



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

210. CRM-M No.8097 of 2017 (O&M)
Reserved on:15.05.2024
Pronounced on:24.05.2024

Paramjit Singh ... Petitioner

Versus

State of Punjab and another ... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Krishan Singh Dadwal, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

Mr. A.S. Athwal, Advocate
for respondent No.2.

HARPREET SINGH BRAR, J.

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of the order dated 09.02.2017 (Annexure P-15) passed by the Judicial Magistrate 1st Class, Garshankar whereby the application under Section 156 (3) Cr.P.C. has been treated as complaint and cognizance has been taken without passing any reasoned order and taking into consideration the cancellation report dated 10.12.2015 (Annexure P-5).

2. In brief, the facts are that FIR No.42 dated 10.05.2014 has been registered against the petitioner under Sections 498-A, 376-A, 354 and 506 IPC at Police Station Mahilpur, District Hoshiarpur at the instance of Meenu Sharma daughter of Ashok Kumar, who is daughter-in-law of the petitioner alleging therein that she is an American citizen and her marriage was solemnized with Vishal Thakur son of the petitioner on 17.07.2008 and her parents had given sufficient dowry articles and gold ornaments as per desire of



in-laws family. Immediately after the marriage her husband Vishal Thakur, mother-in-law Seema Rani @ Baby, father-in-law Paramjit Singh (petitioner herein) and brother-in-law namely Vikas and Varun started taunting her for bringing less dowry and pressurized her to get settled both her brother-in-law abroad. In the year 2009, she got settled her husband permanently in America and out of the wedlock, one daughter namely Alisha was born in the year 2009 and son namely Arush was born. Since their desire to send their sons abroad was not fulfilled by her, they compelled her to send money otherwise divorce proceedings will be initiated. In the year 2014, she along with her husband came to India for celebrating first *lohri* of her son Arush. Her father through her uncle namely Gulshan Lal on demand of her mother-in-law gave Rs.3 lakhs in cash to her father-in-law. It was further alleged that she along with her in-laws celebrated the *lohri* function and when at about 8 PM, she went to bathroom, her brother-in-law namely Varun followed her and entered into the bathroom and when she tried to come out, he put her on the bed and tried to outrage her modesty and touched her private parts. Due to celebration in the house, she did not raise alarm but informed the same to her husband and in-laws, who requested her to keep quiet. Thereafter, she returned to America. However, her mother-in-law informed on phone that her father-in-law got operated and due to that, her husband along with her minor son came to India on 18.04.2014. Her mother-in-law also asked to bring camera, one laptop and perfume etc., which were brought and handed over to her. Her father had also sent Rs.3 lakhs through her uncle Gulshan Lal and maternal uncle Chander Kailash to her father-in-law. Again on 04.05.2014, her mother-in-law demanded a safari car on which she kept quiet and she was given beatings for not fulfilling the said demand. On 05.05.2014 when she was sleeping in her



room, her father-in-law forcibly raped her. She somehow rescued herself and ran outside the room and after hearing her noise, her mother-in-law, husband and father-in-law caught hold of her and tried to put harpic in her mouth. However, she saved herself from their clutches and ran outside. Elder brother of her brother-in-law namely Bhola @ Bikramjit Singh, who was residing nearby came there and rescued her and informed her uncle and maternal uncle on phone. Therefore, her aunt came from Nakodar and took her to Nakodar. Legal action was sought against the accused.

3. Learned counsel for the petitioner *inter alia* contended that in the petition seeking anticipatory bail, Assistant Inspector General of Police (Crime), Bureau of Investigation, Punjab, Chandigarh had submitted his affidavit along with the enquiry report wherein the factum of rape committed by the petitioner upon respondent No.2 was found to be false. Respondent No.2 was allegedly raped by the petitioner on 05.05.2014, however, her medical was conducted on 03.07.2014 from the Civil Hospital, Garshankar where specimen of two vaginal swab/slides were taken. The chemical examiner in his report verified the rape committed upon respondent No.2 and therefore, it is beyond comprehension as to how the factum of rape committed upon respondent No.2 can be verified after two months of alleged occurrence of rape. It is crystal clear that respondent No.2 made an attempt to implicate the petitioner in a false rape case. On the basis of the report submitted by the AIGP (Crime), Bureau of Investigation Punjab, which was duly approved by the Director, Bureau of Investigation, Punjab on 03.12.2015, the Senior Superintendent of Police, Hoshiarpur cancellation report was prepared on 10.12.2015 and the same was presented before the Illaqa Magistrate, Garshankar on 18.12.2015. On the said cancellation report, notice was issued



