IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-21409 of 2012
Date of decision : 22.12.2015

Bikram Singh and another

..... Petitioners

versus

State of Punjab and another

... Respondents

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of the local papers may be allowed to see the judgment ?Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest ?

Present: Mr. S.S. Narula, Advocate
for the petitioners

Mr. Deep Singh, AAG Punjab

Mr. Piyush Sharma, Advocate
for respondent No. 2

ANITA CHAUDHRY, J.

This is a petition filed under Section 482 Cr.P.C. for setting aside the order dated 15.03.2011 passed by Sub Divisional Judicial Magistrate, Balachaur (Annexure P-1) and order passed by the revisional Court on 16.5.2012(Annexure P-2).

The matter pertains primarily to the fact as to whether compliance of Section 210 Cr.P.C. had been made and whether the procedure adopted by the Magistrate was proper.

Before adverting to the legal position as well as the submissions made by either parties it is necessary to give the backdrop which led to the filing of a complaint.

Kulwinder Kaur was married to Kulwinder Singh and two daughters were born to her. After the death of Kulwinder Singh

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Kulwinder Kaur remarried Mohinder Singh who was earlier married and had three sons from his previous wife. Mohinder Singh died in a car accident. Kulwinder Kaur had also sustained injuries. The allegations are that Bikram Singh @ Sodhi her brother-in-law (younger brother of Kulwinder Singh) took them to the village for getting them treated and brought them to village Jamitgarh Bhalla. She was taken to a clinic and forced to sign some blank stamp papers for sanctioning the pension of Mohinder Singh. She had alleged that she was illegally confined alongwith her daughters and during this period, in her absence, various articles from her house in village Mara Jattan were taken away. Allegations were levelled that Bikram Singh forged the agreement and a Will of Mohinder Singh. A complaint was given to the police and an FIR was lodged on 31.08.2005. The complainant approached the Court and filed complaint on 16.9.2005 (Annexure P-5). The Court took cognizance and recorded statement of witnesses. Meantime, cancellation report (Annexure P-4) was filed. The Magistrate passed a summoning order (Annexure P-6) on 27.01.2007 and on 12.8.2009 framed the charges against the accused. Against that order a revision was filed on 10.9.2010 (Annexure P-7) which was disposed of by the Sessions Judge seting aside the order and it gave directions to the trial Court to pass a specific order with regard to the State case and the complaint case as required under Section 210 Cr.P.C. and asked it to consider the evidence on the record afresh and pass a fresh order. The Sessions Judge in its order had noted in para 8 that the Magistrate had clubbed the cancellation report with the complaint

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case but it did not pass a specific order with regard to acceptance of the report or whether it wanted to send it for further investigation and this option was available to the trial Court and the procedure was not correctly followed.

The trial Magistrate referred to the order passed by the revisional Court and in para 3 observed as under:-

> "*So, argument heard on cancellation report filed by the police authorities. It is the case of complainant that earlier, she was married with Kulwinder Singh and she had two daughters from the loins of Kulwinder Singh and after the death of Kulwinder Singh, she remarried with Mohinder Singh, who had three sons from his previous wife. Thereafter, second husband of the complainant Kulwinder Kaur was also died in the accident. Complainant stated that her brother-in-law Bikram Singh @ Sodhi went to her village and stated that he wants to get them medically treated from a reputed doctor and brought them at Village Jamitgarh Bhalla, but Bikram Singh had not tr5eated them nor she was allowed to visit their house situated at village Majra Jattan. Therafter, Bikram Singh @ Sodhi taken her to Balachaur at the clinic of Dr. Suri and there, he gother signatures on some blank stamp papers for sanctioning the pension of Mohinder Singh from Military and he kept her and her daughters in illegal confinement at village Jamitgarh Bhalla and Bikram Singh alognwith others had thefted various articles form her house, situated at village Majra Jattan and thereafter, he forged the agreement and he also forged the Will of her deceased husband Mohinder Singh. So, after investigation, the police authorities had presented the cancellation report and thereafter, notice was issued to complainant, but complainant stated that*

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she does not agree with the cancellation report moved by the police authorities, because they have filed a false cancellation report. Although learned counsel for the accused stated that cancellation report be accepted, but after going through the statements of the witnesses recorded during the investigation and documents placed on the file and statement of complainant. I am of the considered view that there are sufficient grounds for proceeding against the statement Bikram Singh @ Sodhi, Mohan Sigh, Kamaljit Singh, Amarjit, Raghubir and Dilwar Singh. So I took cognizance of the present case and prosecution is directed to file the list of witnesses on the next date of hearing."

The accused were aggrieved with the order and again approached the Sessions Court and filed the revision which was dismissed on 16.5.2012.

