

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

**Criminal Misc. No. M-14570 of 2013
Date of Decision: 02.07.2015**

Sukhmander Singh alias Mander

...Petitioner(s)

Versus

State of Punjab & others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. *Whether reporters of local newspapers may be allowed to see judgment?*
2. *To be referred to reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present:- Mr. D.S. Malwai, Advocate
for the petitioner.

Mr. Gurinderjit Singh, DAG, Punjab.

Ms. Ramandeep, Advocate for
Mr. Sumeet Goel, Advocate
for respondent no.6-CBI.

HARI PAL VERMA J.(Oral)

Through the instant petition filed under Section 482 Cr.P.C., the petitioner, who is confined in Central Jail, Bathinda, seeks issuance of direction to respondents to get the matter investigated from CBI or from an IPS officer who does not belong to the State of Punjab, so that a fair and proper investigation can be carried out in the FIR No.31 dated 28.2.2013 under Sections

Bathinda.

Pursuant to the notice issued by this Court, respondents no.1 to 3 as well as respondent no.6 have filed their separate replies. In the reply filed on behalf of respondents no.1 to 3 by way of affidavit of Dev Dutt Sharma, PPS, DSP, Sub Division Talwandi Sabo, Bathinda, it is stated that on suspicion of possession of some intoxicating substance, the petitioner was apprehended by respondent no.5, who was the Incharge of the Anti-Narcotic Cell, Bathinda. The petitioner was carrying one plastic bag in his hand at the relevant time in the area of Village Laleana at bridge of canal minor and in the meantime, one Gurjant Singh alias Lilla Singh son of Kaur Singh, Jatt, resident of Village Laleana reached at the spot. The petitioner was disclosed about his legal right of search to be conducted by a Magistrate or a Gazetted Officer. The petitioner wanted to get the search conducted from some gazetted officer. Accordingly, respondent no.5 made a telephone call to respondent no.4 with a request to reach at the spot. It is in the presence of respondent no.4 the search of the plastic bag carried by the petitioner was carried out, which was found containing opium in an envelope and intoxicating tablets. The relevant paragraphs of the reply made on behalf of respondents no.1 to 3 read as under:-

“1. That case FIR No.31 dated 28.02.2013 under Section 18, 22/61/85 of Narcotic Drugs Psychotropic Substance Act has been registered in

Police Station Raman against the petitioner on the basis of written report sent by respondent No.5 with the averments that on suspicion of possessing intoxicating substance he apprehended the petitioner, who was carrying one plastic bag in his hand at that time, in the area of Village Laleana at bridge of canal minor and in the meantime one Gurjant Singh alias Lilla Singh son of Kaur Singh, Jatt, resident of Village Laleana reached at the spot and the petitioner was disclosed his legal right of getting his search conducted from a Magistrate or Gazetted Officer and that the petitioner disclosed that he wants to get his search conducted from some Gazetted Officer and then the respondent No.5 made Telephone call to respondent No.4 and the situation was apprised to him and he was requested to reach at the spot and then in presence of respondent No.4 the search of the plastic bag carried by the petitioner was conducted which was found containing opium in an envelope and intoxicating tablets and there were 70 strips of tablets Fortadol and each strip contained 10 tablets and in this way total tablets were 700, 120 strips of Alpracado 0.5 tablets each strip containing 10 tablets and in this way total tablets were 1200 and 50 plastic envelopes were too recovered and further that from the recovered opium, 10 gms was separated for the purposes of sample and on weighing the remaining it was found as 5 kgs. 990 gms. The respondent No.5 packed and sealed the samples and the recovered substances separately and deposited duly sealed samples and recovered

substances with the police of Police Station Raman. The respondent No.5 after completing all the formalities handed over the custody of the petitioner to the police of Police Station Raman for initiating action against him.

2. *That the petitioner was produced before the Illaqa Magistrate, Talwandi Sabo on 29.02.2013 and the sealed samples as well as the sealed recovered substances were too produced before the Illaqa Magistrate. The petitioner did not (raise) say anything before the Ld. Magistrate regarding his false implication in the case. The Ld. Illaqa Magistrate remanded the petitioner to judicial custody and thereafter the petitioner is appearing before the Ld.Judge, Special Court, Bathinda and he has never moved any application or said anything before the Ld. Judge, Special Court, Bathinda regarding his false implication in this case.”*

On 27.1.2015, this Court had directed respondent no.3- SSP, Bathinda to look into the entire case and to file his personal affidavit with regard to the allegations made against the petitioner as well as the allegations made by him. Pursuant thereto, the SSP, Bathinda has filed his affidavit dated 18.3.2015, which reads as under:-

“2. xx xx xx xx xx

Accordingly, the answering respondent called for the related record and thoroughly perused the

same. The perusal of the record related to the present case revealed that the instant case/FIR No. 31 dated 28.02.2013 u/s 18/22/61/85 NDPS Act was registered with Police Station Raman against the petitioner on the basis of written report sent by respondent no. 5 with the averments that on suspicion of possessing intoxicating substance, he apprehended the petitioner who was carrying one plastic bag in his hand. Since, the petitioner desired to get searched by the Gazetted Officer, he called the respondent no.4 at the spot. Accordingly, the search was made, in the presence of one witness Gurjant Singh who had come at the spot.

