



CRM-M-16097-2025

-1-

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

132

CRM-M-16097-2025

Date of decision:25.03.2025

ER. ARUN GARG.**...Petitioner****Versus****STATE OF PUNJAB AND OTHERS****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Petitioner in person (through V.C.)

Ms. Ruchika Sabherwal, Sr. D.A.G., Punjab.

MANISHA BATRA, J.

1. The instant petition has been filed by the petitioner under Section 528 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (For short-BNSS) seeking quashing of order dated 02.05.2023 (Annexure P-5), passed by the Court of learned Judicial Magistrate First Class, Ludhiana in criminal complaint bearing No. CRM/82/2021 as well as order dated 07.11.2024 passed by the Court of learned Additional Sessions Judge, Ludhiana (Annexure P-7) thereby, dismissing the revision petition filed against the order dated 02.05.2023.

2. Brief facts relevant for the purpose of disposal of this case are that the petitioner filed an application under Section 156(3) of Cr.P.C. seeking issuance of directions to the Police authorities to conduct investigation into the allegations levelled by the petitioner and for registration of the FIR against the persons named therein as respondents. It was alleged in the complaint that on 05.04.2019, the petitioner along with his son who is specially abled child was



CRM-M-16097-2025

-2-

going towards Jaimal Road in his car which was driven by him. The road was crowded. The private respondents by driving his vehicle rashly and at a high speed came from back side and tried to overtake the vehicle of the complainant from wrong side. He could not do so and then started hurling abuses to the petitioner. He, thereafter, kicked his vehicle and gave punches on the windowpane of his vehicle thereby, making his son scared. Thereafter, he fled away. The petitioner reported the matter to the Police but no action was taken. Therefore, prayer had been made by him for registration of the FIR.

3. After receipt of the complaint and hearing arguments advanced by the petitioner, learned Magistrate passed the following order on 02.05.2023 :-

“Present: Sh. Arun Garg Advocate, counsel for application.

Consideration advanced. The present application has been filed by the applicant for direction to the police for registration of FIR. Report of the SHO concerned was called. As per the report, the proceedings under Section 107/151 CL.P.C. were initiated against the accused person and that the same has been filed due to non-appearance of the complainant.

Vide this application, the complainant has sought direction for registration of FIR for the offences under Section 279, 283, 290, 291, 294, 323, 324, 325, 326, 336, 337, 338, 352, 355, 504, 506, 511 IPC. During the course of arguments, the applicant has admitted that no physical injury has been caused to his person or to anyone. As such, the plea regarding direction for registration of FIR under Section 323 to 326 IPC gets nullified. Further, in view of the allegations levelled by the applicant in his application and the fact that the police has initiated



proceedings under Section 107/151 Cr.P.C., this court of the considered view that the complainant/applicant is required to bring further evidence in this matter so that an appropriate order can be passed.

It being so, the present application filed by the complainant is hereby treated as private complaint. Adjourned to 06.06.2023 for preliminary evidence.

Date of order dated: 02.05.2023”

The petitioner then filed a petition against the order dated 02.05.2023. The learned Revisional Court on receipt of the application, sought status report from the concerned Police Station which revealed that proceedings under Section 107 and 151 of Cr.P.C were conducted by the Police on the complaint of the petitioner and since he did not appear despite being called, hence, his application was filed. Learned Revisional Court vide its order dated 07.11.2024, observed that there was no illegality or perversity in the order passed by the trial Court and dismissed the revision petition.

4. It is argued by the petitioner that orders passed by learned trial Magistrate as well as the Revisional Court are not sustainable in the eyes of law as while passing the same, the fact that a *prima facie* case for commission of offences as mentioned in the complaint as lodged by him, was not taken into consideration. The matter was such which required investigation by the Police. The learned Magistrate gravely erred in declining the prayer made by the petitioner for registration of the FIR and by treating the complaint filed by the petitioner as a private complaint. With these broad submissions, it is urged that the impugned orders are liable to be quashed.

5. The only question that arises for consideration in this petition is as



to whether the order dated 02.05.2023 as passed by learned Magistrate as well as the order dated 07.11.2024 passed by the Revisional Court, whereby the prayer made by the petitioner to send his complaint for registration of FIR, was declined, are liable to be quashed?

