

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-42061-2021 (O&M)

Date of decision: 05.07.2023

Mukta Agarwal

...Petitioner

Vs.

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. M.S.Rana, Advocate,
For the petitioner.

Mr. Karan Garg, AAG, Haryana.

Mr. Rajesh Hooda, Advocate,
for respondent No.2.

ARUN MONGA, J. (ORAL)

The instant petition has been filed under Section 482 Cr.P.C. seeking quashing of impugned order dated 13.05.2021 (Annexure P-1) passed by Learned Judicial Magistrate First Class, Faridabad whereby application moved by the petitioner under Section 156 (3) Cr.P.C. directing the police authorities at Faridabad or cyber cell Sector 30 Faridabad to register the FIR on the complaint of the petitioner, was declined.

2. Plead case is that petitioner is wife of respondent No.2/accused and from their wedlock they have two minor girls. Accused completely abandoned the petitioner-wife and both daughters for 2.5 years (24.08.2014 to 03.03.2017) after causing physical violence on the petitioner and throwing her out of the matrimonial house along with daughters. Thereafter, accused secretly filed a divorce petition on 13.02.2018 when the petitioner and accused were residing together under the same roof. The petitioner was then driven out from

the house without custody of the children. Subsequently, petitioner filed a guardianship petition before the Family Court at Faridabad on 16.08.2018.

2.1 Learned counsel for the petitioner submits that applications were moved before the police authorities but they did not take any action against the accused. Being aggrieved from the said non-registration of FIR, the petitioner approached the Court of learned Magistrate and sought directions to the police for registration of FIR as a part of offence has been committed within the territorial jurisdiction of Faridabad Court and police. Application was declined by the Court on the ground that as there is no ground for such directions, by overlooking the findings of the police itself *qua* the commission of the offence. It is submitted that directions of the Magistrate to direct registration of the complaint and to post the matter for pre-summoning evidence leads to the position that the Magistrate is of the view that it has jurisdiction to entertain the complaint, therefore, sufficient material are available towards commission of offence. As such the directions should have been issued by the Magistrate to register the case u/s 156 (3) Cr.P.C.

2.2 Learned counsel for the petitioner would further urge that cognizable offences have been committed by the accused punishable under IT Act and IPC and investigation by the Special cyber cell, constituted by the State for investigating the offences under IT Act, is required to be done for collecting the information and evidence which are beyond the approach of the complainant and those evidence can be collected by the investigating Agency only.

2.3 He further submits that learned Magistrate has overlooked the evidence and recorded the perverse findings by holding that as there is no evidence available with respect to the registration of FIR, particularly when the

special cyber cell agency at Faridabad clearly mentioned in its report itself that the accused has committed the offence of Cyber Crime.

3. On the other hand, learned State counsel strenuously opposes the instant petition. Reply has not been filed till date. However, he submits that it is a matrimonial dispute. Learned State counsel places reliance on a Full Bench judgment of Allahabad High Court rendered in *Jagannath Verma and others Vs. State of U.P. and another*¹ and submits that the impugned order is revisable and further the proposed accused is entitled to be given an opportunity of hearing.

4. No new arguments have been raised by learned counsel for respondent No.2 other than reiteration of the stand taken by learned State counsel.

5. Heard.

6. Keeping in view the nature of allegations, it does not though appear to be a case of a crime against society, but a pure personal vendetta. Be that as it may, *de hors* the merits of the case canvassed before me, legal position is no more *res integra* that a Magistrate's order, rejecting an application under Section 156(3) CrPC or converting it into a complaint, is not an interlocutory order and the aggrieved party can prefer revision against it under Section 397 CrPC. Provisions of Section 397 Cr.P.C. are amply clear, which are reproduced hereinbelow:-

“Section 397 in The Code Of Criminal Procedure, 1973

397. Calling for records to exercise powers of revision.

(1) *The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,- recorded or passed, and as to the regularity of any proceedings*

of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record. Explanation.- All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub- section and of section 398.

(2) The powers of revision conferred by sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

7. In the premise, instant petition is dismissed with liberty to approach the appropriate Forum for redressal of grievance under Section 397 Cr.P.C., as aforesaid, which if preferred, shall be decided without being influenced by observations made in the instant order.
8. Disposed of, accordingly.
9. Pending application, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

05.07.2023
vandana

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No