



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

CRM-M-60168-2023
Date of decision: 16.07.2024

Poonam BansalPetitioner

Versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kamal K. Yogi, Legal Aid Counsel
for the petitioner.

Mr. Vikas Bharadwaj, AAG, Haryana.

HARPREET SINGH BRAR, J.

1. The present petition is preferred under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') seeking setting aside of judgment dated 31.07.2023 passed by learned Additional Sessions Judge, Sirsa vide which order dated 05.09.2022 passed by Judicial Magistrate Ist Class, Sirsa, whereby the application under Section 156(3) Cr.P.C. has been declined, was upheld.

2. The petitioner filed a complaint dated 05.09.2022(Annexure P-3) under Sections 323, 324, 354-A, 500, 506, 120-B IPC before the jurisdictional police authority. However, no action was taken. Consequently, the petitioner moved a compliant under Section 200 Cr.P.C. and also filed an application under Section 156(3) seeking directions to respondent No.1 to register an FIR and investigate the matter. The learned trial Court dismissed the same vide order dated 05.09.2022 (Annexure P-2). Aggrieved by the same, the petitioner



preferred a revision petition, which was also dismissed vide judgment dated 31.07.2023 (Annexure P-1) by the learned lowed Appellate Court.

3. Learned counsel for the petitioner *inter alia* contended that the learned trial Court had dismissed the application of the petitioner under Section 156(3) Cr.P.C. without assigning any reason for the same. As mentioned in the complaint(supra), the private respondents, who are the landlords of the petitioner, verbally harassed and physically assaulted her, which is corroborated by the MLR issued by Government Hospital, Sirsa. The private respondents have kicked the petitioner out of her rented accommodation and are in illegal possession of her documents and household articles. The facts of the case clearly demonstrate the need for police investigation in order to collect evidence. Moreover, it is trite law that if the applicant is not able to collect the evidence herself, application under Section 156(3) must be allowed.

4. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner had levelled allegations of molestation on respondent No.2. vide application no. 66-5C dated 02.07.2022. Curiously, respondent No.2 is the owner of the house where the petitioner is living with her daughter as a tenant. During police inquiry, it was discovered that the genesis of the issue lay in dispute qua vacation of the rented accommodation. It was concluded that no cognizable offence had taken place, however, preventive action was taken by filing a *kalandra* under Section 107/151/150 Cr.P.C. on 12.07.2022 before learned Sub Divisional Magistrate, Sirsa.

5. In order to properly adjudicate upon the present controversy, it is pertinent to examine Section 156(3) of the Cr.P.C., which is reproduced below:

Section 156 Police officer's power to investigate cognizable case.



(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

6. The legislature, in its wisdom, has added the word ‘may’ to Section 156(3), indicating that the Magistrate is not mandated to exercise the said power in every case placed before her. In fact, she must exercise discretion by applying her judicial mind to the facts and circumstances and ascertain commission of a cognizable offence that requires interference of the Court. As such, the Court must not act like a mere post office and direct investigation into every case qua which an application under Section 156(3) Cr.P.C. is filed.

7. A two Judge bench of the Hon’ble Supreme Court in ***Usha Chakraborty vs. State of West Bengal 2023 AIR SC 688*** has opined that the Magistrate must necessarily satisfy herself qua the existence of the ingredients constituting the alleged offence. Speaking through Justice C.T. Ravikumar, the following was observed:

“3. There cannot be any doubt with respect to the position that in order to cause registration of an F.I.R. and consequential investigation based on the same the petition filed under Section 156 (3), Cr. P.C., must satisfy the essential ingredients to attract the alleged offences. In other words, if such allegations in the petition are vague and are not specific with respect to the alleged offences it cannot be lead to an order for registration of an F.I.R. and investigation on the accusation of commission of the offences alleged...”



8. Further, a two Judge bench of the Hon'ble Supreme Court in ***Priyanka Srivastava and another vs. State of U.P. and others*** 2015 AIR SC 1758, speaking through Justice Dipak Misra, made the following observations:

“24. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order....

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26. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.”

Reliance in this regard can also be place upon the judgments rendered by the Hon'ble Supreme Court in ***Ramdev Foods Products Pvt. Ltd. vs. State of Gujarat***, (2015) 6 SCC 439 and ***Anil Kumar vs. M.K. Aiyappa***, (2013) 10 SCC 705.

