

(2023) 05 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 30465 Of 2021

Asim Kumar Ray

APPELLANT

Vs

State Of Haryana And Another

RESPONDENT

Date of Decision : 02-05-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 154, 154(1), 154(3), 156(3), 190, 202

Citation : (2023) 05 P&H CK 0013

Hon'ble Judges : Gurvinder Singh Gill, J

Bench : Single Bench

Advocate : R.S. Rai, Sangram Saron, Cheitanya Madan, Gurmeet Singh, Keshav Pratap Singh

Final Decision : Disposed Of

Judgement

Gurvinder Singh Gill, J

1. The petitioner assails order dated 16.7.2021 (Annexure P-5) passed by learned Additional Sessions Judge, Gurugram, wherein the learned Court in exercise of powers under Section 156(3) Cr.P.C., directed the S.H.O. concerned to register FIR against the petitioner and co-accused. The petitioner also seeks quashing of FIR lodged pursuant to order dated 16.7.2021.

2. The impugned order dated 16.7.2021 (Annexure P-5) is reproduced herein-under:-

The present complaint has been received today from the office of learned District & Sessions Judge, Gurugram. It be checked and registered. Arguments heard. The complainant has made a request for sending the present case to police station Sadar Gurugram under section 156(3) Cr.P.C for lodging a FIR.

In view of the facts incorporated in the complaint coupled with voluminous documents which have been enclosed with the complaint, this Court finds that without proper investigation, justice cannot be done in this case for which

lodging the FIR is pre-requisite. Hence the present complaint is sent to the police station Sadar Gurugram for lodging the FIR and investigation. FIR be registered within 24 hours of receipt of complaint in the police station. File be sent immediately.

Pronounced in open Court:

(Ashwani Kumar)

Dated: 16.07.2021

Additional
Judge,

Sessions

Mamta, SG-I
Gurugram.
No.HR0156)"

(UID

3. The short point canvassed before this Court, while assailing the aforesaid order as well as subsequent proceedings including the FIR, is that the said order had been passed without any application of mind and without complying with the provisions of Sections 154(1) and 154(3) Cr.P.C. in letter and spirit.

4. The learned counsel has pointed out that in the instant case an application to the police for lodging the FIR was submitted on 13.7.2021, as is specifically deposed by the petitioner in his affidavit filed in support of the application under Section 156(3) Cr.P.C. and that the learned Additional Sessions Judge, Gurugram without affording sufficient time to the police to examine the

matter and without calling for report of the police, chose to order for registration of FIR on 16.7.2021 i.e. on the very day the application under Section 156(3) Cr.P.C. was filed, and that too without assigning any valid reason for the same. It has been submitted that such like manner of proceedings is virtually non-compliance of provisions of Sections 154(1) and 154(3) Cr.P.C. The learned counsel, in order to hammer forth his aforesaid submission places reliance upon 2015(6) SCC 287 Priyanka Srivastava v. State of U.P. & Others and also a recent judgment of Hon'ble Supreme Court rendered in 2022 (2) RCR (Criminal) 187 - Babu Venkatesh vs State of Karnataka and another to contend that compliance of the provisions of Section 154 (1) Cr.P.C. and Section 154 (3) Cr.P.C. is mandatory and not an empty formality and that compliance is sine-qua-non for registration of FIR by invoking powers under Section 156(3) of Cr.P.C.

5. On the other hand, the learned counsel representing the complainant has submitted that the complainant had been approaching the police authorities since long and it was when the police did not take any action that he sent the complaint through registered post on 13.7.2021 and also through e-mail and that the same would be sufficient compliance of Sections 154(1) and 154(3) Cr.P.C. It has been submitted that no waiting period is prescribed under law and that the petitioner having submitted a written complaint to the authorities concerned, there was no bar for the Magistrate for directing the SHO concerned to lodge the

FIR.

6. This Court has considered rival submissions addressed before this Court.

7. In order to consider the aforesaid submission, it is apposite to bear in mind the provisions of Section 154 Cr.P.C. and also Section 156(3) Cr.P.C, which are reproduced herein under:

"154. Information in cognizable cases.

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub-Section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in Sub-Section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

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."

8. Hon'ble Supreme Court in *Ramdev Food Products Private Limited v. State of Gujarat*, 2015(2) RCR (Criminal) 372, while dealing with the exercise of power under Section 156(3) Cr.P.C. by the learned Magistrate, has held that:

"22. Thus, we answer the first question by holding that the direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to

postpone instance (issuance?) of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued. Cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed". Category of cases falling under Para 120.6 in Lalita Kumari (supra) may fall under Section 202 Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case."

(emphasis supplied)

9. Hon'ble the Supreme Court in Priyanka Srivastava and another Versus State of Uttar Pradesh and others, (2015) 6, SCC, 287 held as under:

"31. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

(emphasis supplied)

10. Hon'ble the Supreme Court in Babu Venkatesh's case (supra), while reiterating the position of law as spelt out in Priyanka Srivastava's case (supra) regarding compliance of provisions of Section 154(1) Cr.P.C. and Section 154(3) Cr.P.C., held as follows :-

"27. This court has further held that, prior to the filing of a petition under Section 156(3) of the Cr.P.C., there have to be applications under Section 154(1) and 154 (3) of the Cr.P.C. This court emphasizes the necessity to file an affidavit so that the persons making the application should be conscious and not make false affidavit. With such a requirement, the persons would be deterred from causally invoking authority of the Magistrate, under Section 156(3) of the Cr.P.C. In as much as if the affidavit is found to be false, the person would be liable for

prosecution in accordance with law.”

