

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 290

Criminal Miscellaneous No.M-38904 of 2021(O&M)

Date of Decision: February 13, 2023

Megh Raj and others

..... PETITIONER(S)

VERSUS

Union Territory of Chandigarh and another

..... RESPONDENT(S)

. . .

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

. . .

PRESENT: - Mr. Rahul Sharma, Advocate for the petitioners.

Mr. Rajeev Anand, Addl. PP, UT Chandigarh for
respondent No.1.

Mr. Shekhar Verma, Advocate for the complainant -
respondent No.2.

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Tribhuvan Dahiya, J (Oral)

This is a petition under Section 482 Cr.P.C. for quashing of Criminal Misc. No.82 of 2021 dated 14.07.2021 (Annexure P-6), allegedly being third complaint filed by respondent No.2 on the same cause of action *qua* the same parties, and all subsequent proceedings arising therefrom including the order dated 19.07.2021 (Annexure P-7) passed by learned Special Judge, Fast Track Special Court, Chandigarh.

2. The facts in brief are, an FIR No.228 dated 17.08.2019 was registered under Sections 354, 354-A, 354-D, 506 IPC and Sections 10 and 12 of POCSO Act, 2012 against five boys who allegedly harassed the complainant's minor daughter. On the same date, another FIR No.229 was registered against the respondent-complainant under Sections 341, 342 and

506 IPC on the complaint of one, Ajay Kumar, the accused in the earlier FIR. Learned counsel for the UT, states that offence under Section 323 IPC was added to it later. After completion of investigation final report/challan in case FIR No.228 was presented on 15.10.2019 only against five boys under Sections 354, 354-A, 354-D, 506 IPC and Sections 10 & 12 of Protection of Children from Sexual Offences Act, 2012. The officials of Chandigarh Lawn Tennis Association (hereinafter referred to as 'CLTA') were not challaned despite the allegations against them.

3. Therefore, on 04.09.2020, the complainant-respondent No.2 filed a complaint under Section 156(3) Cr.P.C. in the Court of Chief Judicial Magistrate (Annexure P-1) for registering FIR against the petitioners and other officials of CLTA, directing police authorities to investigate into the complaint in accordance with law under Sections 17, 18 and 19 read with Section 21 of Protection of Children from Sexual Offences Act, 2012 read with Section 415, 420, 463, 465 and 469 read with Section 120-B IPC. The same was dismissed, vide order dated 19.01.2021, for want of jurisdiction as well as on merits. Against that the respondent No.2-complainant filed a revision petition impugning observations made by the Magistrate on merits of the case. The revision was allowed and the observations on merits were set aside, vide order dated 12.11.2021, passed by the Special Court in CRR No.31 of 2021. However, the order dated 19.01.2021 was upheld to the extent it held that the complaint was bad for want of jurisdiction. In this situation, complaint filed by respondent No.2 dated 06.04.2021 under Section 156(3) Cr.P.C., which had been kept pending awaiting decision of the Special Court in the revision petition, was entertained. Preliminary evidence is being recorded in it.

4. Subsequently, on 14.07.2021, the respondent-complainant filed another, i.e., second complaint under Section 156 (3) Cr.P.C. allegedly on a different cause of action against the present petitioners/officials of CLTA (Annexure P-6). The prayer in this complaint was for registration of FIR against the three petitioners/officials of CLTA, and directing police authorities to investigate into the complaint and punish them in accordance with law under Section 16 of the Protection of Children from Sexual Offences Act, 2012, read with Sections 499, 500, 506 and 509, 166-A read with 120-B of IPC. The impugned order dated 19.07.2021 has been passed in the second complaint to the following effect. The relevant paragraphs 3, 4 and 5 of the order reads as under:

3. The applicant-complainant has prayed for sending the matter for investigation and registration of FIR to the Police, under Section 156 (3) Cr.P.C. However, it needs to be noted that on similar facts a Criminal Revision and a complaint under Section 156 (3) Cr.P.C. is already pending before this Court, which is fixed for 28.07.2021.

4. Perusal of the matter would reveal that the allegations levelled by the complainant in the present matter do not require any discovery of evidence. The evidence/ documents are within the knowledge of complainant, which can conveniently be summoned with the assistance of court, during the course of evidence of complainant.

5. In such circumstance, the request for sending the complaint under Section 156 (3) Cr.P.C. is declined.

However, it be checked and registered as complaint. The matter is adjourned to 07.09.2021 for recording preliminary evidence of complainant.

