

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CRM-M-19478-2013
Date of decision: 19.8.2015**

Onkar Singh and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Kulbhusan Raheja, Advocate for the petitioners.

Mr. K.D.Sachdeva, Addl. A.G., Punjab.

Mr.J.S.Grewal, Advocate for respondent No.2.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the order dated 16.3.2013 (Annexure P-7) passed by the learned Sub Divisional Judicial Magistrate ('SDJM' for short), Abohar, whereby he did not accept the cancellation report, submitted by the investigating agency and took cognizance against the accused-petitioners, as well as ordered to club the FIR case with the already pending criminal complaint, petitioners have approached this Court by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), for setting aside the impugned order.

Notice of motion was issued and pursuant thereto reply on behalf of the complainant-respondent No.2 was filed.

Learned counsel for the petitioners, while referring to the FIR (Annexure P-1), enquiry report (Annexure P-2), opinion of DA (Legal) (Annexure P-3) and complaint (Annexure P-6), submits that the learned

SDJM, Abohar, has exceeded his jurisdiction, while passing the impugned order. He further submits that once the learned Magistrate had already started taking preliminary evidence of the complainant and has, thus, already taken cognizance, it was not permissible to pass the impugned order, thereby taking cognizance for the second time, on the basis of same set of allegations. He would next contend that once the learned Magistrate was seized of the matter in a private complaint filed by the respondent-complainant, while taking cognizance thereof by taking preliminary evidence of the complainant, the cancellation report ought to have been accepted by the learned Magistrate, particularly when there was no protest petition filed by the complainant. Learned counsel for the petitioners contended that the learned Magistrate proceeded to reject the cancellation report, took cognizance for the second time and issued summons to the petitioners illegally, while passing the impugned order (Annexure P-7). In support of his contentions, learned counsel for the petitioners, places reliance on the following judgments:-

1.Madho and another v. State of Maharashtra and another, 2013 (5) SCC 615;

2.Hasan Mohammad Issak Maniyar & Ors v. Harun Gulab Maniyar & Anr., 2014 CriLJ 1200 (Bombay); and

3.Sarup Ram v. State of Haryana, 1977 CriLJ 1420 (P&H).

He prays for setting aside the impugned order, by allowing the present petition.

On the other hand, learned counsel for the complainant submits that the learned Magistrate has not exceeded his jurisdiction as wrongly alleged by the learned counsel for the petitioners. He further submits that

the learned Magistrate was well within his jurisdiction, while passing the impugned order. He next contended that since the investigating agency was hobnobbing with the accused-petitioners, by submitting repeated cancellation reports, altogether ignoring the clinching evidence in the form of medical evidence, the learned Magistrate rightly rejected the cancellation report, taking cognizance against the accused. He also contended that the learned Magistrate took cognizance only for the first time as he had not issued the process, at earlier point of time on the complaint moved by the respondent-complainant. He prays for dismissal of the present petition.

Similarly, learned counsel for the State also opposes the prayer made by the learned counsel for the petitioners and seeks dismissal of the instant petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that instant one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. To say so, reasons are more than one, which are being recorded hereinabove.

An important question of law that falls for consideration of this Court is whether the learned Magistrate was competent to take cognizance, while rejecting the cancellation report presented by the investigating agency and issuing summons to the accused persons, during the pendency of the private complaint, wherein preliminary evidence was being recorded.

It is a matter of record that the learned Magistrate has not issued the process in the complaint. He was enquiring into the matter

himself, while taking preliminary evidence of the complainant so as to find out whether the complainant would be in a position to make out a case for taking cognizance or not. It is also not in dispute that the learned Magistrate was competent to do so, under the relevant provisions of law. During the enquiry of the complaint against the petitioners, which was being conducted by the learned Magistrate himself, cancellation report came to be filed by the investigating agency. Since the complaint of the respondent was already pending before the learned Magistrate for consideration, he did not file any protest petition. After hearing the learned counsel for the parties, the learned Magistrate rejected the cancellation report, took the cognizance and issued process against the accused-petitioners, while simultaneously ordering to club the complaint with the police challan. In view of what has been discussed hereinabove, the answer to the question posed is and has to be in the affirmative. It is held that the learned Magistrate did not exceed his jurisdiction, while passing the impugned order and the same deserves to be upheld.