11. The scheme of the Code, thus, is that a person who wishes to lodge FIR is first required to furnish information to the Incharge of Police Station and if necessary action is not taken thereof, then he can approach or send his complaint in writing to the Superintendent of police who is obliged to do needful as warranted on the basis of the facts disclosed in the complaint. The purpose of Section 154(3) Cr.P.C. is to afford a remedy to the complainant to approach a higher officer in case the Incharge Police Station does not lodge the report. If, however, even the Superintendent does not take necessary action, such complainant may approach the Area Magistrate by way of moving an application in terms of Section 156(3) Cr.P.C. seeking issuance of directions to lodge FIR. As per the ratio of judgment of Apex Court rendered in *Lalita Kumari vs. Govt. of U.P. and others* (2014) 2 SCC 1, a preliminary inquiry could be made in matrimonial disputes/ family disputes, commercial offences, medical negligence cases, corruption cases and cases where there is abnormal delay/laches in initiating criminal prosecution. It was, however, clarified that such inquiry should be time-bound and should not exceed 7 days. In any case, any such direction for lodging FIR can only be issued upon application of mind and not mechanically, as has been held in *Ramdev's case* (supra).

12. The instant case needs to be examined in light of the above stated settled position of law. Para 12 of the complaint dated 16.7.2021 (Annexure R-2/26) duly supported by affidavit of even date (Annexure R-2/28) is reproduced herein-under:

“12. That the complainant gave a complaint to the police on 13.07.2021 through speed post, through email as well as by hand referring the case law *Lalit Kumar* (Supra) but the police was not even interested to receive the complaint which was sent by hand. The police inspite of best knowledge that the losses have been caused to the General Public as well as Government but no action is being taken, hence this complaint is filed.”

13. A perusal of aforesaid extract from complaint does indicate that some complaint has been made to the police by the complainant but it is not clear as to whether the said reference is pertaining to compliance of Section 154(1) Cr.P.C or Section 154(3) Cr.P.C. In other words, as to whether the complainant made the complaint to SHO concerned or to the SSP as would be required in terms of Section 154(3) Cr.P.C. The averment is rather vague in this regard and is simply to the effect that the complainant “gave a complaint to the police”.

14. Still further, sending a complaint to Police and approaching the Courts two days thereafter would hardly afford any time to the police to respond particularly when the matter involves voluminous record as is also noticed in the impugned order. Rather, such circumstances give an impression of eye-wash instead of a sincere effort to avail of the purpose which sub-section (3) of Section 154 Cr.P.C. is to serve. Section 154(3) Cr.P.C. is not to be treated as an empty formality. It is

a mechanism devised for redressal where a complainant is unable to get the needful done for getting FIR lodged at the level of Incharge of Police Station. The complainant, not clearly disclosing as to before which authority the complaint was filed i.e before S.H.O. or S.P. and by not affording even breathing time to the police to examine the matter and having approached the Court immediately thereafter can hardly be said to have complied with the procedure contemplated by Section 154(3) Cr.PC.

15. Equally hurried is the manner in which the learned Additional Sessions Judge, Gurugram issued directions for lodging FIR. The complainant filed the application under Section 156(3) Cr.P.C. in the Court on 16.7.2021 and the Court concerned ordered for lodging of FIR on the same very day without even bothering to call for the report of the SHO. The Court mainly seems to be swayed by the volume of record rather than the facts of the case. If volume was to be the consideration, it would be very convenient for unscrupulous elements to get voluminous applications drafted and get FIRs lodged.

16. In these circumstances, this Court has no hesitation in holding that in the present case there is absolute non-compliance of mandatory provisions of Section 154 Cr.P.C and that the impugned order has been passed without application of mind.

17. Though, during the course of arguments, another contention was made by the learned counsel for the petitioner that for the purpose of proceeding under Section 156(3) Cr.P.C. in respect of an offence under the Prevention of Corruption Act, prior sanction in terms of Section 19 of the Prevention of Corruption Act is required and cited a judgment of Hon'ble Supreme Court rendered in Anil Kumar vs. M.K. Aiyappa (2013)10 SCC 705, to support his contention but this Court need not delve into the said issue as the impugned order otherwise also cannot sustain, as has already been discussed above in preceding paragraphs and also since the issue as decided in Anil Kumar's case (supra) has already been referred to a larger Bench of Hon'ble Apex Court in a subsequent case i.e in Manju Surana Versus Sunil Arora and others, (2018) 5 SCC 557.

18. In view of the aforesaid discussion, the impugned order dated 16.7.2001 (Annexure P-5) is hereby set aside. Consequently, the FIR lodged pursuant to the said order also cannot sustain. However, keeping in view the fact that the matter is at its initial stage and the impugned FIR is not being set aside on merits, the Court concerned shall consider the matter afresh i.e. the application under Section 156(3) Cr.P.C. and after calling for report from the SHO concerned, dispose off the application by passing a speaking order.