

2024:PHHC:169563



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

252

CRM M-60183 of 2022
Date of Decision: 13.12.2024

Dinesh ...Petitioner
Versus
State of Haryana and others ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Vinay Kumar Pandey, Advocate, for the petitioner.
Mr. Rajinder Kumar Banku, DAG, Haryana.
Mr. Mazlish Khan, Advocate, for respondent No. 2.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the order dated 25.07.2022 (Annexure P-11) passed by the Court of Additional Chief Judicial Magistrate, Nuh in criminal complaint (COMI No. 105 of 2022), titled as “**Dinesh Kumar Vs. Mohd.**” whereby, the prayer of the petitioner for sending the complaint under Section 156(3) Cr.P.C. for registration of the FIR and the investigation was declined.
2. Learned counsel for the petitioner contends that the petitioner had moved an application (Annexure P-5) to the Station House Officer, Police Station Sadar Tauru, District Nuh, for protecting the life and liberty of the petitioner as well as to take action

against respondents No. 2 and 3 for their illegal and unlawful acts. Since, no action was taken on the application submitted by the petitioner, the petitioner approached the Superintendent of Police, Nuh, by filing a complaint (Annexure P-6). Since, the authorities had not taken any action against the private respondents, the petitioner filed a CRWP No.3147 of 2022 before this Court with a prayer to issue directions to the official respondents to protect the life and liberty of the petitioner. The said petition came up for hearing before this Court and vide order dated 24.05.2022, this Court had passed the following order:-

“1. After arguing for some time, the learned counsel for the petitioner seeks permission to withdraw the present petition.

2. Permission granted.

3. Consequently, the extant petition is dismissed as withdrawn.

4. However, liberty is reserved to the petitioner to either move an application under Section 145 Cr.P.C. before the Executive Magistrate concerned, or, to institute before the learned civil court concerned, a suit for rendition of accounts, and, also for possession of the disputed premises. Moreover, it is also open to the petitioner to, within the above suit, cast an application seeking ad interim relief of interim restoration of possession to him by the petitioner, qua the disputed commercial establishment”.

3. Learned counsel for the petitioner further submits that thereafter the petitioner had filed a criminal complaint (Annexure P-9) before the Court of Additional Chief Judicial Magistrate, Nuh. However, vide order dated 25.07.2022 (Annexure P-11), the Court of Additional Chief Judicial Magistrate, Nuh, declined the prayer of the petitioner for sending the complaint under Section 156(3) Cr.P.C. and the case was registered as a private complaint and the petitioner/complainant was directed to lead preliminary evidence. Learned counsel further submits that while passing the impugned order, no reasons have been recorded by the Court and the impugned order is liable to be set-aside on this ground alone.

4. On the other hand, learned counsel appearing on behalf of the private respondents submits that there is civil dispute between the parties and even vide order dated 24.05.2022, this Court had declined the similar prayer made by the petitioner. However, he was granted liberty only to move an application under Section 145 Cr.P.C. before the Executive Magistrate or to institute a civil suit for rendition of accounts and for possession of the premises before the learned Civil Court. Thus, the complaint itself was not maintainable before the Court of ACJM, Nuh. Learned counsel further submits that the prayer made by the petitioner has been rightly declined by the Court of ACJM, Nuh as the complaint only discloses a civil action and no criminal offence is made out from the averments made by the petitioner in the complaint.

5. I have heard learned counsel for the parties and perused the record.

6. In the present case, I agree with the submissions made by learned counsel for the petitioner that while declining the prayer made by the petitioner, no reasons have been recorded by the Court of ACJM, Nuh and the order is non speaking. In fact, the order passed by the ACJM, Nuh, should always reflect that he had applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of the complaint and the evidence, which had been attached with the complaint, relatable to the relevant provisions of the offences. Thus, without commenting anything on the merits of the present case, the impugned order dated 25.07.2022 (Annexure P-11) is set aside and the ACJM, Nuh, is directed to pass the orders afresh on the merits of the case.

7. The Court of ACJM, Nuh, shall decide the matter independently on the basis of the averments made in the complaint, uninfluenced by the observations made by this Court in the above order.

13.12.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No