

2024:PHHC:164918



IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

120

CRM-M-61500-2024 (O&M)
Date of decision : 10.12.2024

Krishan Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Jaspreet Singh Brar, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. By way of filing the present petition under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS'), the petitioner is challenging the order dated 14.08.2024 (wrongly mentioned as 14.08.2022 in the petition), passed by the Court of learned Additional Chief Judicial Magistrate, Hisar in Criminal Complaint No. COMI-253-2024 dated 19.03.2024, titled as *Krishan Kumar vs. Rahul*, whereby the matter had been adjourned to 09.01.2025 for recording the preliminary evidence of the petitioner/complainant without passing any order on the prayer made by the petitioner for sending the complaint filed by him for registration of an FIR in view of the provisions of Section 156(3) of the Code of Criminal Procedure.
2. It is submitted by learned counsel for the petitioner that he has filed the aforesaid complaint while making prayer that the same be sent to the SHO concerned for registration of an FIR. Action taken report had been called for from the SHO concerned on 06.04.2024. Then the matter had been

2024:PHHC:164918



adjourned to 02.05.2024 and then to 14.08.2024 for hearing arguments on action taken report but on 14.08.2024, instead of hearing arguments on the said report or passing an order on the prayer made by the petitioner, the learned trial Court passed the impugned order for recording preliminary evidence of the petitioner/complainant. It is submitted that this order is illegal on the face of the record and is not sustainable in the eyes of law.

3. I have heard learned counsel for the petitioner at considerable length and have also gone through the record.

4. Before delving into the question of legality of the impugned order, it would be profitable to refer to the provisions of Section 156 of the Code, which are as under:

“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 proceedings 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.”

5. It is well established that when a complaint is presented before a Magistrate, he has the option either to order an investigation as provided under Section 156(1) of Code or to proceed under Section 200 of Code, examine the complainant and his witnesses and then proceed further under the provision of Section 202 of Code. An order under Section 156(3) of Code which is the second option is in fact in the nature of reminder to the police to perform its

2024:PHHC:164918



duty and reinvestigate into the alleged cognizable offence under Section 156(1) of Code. While disposing of a complaint moved under Section 156(3) of the Code, the Magistrate is required to apply his mind to the bare contents of the application regarding disclosure of cognizable offence, though he is not bound to proceed to decide whether or not there are sufficient grounds for proceeding further to satisfy himself regarding commission of cognizable offence. The Magistrate may treat an application under Section 156(3) of the Code as a complaint within the meaning of Section 2(d) of the Code and is not bound to pass an order for registration of FIR. He can also dismiss the complaint if no cognizable offence is made out and can also pass an order after going through the contents of the complaint and on analyzing the preliminary evidence appended with the complaint, by recording a finding that a prima facie cognizable offence appears to have been committed or not.

6. In the instant case, however, on a perusal of the impugned order, it is revealed that though in the complaint, a specific prayer had been made by the petitioner for sending the same under Section 156(3) of the Code for registration of FIR but after receipt of action taken report, instead of applying its mind on the question as to whether a case for sending the case for registration of FIR was made out or not or that it was a case, which was to be treated as a private complaint, the learned trial Court straightway proceeded to pass the impugned order for recording preliminary evidence and adjourned the case to 09.01.2025 for that purpose. The impugned order, therefore, is not sustainable in the eyes of law as it has not been passed in consonance of the well established principles of law.

7. As per discussion made above, the impugned order is set aside.

2024:PHHC:164918



The petition stands allowed. The matter is remanded to the learned trial Court for hearing the arguments of the petitioner on the question as to whether the prayer made by him for sending the complaint to SHO concerned for registration of an FIR deserves to be allowed or not and to pass an order afresh by recording reasons thereof.

10.12.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No