
(2015) 08 P&H CK 0308
In the Punjab And Haryana At Chandigarh
Case No : Criminal Misc. No. M-14608 of 2011

Neha Chaudhary	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Criminal Procedure Code, 1973 (CrPC) — Section 154, 154(3), 156, 156(3), 173

Citation : (2015) 08 P&H CK 0308

Hon'ble Judges : Hari Pal Verma, J.

Bench : Single Bench

Advocate : R.S. Mamli, Advocate, for the Appellant; Kapil Aggarwal, Additional A.G., Sumeet Mahajan Advocate and Hitesh Ghai, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Hari Pal Verma, J.—The petitioner Neha Chaudhary has filed the present petition under Section 482 Cr.P.C. seeking direction to respondent Nos. 2 and 3 to register an FIR against respondents No. 4 to 11 and to investigate the matter. Prayer has also been made to protect the life and liberty of the petitioner and her family members from the hands of private respondents.

2. The petitioner, who is claiming to be a tenant in house No. 57-A, Hari Bagh, Bhatia Colony, Panipat since 14.12.2008 at the rate of Rs. 3000/- per month, has stated that she had paid the rent from 14.12.2008 to 13.2.2009 in cash on 5.2.2009. However, the petitioner had gone to respondent No. 8 to pay further rent but he had refused to accept the same. Accordingly, the petitioner had sent the amount through money order vide receipt No. A-905 dated 19.2.2009. But respondent No. 4 refused to accept the same also. The petitioner, thereafter filed an application under Section 6 of the Haryana Urban Rent Control and Ejectment Act to deposit the amount of rent payable to respondent No. 8.

3. However, when the petitioner had filed a suit for permanent injunction against

the private respondents, a suit for possession by way of mandatory injunction had also been filed by respondent No. 8 against the petitioner on the ground that the petitioner is a licensee and is in possession of the house. In the suit for possession it was pleaded that the suit property was temporarily given to the petitioner for a limited period of two months i.e. upto 31.3.2009 as a licensee. The suit was filed by respondent No. 8 Madan Mohan Hudia against the petitioner on expiry of the license period. The suit titled as "Madan Mohan Huria v. Neha chaudhary and another" was filed on 17.3.2011.

4. The petitioner has submitted a complaint to the respondent No. 2 for registration of FIR and protection of her life and liberty at the hands of Tehsildar and Patwari of the area as well as the private respondents. Admitting her to be on rent @ Rs. 3000/- per month, she has stated that respondent No. 8 in collusion with respondent No. 6 started harassing the petitioner for vacating the house in her possession without following the due procedure of law. Respondent No. 6 is Chairman of the Municipal Council and District President of Congress and is very influential person. In the complaint, it is alleged that respondent No. 6 had taken the SDM, Panipat along with him to vacate the house without following any law and the procedure laid down in the Civil Procedure Code, Criminal Procedure Code or any other law prevailing in India. On 13.2.2011 at 1:00 O'clock the persons named in the complaint came to her house in 4-5 vehicles and tried to throw out the petitioner forcibly from the house despite pendency of the civil suit between the parties. The private respondents picked up her luggage including valuables and even started beating her. Thereafter, the respondent No. 6 has set on fire the husband of the petitioner, as a result of which the shirt of her husband was burnt.

5. Learned counsel for the petitioner has contended that the police has not taken into consideration the commission of cognizable offence as the accused are liable to be booked under various provisions of the Indian Penal Code. He further contended that on the basis of contents as reflected in Annexure P-3 i.e. the complaint dated 29.3.2011 addressed to respondent No. 2, cognizable offences are made out against the respondents-accused and the respondents are liable to be booked and prosecuted under various provisions of the Indian Penal Code.

6. Learned counsel for the petitioner has further contended that the petitioner is in possession of the house in dispute. She cannot be thrown out in the manner indicated in the complaint dated 29.3.2011 (Annexure P-3) without following the due procedure of law. The respondents have taken the law in their hands by throwing her out from the house in question. Therefore, they have committed the offences, which fall within the definition of "cognizable offences". He further submits that once the police has been informed about the cognizable offence, the police has no option, except, to register a FIR against the accused persons. In support of his contentions, learned counsel for the petitioner has relied upon Anju Chaudhary Vs. State of U.P. and Another, to state that once cognizable offence is reported to the police, the officer incharge of the police station is duty

bound to register an FIR and proceed with investigation forthwith. He refers to para 29 of the judgment, which read as under:--

"29. Section 154 of the Code places an unequivocal duty upon the police officer in charge of a police station to register FIR upon receipt of the information that a cognizable offence has been committed. It hardly gives any discretion to the said police officer. The genesis of this provision in our country in this regard is that he must register the FIR and proceed with the investigation forthwith. While the position of law cannot be dispelled in view of the three Judge Bench Judgment of this Court in *The State of Uttar Pradesh Vs. Bhagwant Kishore Joshi*, a limited discretion is vested in the investigating officer to conduct a preliminary inquiry pre-registration of a FIR as there is absence of any specific prohibition in the Code, express or implied. The subsequent judgments of this Court have clearly stated the proposition that such discretion hardly exists. In fact the view taken is that he is duty bound to register an FIR. Then the question that arises is whether a suspect is entitled to any pre-registration hearing or any such right is vested in the suspect."