A combined reading of the provisions contained in Section 156 (3) Cr.P.C. and Section 190 Cr.P.C. would show that on receipt of complaint, the learned Magistrate can take cognizance by adopting any of the following alternatives:-

- (a) On perusal of the complaint, if the learned Magistrate is satisfied that there are sufficient grounds for proceeding against the accused, he may straightway issue process, while complying the requirements of Section 200 Cr.P.C.;
- (b) The learned Magistrate can conduct the enquiry himself, by postponing the issue of process;

(c) The learned Magistrate will also be competent to postpone the issue of process, while directing any other person to conduct enquiry or an investigation by the police.

In the present case, the learned Magistrate rightly adopted the second alternative. He postponed the issue of process and started conducting the enquiry himself. At this time, the cancellation report came to be filed. However, since the process in the complaint was yet to be issued, while rightly exercising his powers under Section 210 Cr.P.C., the learned Magistrate passed the impugned order, which has been found to be factually correct and legally justified, hence deserves to be upheld, for this reason also.

Sections 190, 200 and 210 of Cr.P.C., which are relevant for the decision of the present case, read as under:-

“Section 190. Cognizance of offences by Magistrates -

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

Section 200. Examination of complainant - A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any,

and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

Section 210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence (1) *When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.*

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of

any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

A bare combined reading of the above-said provisions of law and particularly Section 210 Cr.P.C., would render a complete answer to the arguments raised by the learned counsel for the petitioner. In fact, the argument raised by the learned counsel for the petitioner seems to be very attractive at the first blush, however, on deeper consideration thereof, the same has been found to be wholly misplaced, thus, liable to be rejected and the impugned order deserves to be upheld.

When a pointed question was put to the learned counsel for the petitioners as to whether accused-petitioners had received summons in the complaint, before presentation of the cancellation report by the investigating agency, he had no other option except to deny this fact and rightly so, it being a matter of record. Once it has gone undisputed on record that the learned Magistrate had not issued the process in the complaint and he himself was conducting the enquiry, by taking preliminary evidence of the complainant, he was very much competent to take and had rightly taken cognizance against the accused persons, rejecting the cancellation report and treating the same as police challan. Further, while rightly following the mandate of law as provided under Section 210 Cr.P.C., the learned Magistrate was well within his jurisdiction to club the already pending complaint with the police challan, while passing the impugned order and the same deserves to be upheld, for this reason as well.

Coming to the judgments relied upon by the learned counsel for the petitioners, there is no dispute about the law laid down therein.

However, on close perusal of the cited judgments, none of them has been

found of any help to the petitioner. In fact, the ratio of the cited judgments goes against the petitioner. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

The above-said view taken by this Court also finds support from a recent Constitution Bench judgment of the Hon'ble Supreme Court in **Dharam Pal and others v. State of Haryana and another, 2014 (3) SCC 306.** The Hon'ble Supreme Court in **Dharam Pal's** case (supra) held that in the event the learned Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Similar is the fact situation in the present case. Thus, the learned Magistrate has not been found to have exceeded his jurisdiction, while passing the impugned order and the same deserves to be upheld.

No doubt, the cognizance can be taken only once. Learned counsel for the petitioners was also found justified to say so. However, in the fact situation of the present case, his argument is only to be noted to be rejected. It is so said because cognizance, as a matter of fact, had not been taken by the learned Magistrate in the complaint filed by the respondent-complainant, which was being enquired into by the learned Magistrate himself, while taking preliminary evidence of the complainant. This was the reason that learned counsel for the petitioners had to admit that the petitioners-accused had not received any summons in the complaint case,

till passing of the impugned order by the learned Magistrate. In this view of the matter, it can be safely concluded that the learned Magistrate committed no error of law, while passing the impugned order and the same deserves to be upheld.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noticed above, coupled with the reasons aforementioned, this Court is of the considered view that the instant petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out

Resultantly, with the above-said observations made, the present petition stands dismissed, however, with no order as to costs.

19.8.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE