

2024:PHHC:168478-DB



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

(115)

LPA-3034-2024 (O&M)

Decided on : 12.12.2024

Divyanshu Mehta

.....Appellant(s)

Versus

State of Punjab & another

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MRS.JUSTICE MEENAKSHI I.MEHTA**

Present: Mr.Fateh Sahota, Advocate, for the appellant.

G.S. Sandhawalia, J.(Oral)

CM-7469-LPA-2024

Application for condoning the delay of 8 days in filing the appeal is allowed, in view of the averments made in the application duly supported by affidavit of the appellant and in view of the nominal delay. Accordingly, delay of 8 days in filing the appeal is hereby condoned.

CM stands disposed of.

CM-7470-LPA-2024

Exemption application is allowed as prayed for.

CM stands disposed of.

LPA-3034-2024

1. Consideration in the present appeal is to the judgment dated 04.10.2024 passed by the Learned Single Judge in CWP-24409-2024 whereby it was held that the matter is pending before the Magistrate who has to carefully consider and decide the same in accordance with law since he has taken cognizance and treated it as a complaint and the Magistrate was right in treating the application under Section 156(3) Cr.P.C. as non-maintainable.

2. It is a matter of record that in the writ petition filed, the appellant had sought quashing of the SIT report dated 06.04.2021 and the closure report filed in case No.UCR 216/21 registered in FIR No.88 dated 26.04.2019 at P.S. City Khanna. Resultantly, the appellant had also challenged the action of the SDJM, Khanna dated 19.08.2023 whereby direction sought under Section 156(3) Cr.P.C. had been declined and fresh investigation was not ordered in the said FIR. Learned Single Judge had noticed that the closure report had been submitted on 15.04.2020 (Annexure P-5) and while dealing with the application filed under Section 156(3) Cr.P.C., noticed that cancellation report had been submitted and on account of the protest petition being filed, the same had been treated as a complaint by the earlier Magistrate on 01.02.2022 (Annexure P-7) and the matter was fixed for recording of evidence.

3. Accordingly, it was held that the application was not maintainable as the investigation had already been completed by the police and accordingly, the matter was listed for leading evidence by the complainant. After detailed discussion and while referring to the Three Judge Bench of the Apex Court in **Devarapally Lakshminarayana Reddy v. V. Narayana Reddy**, (1976) 3 SCC 252 **Nirmal Jeet v. State of West Bengal**, (1973) 3 SCC 753 **Ramdev Food Products (P) Ltd. v. State Of Gujarat** (2015) 6 SCC 439. The Learned Single Judge came to the conclusion that option was available with the Magistrate who had taken cognizance of the matter under Section 202 Cr.P.C. and therefore, no question arose to proceed under Section 156(3) Cr.P.C.

4. We are of the considered opinion that the appellant's remedy had not been foreclosed in any manner since the complaint is still pending before the Criminal Court. Apparently, the sole purpose is that direction should be issued under Section 156(3) Cr.P.C. to ensure that the other party is harassed by the police and it is in such circumstances, the present litigation continues to be pressed. Accordingly, we are of the considered opinion that the view which has been taken by the Learned Single Judge does not suffer from any infirmity or illegality.

5. Even otherwise, the matter which is totally criminal in nature, by filing a writ petition cannot now be further proceeded before this Court as the relief which is sought in the writ petition was totally based on the principles governing criminal jurisdiction and it amounts to an appeal being filed, which is not permissible, in view of the judgment of the Apex Court passed in **Ram Kishan Fauji Vs. State of Haryana & others, 2017 (5) SCC 533.**

6. Thus, for both the reasons recorded above, we are of the considered opinion that the present appeal is baseless and the same is hereby dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

(MEENAKSHI I.MEHTA)
JUDGE

12.12.2024
sailesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No