

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on : February 16, 2024
Pronounced on : March 20, 2024

Rohit Bansal

CRM-M-4675-2017
...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By : - Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Vishal Garg Narwana, Mr. Nitin Sachdeva and
Mr. Japjit Singh Johal, Advocates for the petitioner.

Mr. Rajiv K. Takkar, DAG, Punjab.

Mr. H.S. Randhawa, Advocate
for respondent Nos.2 to 4.

Mr. Amritpal Singh Gill, Advocate
for respondent No.6.

DEEPAK GUPTA, J.(Oral)

By way of this petition filed under Section 482 Cr.P.C.,
petitioner prays for quashing order dated 30.01.2017 (Annexure P-7)
passed by learned Judicial Magistrate 1st Class, Dera Bassi, whereby the
request made by him (petitioner) to send his complaint under Section 156
(3) Cr.P.C. for registration of FIR was declined and his application was
treated as a private complaint and he was directed to produce preliminary
evidence.

2.1 What emerges on the perusal of paper book is that petitioner

and his father Shri Sham Lal had purchased 61 Bighas 10 Biswas of land from private respondents by virtue of 05 sale deed executed between 23.10.2010 to 22.07.2011. Petitioner applied for 'Change of land Use' [CLU] to the concerned department and deposited the requisite fee in April, 2015. However, Golden Forest Committee appointed by the Hon'ble Supreme Court of India vide its order dated 05.09.2006 in petition bearing No. T.C.(C) 2 of 2004 titled as ***"Securities & Exchange Board of India v. The Golden Forests (I) Limited"***, issued warrants of possession regarding the land purchased by the petitioner and his father, inasmuch as all the sale deeds executed after 17.08.2005 pertaining to the land of the Golden Forest India Limited were liable to be ignored and the said Committee was to take possession thereof.

2.2 As per the petitioner, a show cause notice had been issued to the private respondents by the Committee as to why their sale deeds be not declared as void. However, despite knowledge of the order of Hon'ble Supreme Court, they had sold the land to petitioner and his father.

2.3 Petitioner made a complaint (copy Annexure P-3) before the police for registration of the FIR against the private respondents on 19.12.2016. The Court called for the report from the S.H.O. concerned vide order dated 19.12.2016. The S.H.O., Police Station Lalru, District S.A.S. Nagar, after conducting investigation, submitted his report (Annexure P-5) to the Magistrate recommending for registration of the FIR. However, learned Magistrate by way of the impugned order dated

30.01.2017 (Annexure P-7) opined that no ground was made out for sending the complaint for registration of the FIR under Section 156(3) Cr.P.C. and so, the said prayer was declined. Instead, learned Magistrate directed to treat the application of petitioner as private complaint and asked him (petitioner) to produce the preliminary evidence.

3. Challenging the aforesaid order, it is contended by the petitioner that once learned Magistrate had called for the report under Section 156(3) Cr.P.C. from the S.H.O. concerned and the S.H.O. had sought direction for registration of the FIR, the Magistrate could not have declined to register the FIR without assigning any reason; that the police report disclosed the commission of cognizable offence by the private respondents; that learned Magistrate did not apply its mind to the facts of the case, as no reasoning has been given for declining the request for registration of the FIR; that only option left with the Magistrate was either to accept the police report or to discard the same by assigning reasons, in view of the legal position explained by Hon'ble Supreme Court in ***“Hemant Yashwant Dhage v. State of Maharashtra and others”***, 2016(6) SCC 273 and so, it was in cumbent for the Magistrate to direct registration of the FIR.

4. Respondent No.1 – State opposed the petition by submitting that it is not maintainable without exhausting the remedy available to the petitioner under the law.

5.1 Respondent No.3 in his reply alleged that petitioner had not

approached this Court with clean hands and had suppressed the material facts, inasmuch as in an earlier complaint dated 04.07.2016 made by the petitioner to the Senior Superintendent of Police, S.A.S Nagar, Mohali, inquiry was conducted by Deputy Superintendent of Police (Head Quarter), who came to the conclusion that respondents were not aware about the pendency of the proceedings before the Hon'ble Supreme Court of India, as they were neither the party nor any summons had been issued to them and that said fact was not even in the notice of revenue authorities. Report of the DSP (H.Q.) is *Annexure R2/1*. Opinion of District Attorney (Legal) upon the matter was taken, who also opined vide *Annexure R2/2* that no fraud or cheating was committed and so, no action was required to be taken by the police. Said report was approved by the Senior Superintendent of Police, S.A.S. Nagar, Mohali and complaint made by the petitioner was ordered to be filed.

