

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-56814-2022

Date of decision : 27.01.2023

Amarjeet Singh Gandhi

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Vaneet Kumar Sharma, Advocate for the petitioner.
Mr. P.S.Grewal, DAG, Punjab.

DEEPAK MANCHANDA, J.

The present petition has been filed under Section 482 Cr.P.C for issuance of directions to respondent Nos.1 to 4 to take legal action against respondent Nos.5 and 6 along with erring police officials, who have not registered a case in violation of directions laid down in “*Lalita Kumari Vs. Government of Uttar Pradesh and others*”, 2014 (1) SCC (524). Further, it has been prayed that directions be issued to respondent No.3 to implement the report dated 13.06.2019 (Annexure P-2) of District Attorney (Legal) Ludhiana and to decide the representation dated 20.09.2022 (Annexure P-3) in accordance with law.

Learned counsel for the petitioner contends that petitioner has been cheated by respondent Nos.5 and 6 by causing financial loss of Rs.36,39,372/- which were due towards accused and after admitting their liability, they issued one cheque bearing No.101104 dated 13.06.2017 amounting to Rs.36,39,372/- and assured that the same would be encashed

upon presentation. However, it was dishonoured on 08.08.2017 because of “insufficient funds” and thereafter, private respondents refused to make the payment and threatened the petitioner. He further submits that aggrieved by the conduct of respondent Nos.5 and 6, petitioner filed an application with respondent No.3 for registration of case and referred to the Annexure P-2 i.e. legal opinion given by the District Attorney (Legal) Ludhiana, vide which he advised the police authorities to register a case in compliance of the guidelines issued by the Hon’ble Supreme Court of India in case titled as “Lalita Kumari Vs. Government of U.P.” 2014 (1) SCC 524, wherein it has been held that if the allegations mentioned in the complaint disclose the commission of a cognizable offence, then it is mandatory for registration of the FIR under Section 154 Cr.P.C, but official respondent Nos.2 to 4 did not act upon the advice given by the State District Attorney and the representation of the petitioner is still pending consideration.

Learned State counsel while referring to the Annexure P-1 i.e. representation made by the petitioner submits that dispute is with regard to dishonouring of cheque issued by the private respondents to the petitioner and petitioner has remedy in the law to file a criminal complaint under Section 138 Negotiable Instruments Act, 1881, if the cheque is dishonoured. He further submits that since the dispute admittedly referred in the representation is with regard to issuance of cheque only, which has been dishonoured and the judgment on which learned counsel for the petitioner is relying upon is not applicable to the facts and circumstances of the present case.

I have heard learned counsel for the parties and have gone through the case file.

The dispute raised vide representation dated 11.09.2017 (Annexure P-1) for registration of case against the private respondent Nos.5 and 6 is with regard to issuance of cheque, which has been dishonoured and the petitioner has the remedy of filing complaint under Section 138 NI Act. Further, the learned State counsel has rightly pointed out that the judgment on which the learned counsel for the petitioner has placed reliance is not applicable to the present facts of the case as the Hon'ble Supreme Court held that registration of FIR is mandatory under Section 154 Cr.P.C if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. It is also held that if the information received does not disclose a cognizable offence, but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not. It is further held that if the inquiry discloses the commission of a cognizable offence, the FIR must be registered and in cases where preliminary inquiry ends in closing the complaint, no action has to be taken in pursuance to the said judgment.

Since the issue involved in the present petition as learned counsel for the petitioner has prayed for registration of FIR on account of issuance of cheque, which was ultimately dishonoured and the remedy is available with the petitioner is under Section 138 of NI Act, which does not disclose commission of a cognizable offence and even no preliminary enquiry is required to be conducted at the end of the official respondents. Moreover the said judgment is not applicable to the facts of the present case.

In view of the above mentioned facts and circumstances, this Court is not inclined to invoke its extraordinary power under Section 482

Cr.P.C by issuing directions and consequently, the present petition is hereby dismissed.

(DEEPAK MANCHANDA)
JUDGE

27.01.2023
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No