

Sr. No.128

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

**CRM-M-53909-2023
Date of decision: 29th January, 2024**

ANNU DEVI AND ANOTHER **.....Petitioners**

versus

STATE OF HARYANA AND OTHERS **.....Respondents**

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Amit Jain, Advocate
for the petitioners.

HARPREET KAUR JEEWAN, J. (ORAL)

1. Prayer in the present petition filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 (for short “the Code”) is for setting aside the judgment dated 31.08.2023 (Annexure P-5), passed by the Additional Sessions Judge, Gurugram, dismissing the revision petition against the order dated 13.06.2022 (Annexure P-3), passed by the Judicial Magistrate First Class, Sohna, whereby the application filed by the petitioner under Section 156(3) of the Code, was dismissed.

2. It is contended on behalf of the petitioners that a criminal complaint was filed by the petitioners against respondent Nos.1 to 7 with the allegations that on the intervening night of 27/28.04.2022, during the period between 11:00 PM and 1:30 AM, respondent Nos.1 to 7 came in the property in question along with the trucks, which were loaded with bricks and JCB machine and encroached upon the property despite the fact that *ad interim* injunction in favour of the petitioner was granted by the Civil Court, as per order dated 23.02.2022 passed in a civil suit filed by the petitioner. The petitioner No.1 was caught hold by the respondents and she

tried to save herself but then, with the *mala fide* intention to outrage her modesty, the petitioner No.1 was dragged on one side and the husband of petitioner No.1 was given beatings. In the meantime, the Police party reached there and respondent Nos.1 to 7 fled away. A complaint bearing No.114 was registered in Police Post, Maruti Kunj on 28.04.2022 at the instance of petitioner No.1 and her husband but no FIR was registered. Prayer in the complaint was made to the Judicial Magistrate First Class, Sohna for issuance of a direction to the Police under Section 157(3) of the Code for registration of the FIR.

3. The application filed by the petitioner under Section 156(3) of the Code was adjourned to 05.09.2022, as per the short order recorded by the Magistrate on 13.06.2022 (Annexure P-2). However, the said application was dismissed by passing the order (Annexure P-3) on the same day i.e. 13.06.2022.

4. Learned counsel for the petitioner contends that the Additional Sessions Judge, Gurugram has not properly appreciated these facts while passing the impugned order dated 17.09.2022 (Annexure P-4). Dismissal of the said application under Section 156(3) of the Code, has caused miscarriage of justice to the petitioners.

5. I have considered the aforesaid contentions raised on behalf of the petitioners.

6. Since no process was initiated by the trial Court as well as the Revisional Court while dismissing the complaint filed by the petitioners, as such, at this stage, issuance of notice to the respondents is dispensed with.

7. The petitioners have filed a criminal complaint (Annexure P-1) before the Area Magistrate with a prayer for passing an order under sub-section (3) of Section 156 of the Code seeking a direction to the Station House Officer, Police

Sections 354-A, 509, 323, 148, 149, 504, 506 read with Section 511 and 120-B IPC and against respondent Nos.8 and 9 under Section 166-A and 201 of IPC. On 13.06.2022, the Area Magistrate has passed two orders i.e. Annexure P-2 and Annexure P-3.

8. Order dated 13.06.2022 (Annexure P-2) reads as under:-

“Today the case was fixed for arguments on the application filed under Section 156(3) of Cr.P.C. Adjournment sought. Heard and allowed. Now to come up on 05.09.2022 for arguments on the above said application.”

9. On the same day, the Area Magistrate has passed a detailed order whereby the prayer for issuance of a direction to the Station House Officer for registration of the case under Section 156(3) of the Code was dismissed. However, the case was adjourned to 05.09.2022 for evidence of the complainant. The relevant portion of the same reads as under:-

“2. Learned counsel for complainant has argued that accused has criminal conspiracy and threatened the complainant of dire consequence used abusing language and but police did not take any action against accused but FIR was registered against the complainant on false ground at last he prayed for issue direction to concerned SHO for registration FIR. It is not in dispute that FIR has already been registered against complainant on the complaint of accused. Complainant has alleged an incidence on 28.04.2022 but present complaint was file same day and there is a lot of delay which is unexplained. If police did not take any action on the complaint of complainant then it is the duty of complainant to move complaint in Court without vesting of time. Hence, at this stage I do not found any ground to issue any direction to the concerned SHO as well as evidences are well within the reach of the complainant and thereafter application under section 156 (3) Cr. P. C. is hereby dismissed.