5.2 Respondent No.3 submitted further that when the Magistrate called for the report from the S.H.O., the latter did not report about the fact that the matter had already been enquired into by the DSP (H.Q.) and his report had been approved by the SSP, Mohali. So much so, petitioner also did not disclose this fact, despite the said fact that he had been associated in the inquiry conducted by the DSP.

5.3 Respondent No.3 alleged further that petitioner has resorted to forum hunting, as he has made every attempt to somehow get the FIR registered against the respondents, inasmuch despite invoking jurisdiction

of this Court by way of the present petition, the petitioner and his family members choose to avail yet another remedy, as father of the petitioner made a complaint *Annexure R2/3* to the Director General of Police, Haryana on the same set of allegations. Thus, a parallel complaint was made by the father of the petitioner in a desperate attempt to get the FIR registered. When the respondents received notice from the Haryana Police, they brought to the notice of the Investigating Agency about the previous inquiry. The Panchkula Police then opined that no action was required. Letter was sent by the Commissioner of Police to the DGP, Haryana vide *Annexure R2/5*.

With these submissions, prayer is made for dismissal of the petition.

6. Petitioner filed rejoinder to the aforesaid reply of respondent No.3 and submitted that finding of the inquiry report as made by the DSP (H.Q.), Mohali was wrong and a result of collusion.

7.1 Initiating the arguments, learned Senior Advocate for the petitioner reiterated the submissions that inquiry was conducted by the DSP (H.Q.), Mohali in collusion with the accused-private respondents. Learned counsel submitted further that when Shri Sham Lal, the father of the petitioner made a complaint to the Haryana Police, it was observed that matter was pending before this Court and on that basis, recommendation was made to file the complaint.

7.2 Learned counsel contends that respondent No.5 is an

influential and politically connected person and so, he made a complaint (*Annexure R-2/6*) against the S.H.O., at which inquiry was conducted and respondent No.5 managed to get an inquiry report to the effect that Jagjit Singh Jalla, PPS, SP had misused his position in getting the report prepared under the signatures of Inspector Satish Kumar and the S.H.O. then made a statement that he was pressurized by S.P. to make the report.

7.3 Learned counsel further reiterated his submissions that Trial Court did not take into consideration the report prepared by the S.H.O., which was required to be considered in view of “**Gurbir Singh v. Maheshender Singh Grewal**”, 2021(1) RCR 429; that private respondents cannot be allowed to take the plea that they were not aware about the orders passed by the Hon'ble Supreme Court or the orders passed by the Golden Forest Committee constituted by the Hon'ble Supreme Court; and that after receipt of report from the SHO, the Court was having only two options, either to accept the police report or to discard the same by assigning the reason, which was not done in this case.

8.1 Refuting the aforesaid submissions, learned counsel for the respondents defended the impugned order of the Magistrate to be legal. Learned counsel has referred to “**Ram Dev Food Products Pvt. Ltd. v. State of Gujrat**”, 2015 (2) RCR (Criminal) 372, in order to contend that it is open to the Magistrate to proceed with the complaint as a private complaint or to call for a report under Section 202 Cr.P.C. instead of

directing investigation under Section 156(3) Cr.P.C. Learned counsel further referred to ***“Lalita Kumari v. Govt. of U.P.”***, (2014) 2 SCC 1, so as to contend that Hon'ble Supreme Court has observed that there are certain categories of cases, where preliminary inquiry can be conducted before registration of the FIR and apart from above, those cases include commercial offences. To support his contention, learned counsel has also referred to ***“Kailash Vijay Vargiya v. Raj Laxmi Chaudhary”*** 2023 (2) Crimes 384 .

8.2 Learned counsel further contends that in this case, petitioner has not been able to demonstrate as to why the police investigation is warranted. By referring to the factual matrix, learned counsel contends that the allegations of the petitioner are to the effect that despite knowledge of the orders of Hon'ble Supreme Court regarding stay on the sale of the land, the private respondents sold the same to the petitioner and his father and that to support this allegation, petitioner has annexed relevant documents. Thus, the case of the petitioner is based upon documentary evidence and so, learned Magistrate did not deem it appropriate to get the FIR registered and thought it appropriate to treat the case as private complaint. Moreover, the final adjudication of the culpability of the accused is to be done by the Trial Court after taking preliminary evidence and then, it will be open for the Magistrate to dismiss the complaint under Section 203 Cr.P.C. or to summon the accused under Section 204 Cr.P.C.

