



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

CRM-M-4523-2024

Date of decision: 27.11.2024

Adarsh Kumar Mahindru

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Sharad Mehra, Advocate for the petitioner.

Mr. Inderjeet Singh Ladher, DAG, Punjab.

None on behalf of respondents No.2 and 3.

KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by the petitioner under Section 482 Cr.P.C seeking quashing of order dated 24.08.2023 (Annexure P-1) passed by the Court of Additional Chief Judicial Magistrate, Amritsar whereby the application filed by the petitioner under Section 156(3) Cr.P.C is disposed of, with direction to treat the said application as a criminal complaint with further direction to the petitioner to lead preliminary evidence.

2. The brief facts of the case are that the petitioner is running business of jewellery under the name and style of M/s Adarsh Jewellers, Amritsar. On 28.02.2022, petitioner received one notice from the side of respondent No.2 wherein it was alleged that respondent No.2 handed over a gold bar weighing 1 kg to the petitioner on 16.02.2016 against a voucher signed by the petitioner and that petitioner agreed to give studded jewellery to the said respondent in lieu of gold bar. That subsequently, neither any



such jewellery was supplied or handed over nor the gold bar was returned to respondent No.2 by the petitioner. The petitioner sent reply to the said notice denying any such transaction, whereby he agreed to hand over jewellery in lieu of gold bar to respondent No.2. The petitioner also denied his signature on the voucher in question and informed respondent No.2 that his signatures are forged by the accused persons. Even thereafter, similar notices were received by the petitioner which were also replied by him. The petitioner lodged complaint dated 16.08.2022 to the police authorities with regard to aforesaid forgery committed by respondents No.2 and 3. The matter was inquired into by SHO Police Station E-Division, Amritsar. The inquiry was also conducted by Assistant Commissioner of Police who submitted his report (Annexure P-4) dated 24.05.2023, whereby it was recommended that criminal case be registered under Section 420 IPC against respondents No.2 and 3. The matter was also inquired into by Additional Deputy Commissioner of Police, City-1, Amritsar who also made similar recommendation vide report Annexure P-3 dated 26.05.2023. However, despite this the police failed to register FIR against respondents No.2 and 3 with regard to forgery of aforesaid voucher which was fabricated by respondents No.2 and 3. Being aggrieved, petitioner filed complaint Annexure P-5 under Section 156(3) Cr.P.C, wherein the impugned order Annexure P-1 dated 24.08.2023, was passed by the Court of Judicial Magistrate Ist Class, Amritsar.

3. The counsel for the petitioner *inter alia* submits that as per the settled position of law, in case, the police fails to register FIR in a case involving cognizable offence, it is open to the aggrieved person to file an



application under Section 156(3) Cr.P.C before the Court of Magistrate concerned, who can direct the FIR to be registered and also can direct that a proper investigation be made. It is further submitted that in the present case, the impugned order Annexure P-1 was passed by the Court concerned without taking into consideration the aforesaid settled position of law. Further, the trial Court did not make any efforts to call the earlier police reports Annexure P-3 and P-4, before passing the impugned order Annexure P-1. That in the given circumstances, the impugned order is not sustainable and deserves to be set aside.

4. None appeared on behalf of respondents No.2 and 3 despite their due service in the present petition, wherein notice of motion was issued vide order dated 05.02.2024.

5. The counsel appearing on behalf of the State submits that the police did not record FIR and being aggrieved, the petitioner has approached the Court of Illaqa Magistrate under Section 156(3) Cr.P.C. It is further submitted that the present petition be disposed of, as per the settled position of law.

6. From the perusal of the record, it appears that petitioner reported to the police authorities that some voucher in the name of the petitioner was forged and fabricated by respondents No.2 and 3. The matter was inquired into and Assistant Commissioner of Police recommended for registration of FIR under Section 420 IPC against respondents No.2 and 3 vide its report Annexure P-4 dated 24.05.2023. The matter was also inquired into by Additional Deputy Commissioner of Police, who also made similar recommendation vide its report Annexure P-3 dated 26.05.2023.



