

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-57467-2022 (O&M)

Reserved on: 20.02.2024

Date of Decision:- 21.03.2024

KULDEEP SINGH

.....Petitioner

Vs.

STATE OF HARYANA AND OTHERS

.....Respondents

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

(As on the reserved date)

Present: Mr. Manoj Kumar Taya, Advocate,
for the petitioner.

Mr. Amrik Singh Narwal, D.A.G. Haryana.

HARPREET KAUR JEEWAN, J.

1. Present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short '*the Code*') has been filed for directing the official respondents to conduct further investigation under Section 178 (8) of the Code in FIR No. 312, dated 10.06.2022, under Section 306 read with Section 34 of the Indian Penal Code, 1860 (for short '*the IPC*'), registered at Police Station Kurukshetra University, Kurukshetra.

2. As per the brief facts of the case, the FIR was registered at the instance of the complainant who is the father of the victim-deceased against Gurvinder Singh (husband), Maya Devi (mother-in-law), Rajan and Shishpal (brothers of the mother-in-law) of the deceased. As per the version of the complainant the marriage of the daughter of the complainant was solemnized with the accused Gurvinder Singh 23.10.2023. However, the

marriage, the mother-in-law and the brothers of the mother harassed the daughter of the complainant. Her daughter went to Jodhpur with her husband. There she was beaten up and was sent back. In the year 2020, the complainant had built a house in Kurukshetra and the daughter of the complainant along with her daughter used to live in the said house. On 09.06.2022 at about 08:00 p.m., the complainant received a phone call from his daughter that she is being harassed by her husband and he had been saying that he would sell all his property and would leave her and go to Australia where his mother and brother are residing. On 09.06.2022, the daughter of the complainant died an unnatural death and her body was found hanging in a room in her house and the room was locked from inside.

2.1 On 09.06.2022, the police received information regarding the same and reached the spot, broke the windowpanes and entered the house by cutting the grill of the window and found the dead body hanging and a chair lying near the bed. The noose was tied with the ceiling fan. In the presence of the complainant the noose was cut and the dead body was alighted. Thereafter, recording the statement of the of the complainant, the FIR was registered under Section 306 of the IPC. The tab phone lying on the bed was taken into the police possession. A suicide note/conversation presented by the father of the deceased was taken into possession and was sent to the FSL, Madhuban for comparison. During the investigation the call details of the accused were obtained. The husband of the deceased joined the investigation who is working as a HMT Constable Major Master Technician, Indian Army, Bathinda. Thereafter, a Special Investigation Team was constituted and during investigation Maya Devi, Shish Pal, Rajan and Jawahar were found innocent. After completion of the investigation,

'*challan*' was presented only against the husband of the deceased on 08.09.2022. The charge-sheet has been issued to the husband of the deceased on 12.10.2022 under Section 306 of the IPC. Statements of 03 witnesses out of 21 have already been recorded during trial.

3. Learned counsel for the petitioner *inter alia* contends that the police has not conducted a fair investigation. Only one accused has been arrested. However, the remaining accused have been given a clean chit without joining them to the investigation merely, on the basis of some affidavits which are alleged to have been obtained during the investigation as per the status report. It was further contended that the relatives of the accused are named in the FIR. There are specific allegations that the mother-in-law and the brothers of the mother-in-law had been harassing the victim for dowry. Apart from this, a suicide note has been recovered which was lying in the pocket of the daughter of the deceased, despite that the remaining accused have been declared innocent.

4. Counsel for the petitioner further contends that as per the photographs of the deceased which were taken immediately after the occurrence, it is visible that the feet of the deceased were touching the surface of the bed, as such, it is not a case of suicide but this part has not been investigated by the investigating agency especially in view of the fact that there were injury marks on the body of the deceased. It was further contended that the investigating agency has also not considered the fact that there was a back door and a window in the room where the dead body was found, however, the investigating agency has only worked on the theory of suicide and did not investigate any other aspects.

5. It was further contended that as per the call details of the mobile phone of the deceased, the mother-in-law of the deceased had called the deceased at 05:34 p.m. on 09.06.2022, i.e. just before her death and the mother-in-law has been specifically named in the suicide note, as well as in the FIR but this fact has also not been considered and investigated by the investigating agency. Relying upon the decision of Hon'ble the Apex Court in Devendra Nath Singh vs. State of Bihar and others 2022 LiveLaw (SC) 835, it was submitted that it is a fit case for exercising the jurisdiction under Section 482 of the Code by way of issuance of directions to the official respondents to conduct further investigation.

6. On the other hand, learned State counsel has opposed the petition. It was contended that a fair and impartial investigation has been conducted. Even a Special Investigation Team was constituted for carrying out the investigation. After the completion of the investigation, the final report under Section 173 (2) of the Code has been presented. Even the charges have been framed and statements of some witnesses have been recorded, as such, there are no merits in the present case.