9. It is trite law that the Court can treat a private complaint under Section 156(3) Cr.P.C. based on the accusation of the complainant. In fact, If the Magistrate decides to decline the application under Section 156(3) Cr.P.C., it would not impact the trial of the private complaint. Reliance in this regard can be placed on the judgment rendered by A two Judge bench of the Hon'ble Supreme Court in ***Kailash Vijayvargiya vs. Rajlakshmi Chaudhari and others*** 2023 Cr.L.R.(SC) 874, wherein, speaking through Justice M.R. Shah, the following was held:

*“36. The State of West Bengal has drawn our attention to the judgment of this Court in ***Gopal Das Sindhi and Others v. State of Assam and Another***, AIR 1961 SC 986 to the effect that even*



when a private complaint is filed, the Magistrate is not bound to take cognizance under Section 190 as the word used therein is 'may', which should not be construed as 'must' for obvious reasons. The Magistrate may well exercise discretion in sending such complaint under Section 156(3) to the police for investigation. However, when a Magistrate chooses not to proceed under Section 156(3), he cannot simply dismiss the complaint if he finds that resorting to Section 156(3) is not advisable. Reference in this regard can also be made to **Suresh Chand Jain v. State of M.P. and another, (2001) 2 SCC 628** which distinguishes between the power of the police to investigate under Section 156, the direction of the Magistrate for investigation under Section 156(3) and post-summoning inquiry and investigation after cognizance under Section 190 and Section 202 of the Code. When a Magistrate orders investigation under Section 156(3), he does so before cognizance of the offence. If he takes cognizance, he needs to follow the procedure envisaged in Chapter XV (see Afaq Jahan (supra)).

The decision in **Mona Panwar v. High Court of Judicature of Allahabad through its Registrar and Others, (2011) 3 SCC 496** is rather succinct. This Court held that when a complaint is presented before a Magistrate, he has two options. One is to pass an order contemplated by Section 156(3). The second one is to direct examination of the complainant on oath and the witness present, and proceed further in the manner provided by Section 202. An order under Section 156(3) is in the nature of a peremptory reminder or intimation to the police to exercise its plenary power of investigation under Section 156(1). However, once the Magistrate has taken cognizance under Section 190 of the Code, he cannot ask for an investigation by the Police. After cognizance has been taken, if the Magistrate wants any investigation, it will be under Section 202, whose purpose is to ascertain whether there is prima facie case against the person accused of the offence and to prevent issue of process in a false or vexatious complaint intended to harass the person named. Such examination is provided, therefore, to find out whether there is or not sufficient ground for proceeding further.

37. We do not intend to go into the question of the merits of the allegations, and what procedure the Magistrate should follow as this is an aspect which the Magistrate must first consider and decide judiciously and as per the law. What is impermissible and contrary to law is an adjudication on merits of the allegations and determination of the facts as baseless, without further scrutiny and examination. Therefore, the High Court was correct in remitting the matter to the judicial magistrate for further examination.”

10. Further reliance can be placed upon the judgment of the Coordinate Bench of the Delhi High Court in **Subhkaran Luharuka vs. State,**



2010 SCC OnLine Del 2324, wherein speaking through Justice Mool Chand Garg the following was observed:

“42. Thus, there are pre-requisites to be followed by the complainant before approaching the Magistrate under Section 156(3) of the Code which is a discretionary remedy as the provision proceeds with the word ‘May’. The magistrate is required to exercise his mind while doing so. He should pass orders only if he is satisfied that the information reveals commission of cognizable offences and also about necessity of police investigation for digging out of evidence neither in possession of the complainant nor can be procured without the assistance of the police. It is thus not necessary that in every case where a complaint has been filed under Section 200 of the Code the Magistrate should direct the Police to investigate the crime merely because an application has also been filed under Section 156(3) if the Code even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, may be with the assistance of the court or otherwise. The issue of jurisdiction also becomes important at that stage and cannot be ignored.”

11. Conspicuously, multiple cases with similar facts and allegations in were listed before this Court in the recent past, which compelled this Court to check the credentials of the petitioner. It was found that at least three cases were filed by the petitioner, with the same Aadhar ID, which are listed as follows:

- *‘Poonam Bansal vs. State of Haryana and others’* in CRM-M-31252-2017 in case stemming from FIR No. 47 dated 15.04.2014 registered under Section 323, 354, 506 IPC at Police Station Kalayat, Kaithal
- *‘Poonam Bansal vs. State of Haryana and others’* in CRM-M-30332-2024 in case stemming from FIR No. 338 dated 16.10.2023 registered under Sections 354, 354-D IPC at Police Station Sector 36, Chandigarh
- *‘Poonam Bansal vs. State of Haryana and others’* in the present petition i.e. CRM-M-60168-2023 in FIR(supra)

All three of the abovementioned petitions referred to sexual harassment complaints. Curiously, the cases pertain to not just Sirsa, as in the present case, but also in Jind, Kaithal and Chandigarh. In order dated



04.07.2024 passed by this Court in '*Poonam Bansal vs. State of Haryana and others*' in CRM-M-30332-2024, it was observed that a bulk of 19 sexual harassment complaints have been filed by the petitioner in Jind itself. The relevant extract from the said order is reproduced hereinunder:

“ Learned Public Prosecutor for U.T. Chandigarh, at the very outset, informs this Court that the petitioner is a habitual complainant and she has adopted this modus operandi to extract money. In fact, she is running a extortion racket of honey trap in the District of Jind and she had made same allegations in 19 complaints of similar nature of sexual harassment and the U.T. Police intend to take the case to its logical conclusion and has completed the investigation and is likely to file the cancellation report.

