

Sr. No.351
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM No. M-13158 of 2008
Date of Decision: 02.12.2015

Devjinder Kumar

...Petitioner

Vs.

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

Present: Mr. Kunal Dawar, Advocate,
for the petitioner.

Mr. Surender Singh, AAG, Haryana.

RAMESHWAR SINGH MALIK, J. (ORAL)

Petitioner, by way of instant petition filed under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.'), seeks quashing of the order dated 30.04.2008 (Annexure P-1), passed by the learned Additional Chief Judicial Magistrate, Faridabad, whereby protest petition (Annexure P-4) filed by the petitioner was dismissed without affording him an opportunity to lead his evidence in support of his protest petition.

Notice of motion was issued and pursuant thereto reply was filed on behalf of the respondent-State.

Learned counsel for the petitioner while placing reliance on a judgment of Patna High Court in the case of ***Harendra Rai and others Vs. State of Bihar and others 2013 (2) PLJR 202***, contends

that since the impugned order runs counter to the above said judgment of Patna High Court as well as of this Court in ***Sudesh Kumari Vs. State of Punjab 2000 (1) R.C.R.(Criminal) 267***, the same cannot be sustained. He further submits that the learned trial Court was under legal obligation to give an opportunity to the petitioner to lead his evidence, before the impugned order could have been passed on his protest petition. Since the petitioner has been denied his right to substantiate his case by leading the evidence, the impugned order has resulted in miscarriage of justice and the same is liable to be quashed. He prays for setting aside the impugned order by allowing the present petition.

On the other hand, learned counsel for the State submits that since the civil litigations are pending between the parties, learned trial Court did not commit any error, while passing the impugned order and the same deserves to be upheld. He seeks dismissal of the present petition.

After hearing learned counsel for the parties, going through the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in the given fact situation, instant one has been found to be a fit case, warranting exercise of inherent jurisdiction under Section 482 (Cr.P.C.) at the hands of this Court, for the following more than one reasons.

It is a matter of record and not in dispute that the FIR was lodged at the instance of the petitioner. It is also not in dispute that the petitioner opposed the cancellation report by filing his protest

petition. A bare reading of the operative part of the impugned order dated 30.04.2008 (Anneuxre P-1) would show that the learned trial Court did not grant any opportunity of leading evidence to the petitioner, with a view to substantiate his allegations levelled against the accused, in his protest petition.

Having said that this Court feels no hesitation to conclude that the learned trial Court has misdirected itself, while not appreciating the right of petitioner for leading his evidence to substantiate his allegations against the accused, levelled in his protest petition. In this view of the matter, it can be safely concluded that the impugned order suffers from patent illegality and the same can not be upheld.

Now, it is an admitted position between the parties that the civil litigation has also been decided in favour of the petitioner. Suit for specific performance filed by the accused against the complainant-petitioner herein, has been dismissed. Learned counsel for the petitioner submits that even the first appeal filed by the plaintiffs has been dismissed. Civil litigation apart, it was incumbent upon the learned trial Court to grant an opportunity to the petitioner to lead his evidence in support of his protest petition, however, this valuable right of the petitioner has been illegally denied to him, thereby causing serious prejudice to the petitioner and the impugned order cannot be sustained, for this reason also.

The above said view taken by this Court also finds support from the judgments in ***Harendra Rai's case (supra)*** as well as in ***Sudesh Kumari's case (supra)***. The relevant observations

made in para 7 of the judgment in **Harendra Rai's case**, which can be gainfully followed in the present case, read as under:-

“It is well settled, on the basis of catena of judgments of the Apex Court as also of this Court, that once a criminal case is registered and investigation is taken up by the police, then on submission of final form, the learned Magistrate has three options-firstly, he can accept the final form submitted by the police and take cognizance of the offence, secondly, he may disagree with the police report and pass an order dropping the criminal case, and thirdly, he may direct further investigation. Similarly, in a case of final report being submitted by the police finding the accusations against the accused persons or the case itself to be false, then also the learned Magistrate has three options. Firstly, he can accept the final report and drop the entire criminal prosecution, secondly, he can disagree with the police report and take cognizance of the offence and thirdly, he can direct further investigation. But once a protest-cum-complaint petition is filed, then he is obliged to proceed in accordance with the procedure prescribed under Chapter XV of the Cr.P.C. After recording the statement of the complainant on Solemn Affirmation as also after recording the statement of witnesses produced for enquiry under Section 202 Cr.P.C., he can still dismiss the complaint petition under Section 203 Cr.P.C. if he does not find a prima facie case, or he can take cognizance and issue process under Section 204 Cr.P.C. after finding sufficient ground for proceeding against the accused persons. But in no case at the very threshold, he can dismiss the protest-cum-complaint petition without following the procedure prescribed under Chapter XV of the Cr.P.C.”

Reverting back to the facts of the case in hand and respectfully following the law laid down in ***Harendra Rai's case (supra)***, this Court is of the considered view that the learned trial Court has exceeded its jurisdiction, while passing the impugned order and the same cannot be sustained for this reason as well.

No other argument was raised.

Considering the peculiar fact situation of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant petition deserves to be accepted. Consequently, the impugned order dated 30.04.2008, passed by the learned Additional Chief Judicial Magistrate, Faridabad is, hereby, set aside with a view to prevent any further abuse of process of Court and also to secure the ends of justice.

The matter is remitted back to the learned trial Court with a direction to grant reasonable opportunity to the petitioner to lead his evidence, so as to enable him to substantiate his allegations against the accused, levelled in his protest petition. Thereafter, the learned trial court shall pass a fresh order, in accordance with law.

Resultantly, with the above said observations made and directions issued, present petition stands allowed, however, with no order as to costs.

02.12.2015

vandana

**(RAMESHWAR SINGH MALIK)
JUDGE**