

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

CRM-M-59429-2023 (O&M)

Date of Decision: 24.11.2023

KULJIT KAUR

.....PETITIONER

Vs.

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Salinder Kumar Saini, Advocate,
for the petitioner.

HARPREET KAUR JEEWAN J. (ORAL)

1. The petitioner has filed the petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for issuance of directions to the official respondents No. 2 and 3, i.e. the Senior Superintendent of Police, Amritsar (Rural) and the Station House Officer, Police Station, Ajnala, District Amritsar, to take legal action against the private respondents No. 4 to 8 and to register an FIR under appropriate sections of the Indian Penal Code, 1860 and to decide the representations submitted by the petitioner, dated 06.10.2023, 10.10.2023 and 31.10.2023 (Annexures P-2, P-3 and P-5, respectively).

2. Learned counsel for the petitioner contends that on 05.10.2023, at about 09:30 a.m., the petitioner along with her children was present in her house and at that time her husband was not present. The father-in-law of the petitioner (respondent No. 4) along with respondents No. 5 to 8 came in the house of the petitioner and they made an attempt to commit rape upon the petitioner. They threatened the petitioner to kill her

in case she would raise any voice. The petitioner, as well as her children, were beaten up. The petitioner informed about the incident to her husband when he returned back home and got her admitted in the Civil Hospital Anjala, District Amritsar, where her Medico-legal examination was conducted on 05.10.2023. The petitioner gave a representation dated 06.10.2023 (Annexure P-2), along with the copy of the Medico-legal report to the Station House Officer, Police Station Ajnala, District Amritsar (Rural) (respondent No. 3) but no action has been taken on her representation. Then the petitioner gave another representation dated 10.10.2023 (Annexure P-3) again to the Station House Officer, Police Station Ajnala, District Amritsar (Rural) (respondent No. 3) but again no action has been taken. Then on 10.10.2023 about 25-30 villagers had also verified that actually the incident mentioned above has taken place and despite this no action has been taken by the official respondents against the private respondents No. 4 to 8. Copy of the statements of the villagers is annexed as Annexure P-4 with the petition. However, after waiting for sufficient time when no action has been taken by the police, the petitioner gave another representation dated 31.10.2023 (Annexure P-5) to the Senior Superintendent of Police, Amritsar (Rural) (respondent No. 2) but despite the above, no action has been taken by the police so far against the private respondents No. 4 to 8.

3. I have considered the aforesaid submissions.

4. As per the provisions of Section 156 of the Code, a police officer is authorized to investigate in a cognizable case which takes place within the local area of his jurisdiction. However, where the Station House

Officer fails to record the statement of the informant under Section 154 of the Code and fails to investigate the case which is a cognizable case, the Magistrate has the powers under sub-section (3) of Section 156 of the Code who is empowered under Section 190 of the Code to order such an investigation.

Section 156 of the Code reads as under:-

“156. Police officer' s power to investigate cognizable case.

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above- mentioned.”

5. Under the provisions of Section 190 of the Code, a magistrate is empowered to take cognizance even upon a complaint filed by a private person.

Section 190 of the Code is reproduced as under:-

“190. Cognizance of offences by Magistrates.

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub- section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a

police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.”

6. As such, the Magistrate has the power to take cognizance of an offence upon a complaint filed before him under Section 190 (1) (a) of the Code and in addition to this, magistrate can also order for investigation in a cognizable case under Section 156 (3) of the Code.

7. The Hon'ble Apex Court in **Sakiri Vasu vs. State of U.P. and others** 2008 (2) SCC 409, has held that Section 156(3) Criminal Procedure Code, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation and it includes the power to order registration of an F.I.R. and order of proper investigation, if the Magistrate is satisfied that a proper investigation has not been done. It was further held that Magistrate also has wide power to ensure proper investigation and for this purpose he can monitor the investigation to ensure that investigation is done properly. The High Court should discourage the practice of filing the writ petition or petition under Section 482 of the Code of Criminal Procedure, simply because a person has a grievance that FIR has not been registered by the police.

8. Since the petitioner in the present case is aggrieved of non-action on the part of the police authorities for registration of the case as well as for conducting investigation, as such there is an equal and efficacious remedy available under the Code by way of approaching the

Area Magistrate either under Section 190 of the Code by way of filing a criminal complaint or by approaching the Magistrate under Section 156 (3) of the Code seeking a direction for investigation.

9. The petitioner has never availed the said equal and efficacious remedy available to her under Section 156 (3) and under Section 190 of the Code but the present petition has been filed under Section 482 of the Code invoking the inherent powers of this Court.

10. While dealing with the scope of Section 482 of the Code, the Hon'ble Supreme Court in M/s Zandu Pharmaceutical Works Ltd. vs. Md. Sharaful Haque 2004 (4) RCR (Criminal) 937, has held that the powers possessed by the High Court under Section 482 of the Code are very wide. However, it requires great caution in its exercise. Court must be careful to see that its decision in exercise of this powers is based upon on sound principles. The High Court should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court. The observations of the Hon'ble Apex Court are as under:-

9. "xxxx xxxx xxxx xxxx

"The scope of exercise of power under [Section 482](#) of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in [State of Haryana v. Bhajan Lal](#) (1992 Supp (1) 335). A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of

rare cases. The illustrative categories indicated by this Court are as follows:

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155\(2\)](#) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions [of the Code](#) or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in [the Code](#) or Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is

maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

As noted above, the powers possessed by the High Court under [Section 482](#) of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See: [Janata Dal v. H. S. Chowdhary \(1992 \(4\) SCC 305\)](#), and [Raghubir Saran \(Dr.\) v. State of Bihar \(AIR 1964 SC 1\)](#)). It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under [Section 482](#) of the Code. It is not, however, necessary that there should be

*meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. (See: **Dhanalakshmi v. R. Prasanna Kumar** (1990 Supp SCC 686), **State of Bihar v. P. P. Sharma** (AIR 1996 SC 309), **Rupan Deol Bajaj v. Kanwar Pal Singh Gill** (1995 (6) SCC 194), **State of Kerala v. O. C. Kuttan** (AIR 1999 SC 1044), **State of U.P. v. O. P. Sharma** (1996 (7) SCC 705), **Rashmi Kumar v. Mahesh Kumar Bhada** (1997 (2) SCC 397), **Satvinder Kaur v. State (Govt. of NCT of Delhi)** (AIR 1996 SC 2983) and **Rajesh Bajaj v. State NCT of Delhi** (1999 (3) SCC 259.”*

11. The extra-ordinary powers under Section 482 of the Code have to be exercised sparingly and should not be exercised where other remedies are available to a litigant but the same has not been availed. Keeping in view of the facts of the case, it is not a fit case to invoke the extra-ordinary jurisdiction under Section 482 of the Code. The petitioner may avail her remedy by approaching the Area Magistrate under Section 190 or under Section 156 (3) of the Code.

12. In view of the above discussion, I am of the considered

opinion that the present petition is liable to be dismissed with liberty the petitioner to avail her remedy as per law.

13. Consequently, the petition is dismissed with the liberty aforesaid.

14. Pending miscellaneous application (s), if any, shall also stand disposed of.

November 24, 2023

(HARPREET KAUR JEEWAN)

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JUDGE

Whether Speaking	Yes
Whether reportable	No