner and more specifically, complainant neither appeared before petitioner nor had she made any kind of written request to the petitioner. No representation of the complainant was ever entrusted to the petitioner for alleged facts/ grievances.

2.3. Learned counsel further contends that complaint filed by complainant-respondent No.2 already stood filed and petitioner has nothing to do with earlier enquiry and has no role to play on the complaint of respondent No.2. Petitioner had acted on the complaint of accused Rajinder Kumar, in his official capacity and not in personal capacity, where petitioner had recommended legal proceedings against respondent No.2 which were further approved by SSP, Fazilka.

2.4. Learned counsel for petitioner would further urge that while exercising jurisdiction under Section 156(3) Cr.P.C., learned Additional Chief Judicial Magistrate, Fazilka, exceeded his jurisdiction and even after issuance of directions, the notices have been sent by the said Court to the accused. The complaint was not supported with an affidavit, contends the learned counsel.

3. Notice of motion was issued vide order dated 18.09.2020 and implementation of impugned order was directed to be kept in abeyance.

4. None appears on behalf of respondent No.2, despite service, which is suggestive of the fact that she has no serious objection to the petition being allowed.

5. Heard.

6. Stand of the petitioner taken in the petition is vindicated by the candid response contained in para-5 of the preliminary submissions in the reply by way of affidavit dated 03.11.2022 filed by Deputy Superintendent of Police, Fazilka. For ready reference, the same is reproduced hereinbelow:

“5. That it is respectfully submitted that the petitioner had not conducted any preliminary enquiry on the representation of the complainant at any time. The petitioner had carried out enquiry on the representation of Rajinder Kumar son of Hakam Chand resident of village Ladhuka. The said enquiry was conducted by the petitioner in his independent official capacity in compliance with the directions of S.S.P Fazilka. After said inquiry, it was revealed that the respondent No.2 in league with her husband Sara Singh falsely got registered FIR against said Rajinder Kumar, by manipulating medical examination in order to blackmail him. It was also found that the respondent No.2 had got recorded a false statement for getting the FIR registered to give effect to her nefarious designs. Therefore, FIR No.163 dated 22.05.2020 was registered against respondent No.2 and her husband under section 420, 389, 384, 195, 193, 120-B IPC at P.S. Sadar, Fazilka.”

7. In view of the aforesaid, it is clear that vide impugned notice dated 22.06.2020 and the order dated 17.06.2020 (Annexure P-1/C) against the petitioner cannot be sustained as no preliminary inquiry was conducted. Accordingly, it is so ordered.

8. Petition is allowed. Impugned order dated 22.06.2020 (Annexure P-1/B) passed by learned Additional Chief Judicial Magistrate, Fazilka and order dated 17.06.2020 (Annexure P-1/C) to the extent of ordering the issuance of show cause notice for registration of FIR under Section 166A of IPC against the petitioner, are quashed.

9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

August 07, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No