8.3 Learned counsel further contends that inquiry report of the S.H.O. (Annexure P-5) is bereft of any legal sanction and so, cannot be considered in the eyes of law because Section 156(3) Cr.P.C. does not contemplate any inquiry report. By referring to the provisions of Sections 154 and 156 Cr.P.C., learned counsel contends that while passing the order for the S.H.O. to furnish the report, the reference by the Magistrate was to file a status report to be furnished and not to conduct the detailed investigation. Learned counsel contends that S.H.O. does not require sanction of the Magistrate to register the FIR and could have proceeded to do so himself after getting the order (Annexure P-4) and as such the report of the S.H.O. as submitted before the Court could not have been submitted at the stage of complaint under Section 156(3) Cr.P.C. Learned counsel contends that from the tone and tenor of the report, the same may be treated as a report under Section 202 Cr.P.C., which can be considered by the Magistrate either for dismissal of the complaint or to summon the accused.

8.4 Learned counsel has also alleged that the report of the S.H.O. (Annexure P-5) is ex-facie tainted and has been obtained by fraud, inasmuch as the inquiry had already been conducted by the DSP (H.Q.) Mohali, which was approved by the SSP after obtaining the opinion of District Attorney (Legal) and all these facts were hidden by the S.H.O. while submitting his report. Learned counsel contend that learned Magistrate vide his order Annexure P-4 only wanted to know about the

status of the complainant, which had been made by the petitioner before the SSP, Mohali. Learned counsel further submits that as respondents came to know about the report submitted by the S.H.O., they moved a complaint to the SSP, Mohali as to how a wrong report had been made contrary to the earlier report submitted DSP (H.Q.), Mohali and which had already been approved and then necessary inquiry was conducted and it came out that report from the S.H.O. was managed by the S.P. Jagjit Singh Jalla, against whom action has been recommended by the SSP, Mohali by writing a letter to the DGP, Punjab.

8.5 Learned counsel contends that petitioner has resorted to forum hunting, in order to frame the accused in one or the other way. After failing to get the FIR registered by making complaint to SP, Mohali, he filed complaint before the Magistrate. When the Magistrate did not order for registration of the FIR, petitioner approached this Court. Even during the pendency of this petition before this Court, when this court was in seize of the matter, father of the petitioner made a complaint to the DGP, Haryana on the same set of allegations.

With all these submissions, prayer is made for dismissal of the petition.

9. I have considered submissions of both the sides and have appraised the record carefully.

10. At the outset, it may be noticed that learned Magistrate has not expressed any opinion regarding the merits of the allegations made in

the complaint. By way of the impugned order, only the request of the petitioner – complainant to direct the SHO concerned to register the FIR under Section 156(3) Cr.P.C. has been declined and the Magistrate has directed to treat the application of the petitioner in this regard as a private complaint with further direction to produce the preliminary evidence.

11. As the allegations made in the complaint itself would reveal that case is mostly based upon the documentary evidence, inasmuch as the allegations are to the effect that despite knowledge of the stay order passed by the Hon'ble Supreme Court, the private respondents sold the land to the petitioner and his father by virtue of sale deeds executed in 2010 and 2011. These allegations can be proved before learned Magistrate by the complainant – petitioner by producing the preliminary evidence.

12. In ***Ramdev Food Products Private Limited's case (supra)***, Hon'ble Supreme Court considered the question as to: “*whether discretion of the Magistrate to call for a report under Section 202 Cr.PC instead of directing investigation under Section 156 (3) Cr.PC is controlled by any defined parameters?*” Hon'ble Supreme Court referred to Section 156, 190 & 202 CrPC and the law enunciated by the Hon'ble Constitutional Bench in the case of ***Lalita Kumari vs. Govt. of UP 2013 (4) RCR (Criminal) 979***, wherein, it was observed that there would be certain categories of cases, where preliminary inquiry can be conducted before ordering registration of the FIR.

13. In *Lalita Kumari's Case (supra)*, it was observed:

“120.6 As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case.

The category of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/ family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases

e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.”

14. Hon'ble Supreme Court then held in *Ramdev Food Products Case (supra)* that for cases falling under the various categories enunciated in para No.120.6 in the *Lalita Kumari's case*, the Magistrate instead of issuing directions under Section 156(3) of Cr.P.C. may proceed with the matter as a complaint case and call for a report U/s 202 of Cr.P.C. The relevant reasoning given in case of *Ramdev's case (supra)* is reproduced as under:-

"22. Thus, we answer the first question by holding that the direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone instance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued. Cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed". Category of cases falling under Para 120.6 in *Lalita Kumari (supra)* may fall under Section 202. Subject to these broad guidelines available from the scheme of the Code,

exercise of discretion by the Magistrate is guided by interest of justice from case to case."

15. The aforesaid dicta was followed by the Hon'ble Supreme Court in *Kailash Vijayvargiya vs. Rajlakshmi Chaudhuri and others* 2023 (2) Crimes 384.