However, the police failed to register any FIR against respondents No.2 and 3 on the basis of aforesaid recommendations. On this, the petitioner approached the Illaqa Magistrate by moving an application under Section 156(3) Cr.P.C. However, the said application was disposed of by the Court concerned vide order Annexure P-1 with direction to consider the said application as a normal criminal complaint.

7. The offence of forgery alleged to be committed by respondents No.2 and 3 being a cognizable offence, the police should have registered the FIR under Section 154 Cr.P.C. The petitioner also reported the matter to the higher police authorities, who recommended for registration of FIR, but despite this, no FIR was registered by the incharge of the police station concerned. Thus, there was no option left with the petitioner except for filing an application under Section 156(3) Cr.P.C seeking direction to the police to register the FIR and to investigate the matter. The Hon'ble Supreme Court in ***Sakiri Vasu Vs. State of UP (2008) 2 SCC 409***, while expounding upon the Magistrate's power under Section 156(3) of Cr.P.C, observed as follows:-

“11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under [Section 154](#) Cr.P.C., then he can approach the Superintendent of Police under [Section 154\(3\)](#) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under [Section 156 \(3\)](#) Cr.P.C. before the learned Magistrate concerned. If such an application under [Section 156 \(3\)](#) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

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13. The same view was taken by this Court in *Dilawar Singh vs. State of Delhi JT 2007 (10) SC 585* (vide para 17). We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under [Section 156\(3\) Cr.P.C.](#), and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order orders as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) Cr.P.C.

14. [Section 156 \(3\)](#) states:

Any Magistrate empowered under [Section 190](#) may order such an investigation as abovementioned. The words 'as abovementioned' obviously refer to [Section 156 \(1\)](#), which contemplates investigation by the officer in charge of the Police Station.

15. [Section 156\(3\)](#) provides for a check by the Magistrate on the police performing its duties under Chapter XII [Cr.P.C.](#) In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

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17. In our opinion [Section 156\(3\)](#) Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. [Section 156\(3\)](#) Cr.P.C., though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

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24. In view of the abovementioned legal position, we are of the view that although [Section 156\(3\)](#) is verybriefly worded, there is an implied power in the Magistrate under [Section 156\(3\)](#) Cr.P.C. to order registration of a criminal offence and /or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in [Section 156\(3\)](#) Cr.P.C., we are of the opinion that they are implied in the above provision.

25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under [Section 482](#) Cr.P.C. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters, and relegate the petitioner to his alternating remedy, firstly under [Section 154\(3\)](#) and [Section 36](#) Cr.P.C. before the concerned police officers, and if that is of no avail, by approaching the concerned



Magistrate under [Section 156\(3\)](#).

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under [Section 154\(3\)](#) Cr.P.C. or other police officer referred to in [Section 36](#) Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in [Section 36](#) his grievance still persists, then he can approach a Magistrate under [Section 156\(3\)](#) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under [Section 482](#) Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under [Section 200](#) Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?”

8. From the perusal of the impugned order (Annexure P-1), it could be easily made out that the Court concerned while passing the impugned order did not call, the report from SHO of police station concerned with regard to earlier inquiry reports Annexure P-3 and Annexure P-4 which were submitted by the police authorities after inquiring into the complaint lodged by the petitioner with regard to alleged forgery.

9. The said inquiry reports Annexure P-3 and P-4 wherein also registration of FIR against respondents No.2 and 3 was recommended, are material documents required for just decision of the criminal complaint filed by the petitioner under Section 156(3) Cr.P.C.

10. In light of the above discussion, this Court is of the view that the impugned order was passed by the Court below in a mechanical manner against the settled position of law, as is discussed above.

11. Consequently, the present petition is hereby allowed and impugned order dated 24.08.2023 (Annexure P-1) is set aside and the matter is remanded back to the Court concerned to decide afresh the complaint (Annexure P-5) moved by the petitioner under Section 156(3) Cr.P.C, in accordance with law, as is detailed above. The petitioner is directed to appear before the Court concerned for further proceedings on 12.12.2024.

12. However, observations made herein above are not to be construed as an expression of opinion on merits of the case.

27.11.2024

Yogesh

(KARAMJIT SINGH)

JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No