to respondent No.2 for 30.03.2016. Respondent No.2 appeared before the trial Court on 30.03.2016 and stated her disagreement with the cancellation report. After the statement of respondent No.2, the learned Judicial Magistrate 1st Class, Garhshankar again sent the cancellation report for further investigation on 30.03.2016. In compliance of said order, the Senior Superintendent of Police, Hoshiarpur handed over the further investigation to the Superintendent of Police (Investigation), Hoshiarpur, who after scrutinizing the record of the case, came to the conclusion that the allegations levelled by respondent No.2 are false. Again the cancellation report was submitted before the Court on 10.06.2016 and notice of the same were issued respondent No.2 for 16.07.2016 and for various other dates and when she did not appear, the learned Judicial Magistrate 1st Class on 29.08.2016 returned the cancellation report to the Investigating Officer with a direction to present respondent No.2 before the Court and get her statement recorded. Thereafter, respondent No.2 appeared in the Court and filed a protest petition/complaint on 21.01.2017 wherein she merely reiterated the allegations as levelled in the FIR. However, shockingly the learned Judicial Magistrate 1st Class, Garhshankar vide impugned order dated 09.02.2017 instead of accepting the cancellation report observed that in lieu of report submitted by SHO, no ground is made out to register the FIR, however, treated the protest petition as a complaint and took cognizance thereof. It was argued that the learned Judicial Magistrate 1st Class, Garhshankar totally belied the investigation conducted by the investigating agency as well as the medical evidence and in a mechanical manner vide order dated 09.02.2017 took cognizance of the protest petition filed by respondent No.2 as a complaint case. Furthermore, in the protest petition no reasons were assigned as to why the cancellation report should not be accepted and



therefore, the impugned order was passed by the Court below without application of mind.

4. Per contra, learned State counsel as well as the counsel appearing for respondent No.2 had supported the impugned order by contending that there were specific allegations levelled against the accused in the FIR by mentioning the dates and place of occurrence, however, the investigating agency under the influence of accused persons did not carry out a fair and impartial investigation and submitted the cancellation report. Since respondent No.2 filed a protest petition against the said cancellation report, the learned Judicial Magistrate 1st Class rightly took cognizance of the same.

5. I have heard learned counsel for the parties and perused the record of the case with their able assistance. Admittedly, in the present case cancellation report was submitted by the investigating agency before the concerned Magistrate on 18.12.2015 and on the statement of respondent No.2 being dissatisfied with the same, a further investigation was ordered. However, after further investigation again a cancellation report was submitted on 10.06.2016 whereupon a protest petition was filed by respondent No.2 and the learned Judicial Magistrate 1st Class, Garhshankar while passing impugned order dated 09.02.2017 on the protest petition/complaint filed by respondent No.2 has observed as under:-

“16. I have heard the applicant. As per the report of SHO, there is no application moved by the applicant against Seema Rani w/o Paramjit Singh, Paramjit Singh s/o Bansi Lal Thakur, both resident of Ward No.1, near Handa Nursing Home, Mahilpur, PS Mahilpur, Hoshiarpur, Vishal Thakur s/o Paramjit Singh, resident of 338, Roselane, Yuba City, California, USA, Vikas Thakur s/o Paramjit Singh, Varun Thakur s/o



Paramjit Singh, both resident of 6 Lang Field Cres, M9V3L7, Etobicoke, Toronto, Canada. In lieu of the report submitted by SHO, no ground is made out of register the FIR. No ground is made out to make direction register the FIR. However, the application under Section 156 (3) is treated as a complaint and cognizance is taken thereof. Now to come up on 18.03.2017 for preliminary evidence of the complainant.