16. It is, thus, clear from the aforesaid legal position as enunciated by Hon'ble Supreme Court that it is open to the Investigating Agency to conduct preliminary inquiry and not to register the FIR immediately, depending on the nature of allegations made in the complaint. Similar discretion is vested with the Magistrate. In matters involving matrimonial disputes, commercial disputes etc., it is open to the Magistrate not to issue direction for registration of the FIR under Section 156(3) Cr.P.C. and rather, to proceed with the case as a private complaint and call for the report under Section 202 Cr.P.C.

17. Proceeding further, the complaint was presented on 19.12.2016 before learned Magistrate and on that day, he passed the following order (*Annexure P-4*):-

"Present:- Shri M.K. Gandhi, Advocate for the complainant.

Complaint presented today before me being Area Magistrate. Let report of SHO be called for 09.01.2017.

(sd/-)
JMIC/Dera Bassi
19.12.2016"

18. It will be evident from the above that by way of the aforesaid order, Magistrate did not ask the SHO concerned to investigate the matter under Section 156(3) Cr.P.C. or register the FIR. He simply asked the

SHO to file the report. It is necessary to notice that in what context, the report had been called. In para 7 of the complaint (*Annexure P-3*), it was stated by the complainant - petitioner that he had earlier made a complaint dated 04.07.2016 to the police authorities, but no action was taken against the accused and it appears that police authorities had been influenced by the accused persons and were conniving with them despite the fact that the complaint made out various offences including cheating, forging of documents etc. The copy of the complaint was annexed as Annexure C-10.

19. Thus, in the complaint *Annexure P3*, reference was made by the complainant – petitioner regarding a previous complaint dated 04.07.2016 to the police authorities. Despite the fact that inquiry had already been concluded in that complaint and the report dated 14.10.2016 (*Annexure R2/1*) submitted by the DSP (HQ) in this regard had been approved by the SSP, SAS Nagar, Mohali, complainant – petitioner did not make any reference of that report in his complaint (*Annexure P-3*).

20. What it appears is that learned Magistrate vide order dated 19.12.2016 (*Annexure P4*) wanted to call the report of the SHO in respect of the earlier complaint, as referred in the complaint (*Annexure P-3* and not to conduct investigation under Section 156(3) Cr.P.C.

21. It may also be noticed that by way of his report (*Annexure P-5*), the SHO recommended for registration of the FIR and sought direction from the Magistrate. In case, the SHO had found a cognizable

offence, the SHO himself had the power to register the FIR and no direction from the Magistrate was required. So, in these circumstances, the report of the SHO is to be considered in the light of Section 202 Cr.P.C. and not Section 156(3) Cr.P.C. The tone and tenor of the report (*Annexure P-5*) as submitted by the SHO would itself indicate that the same can be termed as a report under Section 202 Cr.P.C., which could be taken into consideration by the Magistrate either for dismissal of the complaint under Section 203 Cr.P.C. or summoning of the accused under Section 204 Cr.P.C. So, no illegality can be found in the impugned order, in case the Magistrate refused to accept the report of the SHO and instead called the complainant – petitioner to produce his preliminary evidence.

22. Apart from above, learned counsel for the respondents has rightly pointed out that the report of the SHO (*Annexure P-5*) appears to be tainted. This fact will become evident from the fact that SHO did not make any reference of the earlier inquiry report, which was filed by the DSP (HQ) and which had been approved by the SSP, SAS Nagar, Mohali after taking the opinion of the District Attorney. As the respondents of the case came to know about filing of the report by the SHO in this case, seeking direction for registration of the FIR, they approached the SSP concerned by moving application (*Annexure R2/6*) as to why a contrary report had been filed, inasmuch as the earlier the inquiry was concluded that no case was made out. It then came out after holding enquiry that the SHO had submitted the report (*Annexure P-5*) under the pressure of S.P.

Jagjit Singh Jalla and against whom action was recommended by the SSP by writing a letter to the DGP concerned.

23. Still further, learned counsel for the respondents is also right in contending that present case is an instance of forum shopping. Initially, the complaint was made to the SSP, SAS Nagar, Mohali on 04.07.2016. It was duly enquired into. No action was recommended. Petitioner then filed complaint before the Magistrate. As the Magistrate did not order for registration of the FIR and rather, asked the petitioner to produce the preliminary evidence and thus, petitioner failed to get the FIR registered, his father then, despite pendency of the present petition, filed a fresh complaint (*Annexure R-2/3*) on the same set of allegations before DGP, Haryana. Commissioner of Police, Panchkula vide his report (*Annexure R-2/5*) made to the DGP made reference of the earlier inquiry conducted by the SSP, SAS Nagar, Mohali and recommended that no action was required.

24. Having regard to all the aforesaid facts and circumstances, this Court does not find any merit in the present petition. As such, the same is hereby dismissed.

March 20, 2024

Sarita

(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking: Yes

Whether reportable: Yes