6. At the outset, it will be proper to refer to the relevant provision i.e. the provisions of Section 156 of the Code to answer that question. The provision reads 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 cognisable 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.”

7. 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 duty and reinvestigate into the alleged cognizable offence under Section 156(1) of Code. At the stage of ordering investigation under Section 156(3) of Code, it cannot be said that Magistrate have taken cognizance of an offence as



the Magistrate can be said to have taken cognizance only when judicial mind is applied by him to the contents of the complaint for proceedings under Section 200 of Code or other provision subsequent thereto. Reference in this regard can be made to the authority cited as ***Devara Palli Lakshminarayana vs. V. Narayana Reddy and Others : AIR 1976 SC 1672***, wherein it was observed by Hon'ble Supreme Court that an order made under Section 156(3) of Code was in the nature of an pre-emptory reminder or intimation to the police to exercise its powers of investigation under Section 156(1) of the Code.

8. It is also sell settled that while disposing of an application 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 and not to proceed to decide whether or not there are sufficient grounds for proceeding further to satisfy himself regarding commission of cognizable offence. No-doubt the Magistrate is not bound to dispose of an application under Section 156(3) of Code or order of registration of first information report and investigation thereof by the police. He may treat such application as complaint within the meaning of Section 2(d) of the Code and proceed onwards in accordance with the procedure laid down therein for complaint cases i.e. in accordance with the procedure provided under Sections 200/204 of Code. However, he is also competent to order for investigation by the police under Section 156(3) of Code, if the allegations made in the complaint disclose a cognizable offence. Reference can be made to the authority cited as ***Dharmesh Bhai Vasudev bhai vs. State of Gujarat : (2009) 3 SCC (Crl.) 76***, wherein it was observed that any person may set the criminal law in motion ofcourse subject to some statutory interdicts. When an offence is



committed, a first information report can be lodged under Section 154 of the Code. However, if for some reason or the other reason, the first information report is not recorded in terms of Section 156(1) of the code, then the Magistrate is empowered under Section 156(3) of the Code to order an investigation into the allegations as contained in the complaint. The Magistrate on filing of such complaint, can either dismiss the same in case, no cognizable offence is made out, can pass an order after going through the contents of the complaint and on analyzing the preliminary evidence appended with the complaint and record a finding that a prima facie cognizable offence appeared to have been committed and may direct lodging of the first information report and conducting an investigation.

9. In view of the above, it is explicit that the Magistrate concerned was very much competent to pass an order for treating the application/complaint filed by the petitioner as a private complaint and to decline the prayer made by him for registration of the FIR. Learned Magistrate exercised that power as he was not duty bound to direct registration of the FIR and for investigation of case. Learned Magistrate after applying his mind, had observed that no case for registration of the FIR was made out. Learned Revisional Court also observed that the allegations did not involve collection of investigation by Police or any recovery. This Court in exercise of powers under Sections 528 of BNSS (which is pari materia with Section 482 of Cr.P.C.) to quash such proceedings, has to consider that such exercise is an exception and not a rule. More so, an order under Section 156(3) of the Code is not a matter of moment which affects or adjudicates the rights of the accused or a particular aspect of the trial. The Magistrate is also not under an obligation



CRM-M-16097-2025

-7-

to direct registration of the FIR nor he is required to record detailed reasons at the stage of exercising powers under Section 156(3) of Cr.P.C. Learned Magistrate after satisfying himself that no case for registration of the FIR had been made out and after applying his mind to the contents of the complaint, ordered to treat it as a private complaint. The petitioner has not been able to point out any infirmity or illegality in the impugned orders as passed by learned Magistrate as well as by the learned Additional Sessions Judge. These orders reflects due application of judicious mind by the Courts below to the facts of the case.

10 The petitioner has tried to get adjudicated upon correctness, validity and propriety of the impugned orders in the garb of invoking the powers of High Court and Section 528 of BNSS which are to be exercised sparingly and in exceptional circumstances, though, no circumstance has been made out in this case. As such, finding no flaw or illegality in the impugned orders, the same are affirmed and the petition is dismissed.

11. However, it is made clear that the observations made herein above are only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

25.03.2025

Spoke-77(MANISHA BATRA)
JUDGE*Whether speaking/reasoned**Yes**Whether reportable**Yes*