

CRM-M-55741-2023

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-55741-2023

Date of decision : November 06, 2023

Atul Bhutani

....Petitioner

VERSUS

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Gourav Jain, Advocate, for the petitioner
Mr. Chetan Sharma, DAG, Haryana

KULDEEP TIWARI, J. (ORAL)

1. Through the instant petition, challenge has been thrown to the impugned order dated 7.10.2023, by which the learned Illaqa Magistrate concerned, has declined to forward the complaint, as preferred by the petitioner, for investigation under Section 156(3) of the Cr.P.C. and to register the application as a complaint case, and, further adjourned the matter for recording of preliminary evidence of the complainant. This has caused grievance to the petitioner, which compelled him, to file the instant petition invoking the extra ordinary powers of this Court envisaged under Section 482 Cr.P.C., for setting aside the orders (*supra*) as well as for issuance of directions to the learned Illaqa Magistrate, to refer the matter to the Station House Officer, for registration of case, as cognizable offences are being made out, from the allegations, as levelled by the petitioner in the said application.

2. The learned counsel for the petitioner, to give strength to his arguments, submits that Magistrate is not required to go into the factum of genuineness of allegations made in the application, rather, if the contents of the application disclose commission of cognizable offence, the Magistrate is under statutory obligation to pass an order for registration of an FIR, and, investigation thereof. He further submits, that assessment of evidence and drawing an inference is not required to be done. He also submits that whenever, an application under Section 156(3) Cr.P.C. is filed, the Magistrate need not, at the first instance proceed to take cognizance, rather, on finding the complaint disclosing the commission of some cognizable offence, the same shall be forthwith sent to the police station/S.H.O. concerned for registration of an FIR.

3. Before this Court analysis the legality of impugned order (supra), it is appropriate to give a small factual background of the instant matter. The petitioner preferred a complaint under Sections 420,406,467,468,471,120-B IPC against the private respondents, alleging that the private respondents in connivance with each other duped him for about Rs 59 lakhs. Finding the case to be an economic offence, and, in compliance of guidelines issued by the Hon'ble Supreme Court in **Priyanka Srivastav and anr. Vs State of UP and ors. 2015(2) Supreme Court CCJ 784**, the learned Illaqa Magistrate called for an inquiry report from the concerned SHO. Upon conducting the preliminary inquiry, the SHO found the

allegations false and submitted his report. The learned Illaqa Magistrate, after considering the report (supra), the application and other material on record observed that there is no necessity for collection of evidence through the Investigating Agency, as all the evidence(s) are in the reach of the complainant and passed the impugned order. Further the application was ordered to be registered as a complaint case.

4. This Court has examined the contentions, as raised by the learned counsel for the petitioner as well as the impugned order (supra), and, finds no perversity or illegality in the same, and, the instant petition is required to be dismissed, for the reasons recorded hereinafter:-

(i) It is a trite law that while exercising powers under Section 156(3) Cr.P.C., the learned Magistrate is not required to act like a postman, but he is required to examine whether from reading of application/complaint, *prima facie* commission of offence is disclosed or not. Further the Magistrate is not bound to dispose of every application filed under Section 156(3) Cr.P.C. by ordering for registration of an FIR. Rather, he may treat such application as a private complaint, and, proceed further in accordance with the procedure, as laid down under Sections 200 to 204 Cr.P.C.

(ii)In the instant matter, the preliminary inquiry, as conducted by the S.H.O. Concerned, the allegations so levelled by the petitioner, were found to be false/untruthful. Further, the learned Magistrate concerned, after due consideration to the preliminary inquiry, as well as, to the complaint, concluded that the evidence(s) are well within the reach of the complainant, and, there is no requirement to get the matter investigated through the police, and, rightly ordered for registration of the application as a private complaint. The learned counsel for the petitioner has failed to cite any perversity or illegality in the impugned order (supra) for not sending the complaint to the police specifically, when the matter is of an economic/monetary dispute, and, all the evidence(s) are well within the reach of the complainant, therefore, the impugned order has passed the test of legality and no interference is required.

5. In view of the aforesaid, the instant petition is **dismissed**, being bereft of any merit.

November 06, 2023

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Whether speaking/reasoned ?

Whether Reportable ?

(KULDEEP TIWARI)

JUDGE

Yes/No

Yes/No

