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

CRM-M-7142-2025 (O&M)

Date of decision: 07.02.2025

Veer Sain

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

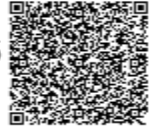
Present: Mr. Nikhil Ghai, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

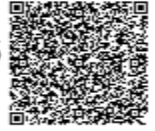
1. Present petition has been preferred under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking quashing of impugned order dated 08.01.2025 passed by learned Judicial Magistrate 1st Class, Faridabad, vide which the application under Section 156(3) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for registration of FIR under Sections 384, 389, 406, 420, 120-B, 506 of the Indian Penal Code, 1860 (for short 'IPC') was dismissed and the case was adjourned for recording of preliminary evidence of the petitioner.

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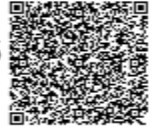
2. Succinctly, the facts of the case are that the petitioner was posted at Police Post Sector 8, Faridabad and respondent No.2 was posted as a security guard at Sarvodya Hospital, Sector-8, Faridabad. Both of them developed friendly relations and thereafter, developed physical relations with each other. In the year 2017, respondent No.2 went on pilgrimage to Banke Bihar Mandir, Vrindavan, Mathura (UP) along with the petitioner and his wife and developed friendly relations with her and started visiting house of the petitioner. Subsequently, respondent No.2 started blackmailing the petitioner and compelled the petitioner to purchase an Activa scooty worth Rs.55,358/-, out of which Rs.50,000/- paid vide cheque No.706242 and remaining by cash. The petitioner purchased a flat on first floor of plot No.3012 measuring 90 sq. yards, Block J, Sainik Colony, Extension II, Sector 49, Faridabad (Haryana) for sale consideration of Rs.35,00,000/- and he paid Rs.27,00,000/- out of his provident funds account No.40202 and remaining Rs.9,00,000/- through personal loan. However, respondent No.2, in connivance with her family, by blackmailing the petitioner, got executed and registered sale deed No.4538 dated 31.08.2023 (Annexure P-5) in her name without consent and intimation to the petitioner. Thereafter, respondent No.2 compelled the petitioner to stay with her since 2023, otherwise, she would implicate him in a false case. Thereafter, the petitioner came to know from the messages in the phone of respondent No.2 that she, in connivance with her family members, was

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planning to kill the petitioner and on being confronted with the same, she turned hostile. On 24.05.2024, the petitioner left the company of respondent No.2 and on the same day, a panchayat was convened, in which it was agreed that respondent No.2 would sell the flat (*supra*) and would come only at the time of registration of the sale deed. Further, a settlement was arrived at between the parties and it was agreed that no legal action shall be taken against the petitioner. However, after a delay of 16 days, respondent No.2 submitted a complaint before the police, on the basis of which, FIR No.280 dated 10.06.2024 under Sections 376(2)(n) & 506 of IPC was registered at Police Station Dabua, District Faridabad. Thereafter, the petitioner approached this Court by filing a petition i.e. CRM-M-32284-2024 seeking anticipatory bail, which was allowed vide order dated 08.08.2024 (Annexure P-4).

3. Learned counsel for the petitioner, *inter alia*, contends that respondent No.2 extorted money from the petitioner and falsely got registered sale deed in her favour. Further, from the conversation on her phone with her siblings, it is evident that she became greedy and was blackmailing in pursuance of her greed, to which she later turned hostile. Additionally, respondent No.2 was aware that the petitioner was already married and therefore, there was no occasion for the petitioner to get married to respondent No.2. The FIR (*supra*) was lodged after a delay of 16 days with the malafide intention to usurp the flat (*supra*), jewellery and other moveable and

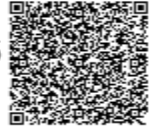


immovable properties of the petitioner. Further, it can be depicted from the pictures (Annexure P-6) that respondent No.2 was well acquainted with wife of the petitioner.

4. *Per contra*, learned State counsel appears on advance notice and contends that the petitioner got married to respondent No.2 in Vrindavan Mandir on the pretext of socially accepting her. However, the petitioner repeatedly made excuses for not getting the marriage registered.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that learned Magistrate is well within his power to treat the case as a complaint case and is not expected to be a mere postmaster to mechanically pass order of registration of FIR. Learned Judicial Magistrate 1st Class, Faridabad was well equipped to pass the impugned order dated 08.01.2025. Additionally, if any material is required to be brought on record during pendency of the trial, the petitioner is at liberty to move an appropriate application under Sections 91 and 311 of Cr.P.C. for recording the additional evidence or adduce the documents in evidence. Further, if the person is aggrieved by inaction of the police authorities, he has a remedy to approach the jurisdictional Magistrate by way of an application under Section 156(3) Cr.P.C. Reliance in this regard can be placed on ***Lalaram Vs. State of U.P., 2020 SCC Online All 1497:***

“The Magistrate is equipped to register the complaint as a

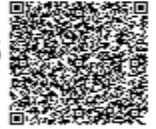


complaint case as per the procedure prescribed under Chapter XV Cr.P.C. The Magistrate has to apply judicial mind. There cannot be mechanical exercise of the jurisdiction or exercise in the routine matter. What weighed for the magistrate to order investigation or to take cognizance should be reflected in the order, although a detailed expression of his view is neither required nor warranted.”

6. Further, Section 311 of Cr.P.C. confers wide powers upon the Courts to examine any witness, though not examined or already examined, in lieu, call such person, if his evidence appears to it, to be essential for the proper adjudication of the case. Reliance in this regard can be placed upon a judgment of the Hon’ble Supreme Court in ***Zahira Habibullah Sheikh and Ors. Vs. State of Gujarat and others, (2006) 3 SCC 374***, wherein the following was observed: -

“Section 311 of Cr.P.C is manifestly in two parts. The first part is discretionary as the presumption used is “may” whereas the second part is mandatory and the presumption used is “shall”. Because of mandatory nature of the second part, it compels the court to take any steps provided in Section 311 of Cr.P.C if the new evidence appears to it to be essential for the just decision of the case.”

7. A two Judge Bench of the Hon’ble Supreme Court in ***Nitya Dharmananda @ K. Lenin Vs. Sri Gopal Sheelum Reddy 2017 AIR SC 5846***,



has observed the following:

“6. It is settled law that at the stage of framing of charge, the accused cannot ordinarily invoke Section 91. However, the court being under the obligation to impart justice and to uphold the law, is not debarred from exercising its power, if the interest of justice in a given case so require, even if the accused may have no right to invoke Section 91. To exercise this power, the court is to be satisfied that the material available with the investigator, not made part of the chargesheet, has crucial bearing on the issue of framing of charge.

8. As an upshot of above discussion, the impugned order dated 08.01.2025 passed by learned Judicial Magistrate 1st Class, Faridabad is hereby upheld and present petition is dismissed.

9. All the pending miscellaneous application(s), if any, shall stand disposed of.

07.02.2025
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No