3. Now case is adjourned to 05.09.2022 for evidence of complainant at own responsibility.”

10. While dismissing the revision petition vide order dated 31.08.2023 (Annexure P-5), the Additional Sessions Judge, Gurugram has observed that though the trial Court has not given any detailed reasons for declining the request of the revisionists for sending the complaint under Section 156(3) of the Code but no case is made out to interfere in the discretionary exercise of the revisional powers of the trial Court. It was further observed that the complaint has not been dismissed by the trial Court and the trial Court has proceeded to record the preliminary evidence of the complainant. The following reasons were recorded by the Court of Additional Sessions Judge, Gurugram while dismissing the revision petition:-

“xxx xxx xxx xxx

..... Though in the impugned Order the Ld. Trial Court did not give any detailed reason for declining the request of revisionist for sending the complaint under Section 156(3) Cr.P.C, despite that this Court contemplate that no case is made out to interfere in the discretion exercised by the Ld. Trial Court.

9. In the case in hand the complaint has not been dismissed by the Ld. Trial Court. It has proceeded to record the Preliminary Evidence of the complainant to form an opinion whether the offences are made out or not. From the entire documentary account adduced by the revisionists themselves, it emanates that the matter was investigated by the police upon the complaint moved by the revisionists and the allegations against the respondents were found false. The revisionists may prove their case by leading evidence against the respondents, which may have cautioned the Ld. Trial Court to not to proceed under Section 156(3) Cr.P.C.

xxx xxx xxx xxx”

11. As per the facts on record, two contradictory orders have been passed by the trial Court on 13.06.2022 (Annexures P-2 and P-3). In short, as per order (Annexure P-2), the application was adjourned to 05.09.2022 for addressing

arguments, whereas, as per another order passed on the same day i.e. 13.06.2022

(Annexure P-3), the relief under Section 156(3) of the Code was declined to the petitioner while dismissing the application and the matter was shown to be adjourned to 05.09.2022 for recording evidence of the complainants (petitioners).

12. The petitioners have taken a specific plea in the revision petition (Annexure P-4) which was decided by the Additional Sessions Judge, Gurugram (Annexure P-4) that the said contradictory orders have been passed by the Judicial Magistrate First Class, Sohna. The Revisional Court has not considered the said plea while passing the impugned order of dismissal of the revision petition. The revisionists have further alleged in Para No.6 of the revision petition (Annexure P-4) that accused Nos.8 and 9 are police officials and collection of the other evidence would be facilitated if the investigation is conducted. The petitioners have further contended in the revision petition (Annexure P-4) that the trial Court has not taken note of the fact that despite complaint No.114 dated 28.04.2022, recorded by the police officials in the Daily Diary, no action was taken against the respondents (accused). The said facts were not appreciated by the Revisional Court.

13. Keeping in view the aforesaid facts, I am of the considered opinion that no doubt, a detailed reasoned order is not required to be passed by the Magistrate while declining the request under sub-section (3) of Section 156 of the Code, however, in the present case, the contradictory orders were passed by the trial Court, as such, the Revisional Court should have exercised its jurisdiction. Perusal of the record manifests that the Judicial Magistrate First Class, Sohna has passed both the orders dated 13.06.2022 (Annexures P-2 and P-3) in a routine manner. There is no proper appreciation of the facts.

14. The arguments raised by the petitioners were not even considered by the Revisional Court, as such, the Revisional Court has not exercised its jurisdiction by directing the trial Court to pass a well-reasoned order. Since the

Court has not exercised the revisional jurisdiction while passing the impugned order dated 13.06.2022 (Annexure P-3), as such, the error committed by the trial Court has been stamped leading to miscarriage of justice.

15. In view of the above reasons, the present petition is allowed. The impugned order dated 31.08.2023 passed by the Additional Sessions Judge, Gurugram (Annexure P-5) as well as impugned order dated 13.06.2022, passed by Judicial Magistrate First Class, Sohna (Annexures P-2 and P-3) are set aside. The matter is remanded back to the Area Magistrate to pass a fresh order after hearing the counsel for the petitioner. The petitioner shall appear before the Judicial Magistrate First Class, Sohna on 29.02.2024.

16. Pending miscellaneous application(s), if any, shall stand disposed of.

(HARPREET KAUR JEEWAN)
JUDGE

29th January, 2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No