

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM No.M-11142 of 2015 (O&M)

Date of decision:- August 04, 2015

Pankaj Kumar and others

.....Petitioners...

Vs.

State of Punjab and another

....Respondents...

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. D.S. Pheruman, Advocate,
for the petitioners.

Mr. Deepak Garg, AAG, Punjab.

Mr. Gaurav Mannan, Advocate,
for respondent No.2.

JASPAL SINGH, J.

CRM No.24443 of 2015

Reply filed along with the application by respondent No.2
is taken on record, subject to all just exceptions.

CRM stands disposed of.

Main case

Through this petition Pankaj Kumar and others have
sought quashing of FIR No. 178, dated 27.09.2013, under Sections
304-B/34 IPC, Police Station Makhu, District Ferozepur
(Annexure P-1) as well as order dated March 25, 2014 and
August 12, 2014 (Annexures P-5 and P-7 respectively) vide which

cancellation report (Annexure P-3) was returned to the police with the direction to further investigate the matter; and further to quash all subsequent proceedings emerging out of the same.

2. The factual matrix of the matter is that after investigation of the case, investigating officer recommended cancellation of FIR in question and accordingly, cancellation report was submitted to Id. Jurisdictional Magistrate for its acceptance. During pendency of those proceedings, Id. Magistrate recorded statement of Pardeep Kumar-complainant, who deposed that though FIR was registered by him against accused regarding the death of his daughter, Renu but subsequently, he came to know that deceased took some poisonous substance inadvertently or by mistake and he is satisfied with the investigation done by the police. But observing that the allegations contained in the FIR were serious in nature and statement of complainant is not suffice to accept the cancellation report, further investigation was directed to be conducted vide order dated March 25, 2014 (Annexure P-5). Subsequent thereto, investigating agency submitted cancellation report but disagreeing with the said report, request for acceptance of cancellation report was declined and investigating officer was again directed to further investigate the matter vide order dated August 12, 2014 (Annexure P-7).

3. By now, it is well settled that if after the registration of FIR, investigating agency comes to the conclusion that no case is made out against the accused for sending him for trial, the Magistrate, agreeing with the report, may accept the final report and close the proceedings. The Magistrate is also empowered to take a

view on consideration of the final report that the opinion formed by the police is not based upon full and complete investigation and in such a situation, he can direct for further investigation. The Magistrate is also empowered to decline or accept the closure report as well as direct to further investigate the matter but once the closure report is not accepted and the matter is ordered to be re-investigated/further investigation, then for the second time, Magistrate cannot compel the investigating agency to take a particular view in the matter and submit report under Section 173 of the Code. If at all, Magistrate does not agree with the opinion formed by the police and still have some suspicion that an offence has been committed, he is entitled to take cognizance under Section 190 (1) (c) of the Code but in no case, he can direct the police to further investigate the matter time and again. To fortify the aforesaid aspect of the case, reference can be had from the judgments of Hon'ble Apex Court captioned as ***“Abhinandan Jha and others v. Dinesh Mishra”, AIR 1968 SC 117, “State through CBI v. Raj Kumar Jain”, 1998 (3) RCR (Crl.) 656(SC) and “R. Sarala v. T.S. Velu and others”, 2000(2) RCR (Crl.) 637 SC.***

4. A perusal of the aforesaid judgments makes it abundantly clear that police is the master of investigation and formation of opinion as to whether a case is made out to put the accused for trial on the basis of material collected by it. The Magistrate while declining cancellation report, cannot compel the investigating agency to change its opinion or to form a particular opinion or to submit the report.

5. In the wake of aforesaid legal proposition and examining the impugned orders, this Court is of the considered view that declining of closure report for the second time and ordering re-investigation of the matter for third time is not justified. However, Magistrate is fully empowered to have recourse to the other option i.e. to consider the FIR as complaint and issue the process for summoning the accused.

6. Here, it would be pertinent to mention that though an offence under Section 304-B IPC is not compoundable but from the documents available on file especially compromise, it emerges that parties are otherwise satisfied. In case, challan is presented qua petitioners, same is not likely to culminate into conviction. Compromise arrived at between the parties is itself suggestive of the fact that complainant and other private witnesses are not going to support the case and trial would be nothing but a futile exercise and wastage of time of the Court and parties.

7. Taking into consideration the aforesaid aspects of the case and discussion made above, petition deserves to be allowed. Accordingly, FIR No. 178, dated 27.09.2013, under Sections 304-B/34 IPC, Police Station Makhu, District Ferozepur and all subsequent proceedings stand quashed qua the petitioners.

August 04, 2015
sonika

(JASPAL SINGH)
JUDGE

Be reported.