

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. CRM-M No.38851 of 2020

Mukesh Narang & another

... Petitioners

Versus

State of Haryana & another

... Respondents

2. CRM-M No.39565 of 2020

Narender Yadav

... Petitioner

Versus

State of Haryana & another

... Respondents

Date of decision: 24th January, 2023

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Jai Vir Yadav, Senior Advocate with
Mr. Tarun Yadav, Advocate for the petitioners.

Mr. Rahul Mohan, Dy. Advocate General, Haryana
for the respondent/State.

Mr. Akshay Jindal, Advocate for respondent No.2.

MANJARI NEHRU KAUL, J.

The instant petitions have been filed under Section 482 Cr.P.C., for quashing of complaint bearing No.COMP/28520/2020 under Sections 384, 193, 406, 420, 467, 468, 471, 120-B, 506 IPC filed by respondent No.2 before the Illaqa/Duty Magistrate, Gurugram (Annexure P-7) as well as order dated 11.09.2020 passed by learned Judicial Magistrate 1st Class, Gurugram (Annexure P-8) with a further prayer for quashing of FIR No.256 dated 22.09.2020 under Sections

193, 384, 420, 467, 468, 471, 506, 120-B IPC registered at Police Station New Colony, Gurugram (Annexure P-9). Since both the petitions arise from the same order, they are being disposed of by this common order.

Learned senior counsel appearing for the petitioners contends that the complainant respondent No.2 had borrowed a sum of ₹ 18,46,100/- in the year 2016 from the petitioner-Narender Yadav's Company namely M/s Royal Chit Fund Private Limited, Gurugram, however, he defaulted in making timely payment of the installments. After repeated requests made by the petitioner-Narender Yadav to respondent No.2 to discharge his legal liability, respondent No.2 ultimately issued cheque No.411480 dated 16.03.2020 for an amount of ₹ 36,86,060/- drawn on Karnataka Bank, Gurugram. Similarly, in order to discharge his outstanding liability of ₹48,12,002/- towards petitioners-Mukesh Narang and Krishan Lal, respondent No.2 issued cheque No.170332 drawn on State Bank of Patiala, Gurugram. When the aforesaid cheques were presented by the petitioners for encashment in their bank, they were dishonored with the remarks '*funds insufficient*', as a result of which complaints under Section 138 of the Negotiable Instruments Act, 1881 were filed by the petitioners against respondent No.2. Subsequently, respondent No.2 with an oblique motive, to avoid his aforesaid legal liabilities, filed a false and fabricated complaint (Annexure P-4) dated 24.04.2020 before Police Station New Colony, Gurugram. Respondent No.2 also moved a

complaint (Annexure P-4(1)) dated 01.06.2020 before the Commissioner of Police, Gurugram.

Learned senior counsel has contended that respondent No.2 had been coming up with different versions at different stages. Subsequent to the moving of the complaint (Annexure P-4) before the SHO Police Station New Colony, Gurugram, a detailed investigation was carried out by the Police. As per the inquiry report of the SHO (Annexure P-5) the version of respondent No.2 was found to be false and fabricated, however still, the learned Magistrate passed the order dated 11.09.2020 (Annexure P-8) by ignoring the said report.

Learned senior counsel has further contended that even otherwise the allegations levelled in the complaint in question do not disclose the commission of any offence much less cognizable and thus it was apparent that the learned Magistrate had exceeded its jurisdiction by directing registration of FIR. Not only this, the Magistrate failed to record in explicit terms a prima facie satisfaction qua the commission of cognizable offence(s). Learned senior counsel has asserted that merely because learned Magistrate entertained doubt qua some facts, it could not have been a sufficient enough ground to direct registration of the FIR against the petitioners. Rather, the proper course would have been to proceed under Section 202 Cr.P.C. Learned senior counsel still further urged that the learned Magistrate erred in entertaining the complaint as it was not even maintainable. The complainant, as per him, should have approached the Superintendent of Police at the first

instance under the provisions of Section 154(3) Cr.P.C. and only thereafter, invoke the provisions of Section 156(3) Cr.P.C. In support of his submissions, learned senior counsel has placed reliance upon ***Ramdev Foods Products Pvt. Ltd. Vs. State of Gujarat, 2015 (2) RCR (Criminal) 372; Mrs. Priyanka Srivastava and another Vs. State of U.P. and others, 2015 (2) RCR (Criminal) 1034; Maksud Saiyed Vs. State of Gujarat and others, 2008 (5) SCC 668; Lalita Kumari Vs. Govt. Of U.P. and others, 2013 (4) RCR (Criminal) 979 and State of Haryana and others Vs. Ch. Bhajan Lal and others, 1992 AIR (SC) 604; 1991 (1) RCR (Criminal) 383.***