5. Learned counsel for the petitioners has contended that multiple complaints on the same cause of action have been filed by the respondent-complainant pertaining to the same incidents dated 08.05.2019 and 22.07.2019. He contends that the filing of the complaints itself amounts to harassment and humiliation for the petitioners, who even otherwise are not concerned with the offences alleged in any manner. The only allegation is, certain provisions of Sections 21 & 16, 19 & 21 of Protection of Children from Sexual Offences Act Act, 2012 were allegedly not followed by them and appropriate complaint was not lodged. He has relied upon the judgment of the Supreme Court in *Krishan Lal Chawla and others vs. State of Uttar Pradesh and another* (2021) 5 SCC 435 to contend that filing of multiple complaints on same cause of action, is an abuse of process of law and should not be entertained.

6. Learned counsel for the respondent-complainant, on the other hand, contends that the aforementioned two complaints are on different causes of action. He was forced to file the second complaint only because the facts pertaining to commission of the alleged offences by the petitioners herein came to his knowledge only after filing of challan by the investigating agency in case FIR 228 dated 17.08.2019. Besides, he could not have amended the earlier complaint filed by him as there was no provision to do so. The only option with him was to file the second complaint in question. It is further contended that the petition itself is pre-mature as only preliminary evidence is being recorded by the Magistrate and the petitioners herein have

not been summoned as yet, nor has any notice been issued to them.

7. Learned counsel for the parties have been heard.

8. It is not in dispute that the second complaint filed by the complainant under Section 156(3) Cr.P.C., dated 14.07.2021, is pending before the trial Court and preliminary evidence is being recorded. The Court is yet to take cognizance of the alleged offences. No notice has been issued to the petitioners as yet, nor have they been summoned. As contended by learned counsel for the petitioner, they came to know about the pending proceedings through newspaper reports, and approached this Court by filing the instant petition. A newspaper report about pending proceedings before the trial Court for recording of preliminary evidence, does not give any cause of action to the petitioners to file the instant petition. As of now, no order has been passed by the trial Court upon the second complaint dated 14.07.2021, nor any notice or summon has issued to either of the petitioners. No cause of action has arisen in their favour based on which the instant petition could have been filed. Therefore, the petition is pre-mature.

9. Allowing the petition or entertaining it at this stage would require this Court to go into the merits of the second complaint dated 14.07.2021, pending before the trial Court at this stage of recording preliminary evidence. There is no compelling reason for this Court to go into the merits of such a case and examine its maintainability in exercise of its inherent jurisdiction under Section 482 Cr.P.C. when no prejudice has been caused to the petitioners. It would amount of pre-judging the issue pending adjudication before the trial Court, which is still to take cognizance of the offences alleged. After recording of the preliminary evidence, the trial Court may or may not issue process and summon the petitioners. In case it does,

the petitioners will have their remedies in law on being aggrieved. At this stage, however, there is no occasion for the Court to interfere with matter.

10. Learned counsel for the petitioners has vehemently argued that the inherent power of the Court under Section 482 Cr.P.C. should be exercised to check the blatant abuse of the process of law by the respondent-complainant in filing the second complaint on the same cause of action on which an earlier complaint already stands filed by him. The fact of filing the first complaint was duly disclosed by the respondent-complainant in the second complaint of his. It is his case that the second complaint is on a separate cause of action. Apparently therefore, the second complaint has been filed without concealing any fact from the trial Court which is seized of the matter, and will take appropriate decision in accordance with law. At this stage, it cannot be said that any jurisdictional error is there in the trial Court allowing recording of preliminary evidence by the respondent-complainant on the second complaint filed by him. The judgment referred to, by learned counsel for the petitioners in *Krishan Lal Chawla* case, is not applicable to the facts of the instant case, since in that case, the trial Court had taken cognizance and summoned the petitioners-accused on the basis of a second complaint. It was, therefore, held that the complainant could not subject the accused to double whammy of investigation by the police and enquiry before the Magistrate. Such situation does not arise in the instant case as the petitioners herein are yet to be summoned by the trial Court.

11. In view of the aforesaid discussion, the instant petition is dismissed as pre-mature.

12. Pending miscellaneous application(s), if any, stand disposed of, as having been rendered infructuous.

February 13, 2023

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(Tribhuvan Dahiya)
Judge

<u>Whether Speaking/ Reasoned:</u>	<u>Yes/ No</u>
<u>Whether Reportable:</u>	<u>Yes/ No</u>