7. Reliance has also been placed on *Samaj Parivartan Samudaya and Others Vs. State of Karnataka and Others*, to state that Section 154 , 156(3) and 190 of the Criminal Procedure Code places an obligation upon the authorities to register the FIR on basis of information received relating to commission of a cognizable offence, whether such information is received orally or in writing by the officer in-charge of the police station. The relevant para 17 of the same reads as under:--

"17. The machinery of criminal investigation is set into motion by the registration of a First Information Report (FIR), by the specified police officer of a jurisdictional police station or otherwise. The CBI, in terms of its manual has adopted a procedure of conducting limited pre-investigation inquiry as well. In both the cases, the registration of the FIR is essential. A police investigation may start with the registration of the FIR while in other cases (CBI, etc.), an inquiry may lead to the registration of an FIR and thereafter regular investigation may begin in accordance with the provisions of the Criminal Procedure Code. Section 154 of the Criminal Procedure Code places an obligation upon the authorities to register the FIR of the information received, relating to commission of a cognizable offence, whether such information is received orally or in writing by the officer in-charge of a police station. A police officer is authorised to investigate such cases without order of a Magistrate, though, in terms of Section 156(3) Criminal Procedure Code the Magistrate empowered under Section 190 may direct the registration of a case and order the police authorities to conduct investigation, in accordance with the provisions of the Criminal Procedure Code. Such an order of the Magistrate under Section 156(3) Criminal Procedure Code is in the nature of a pre-emptory reminder or intimation to police, to exercise their plenary power of investigation under that Section. This would result in a police report under Section 173 , whereafter the Magistrate may or may not take cognizance of the offence and proceed under Chapter XVI Criminal Procedure

Code. The Magistrate has judicial discretion, upon receipt of a complaint to take cognizance directly under Section 200 Criminal Procedure Code, or to adopt the above procedure. [Ref. Gopal Das Sindhi and Others Vs. The State of Assam and Another--> ; Mohd. Yousuf Vs. Smt. Afaq Jahan and Another--> and Smt. Mona Panwar Vs. The Hon"ble High Court of Judicature at Allahabad and Others, ."

8. Learned counsel for the petitioner also refers to Lalita Kumari Vs. Govt. of U.P. and Others, and Mrs. Charu Kishor Mehta v. State of Maharashtra 2011 (8) RCR (Criminal) 1516.

9. On the other hand Mr. Sumeet Mahajan, learned senior counsel has argued that the allegations made in the complaint false and the petition seeking such like relief cannot be entertained under Section 482 Cr.P.C. He submits that the petition under Section 482 Cr.P.C. will come into operation only when no specific provision under law is available. Learned counsel has relied upon Sakiri Vasu v. State of U.P. and others 2008(1) RCR (Criminal) 392 to state that under Section 156 Cr.P.C., the Magistrate has very wide powers including the power to direct the police to register an FIR. He refers to para 27 of the judgment, which read as under:--

"27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Criminal Procedure Code simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Criminal Procedure Code before the Magistrate or by filing a criminal complaint under Section 200 Criminal Procedure Code and not by filing a writ petition or a petition under Section 482 Criminal Procedure Code."

10. He further submits that when the remedy under Section 156(3) Cr.P.C. is available to the petitioner, the petition under Section 482 Cr.P.C. cannot be permitted to be entertained. He argued that filing of the present appeal is contrary to the provision as provided under Section 156(3) Cr.P.C.

11. Learned senior counsel while defending the SDM, Panipat argued that the private respondents have filed a suit for possession and termination of license against the petitioner. The said suit was decreed in favour of respondent No. 8. Meaning thereby the petitioner was directed to hand over the possession of the premises in question. Furthermore aggrieved against the judgment and decree dated 17.3.2011 passed by the learned trial Court directing the petitioner to hand over the possession of the premises to respondent No. 8, the petitioner had preferred first appeal. Even the first appeal filed by the petitioner against the

judgment and decree dated 17.3.2011 was allowed in favour of respondent No. 8 by the learned Appellate Court vide judgment dated 19.3.2015. In this manner, the judgment and decree dated 17.3.2011 was affirmed. The petitioner has thereafter filed regular second appeal against the judgment and decree dated 19.3.2015 passed by the learned lower Appellate Court, which is fixed for 1.9.2015. He argued that though in the regular second appeal no notice was issued to respondent No. 8 but to his information no stay had been granted, which led to the conclusion that as on date petitioner is in unauthorized possession in view of the decree passed in favour of respondent No. 8 and affirmed by the learned lower Appellate Court.