From the search of the plastic bag carried by the petitioner, the opiom was detected from one envelope besides intoxicating 70 strips of tablet Fortadol (Each strip contained 10 tablets and in this way, total tablets were 700), 120 strips of tablet Alpracado 0.5 (Each strip containing 10 tablets and in this way total tablets were 1200) and 50 plastic envelopes.

From the recovered opium, 10 gms was separated for the purposes of sample and on weighing the remaining it was found as 5 kgs. 990 gms. The respondent No. 5 packed and sealed the samples and the recovered substances separately and deposited duly sealed samples and recovered substances with the police of police station Raman. The respondent No. 5 after completing all the formalities handed over the custody of the petitioner to the police of police station Raman for

initiating action against him.

The record further revealed that the petitioner was produced before the Ld. Illaqa Magistrate, Talwandi Sabo on 29.02.2013 and the sealed samples as well as the sealed recovered substances were too produced before the Illaqa Magistrate, in compliance of section 52A NDPS Act. The petitioner did not raise anything about his false implication before the Ld. Magistrate.

Pursuant to completion of the investigation, the report u/s 173 Cr.P.C. was presented in the Ld. Court of competent jurisdiction on 19.12.2013. At present, the trial is pending consideration before the Ld. Trial Court.

3. *That it is respectfully submitted that as a consequence of the perusal of the related record, the deponent, in compliance of the order dated 27.01.2015 passed by this Hon'ble Court, directed the Superintendent of Police (Investigation) Bathinda to verify the circumstance, under which, the instant case/FIR No. 31 (Supra) was registered. I also heard the petitioner Sukhmandar Singh alias Mandar, witnesses of the case, opposite party Gurdit Singh alias Kaka and respectable persons of village Bangi Kalan, the investigation carried out into the allegations leveled by the petitioner and to submit his report. In pursuance thereof, the SP (Inv.) District Bathinda carried out the inquiry by associating the petitioner, Gurdit Singh alias Kaka, Gurcharan Singh Ex. Sarpanch, the investigating*

*officer SI Gurdip Singh, HC Tarjinder Singh and the private witness namely Gurjant Singh and further by recording their respective statements besides considering the investigation carried out and submitted his report with the conclusion that there is no force/substance in the allegations leveled and further that the matter being subjudice, it would be appropriate to leave the matter for the adjudication by the Ld. Trial Court. True translated copy of the inquiry report of SP (Inv.) Bathinda is being annexed herewith as **Annexure R-1/T** for the kind consideration of this Hon'ble Court.*

4. *That it is respectfully submitted that the perusal/ consideration of the report of SP (Inv.) Bathinda revealed that the inquiry officer has concluded that the petitioner has leveled allegations against his cousin brother (Massi's son) namely Gurdit Singh alias Kaka by alleging that owing to the land dispute going on, he was falsely got implicated, by keeping the tablets and the intoxicant substance but no substance was found in the same as from the inquiry conducted, the statements of the witnesses, the perusal of the log book of vehicle No. PB-12G-7560 of the then DSP Maur Sh. Sarabjit Singh, the compliance of the provisions of NDPS Act, the recovery of contraband in the presence of independent witness, the timely presentation of the accused as well as the case property before the Ld. Court, it stands proved that the case in hand was rightly registered. The SP (Inv.) Bathinda also reported that the in laws family of the petitioner residing in Village Sahu of the*

State of Haryana is having criminal background and his father in law namely Mukand Singh alias Kandi had gone to jail several times, for selling contraband. Accordingly, being satisfied with the facts and circumstances came on record during inquiry, the deponent approved the same.

5. *That it is respectfully submitted that from the inquiry got conducted, in compliance of the order dated 27.01.2015, no force/substance in the allegations leveled by the petitioner. The case in hand has been found to be rightly registered, in which, the challan stands presented, the charges stand framed and the trial is now fixed for recording the prosecution evidence. Thus, the present petition filed by the petitioner may kindly be dismissed. However, the answering respondent undertakes to comply with the order or direction which this Hon'ble Court would pass, in the facts and circumstances of the present case."*

Thus, it is stated that on enquiry conducted in the case, no force or substance was found in the allegations levelled by the petitioner. The affidavit further reveals that case was rightly registered against the petitioner, as he was found involved in narcotics substance. The report, Annexure R-1/T, as conducted by Superintendent of Police, Investigation, District Bathinda is the part of the record of the reply.

Similarly, in the reply, respondent no.6-CBI has stated

that the case in hand does not fall within the basic guidelines laid

down by Hon'ble the Apex Court in the case of **State of West Bengal v. Committee for Protection of Democratic Rights 2010 (3) SCC 571.**

Having considered the arguments raised by the parties and the reply submitted by respondents no.1 to 3 as well as the report submitted by Superintendent of Police (Investigation), Bathinda (Annexure R-1/T), it is clear that the petitioner was found in possession of opium in an envelope and intoxicating tablets for which the FIR has been registered against him. Interestingly, when the petitioner was produced before the Illaqa Magistrate, Talwandi Sabo on 29.2.2013, he did not raise any objection before him regarding his false implication in the case.

Thus, the prayer of the petitioner that the matter be got investigated from CBI or from an IAS officer not belonging to the State of Punjab is nothing but an attempt to mount pressure on the investigating agency.

Accordingly, I find no substance in the present petition and the same is dismissed.

However, it is made clear that nothing observed hereinabove shall be construed as an expression on the merits of the case and the trial Court shall decide the case on the basis of evidence available on record.

July 02, 2015

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**(HARI PAL VERMA)
JUDGE**