7. I have considered the aforesaid submissions.

8. As per the version of the petitioner, the mother-in-law of the deceased was residing in Australia. She was present in Australia at the time of occurrence of the incident and her mobile phone No. is +61433919639. The petitioner has relied upon the suicide note and a call made by the mother-in-law on the day of occurrence of the incident from Australia to connect the other co-accused with the commission of crime. Apart from this, the petitioner has alleged that there are specific allegations against the other accused in the FIR but they have not been put to trial and have been wrongly

declared innocent.

9. The investigation agency has completed the investigation and presented the final report under Section 173 of the Code. The matter is pending before the trial court. The petitioner is unsatisfied with the proceedings conducted during the investigation.

10. 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.

11. 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.”

12. 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.

13. Apart from this, the trial Court has the powers under Section 319 of the Code to proceed against other persons appearing to be guilty of the offence during the course of an inquiry or trial. The petitioner is relying upon the averments in the FIR regarding the allegations against the other persons against whom the '*challan*' has not been presented, as well as the documentary proof by way of suicide note and also the call details having a call *inter se* the victim and the mother-in-law of the deceased, as such, the petitioner can avail the remedy of approaching the Magistrate by way of filing a criminal complaint under Section 190 of the Code or filing an application under Section 319 of the Code. At present the investigation is complete and the final report has already been presented before the trial Court.

14. The Magistrate is also empowered under Section 156 (3) to order further investigation. It has been held by Hon'ble the Apex Court in M.Subramaniam and another vs. S. Janki and another 2020 (2) RCR (Criminal) 788, that the powers of the Magistrate to order further investigation under Section 156 (3) of the Code is an independent power and does not affect the power of the investigating officer to further investigate the case even after submission of the report under Section 173 of the Code. It was further observed by Hon'ble the Apex Court that as such the Magistrate can order for reopening of the investigation even after the police submits the final report. The following observations were made by Hon'ble the Apex Court:-

"14. Section 156 (3) state:

"156.(3) 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 CrPC. 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.

16. The power in the Magistrate to order further investigation under [Section 156\(3\)](#) is an independent power and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide [Section 173\(8\)](#). Hence the Magistrate can order reopening of the investigation even after the police submits the final report, vide [State of Bihar v. J.A.C. Saldanha](#) (SCC :AIR para 19).

17. In our opinion [Section 156\(3\)](#) CrPC 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 FIR 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\(3\)](#) CrPC, 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.

18. It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution.”

15. Further, in M.Subramaniam's case (*supra*) while relying upon the judgment in Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhange (2016) 6 SCC 277, Hon'ble the Apex Court has made the following observations:-

*“The said ratio has been followed in **Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage and Others** (2016) 6 SCC 277, in which it is observed.*

*“2. This Court has held in Sakiri Vasu v. State of U.P., that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) CrPC. If such an application under Section 156(3) CrPC is made and the Magistrate is, *prima facie*, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in Sakiri Vasu case because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.*

3. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned

under [Section 156\(3\)](#) CrPC and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.

4. In view of the settled position in [Sakiri Vasu](#) case, the impugned judgment of the High Court cannot be sustained and is hereby set aside. The Magistrate concerned is directed to ensure proper investigation into the alleged offence under [Section 156\(3\)](#) CrPC and if he deems it necessary, he can also recommend to the SSP/SP concerned a change of the investigating (2016) 6 SCC 277 officer, so that a proper investigation is done. The Magistrate can also monitor the investigation, though he cannot himself investigate (as investigation is the job of the police). Parties may produce any material they wish before the Magistrate concerned. The learned Magistrate shall be uninfluenced by any observation in the impugned order of the High Court.”

(Emphasis applied)

16. The said equal and efficacious remedy available to the petitioner has not been availed and the present petition has been filed under Section 482 of the Code by invoking the inherent powers of this Court.

17. 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 these powers is based upon 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.”

18. Keeping in view the facts and circumstances of the present case, this Court is of the considered opinion that the petitioner has neither approached the Magistrate for seeking further investigation nor availed his alternate and efficacious remedy available in the Code and the present petition has been filed invoking the extra-ordinary powers under Section 482 of the Code.

19. The extra-ordinary powers under Section 482 of the Code has 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 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 his remedy by approaching the Area Magistrate under Section 190 or under Section 156 (3) of the Code.

20. Further, the ratio of the judgment relied upon by learned counsel for the petitioner in Devendra Nath's case (*supra*) is not applicable to the peculiar facts and circumstances of the present case.

21. Consequently, in view of the peculiar facts and circumstances of the present case and in view of the ratio of the judgments passed by Hon’ble the Apex Court in M.Subramaniam’s, Sudhir Bhaskarrao Tambe and M/s Zandu Pharmaceutical Works Ltd. cases (*supra*), the present petion is liable to be dismissed with liberty to the petitioner to avail his remedy as per law.
22. Consequently, the petition is dismissed with the liberty aforesaid.
23. Pending miscellaneous applications, if any, also stand disposed of.

March 21, 2024

(HARPREET KAUR JEEWAN)

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JUDGE

Whether Speaking

Yes

Whether Reportable

Yes