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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27550-2021 (O&M)
Date of Decision: 07.05.2024

Sonia Shaheen

.. Petitioner

Vs.

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Ms. Jannat Duhan, Advocate for
Mr. Sartej Singh Narula, Advocate for the petitioners
(*through Video Conferencing*)

Mr. Adhiraj Singh Thind, AAG, Punjab.

Mr. Paras Talwar, Advocate
for respondents No.6 to 8.

...

SUMEET GOEL, J. (Oral)

1. The present petition has been filed under Section 482 of Cr.P.C. of 1973 with a prayer, primarily for, issuance of directions to respondent Nos.1 to 5 to register an FIR against respondent No.6 for offences under Sections 376, 377, 506, 228-A and 120-B of IPC as also Section 65 of Information Technology Act of 2000 and other relevant provisions.
2. Learned counsel for the petitioner has argued that the petitioner was sexually assaulted by respondent No.6 on various occasions whereinafter various complaints/representations were made by her to various police authorities as also Punjab State Human Rights Commission for taking requisite legal action against respondent No.6 but no substantial action has yet been taken. Thus, the petitioner has been constrained to file the instant petition seeking the prayer(s) as indicated hereinabove.

3. Separate replies have been filed by the respondents. The official respondents have referred, *in extenso*, to various inquiry(s) conducted by police whereupon no substance was found in the complaint(s)/grievance(s) made by the petitioner. Respondents No.6 and 7 have also taken similar stand.

4. The prime issue that arises for consideration is whether a direction/order ought to be issued by this Court, exercising its jurisdiction under Section 482 of Cr.P.C. of 1973, for directions to the official respondents for registration of an FIR as sought for by the petitioner.

5. It would be apposite to refer herein to a judgment passed by this Court in '***Talima Vs. State of Haryana and others***', ***Neutral Citation No.2024:PHHC:035176***, which held as under:

“9.5. The factum of a Magistrate having requisite powers to direct for registration of FIR, monitor investigation therein as also order to change of investigating Officer cannot be construed to be ipso facto taking away the innate powers of the High Court under Section 482 of Cr.P.C., 1973 to issue such direction(s). Ordinarily, a litigant/ complainant ought to approach the Magistrate in the first instance for issuance of such like direction(s) but the same does not divest the High Court of its inherent plenary jurisdiction. The tendency to approach the High Court directly even when an independent and robust mechanism for dispensation of justice is available in the Illaqa/Jurisdiction Magistrate is worrisome. It avoidably prolongs the grant of relief(s) that the litigant seeks apart from adding to the cost of litigation. The Magistracy is specifically put in place for expeditious and accessible judicial remedy within the reasonable and easy reach of the litigant. Bypassing the Magistracy, without a justifiable cause, is patent subversion of judicial authority in general. Instead knocking at the doors of the High Court directly indicates indifference towards the judicial process. Indubitably, the volume of such petitions pouring into the High Court is stalling the working as also proficiency of the Constitutional Court. Accordingly, unless there are accentuating facts/ circumstances, a litigant/ complainant ought not to approach the High Court under Section 482, Cr.P.C. 1973; in the first instance; seeking direction(s) for registration of FIR, fair investigation therein etc. This Court must hasten to add a word of caution that a petition filed under Section 482 of Cr.P.C. thereby invoking the

inherent powers of the High Court for above said like prayer(s) is “maintainable” in strictosense but it may not be “desirable” to entertain such a petition lest High Court may be flooded with litigations of this kind. To say, by way of simile, the difference between “maintainability of a petition” and “desirability to entertain a petition” is as distinct and stark as the difference between chalk and cheese.

10. As a result of above discussion, the following postulates emerge:

I) Ordinarily, an applicant/complainant ought to approach, in the first instance, the Court of Illaqa/Jurisdictional Magistrate to seek prayer(s) for issuance of direction(s) for registration of FIR, monitoring of investigation in FIR as also other prayers of akin nature.

II) An Illaqa/Jurisdictional Magistrate has, by virtue of section 156(3) of Cr.P.C. of 1973, the requisite powers and jurisdiction to grant plea(s) for issuance of direction(s) for registration of FIR, monitoring of investigation in an FIR, change of investigating officer and prayer(s) of alike nature.

III) In a given case, if the facts/circumstances of such case so warrant, the High Court is well within its jurisdiction to entertain and consider plea(s) seeking registration of FIR, monitoring of investigation in a FIR, constituting an SIT (Special Investigating Team), change of investigating officer & all such prayer(s) of such kind and nature. However, it would be prudent that an applicant/complainant, while seeking to invoke the jurisdiction of the High Court under Section 482 of Cr.P.C. in the first instance seeking prayer(s) of above nature, shows sufficient cause for not having approached the Illaqa/Jurisdictional Magistrate in the first instance.

IV) The High Court, in its inherent jurisdiction under Section 482 of Cr.P.C has unbridled, unfettered and plenary powers. The only restriction on exercise of such powers is self-restraint. No inflexible and comprehensive guidelines can conceivably be enumerated governing the exercise of these intrinsic powers by High Court under Section 482 of Cr.P.C. There is no gainsaying that the nature, mode and extent of such exercise of powers by High Court under Section 482 of Cr.P.C shall depend upon the judicial discretion exercised by the High Court in the facts and circumstances of a given case.”

6. The prime prayer made in the petition is for issuance of directions to the official respondents for registration of FIR against the person(s) named by the petitioner in terms of various complaint(s)/representation(s) made by her. The petitioner (herein), who

claims herself to be a victim of sexual assault, has chosen to invoke the inherent jurisdiction of this Court under Section 482 of Cr.P.C. without even referring to, much less disclosing any impediment being faced by her in approaching the concerned Illaqa/Jurisdictional Magistrate by invoking Section 156(3) of Cr.P.C., 1973. In the considered opinion of this Court, the petitioner ought to have approached the concerned Illaqa/Jurisdictional Magistrate in the first instance who is well empowered to grant the substantial relief(s) sought for in the present petition. No such accentuating facts/circumstances have been brought forward by the petitioner which may warrant interference by this Court under Section 482 of Cr.P.C. Accordingly this Court does not find the present case a fit one for exercise of its jurisdiction under Section 482 of Cr.P.C.

Decision

7. The instant petition filed under Section 482 of Cr.P.C. stands dismissed. Needless to state herein that this Court has not delved into the merits of the matter and the same is left open to be considered in appropriate proceedings, if so initiated. There is no gainsaying that the petitioner, if so advised, will be at liberty to file an appropriate petition under Section 156(3) of Cr.P.C., 1973 for redressal of her grievance(s), in accordance with law.

07.05.2024

Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No