

110

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

-.-

CRM M 32900-2022 (O&M)
Date of Decision 27.07.2023

Naresh Dilawari*Petitioner*
versus
State of Punjab and others ..*Respondents*

Coram Hon'ble Mr. Justice Rajbir Sehrawat

Present: Petitioner in person

 Mr. Sandeep Singh, Additional Advocate General, Punjab
 -.-

Rajbir Sehrawat, J, (Oral)
CRM-12560-2023

Prayer in this application is for seeking permission to place on record reply filed on behalf of respondent No. 3.

For the reasons mentioned in the application, the same is allowed and reply filed on behalf of respondent No. 3 is taken on record.

CRM-13358-2023

Prayer in this application is for placing on record Annexures P-10 and P-11.

For the reasons mentioned in the application, the same is allowed and Annexures P-10 and P-11 are taken on record.

Main case

The present petition has been by the petitioner under Section 482 of the Code of Criminal Procedure, praying for setting aside the impugned orders dated 18.10.2021, 13.09.2021 and 25.08.2021 (Annexures

P-1 to P-3) passed by the Judicial Magistrate Ist Class, Ludhiana whereby his application No. CRM/8483/2021 titled as '*Naresh Dilawari vs The Branch Manager Indian Overseas Bank*' filed under Section 156(3) Cr.P.C. has been disposed of while treating the same as criminal complaint and directing the petitioner/complainant to produce his preliminary evidence in support of allegations.

The facts as alleged in the petition are that the petitioner had filed an application under Section 156 (3) of the Code of Criminal Procedure before the Magistrate for referring the matter to the Police for conducting fair and impartial investigation into the allegations that respondent No. 2 *i.e.* Branch Manager of Indian Overseas Bank, Rahon Road, Ludhiana has defrauded his Bank for a sum of Rs.12,00,000, in connivance with other bank officials, as well as, the private respondents No. 3 to 6. The petitioner, statedly, obtained RTI from the Bank to substantiate the allegations against the respondents and others. Vide order dated 18.10.2021 passed by the JMJC. Ludhiana (Annexure P1), the application of the petitioner filed under Section 156 (3) Cr.P.C. has been disposed of. Further, the Magistrate has ordered that the said application is treated as criminal complaint, and accordingly, the petitioner was directed to produce his preliminary evidence. Aggrieved of the said order, the petitioner has filed the present petition, challenging the order dated 18.10.2021 (Annexure P1).

Arguing the case, the petitioner, who appears in person submits that since the public money is involved and he cannot collect the evidence on his own, therefore, the matter should have been referred to the police for investigation. Still further, it is submitted that the Bank has filed some

frivolous application before the DRT, Chandigarh against respondent No. 3 to extend benefit to him. It is also submitted by the petitioner that earlier the Bank had also filed application qua this fraud under Section 156 (3) Cr.P.C. before the Magistrate, Ludhiana; but no order has been passed thereon so far.

Having heard the petitioner and having perused the case file, this Court finds that the Magistrate; after considering all the aspects involved in the matter; has come to the conclusion that the application be treated as criminal complaint; and directed the petitioner to lead his preliminary evidence in the matter. The petitioner has not been deprived of his legal remedy, as such.

Moreover, this Court has already held in CRM M 12329 of 2018 titled as '*M/s Sujjan Multiportis Limited Vs. State of Haryana and others*', decided on 12.03.2019 that while dealing with the application under Section 156 (3), the Magistrate is not required to give any detailed reasons for not referring the matter for investigation by the Police. The course of action adopted by the Magistrate in this case is perfectly in line with the law laid down by the Hon'ble Supreme Court also, insofar as the Magistrate has taken cognizance of the offence and has decided to proceed further with the matter in accordance with law. Therefore, this Court does not find any illegality or irregularity with the order passed by the Court below.

The arguments of the petitioner that he cannot collect the evidence and, therefore, the matter should have been referred to the Police is of no help. Even during trial; if the Magistrate so finds and feels it necessary that the assistance of the police is required on certain aspect of the

matter, then the Magistrate can very well order the Police concerned to investigate the said aspect. Otherwise also, it is for the Magistrate to decide whether he should refer the matter to the police for investigation or proceed with the matter as a complaint.

Though the petitioner has also pointed out that; earlier; the Bank had also moved an application under Section 156 (3) Cr.P.C, but no order has been passed thereon, however, it is the subject matter for the concerned applicant to take up the same with the Court of concerned Magistrate. The petitioner has nothing to do with the said aspect.

Another argument raised by the petitioner is that some frivolous application was filed by the Bank against respondent No. 3. However, again; the same is of no use to the petitioner. Had the Bank filed any frivolous application, the same would have been thrown out by the DRT, Chandigarh by now. However, the same is still pending before the DRT; which is proceeding with the said case against the respondent No. 3

In view of the above, finding no merits, the present petition is dismissed.

All other pending applications also stand disposed of accordingly.

(Rajbir Sehrawat)
Judge

July 27, 2023
mohan bimbra

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