

Before Vikas Bahl, J.

FARUKH—Petitioner

versus

STATE OF HARYANA—Respondent

CRM-M No. 49052 of 2021

November 24, 2021

Code of Criminal Procedure, 1973—Ss.156(3) and 482—Petitioner filed a complaint for sending it to police for registration of FIR—Additional Chief Judicial Magistrate declined prayer for registration of FIR and directed complainant to lead primary evidence—Petition under Section 482 Cr.P.C. filed—Allowed—Held, it is prima facie clear that cognizable offence has been made out—Order passed in mechanical manner—Impugned order set aside—Trial Court directed to pass fresh order.

Held, that from a reading of the complaint made to the police (Annexure P-2) as well as the complaint made to the Chief Judicial Magistrate, Nuh (Annexure P-3), it is prima facie clear that a cognizable offence has been made out. The Additional Chief Judicial Magistrate, Mewat, however, without considering the settled proposition of law passed a cryptic and non-speaking order.

(Para 7)

Further held, that a perusal of the said order would show that it has simply been mentioned that the matter has been perused and that there is no ground to send the matter for registration of an FIR. It has further been observed that in the present case, no accused has been named. The above observations show the mechanical manner in which the order has been passed. In case the Additional Chief Judicial Magistrate had considered the facts of the present case as well as the law on the said point in its proper perspective, the Court would have acknowledged the fact that the present case is a case of theft and a bona fide complainant would not know as to who has committed the theft and, thus, could not possibly name the person who had committed the theft. In such a situation, registration of FIR was imperative so that investigation could be carried out and the person who had committed the offence of theft is nabbed by the police and the truck is recovered and handed over to the petitioner. The petitioner cannot, without the assistance of the police, carry out

an investigation at his own level in order to find out as to who is the person who has committed the theft. Moreover, the judgment of the Hon'ble Supreme Court also requires the registration of an FIR in such a case. Oblivious to the facts of the case, as well as the law on the point, the above-said cryptic order has been passed and apparently, the case has been adjourned for preliminary evidence and the matter is till date pending for the same. One cannot comprehend as to what would come out of the said proceedings as the petitioner does not know who has committed the theft and, thus, the question of summoning of any accused person would not arise. Therefore, it is apparent that there is complete non-application of mind on behalf of the Additional Chief Judicial Magistrate, Mewat, while passing the impugned order.

(Para 8)

Virendra Rana, Advocate, *for the petitioner.*

Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (Oral)

(1) This is a petition under Section 482 of Cr.P.C. for quashing of impugned order dated 01.10.202019 passed by the Additional Chief Judicial Magistrate, Mewat (Annexure P-1) in Complaint No.89 of 2019 instituted on 23.04.2019 vide which the Court has declined the prayer for sending the complaint for registration of FIR by police under Section 156 (3) Cr.P.C.

(2) Learned counsel for the petitioner has submitted that in the present case, the petitioner is the owner of truck bearing registration No.RJ- 14-GJ-3170 and on 21.03.2019, the petitioner had come from Ambala and at about 6.00 p.m., he had parked his truck at Manish Hotel in front of HP Petrol Pump Sohna-Tauru Road, Tauru and had locked his truck. On the morning of 22.03.2019, when the petitioner returned to his truck, the same was not there. The petitioner searched for his truck but could not succeed in finding it. The petitioner then approached the SHO concerned and when no response was given to him, he moved an application before the Superintendent of Police, Nuh and a copy of the said application has been annexed as Annexure P-3, for registration of the case/FIR. It is the case of the petitioner that no action was taken on the same and, accordingly, left with no other alternative, the petitioner filed complaint No.89 of 2019 (Annexure P-3) under Section 379 of IPC in the Court of Additional Judicial

Magistrate, Nuh. It has been contended that the Additional Chief Judicial Magistrate, Nuh, without any application of mind, passed a cryptic order declining the registration of FIR and directed that the complainant be examined as CW1 and put the case for preliminary evidence. It is argued that the said order passed is absolutely illegal and against law and in violation of the law laid down by Hon'ble the Supreme Court in *Lalita Kumari versus Govt. of U.P. and others*¹.