12. Heard.

13. In the case of Anju Chaudhary (supra) the proposition of law laid down by the Hon'ble Apex Court is not disputed. As per para 29, the Hon'ble Apex Court while dealing with the provisions of Section 154 of the Code of Criminal Procedure has observed that it hardly gives any discretion to the police to register the FIR and the accused is not entitled to hearing pre-registration of an FIR and the very purpose of fair and just investigation shall stand frustrated if pre-registration hearing is required to be granted to a suspect. Similarly, in the case of Samaj Parivartan Samudaya and others (supra) in order to set into motion the machinery of criminal investigation, the registration of FIR is necessary and police investigation may start with the registration of the FIR. The Hon'ble Apex Court has observed that whereas the trial Court does not have inherent powers akin to those of the High Court under Section 482 Cr.P.C. and the Supreme Court under Article 136 of the Constitution of India, the trial Court has the power under Section 156(3) Cr.P.C. to direct the police officer to register an FIR.

14. There is no dispute that when the commission of cognizable offence is informed to the police, the officer in-charge of the police station is duty bound to register an FIR and proceed with the investigation. In case no such FIR is registered despite pointing out the cognizable offence, the complainant has a right to invoke Section 156(3) Cr.P.C. Section 156(3) Cr.P.C. read as under:--

"156. Police officer's power to investigate cognizable cases.

(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."

15. A perusal of the provisions shows that the Magistrate has very wide powers under Section 156 Cr.P.C. including the power to direct the police to register an FIR, to monitor the investigation, to order re-investigation and re-opening of investigation on submission of final report by the police if investigation is not done satisfactorily. But in the case in hand, without resorting to the available remedy as available under Section 156(3) Cr.P.C., the petitioner has filed the present petition. In the case of Sakiri Vasu (supra) the Hon''ble Apex Court has dealt with the provision of Section 482 Cr.P.C. viz-a-viz to provision of Section 156(3) Cr.P.C. In Sakiri Vasu's case (supra) the Hon''ble Apex court has observed that when the police is not registering the FIR, petition under Section 482 Cr.P.C. cannot be entertained rather petitioner should be relegated to the Magistrate, who has power under Section 156(3) Cr.P.C. to direct the police to register an FIR.

16. Thus, there is specific provision under the Code of Criminal Procedure namely, Section 156(3) Cr.P.C., where the Magistrate can direct for registration of an FIR, if he finds that the police has not done its duty. Para 11 of the Sakiri Vasu's judgment deals the situation like present one, which is reproduced as under:--

"11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 Criminal Procedure Code, then he can approach the Superintendent of Police under Section 154(3) Criminal Procedure Code by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) Criminal Procedure Code before the learned Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation."

17. Thus, when a person informs his grievances to the police and the police is not registering the FIR, under Section 156 Cr.P.C. the complainant can approach the Senior Superintendent of Police by making an application in writing under Section 154(3) Cr.P.C. If still, he does not find favour from the Senior Superintendent of Police, it is open to the complainant to file an application under Section 156(3) Cr.P.C. before the Magistrate concerned. In K.R. Ramkumar v. State represented by Inspector of Police, Kumbakonam 2004(2) RCR (Criminal) 287 it has been held that when alternative remedy is available to the petitioner under Section 156(3) Cr.P.C., the remedy under Section 482 Cr.P.C. cannot be invoked. The inherent power of the High Court under Section 482 Cr.P.C. is different to that of Article 226 of the Constitution of India. The power under Section 482 Cr.P.C. cannot be invoked in respect of any matter covered by

specific provisions of the Code as held in *Khushi Ram Vs. Hashim and Others*, . Further in the case of *Arun Shankar Shukla Vs. State of Uttar Pradesh and Others*, and *Hari Singh Mann Vs. Harbhajan Singh Bajwa and Others*, it has also been held by the Supreme Court that power under Section 482 Cr.P.C. cannot be exercised in the matter covered by specific provisions of the Code. In view of the judgment *Sakiri Vasu (supra)* the prayer of the petitioner under Section 482 Cr.P.C. for seeking direction to respondent No. 2 register an FIR against the private respondents cannot be entertained and accepted. There is a specific provision under Section 156(3) Cr.P.C., whereby the Magistrate concerned has been empowered to issue such like directions. In such circumstances, the petitioner has got the available remedy to resort to the provision of Section 156(3) Cr.P.C. and, therefore, not competent to approach this Court under Section 482 Cr.P.C. There are specific provision in the Code for the relief sought for. Therefore, this petition is held to be not maintainable. Even if it is presumed that the alternative remedy is a process, there is no ground to entertain the present petition under Section 482 Cr.P.C. while by passing the specific provision of the Code.

18. In view of the above, the present petition is dismissed as not maintainable.

19. However, it is made clear that the dismissal of the present petition does not prohibit the petitioner from approaching to the Magistrate for the relief under Section 156(3) Cr.P.C. provided the cause of action survives to her and law permits her.