Per contra, learned counsel representing respondent No.2, while controverting the submissions made by the learned senior counsel appearing for the petitioners, has contended that the impugned order being in accordance with law did not warrant any interference. He has contended that respondent No.2 had given some cheques to petitioner Narender Yadav for security purposes, however, instead of returning the said cheques, petitioner Narender Yadav after conspiring with petitioners Mukesh Narang and Kishan Lal Narang had misused the said cheques. Learned counsel has still further submitted that cheque bearing No.170332 was never issued by the petitioner in favour of M/s Krishan Lal & Sons, a firm being run by Mukesh Narang and Kishan Lal Narang. To report the said fraud, multiple representations were moved before the police against the accused-petitioners, however, no action was taken against them by police as they are influential people.

Hence, respondent No.2 was left with no other remedy but to file a private complaint before the Illaqa Magistrate. While inviting the attention of this Court to the complaint (Annexure P-4), learned counsel has further submitted that a perusal of the averments and allegations levelled therein clearly reveal as to how the petitioners had played a big fraud upon him in active connivance with each other.

It has also been submitted that the learned Magistrate while perusing the material before it including the allegations levelled in the complaint, did not err in entertaining a doubt qua a criminal conspiracy having been hatched as the cheque drawn on State Bank of Patiala was valid till the year 2018, however as per records it was presented for encashment only in the year 2020. Therefore, there were prima facie sufficient grounds to direct the police to investigate into the matter. He has also asserted that the accused had no right to be heard prior to the registration of the FIR in question and hence, the petitioners could not seek quashing of an order under Section 156(3) Cr.P.C. and still further, since the matter was still under investigation, the FIR could not be quashed. Learned counsel for the respondent has further asserted that present petitions for quashing of private complaint (Annexure P-4) were not even maintainable as the complaint (Annexure P-8) had culminated into the registration of an FIR (Annexure P-10). He has also submitted that there was no precondition under the provisions of law that the Superintendent of Police had to be approached first under Section 154 (3) Cr.P.C. and only then a complaint under Section 156

(3) Cr.P.C. could be filed. In support of his submissions, learned counsel for the respondent No.2 has placed reliance upon *M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra, 2021 AIR (Supreme Court) 1918; Mona Panwar Vs. High Court of Judicature at Allahabad, 2011(3) SCC 496, Father Thomas Vs. State of U.P., 2011(3) RCR (Criminal) 160; Rakesh Puri and Bhaskar Puri Both Vs. State of UP, 2006 (12) RCR (Criminal) 226 and Anju Chaudhary Vs. State of UP (SC), 2013 (1) RCR (Criminal) 686.*

Learned State counsel has also opposed the prayer made by the learned Senior counsel for the petitioner by submitting that the investigation is still underway.

I have heard learned counsel for the parties and perused the relevant material on record.

When a private complaint is presented before learned Illaqa Magistrate, it has two options available either to order an investigation as provided for under Section 156 (1) Cr.P.C., or proceed under Section 200 Cr.P.C., examine the complainant and his witnesses, if any, on oath and then further proceed under the provisions of Section 202 Cr.P.C.

It would be apposite to point out here that an order under Section 156(3) Cr.P.C. is in fact in the nature of a reminder to the police to perform its duty and investigate into the alleged cognizable offences under Section 156(1) Cr.P.C. At the stage of ordering investigation under Section 156(3) Cr.P.C., it cannot be said that the Magistrate has taken cognizance of an offence. Directing investigation

is distinguishable from taking cognizance of an offence. The Magistrate can be said to have taken cognizance only when it applies its judicial mind to the contents of the complaint for proceeding under Section 200 Cr.P.C. or other provisions subsequent thereto.

In the instant case, respondent No.2 approached the Magistrate by filing private complaint after the police failed to act on his complaint against the petitioners. The Magistrate, after satisfying itself that no case had been registered on the basis of complaints moved by respondent No.2, directed investigation under Section 156(3) Cr.P.C. The Magistrate after applying its mind to the contents of the complaint, directed only investigation under Section 156(3) Cr.P.C. Therefore, it is evident that the Magistrate had not taken cognizance at that stage and the matter was still at a pre-cognizance stage.

This Court does not find any merit in the submissions made by learned senior counsel representing the petitioners that the Magistrate should have proceeded under Section 202 Cr.P.C. instead of Section 156(3) Cr.P.C. and still further, the Magistrate should have recorded detailed reasons qua its satisfaction with respect to the existence of a prima facie case against the petitioners.

