

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

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CRM-M-10451-2009 (O&M)

Decided on : 24.09.2015

J.P.Bargale and others

... Petitioners

Versus

State of Haryana and another

.. Respondents

CORAM : HON'BLE MRS.JUSTICE SABINA

Present : Mr.Samir Rathore, Advocate for
Mr.Sumeet Goel, Advocate
for the petitioners.
Ms.Trishanjali Sharma, AAG, Haryana.
Mr.Sandeep Singh Jattan, Advocate
for respondent No.2.

Sabina, J.

Petitioners have filed this petition seeking quashing of complaint/protest petition dated 15.10.2015 under Sections 420, 417, 418, 408, 161, 167, 131, 182, 191, 103, 500, 34, 120-B, of Indian Penal Code, 1860 (Annexure P/22) and the summoning order dated 22.10.2008 (Annexure P/32).

Learned counsel for the petitioners has submitted that on the complaint filed by respondent No.2, police has duly investigated the case and submitted the cancellation report. Respondent No.2 had filed the protest petition (Annexure P/22) against the cancellation report. On the basis of the protest petition filed by respondent No.2, petitioners were summoned to face the trial vide order dated 13.05.2006 (Annexure P/23). The said order was challenged by the petitioners by filing CRM-M-41405 of 2006. Vide order dated 06.08.2008 (Annexure P/31), the trial Court was directed to pass a fresh order and the summoning order (Annexure P/23) was set aside. Learned counsel for the petitioners has further submitted that the trial Court while passing impugned order dated 22.10.2008

(Annexure P/32) had again not considered the cancellation report submitted by the Investigating Agency.

Learned State counsel as well as learned counsel for respondent No.2 on the other hand have opposed the petition. Learned counsel for respondent No.2 has further submitted that the petitioners can take all the pleas available to them during the trial.

In the present case, factual aspect of the submissions made by learned counsel for the petitioner is not in dispute. The trial Court while passing the impugned summoning order (Annexure P/32) has not considered the cancellation report submitted by the Investigating Agency. There is no doubt that cancellation report prepared by the Investigating Agency is not binding upon the Magistrate but while passing the summoning order, the Magistrate was required to at least consider the cancellation report and then come to a conclusion as to whether the accused were liable to be summoned to face the trial or not. In these circumstances, the impugned summoning order dated 22.10.2008 (Annexure P/32) is liable to be set aside.

Accordingly, impugned summoning order dated 22.10.2008 (Annexure P/32) is set aside. The trial Court is directed to pass a fresh order in accordance with law after taking into consideration the cancellation report submitted by the Investigating Agency.

Petition stands disposed of accordingly.

[Sabina]
Judge

24.09.2015
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