6. A perusal of the impugned order indicates that the same is bereft of the reasoning whether the final report under Section 173 (2) Cr.P.C. and the supplementary report under Section 173 (8) Cr.P.C. submitted by the investigating agency were accepted or not. The Hon'ble Supreme Court in ***Zunaid v. State of U.P., 2023 SCC OnLine SC 1082*** speaking through Justice Bela M. Trivedi has held as under:-

*“11. In view of the above, there remains no shadow of doubt that on the receipt of the police report under Section 173 Cr. P.C., the Magistrate can exercise three options. Firstly, he may decide that there is no sufficient ground for proceeding further and drop action. Secondly, he may take cognizance of the offence under Section 190(1)(b) on the basis of the police report and issue process; and thirdly, he may take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200. It may be noted that even in a case where the final report of the police under Section 173 is accepted and the accused persons are discharged, the Magistrate has the power to take cognizance of the offence on a complaint or a Protest Petition on the same or similar allegations even after the acceptance of the final report. As held by this Court in *Gopal Vijay Verma v. Bhuneshwar Prasad Sinha*², as followed in *B. Chandrika v. Santhosh*³, a Magistrate is not debarred from taking cognizance of a complaint merely on the ground that earlier he had declined to take cognizance of the police report. No doubt a Magistrate while exercising his judicial discretion*



has to apply his mind to the contents of the Protest Petition or the complaint as the case may be.”

7. Therefore, when a final report is submitted, the Magistrate has to first of all apply his mind to determine whether there exist grounds to presume that the accused has committed the offence. Meaning thereby, when a final report is submitted by the investigating agency under Section 173 (2) Cr.P.C., the Magistrate has three options:-

- (i) He may decide that there is no sufficient ground for proceeding further and drop action;
- (ii) He may take cognizance of the offence under Section 190 (1) (b) Cr.P.C. on the basis of the police report and issue process;
- (iii) He may take cognizance of the offence under Section 190 (1) (a) Cr.P.C. on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200 Cr.P.C.

8. However, in the present case, the finding rendered by the learned Magistrate is contrary to the factual matrix of the case. On the one hand, the learned Magistrate observed that no ground is made out to make a direction to register the FIR whereas there is already an FIR registered in which cancellation report has been submitted by the investigating agency and on the other hand, in one line, observed that *the application under Section 156 (3) is treated as complaint and cognizance is taken thereof.”* The prayer clause of the protest petition/complaint is reproduced as under:-

“It is therefore prayed that in view of the submissions made above, this protest petition please be registered and cancellation report may kindly not be accepted and the accused persons may kindly be



summoned, tried and may kindly be brought to book, in the interest of justice.

9. The prayer in protest petition/complaint filed by respondent No.2 was that the cancellation report may kindly not be accepted, however, there is no finding in the impugned order by the learned Magistrate whether he accepted the cancellation report or not, rather he treated the protest petition as a complaint and took cognizance of the same, again without rendering any finding qua material made available on record by respondent No.2-complainant, which weighed in his mind to treat the protest petition as a complaint and take cognizance thereof. Furthermore, the observation of learned Magistrate that the application filed under Section 156 (3) Cr.P.C. is treated as a complaint is also misconceived, as the protest petition to which he treated an application filed under Section 156 (3) Cr.P.C. is not accompanied by an affidavit duly sworn by respondent No.2-complainant. The Hon’ble Supreme Court in the judgment passed in *Priyanka Srivastava and another vs. State of Uttar Pradesh (2015) 6 SCC 287* has held that in any case, when the complaint was not supported by an affidavit, the Magistrate ought not to have entertained the application under Section 156 (3) Cr.P.C.

10. Keeping in view the aforesaid facts and circumstances, the impugned order dated 09.02.2017 is set aside and the learned Magistrate is directed to pass a fresh order strictly in accordance with law within a period of one month from the date of receipt of certified copy of this order. The instant petition is disposed of in the above terms.

(HARPREET SINGH BRAR)
JUDGE

May 24, 2024
Pankaj*

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No