This Court fails to comprehend as to how the Magistrate could take recourse to Section 202 Cr.P.C. when it had not even taken cognizance of the offences till then. Section 202 Cr.P.C. cannot be invoked at pre-cognizance stage and still further, the discretion rests

with the Magistrate depending on the facts and circumstances of each case as to whether to proceed under Section 156(3) or 200 Cr.P.C.

In the present case, this Court finds no perversity in the impugned order dated 11.09.2020 as after due application of its mind to the allegations levelled in the complaint the Magistrate entertained a doubt qua the commission of offences which required further elucidation, thus, he ordered police to carry out investigation after registering an FIR. It also needs to be emphasized that the Magistrate is not required to record its reasons in detail while directing investigation under Section 156(3) Cr.P.C.

Even otherwise, at the pre-cognizance stage when the Magistrate directs investigation by the police under Section 156 (3) Cr.P.C., the accused has no right of being heard since such order does not substantially affect his rights. The Hon'ble Supreme Court, in **Anju Chaudhary's case (supra)**, while dealing with the question as to whether the accused is entitled to hearing prior to registration of FIR or not, observed:

“30. The rule of audi alteram partem is subject to exceptions. Such exceptions may be provided by law or by such necessary implications where no other interpretation is possible. Thus rule of natural justice has an application, both under the civil and criminal jurisprudence. The laws like detention and others, specifically provide for post-detention hearing and it is a settled principle of law that application of this doctrine can be excluded by exercise of legislative powers which shall withstand judicial scrutiny.

The purpose of the Criminal Procedure Code and the Indian Penal Code is to effectively execute administration of the criminal justice system and protect society from perpetrators of crime. It has a twin purpose; firstly to adequately punish the offender in accordance with law and secondly to ensure prevention of crime. On examination, the scheme of the Criminal Procedure Code does not provide for any right of hearing at the time of registration of the First Information Report. As already noticed, the registration forthwith of a cognizable offence is the statutory duty of a police officer in charge of the police station. The very purpose of fair and just investigation shall stand frustrated if pre- registration hearing is required to be granted to a suspect. It is not that the liberty of an individual is being taken away or is being adversely affected, except by the due process of law. Where the Officer In-charge of a police station is informed of a heinous or cognizable offence, it will completely destroy the purpose of proper and fair investigation if the suspect is required to be granted a hearing at that stage and is not subjected to custody in accordance with law. There would be the pre- dominant possibility of a suspect escaping the process of law. The entire scheme of the Code unambiguously supports the theory of exclusion of audi alteram partem pre-registration of an FIR. Upon registration of an FIR, a person is entitled to take recourse to the various provisions of bail and anticipatory bail to claim his liberty in accordance with law. It cannot be said to be a violation of the principles of natural justice for two different reasons. Firstly, the Code does not provide for any such right at that stage. Secondly, the absence of such

a provision clearly demonstrates the legislative intent to the contrary and thus necessarily implies exclusion of hearing at that stage. This Court in the case of Union of India v. W.N. Chadha (1993) Suppl. (4) SCC 260 clearly spelled out this principle in paragraph 98 of the judgment that reads as under:

‘98. If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and self- defeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary’.”

Moreover, it needs to be pointed out that the complaint in question cannot be quashed as it has now culminated into registration of an FIR and the proper remedy available to the petitioners would be to seek quashing of the FIR and certainly not the complaint. However, as admittedly the matter is still under investigation, therefore, this Court would desist from exercising its inherent jurisdiction under Section 482 Cr.P.C. for quashing the FIR in question, more so, when the allegations levelled therein do prima facie disclose the commission of a cognizable offence. This Court at this stage cannot be expected to delve into an inquiry qua the truthfulness or otherwise of the allegations

levelled in the FIR and must permit the investigation to go on as has also been held by the Hon’ble Supreme Court in **M/s Neeharika’s case (supra)**. The ratio of law laid down by the Hon’ble Supreme Court in **Mrs. Priyanka Srivastava’s case (supra)** would not apply to the present case as in that case the jurisdiction under Section 156(3) Cr.P.C. was invoked by the borrower of a financial institution with a mala fide intention to force the institution to settle financial claim.

As a sequel to the above, this Court is not inclined to invoke its inherent jurisdiction under Section 482 Cr.P.C. and quash the complaint (Annexure P-7), order (Annexure P-8) and FIR (Annexure P-9).

Dismissed.

(MANJARI NEHRU KAUL)
JUDGE

January 24, 2023

rps

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