In view of the above, learned counsel for the petitioner wishes to withdraw the present petition with liberty to invoke alternative remedy available to him in accordance with law.”

12. Sexual harassment causes great distress and humiliation to the victim and false implication in such cases can cause equal distress, humiliation and damage to the reputation of the accused and his family. The Court cannot remain a silent spectator to such manifestly frivolous and vexatious instances of false implication. In fact, the Court is duty bound to look into such cases with extra care and scrutiny in order to protect innocent citizens. Moreover, the Court is well within its power while exercising its inherent jurisdiction under Section 482 Cr.P.C. or under Article 226 of the Constitution of India to look into the overall circumstances and the oblique motive of the complainant for falsely implicating innocent persons in countless cases.

13. The impact of false implication is deeply stigmatic and creates a psychological burden on the person portrayed as the accused. He is doomed to live in a constant state of fear and anxiety due to humiliation brought in by the blemish of being a perpetrator of a sexual offence. The entire ordeal also



unjustly taints the painstakingly built reputation of the wrongly accused, which is bound to have long term adverse effects on his life and self-esteem. Such accusations have been known to cause ostracisation of the family of the accused, which directly impacts their social standing as they are now seen unsafe to commune with. Reputation is a valuable personal asset and a facet of an individual's right to life as enshrined in Article 21 of the Constitution, as noted by the Hon'ble Supreme Court in ***Sukhwant Singh vs. State of Punjab 2009(4) R.C.R(Criminal) 868***. Unsubstantiated, sweeping allegations cannot be taken up on face value, especially when the conduct of the complainant seems dubious. The Courts must take up the mantle and proceed with an intention to seek the truth, in spite of the seemingly blurred boundaries. In case the allegations are found to be false, the investigating agency should not hesitate to invoke the relevant provisions of the IPC or Bhartiya Nyaya Sanhita, 2023 (hereinafter 'BNS') including Chapter X and Chapter XI of the IPC to prosecute such complainants, particularly under Sections 182, 195, 196, 199, 200 and 211, which correspond to Sections 217, 231, 233, 236, 237 and 248 of the BNS.

14. At this juncture, this Court must take notice of the malicious behaviour of the petitioner and her disregard for the sanctity of the criminal justice system. The Courts must separate the chaff from the grain to ensure that the stream of justice is not clogged by ill-intended, vexatious proceedings. This unscrupulous and unethical practice of initiating criminal prosecution in order to extort money from unsuspecting victims, must be taken note of and strictly condemned to ensure that the judicial process is not used as an instrument of oppression and harassment. Stooping to such practices, indubitably has wider



ramifications on society as it becomes increasingly difficult to distinguish between genuine and false cases. It makes people glaringly insensitive to cases of genuine plight and misery, resulting in the privation of compassion towards genuine victims. If this *modus operandi* is allowed to continue unchecked, irreparable loss would be caused to the society at large. As per the latest National Crime Records Bureau's report, there is an alarming surge in crimes against women in India. An astonishing 4,45,256 cases were registered in the year 2022 alone, which equates to nearly 51 FIRs every hour. These unfortunate figures are to be understood in the backdrop of the social context where it takes a lot of courage for women of this country to come forward and report a crime in the first place. By instituting false cases, the sufferings of the victims are undermined, leading to a perception among women that even if they step forward to report an offence, they will not be taken seriously either by the investigating agency or the Court. Accordingly, this Court is of the considered opinion that the practice of filing false complaints of sexual harassment needs to be dealt with an iron fist in order to deter people from executing their nefarious designs and protect the interests of the innocent victims.

15. In view of the discussion above, this Court does not find any reason to interfere in the proceedings qua complaint (*supra*). Accordingly, the present petition stands dismissed.

16. However, in the peculiar facts and circumstances of this case, this Court deems it appropriate to direct Director General of Police, Haryana to look into the credentials of the petitioner and assign an IPS Officer to conduct a thorough investigation into the allegations levelled by the petitioner and find out how many complaints of a similar nature have been filed by her in the

States of Punjab, Haryana and U.T. Chandigarh. In case the allegations levelled by the petitioner are found to be false and manipulated, the DGP, Haryana is directed to take strict action against her, in accordance with law. The DGP, Haryana is further directed to file a compliance report, detailing the action taken, before the Registry of this Court within 03 months from the date of receipt of certified copy of this order.

18. The Registry is directed to supply a copy of this order to the learned State counsel for the state of Haryana to ensure strict compliance.

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

(HARPREET SINGH BRAR)
JUDGE

16.07.2024
Neha

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