(3) Learned counsel for the petitioner has further stated that the case is pending for 11.01.2022 for preliminary evidence and till date no summoning order has been issued and in fact, the complaint has been made against an unknown person because it is a matter of investigation as to who has committed theft of the truck of the petitioner and it is not possible for the petitioner to find out the same by himself without there being an FIR registered.

(4) Upon instructions, learned State counsel has appeared in this case and he is fully prepared to argue the matter. Learned State counsel has stated that the present petition deserves to be dismissed.

(5) This Court has heard the learned counsel for the parties and has perused the paper book.

(6) Hon'ble the Supreme Court in *Lalita Kumari's case (supra)* has held as under:-

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“110) Therefore, in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given,

¹ 2014 (2) SCC 1

whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.

Conclusion/Directions:

111) In view of the aforesaid discussion, we hold:

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in

which preliminary inquiry may be made are as under:

- a) Matrimonial disputes/ family disputes
- b) Commercial offences
- c) Medical negligence cases
- d) Corruption cases
- e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.
- vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.
- viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”

(7) A perusal of the above judgment would show that where the information given to the police discloses a cognizable offence, then registration of FIR is mandatory and the Police Officer cannot avoid his duty for registration of an FIR. In the present case, the complaint made by the petitioner was to the effect that his truck had been stolen in the intervening night of 21.03.2019 and 22.03.2019. From a reading of the complaint made to the police (Annexure P-2) as well as the complaint made to the Chief Judicial Magistrate, Nuh (Annexure P-3), it is prima facie clear that a cognizable offence has been made out. The Additional Chief Judicial Magistrate, Mewat, however, without considering the settled proposition of law passed a cryptic and non-speaking order. The said order is reproduced hereinbelow:-

“Sh. S.K. Tanwar, Advocate for applicant ATR report received. Matter perused. No ground arises for sending the matter for registration of an FIR. Request under Section 156 (3) Cr.P.C. stands declined. Towards taking cognizance of the matter it comes up that accused has not been named in the matter. Cognizance of the offence taken. Complainant is examined as CW-1 on oath in preliminary evidence. On request adjourned to 21.12.2019 for remaining preliminary evidence.”

(8) A perusal of the said order would show that it has simply been mentioned that the matter has been perused and that there is no ground to send the matter for registration of an FIR. It has further been observed that in the present case, no accused has been named. The above observations show the mechanical manner in which the order has been passed. In case the Additional Chief Judicial Magistrate had considered the facts of the present case as well as the law on the said point in its proper perspective, the Court would have acknowledged the fact that the present case is a case of theft and a bona fide complainant would not know as to who has committed the theft and, thus, could not possibly name the person who had committed the theft. In such a situation, registration of FIR was imperative so that investigation could be carried out and the person who had committed the offence of theft is nabbed by the police and the truck is recovered and handed over to the petitioner. The petitioner cannot, without the assistance of the police, carry out an investigation at his own level in order to find out as to who is the person who has committed the theft. Moreover, the judgment of the Hon'ble Supreme Court also requires the registration of an FIR in such a case. Oblivious to the facts of the case, as well as the law on the point, the above-said cryptic order has been passed and apparently, the case has been adjourned for preliminary evidence and the matter is till date pending for the same. One cannot comprehend as to what would come out of the said proceedings as the petitioner does not know who has committed the theft and, thus, the question of summoning of any accused person would not arise. Therefore, it is apparent that there is complete non-application of mind on behalf of the Additional Chief Judicial Magistrate, Mewat, while passing the impugned order.

(9) The Hon'ble Supreme Court of India in *Anil Kumar and*

*others versus M.K. Aiyappa and another*² had observed that the application of mind by the Magistrate should be reflected in the order passed under Section 156 (3) of Cr.P.C. and merely stating that he has gone through the complaint documents and has heard the complainant will not be sufficient and the points which weighed with the Magistrate while passing the order should be reflected in the order.

(10) Keeping in view the above-said facts and circumstances, the present petition is allowed and the impugned order dated 01.10.2019 is set aside and the trial Court is directed to pass a fresh order in the application under Section 156 (3) of Cr.P.C. filed by the petitioner, keeping in view the law laid down by the Hon'ble Supreme Court in *Lalita Kumari (supra)*, as also the facts and circumstances of the present case.

(11) The said order be passed within a period of one month from the date of receipt of a certified copy of this order.

J.S. Mehndiratta

² 2014 (1) SCC (Cri) 35