
(2014) 08 P&H CK 0276

In the Punjab And Haryana At Chandigarh

Case No : Crl. Misc. M No. 17862 of 2014 (O&M)

Defecto Infotech Pvt. Ltd.

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 190, 2(d), 482
Information Technology Act, 2000 — Section 65, 72, 72A, 76
Penal Code, 1860 (IPC) — Section 120B, 201, 381, 403, 406

Citation : (2014) 08 P&H CK 0276

Hon'ble Judges : Sabina, J

Bench : Single Bench

Advocate : Puneet Sharma, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Sabina, J.—Petitioner has filed this petition u/s 482 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short) challenging order dated 7.5.2014 (Annexure P22) whereby the application moved by the petitioner u/s 156(3) Cr.P.C. was ordered to be treated as a private complaint.

2. Learned counsel for the petitioner has submitted that the petitioner had filed the petition u/s 156(3) Cr.P.C. (Annexure P21) against respondents No. 2 and 3 under Sections 381, 403, 406, 408, 418, 420, 463/465, 468, 469, 506 and 201 read with Section 120B of the Indian Penal Code, 1860 ("IPC" for short) and Sections 65, 72, 72A, 76 of Information Technology Act, 2000 ("Act" for short). The matter was necessary to be investigated by the Police. Certain articles were liable to be confiscated under the Act. The Magistrate should have directed the Police to register the FIR instead of treating the petition filed by the petitioner as a complaint. Impugned order(Annexure P22) reads as under:-

"Report of SHO received. The Ld. Counsel for the complainant has filed an application u/s 156(3) Cr.P.C. that the FIR has not been registered against the present accused, so police may be directed to register FIR against present

accused. Heard. The contention of learned counsel for complainant is devoid of any merit in view of the law down in case titled as Chandrika Singh Vs. State of U.P., Station House Officer, Sritam Ram and Dr. Tirthraj Singh, by the Hon''ble Allahabad High Court in which it has been held that-

Magistrate is not always bound to pass an order for registration of the case and investigation after receipt of the application U/s. 156(3) Cr.P.C. disclosing a cognizable offence. The Magistrate may use his discretion judiciously and if he is of the opinion that in the circumstances of the case it will be proper to treat the application as a complaint case then he may proceed according to the procedure provided under Chapter XV of Cr P.C.

3. From the perusal of file and allegations contained in the complaint, I seek no reason to send the complaint directly for registration of FIR and to investigate, when this court is equally competent to take cognizance of the offence as set out in complaint. So, the application stands declined. Complaint be registered. To come up on 13.05.2014 for recording the statements of complainant and witness if any."

4. A report was called from the concerned Magistrate and vide letter dated 24.5.2014, it was informed that due to inadvertence, it has been mentioned in the impugned order that the report of the Station House Office has been received, whereas, the report had not been received from the Station House Officer.

5. Petitioner had filed the petition u/s 156(3) Cr.P.C. for registration of the FIR before the Magistrate against respondents No. 2 and 3. Allegations have been levelled against respondents No. 2 and 3 that the said respondents had joined the petitioner-Company in the year 2010-2011. The business of the petitioner-Company was confidential in nature. With bona fide intention, petitioner-Company assigned projects/work to respondents No. 2 and 3. The said respondents, initially, worked honestly and sincerely but, thereafter, they started taking away clients of the petitioner-Company. Respondents No. 2 and 3 had stolen all softwares, data base and details of customers from the Office of the petitioner-Company.

6. Section 156(3) Cr.P.C. reads as under:-

"Any Magistrate empowered u/s 190 may order such an investigation as above-mentioned."

7. The Magistrate had the jurisdiction either to send the complaint to the police for registration of the FIR or itself take cognizance of the matter. It is not in every case that on an application moved by the complainant, the Magistrate is duty bound to order registration of FIR.

8. Section 2(d) Cr.P.C. reads as under:-

"Complaint" means any allegation made orally or in writing to a Magistrate, with

a view to his taking action under this code, that some person, whether known or unknown, has committed an offence, but does not include a police report"

9. Thus, as per the above provision, whenever an application is addressed to the Magistrate containing an allegation that an offence has been committed and the accused persons were liable to be punished under the relevant provision of law, it can be said that a complaint has been filed before the Magistrate.

10. Although the petitioner had prayed in his complaint, Annexure P21 that his petition be accepted and be sent to the Police for registration of the FIR but it was not binding on the Magistrate to have sent the case for registration of the FIR. Rather, it was within the powers of the Magistrate to have asked the complainant to lead evidence before proceeding further with the matter. A perusal of the order reveals that the Magistrate, after perusing the file and allegations contained in the complaint, formed an opinion that there was no reason to send the complaint directly for registration of FIR and investigation. Rather the Magistrate felt that the cognizance of the matter was liable to be taken by the Court and the case was adjourned for recording of the statements of the complainant and its witnesses.

11. In the facts and circumstances of the present case, the impugned order cannot be said to be illegal and, therefore, calls for no interference.

12. Dismissed.