

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

CRM-M-1704-2023

Date of Decision:- 16.01.2023

Ramesh Kumar

...Petitioner

vs.

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Susheel Gautam, Advocate for the petitioner

HARKESH MANUJA, J.

By way of present petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner has impugned an order dated 11.11.2022 whereby he has been directed to lead preliminary evidence in his complaint filed before the learned Session Judge/ Special Court.

Levelling allegations against respondent no. 2 to 6, on account of an incident dated 27.02.2019 in which petitioner and his family members were allegedly dispossessed from their house besides forcibly taking away other household articles by terrifying them using knife and iron rods, petitioner file repeated complaints before the police officials but no action was taken, however, petitioner again approached the police by way of filing complaint dated 07.11.2022 for registration of case against respondent no. 2 to 6 u/s 391, 506, 34 of IPC and 3(i)(z) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred as SC/ST Act, 1989). This time also, no action was taken by the police and consequently petitioner moved an application dated 11.11.2022 (Annexure-P1) u/s 156(3) of Cr.P.C. before the court of learned Additional Session

cognizance of offence u/s 14 of the act and to direct the S.P. Panipat as well as to SHO P.S. Quilla, Panipat to take legal action on the basis of application dated 07.11.2012 and for registration of case against the respondent no. 2 to 6.

Vide impugned order dated 11.11.2022, learned Additional Session Judge/ Special Court directed the petitioner to lead preliminary evidence to be brought at his own responsibility. It is this order which has been impugned by way of present petition.

Learned counsel for the petitioner contends that in view of mandate of section 18A (1)(a)(b) of amended SC/ST Act, 1989, learned Additional Session Judge i.e. the Special Court while invoking its power under section 14 of the SC/ST Act, 1989, could not have asked for recording of preliminary evidence as it was obligatory upon it to order the police to register case against respondent no. 2 to 6. He further contends that as prima facie offence under SC/ST Act, 1989, was made out from the ingredients of the application, no enquiry or preliminary investigation was required for registration of FIR against any person and therefore, order dated 11.11.2022 passed by the learned Additional Session Judge asking the petitioner to bring preliminary evidence was liable to be set aside/quashed.

I have gone through the paper book and heard learned counsel for the petitioner, however, I do not find much substance in his arguments. In case the submission made by the learned counsel for the petitioner is accepted, then it would mean that the learned Additional Session Judge/ Special Court has no discretion in such cases and the Court is obliged to direct registration of case against the

accused persons. In my considered opinion, this submission is devoid of any merit.

From the judgment of Constitution Bench in “**A.R. Antulay v. Ramdas Srinivas Nayak and another**” reported as AIR 1984 SC 718, there cannot be any dispute regarding the proposition of law that the Special Court constituted under Section 14 of the Act of 1989 is the criminal court of original jurisdiction and can take cognizance in any of the circumstances referred to in Section 190 of the Code and is governed by Chapters XV & XVI of the Code and such other provisions of the Code which are not inconsistent with the status and functions as Courts of original jurisdiction. Therefore, the Special Courts constituted under the Act of 1989 will also have power and jurisdiction to invoke Section 156(3) of the Code to direct the complainant to bring evidence to support the allegations made in the complaint.

At this juncture it would be appropriate to take notice of judgment of Hon’ble Supreme Court in the matter of “**Priyanka Srivastava and another v. State of Uttar Pradesh and others**” reported as (2015) 6 SCC 287, wherein, it laid down duty and approach of Magistrate while exercising power under Section 156(3) of the Code and it was held as under: -

“29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.

30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an 29

affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores."

In view of the aforesaid, Learned Court/Special Court cannot be expected to work merely as a post office without any application of judicial mind being empowered to call upon the complainant to substantiate its complaint if not satisfied about the truth or veracity of the contents of complaint.

More than that, though Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018, following section was inserted:-

"18A. (1) For the purposes of this Act,—

(a) preliminary enquiry shall not be required for registration of a First Information Report against any person; or

(b) the investigating officer shall not require approval for the arrest, if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply.

(2) The provisions of section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court."

It may be pointed out here that the constitutional validity of this amendment was upheld by Hon'ble Apex Court in "**Prathvi Raj Chauhan vs Union Of India**" reported as 2020(4) SCR 727. The aforementioned amendment was in fact brought in to deal with the situation post directions issued by the Hon'ble Apex Court in "**Dr Subash Kashinath Mahajan Vs. State of Maharashtra and another**" reported as (2018) 6 SCC 454 wherein it was directed that to avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the SC/ST Act, 1989 and that the allegations are not frivolous or motivated. It was in this context that this amendment was brought and as such its object, intent and purpose was merely that no preliminary investigation was to be done by any police official before registering any FIR under the provisions of SC/ST Act, 1989. However it would be farfetched to extend its scope even for the Special Court who calls upon the complainant to bring material on record to prime facie satisfy itself regarding the veracity of allegations about commission of offence while exercising its power under section 156(3) of Cr.P.C., the same having been invoked on a complaint made at the instance of complainant himself.

In view of the discussion held above, present petition is dismissed being devoid of any merit and no interference is warranted with the order passed by the learned Court below.

16.01.2023
anil

(HARKESH MANUJA)
JUDGE

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