

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

116

CRM-M-30249-2023
Date of Decision.:13.06.2023

Shailender Kumar and AnotherPetitioners
Vs.
U.T. Chandigarh and OthersRespondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Karan Garg, Advocate for the petitioners.

DEEPAK GUPTA, J. (ORAL)

Prayer in this petition filed under Section 482 Cr.P.C. is to issue appropriate direction to the official respondents to follow the procedure as envisaged in Section 41-A Cr.P.C., in case any complaint is received by them against the petitioners, at the hands of private respondent who is bent upon to harass and torture the petitioners and their family members.

2. It is contended that petitioners are Government contractors in Chandigarh dealing with CPWD since long time. Private respondent has filed a false and frivolous complaint against the petitioners levelling allegations of embezzlement. Copy of that complaint is Annexure P-1. Under the garb of that complaint, the official respondents have been calling the petitioners time and again to the police station without following due procedure of law. Learned counsel contends that even no notice as envisaged under Section 41-A Cr.P.C. has ever been served.

3. Notice of motion.

4. Mr. Amit Kumar Goyal, APP, U.T. Chandigarh accepts notice

CRM-M-30249-2023

on behalf of respondent Nos.1 to 3.

5. It is conceded by learned counsel for U.T. Chandigarh that complaint Annexure P-1 dated 06.04.2023 has been received against the petitioners and others. He also concedes that no FIR has been lodged on the basis of that complaint so far and the matter is being enquired into. However, he could not point out as to whether any notice envisaged under Section 41-A Cr.P.C. has ever been served upon any of the petitioners.

6. Having heard learned counsels for both the sides, it is observed that though the police has the power to investigate any cognizable offence but it has to exercise the said power in accordance with law. Under the garb of conducting enquiry/investigation, police cannot be allowed to harass the petitioners and that too without following the due process of law.

7. This petition is hereby disposed of with the direction to the official respondents to follow the guidelines stipulated by Hon'ble Supreme Court in *Lalita Kumari v. Government of Uttar Pradesh 2014 (2) SCC 1*. It is further directed that in case the presence of the petitioners is required to conduct the enquiry without registration of the FIR, as is contended by learned State counsel the necessary procedure as per Section 41-A Cr.P.C. shall be followed.

8. Disposed of.

June 13, 2023

Neetika Tuteja

(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No