
(1996) 01 P&H CK 0094

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 19597-M of 1995

Hans Raj Talwar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 05-01-1996

Acts Referred:

Citation : (1996) 2 AICLR 27 : (1996) 2 RCR(Criminal) 805 : (1996) 1 RCR(Criminal) 782

Hon'ble Judges : Swatanter Kumar, J

Advocate : N.S. Bhinder, Girish Agnihotri, Deepak Agnihotri, Advocates for appearing Parties

Judgement

Swatanter Kumar, J.

1. This is a petition under Section 482 of the Code of Criminal Procedure praying for the quashment of FIR No. 180 dated 18.7.1994 registered at Police Station Sadar, Thanesar, District Kurukshetra and all subsequent proceedings thereof.

2. Hardip Singh, the complainant, is stated to have made a complaint to the Superintendent of Police, Kurukshetra, on the allegations that the petitioner alongwith his other two partners were running a travelling agency for the purpose of sending for employment youths to the foreign country. He further alleged that he had told him to arrange for a visa, ticket, immigration etc. for America within 3 months" time for his son Narinderjit Parmar and, for this purpose, he had paid then Rs. 1,60,000/ and the remaining amount of Rs. 2,40,000/ was to be paid after the papers were received. For Rs. 1,60,000/ cash receipt was taken and, according to the complainant, he further paid a sum of Rs. 2,37,000/ also to the accused. But, as all these persons had failed to fulfil their commitment, they had issued two cheques for Rs. 1,00,000/ and Rs. 1,33,000/ and also premised that the balance amount would be returned. These cheques were dishonoured on presentation and also the balance amount was not returned. The police authority appears to have come to the conclusion that the dispute was of a civil nature and no case was made out. Complainant Narinderjit

Parmar then filed complaint under Sections 420, 406, 504, 506, 109 and 120B read with Section 34, Indian Penal Code before the Illaqa Magistrate with a prayer that the accused in the complaint be summoned and punished in accordance with law. However, the learned Magistrate, vide order dated 3.5.1994, directed that the case be sent for further investigation under Section 156(3) of the Code of Criminal Procedure. The relevant paragraph of the order is as under :

"Under the circumstances, finding necessity for the investigation of this case, I hereby send this complaint to S.H.O. Police Station Sadar, Thanesar under Section 156(3) CrI.P.C. for investigations. Papers be sent to SHO, P.S. Sadar, Thanesar, in accordance with law."

3. The learned Magistrate, vide order dated 1.9.1994, also directed the Investigating Officer to obtain specimen signatures of the accused for comparison in accordance with law.

4. The submission of the learned counsel for the petitioner primarily is that what was recorded in D.D. No. 32 dated 18.7.1994 (Annexure P6 to this petition) indicates that the police authorities registered the case in furtherance to the order dated 3.5.1994 of the learned Magistrate. It will be relevant to reproduce a portion of this D.D. :

"The case was registered in accordance with the order of the court of Smt. R.R. Garg, ACJM KKR on the basis of abovesaid subject mentioned in the letter. The copy of the letter in original was placed on the file of the Police. The copy of the FIR will be sent to the Illaqa Magistrate and other higher officer will be sent through post for information."

5. The counsel for the petitioner submits that as per the settled principles of law under the provisions of Section 156(3) of the Code of Criminal Procedure, the learned Magistrate could have only ordered the investigation of a case and could not direct its registration. For this purpose, he relies upon various judgment of this Court including Gopal Das Sindhi and others v. State of Assam and another, AIR 1961 Supreme Court 986; Diwarapalli Laxmi Naraina v. Naraina Reddy, AIR Supreme Court 1672; and Criminal Misc. No. 3545M (Ganesh Dass and others v. State of Haryana and other) decided on 10.8.1995. There can be no dispute to this legal proposition of law that the power of the learned Magistrate, while exercising jurisdiction under Section 156(3) of the Code of Criminal Procedure is limited to the question of investigation and not directing registration of the case. As is clear from the above facts, the learned Magistrate, vide his order dated 3.5.1994 did not direct the registration of the case but had passed a legally sound order directing the police to conduct investigation under Section 156(3) of the Code of Criminal Procedure. It is the police who have converted this into a case for registration and consequently nothing erroneous or illegal can be found with the order of the learned Magistrate dated 3.5.1994 which is a legal and valid order.

6. Coming to the direction as contained in Annexure P6 to the petition, from the record it is nowhere clear as to on what basis the said observations were recorded by ASI Jahangir Singh on 18th July, 1994, under the abovesaid D.D. No. 32 dated 18.7.1994. The present petition has been filed after the lapse of more than a year and there is no justification for this delay. The conduct of the petitioner before this Court is such which would not call for any interference from this Court while exercising power under Section 482 of the Code of Criminal Procedure.

7. There is a mere procedural irregularity and not illegality in this case. Once the learned Magistrate had passed the order dated 3.5.1994 under Section 156(3) of the Code of Criminal Procedure, the police was obliged to comply with the said order and submit the required report to the learned Magistrate at the earliest.

8. For the aforementioned reasons, this petition is dismissed with a direction to the police authorities to file the report, as required under the provisions of the Code of Criminal Procedure, to the learned Magistrate in furtherance to his direction dated 3rd May, 1994. Interim order stands vacated.