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

CRM-M-44950-2024

Date of Decision:- 23.09.2024

ALKA BANSAL

....Petitioner

Vs.

STATE OF HARYANA & OTHERS

...Respondents

CORAM:-HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Parminder Singh, Advocate for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

AMARJOT BHATTI, J. (Oral)

1. Petitioner Alka Bansal has filed petition under Section 528 of BNSS, 2023 for setting aside order dated 22.08.2024 (Annexure P-4) vide which, complaint for initiation of proceedings as provided under Section 175 of BNSS, 2023 has been wrongly dismissed disclosing cognizable offence, with further direction to respondent Nos.2 and 3 to consider representation dated 05.06.2024 (Annexure P-1) against respondent Nos.4 to 6 for committing fraud on the pretext of sending complainant and her husband to Canada proclaiming themselves to be Legal License Holder Agent and received huge amount and to decide the same in a time bound manner or any other appropriate order or direction which the Court may deem fit and proper.



2. Learned counsel for petitioner argued that respondent Nos.4 to 6 on the pretext of sending complainant and her husband to Canada presented themselves to be Government approved Agent for securing visa and sending people abroad. In this connection, respondent Nos.4 to 6 received total sum of Rs.8,98,700/- but thereafter, postponed the arrangement of visa on one pretext or the other and grabbed huge amount from them. In this connection complaint was filed addressed to Inspector General of Police, Karnal (Annexure P-1). Said complaint was marked to SHO, Police Station Tarori, District Karnal but no action was taken as a result, present petitioner filed complaint before Illaqa Magistrate under Section 316, 318, 351 and 62 of BNS, 2023 and Section 24 of Immigration Act against Shubham Bansal, Naresh Bansal and Renu Bansal, which is Annexure P-2.

3. Learned Magistrate without following the provisions of Section 175 (3) of BNSS and without making any inquiry as per procedure under Section 210 of BNSS, 2023 called the report of Police Officer who reported that the matter was of civil nature and no cognizable offence was committed. Said report submitted by SI Sukhwinder Singh is Annexure P-3. There was no statement of any witness on the basis of which it was concluded that the dispute was regarding money transactions and no cognizable offence was made out. Learned trial Court, by relying upon the said report finally dismissed the application by passing impugned order dated 22.08.2024 which is Annexure P-4. Learned Magistrate was required to proceed further under Section 175 read with Section 210 BNSS, 2023 which the trial Court has failed. Simply on the basis of police report, complaint has been dismissed.

4. No purpose would be served by issuing notice to respondents.



All the relevant documents are already annexed with present petition.

5. I have considered the arguments advanced by learned counsel for petitioner and have gone through record carefully. In the case in hand, present petitioner initially filed complaint to Inspector General of Police, Karnal (Annexure P-1) and when no action was taken, she filed a complaint to Illaqa Magistrate, Karnal against Shubham Bansal and others which is Annexure P-2. Learned Judicial Magistrate 1st Class, relied upon the police report, Annexure P-3 and dismissed the application by passing impugned order dated 22.08.2024 (Annexure P-4). Petitioner has filed complaint under the provision of Section 175 of BNSS, 2023 and relevant provisions run as under:-

Section 175:-

Police Officer's power to investigate cognizable case.-

(1)

(2)

(3) Any Magistrate empowered under Section 210 may, after considering the application supported by an affidavit made under sub-section (4) of Section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned.

(4) Any Judicial Magistrate empowered under section 210, may upon receiving a complaint against a public servant arising in course of the discharge of his official duties, take cognizance, subject to—

(a) receiving a report containing facts and circumstances of the incident from the officer superior to him; and

(b) after consideration of the assertions made by the public servant as to the situation that led to the



incident so alleged.

From bare reading of aforesaid provision it reveals that learned Magistrate is to proceed further as per the provisions of Section 210 of BNSS, 2023 which runs as under:-

210. (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Judicial 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, including any complaint filed by a person authorised under any special law, which constitutes such offence;

(b) upon a police report (recorded in any mode including digital mode) 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. Considering the provisions of Section 175 (3) and 175 (4) of BNSS in case Magistrate comes to the conclusion that no direction was required for the registration of FIR, then the learned Magistrate was to proceed further as provided under Section 210 of BNSS, 2023. Perusal of impugned order, para No.8 further shows that learned Judicial Magistrate

1st Class concluded as under:-



“In the facts and circumstances of the present case also the allegations made against the accused persons are such that the same are within the knowledge of the complainant and the same can be adduced by her. There is no need for the assistance of police. Hence, in view of the forgoing discussion, the present application is dismissed.”

7. In view of the aforesaid discussion, impugned order passed by the learned Judicial Magistrate 1st Class dismissing the application is not justified and same is set aside and learned Judicial Magistrate can proceed with the said complaint as a complaint case as per law.

8. With the aforesaid direction, petition filed by petitioner is partly accepted and disposed of accordingly.

9. Pending miscellaneous application(s), if any, stand disposed of accordingly.

23.09.2024

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned: Yes/No.

Whether reportable: Yes/No