The accused have filed this petition under Section 482 Cr.P.C. challenging both the orders pleading that the Courts below had adopted a new procedure to proceed against the petitioners in complete violation of the Code which were mandatory. They have prayed for setting aside that order and have pleaded that the cancellation report and the order to proceed against the accused could only be made in the State case which should bear the title of the State case and not of the complaint case and this fact was not appreciated by the Additional Sessions Judge and the order was liable to set aside. It was pleaded that after taking cognizance the police submitted the report under Section 173 Cr.P.C. and the complaint case should have been clubbed with the State case and the matter could be tried as if the case was instituted on police

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record. It was pleaded that the Magistrate had adopted a novel procedure and while taking cognizance of the case it asked the prosecution to file list of witnesses which are to be filed by the complainant in the complaint case.

Upon notice the State submitted its reply supporting the order passed by the Court below.

Respondent No. 2 pleaded that the cancellation report had been submitted whereas the petitioners had been summoned in a complaint case and the investigation in the FIR stood clubbed much prior to the passing of the summoning order and there was no illegality in the procedure adopted by the SDJM.

Since the judgment referred to as order of clubbing of the complaint and report under Section 173 Cr.P.C. filed by the police and it was disputed by the petitioners, therefore, the file containing the cancellation report and the complaint was ordered to be summoned which has been received.

I have heard the submissions made on behalf of both the sides.

Initiating the arguments, the submissions made on behalf of the petitioners were that the order passed by the Magistrate had been set aside by the revisional Court and directions had been given to it to pass a specific order under Section 210 Cr.P.C. and without passing any order, the SDJM Balachaur passed another order on 15.03.2011 which is not in accordance with the procedure laid down in Section 210 Cr.P.C. Referring to the provisions it was urged that when there is a complaint case and an FIR and when it comes to the

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notice of the Magistrate that complaint before the police is pending he has to stop the proceedings in the complaint case and call for the report from the police and after the report is received from the police he has to take up the matter together and if cognizance has been taken on the police report he has to try the complaint case alongwith the State case as if both are instituted upon police report and provisions of Section 210 Cr.P.C. are mandatory in nature. It was urged that the revision was filed against the order passed by the Magistrate who did not deliberate on the issues raised before it and held that there was sufficient evidence to proceed against the accused as if it was hearing a revision against framing of charge. It was urged that there was a reference to clubbing of the State case and the complaint case but they had taken the copy of the zimni orders and there is no order of clubbing. Photocopy of the zimni order from 19.9.2005 to 20.9.2009 were placed on record. Reliance was placed upon ***Gurdev Singh vs. State of Punjab and another, 2011(2) RCR(Criminal) 688, H.S. Bains vs. The State (Union Territory of Chandigarh), AIR 1980 Supreme Court 1883, Dilawar Singh vs. State of Delhi, 2007(4) RCR(Criminal) 115*** and ***Pawan Kumar vs. State of Haryana, 1999(1) RCR(Criminal) 178.***

The submission on the other hand was that an order had been passed on 23.11.2006 and both the complaint case and the State case were ordered to be clubbed. It was urged that the complaint had been presented of which the Magistrate had already taken cognizance and there could not be a second cognizance and the procedure had been followed. It was urged that if Court had

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taken cognizance under Section 190(1)(b) Cr.P.C. then compliance of Section 207 Cr.P.C. had to be made and the order passed by the Magistrate was to file the list of witnesses and it was an order to the State as they had filed a cancellation report and the Magistrate was following the procedure laid down under Section 210 Cr.P.C. treating the case lodged on police report and, therefore, that order was made. It was urged that in a complaint case the list of witnesses is always appended alongwith the complaint at the time of presentation and simply because the title suggests that it was a complaint was not enough to set aside the order. It was urged that the Magistrate had taken cognizance of the complaint and had embarked upon the procedure and embodied in Chapter XV. Reliance was placed upon ***CREF Finance Ltd. vs. Shree Shanthi Homes Pvt. Ltd. and another, 2005(4) RCR(Criminal) 26, Madhao and another vs. State of Maharashtra and another, 2013(2) RCR (Criminal) 975, Sarup Ram vs. State of Haryana, 1977 CriLJ 1420*** and ***R.K. Khanna vs. State and others, 2003(11) SCC 758.***

It is necessary to first refer to the two courses which are open to a complainant. When information is given at the police station a station diary entry is made or the FIR is registered. If it does not yield any result, a complaint can be filed. In the present case a complaint was given to the police. The police had registered the FIR on 31.07.2005, fifteen days later the complaint was filed in the Magistrate's Court on 16.9.2005. The Magistrate took cognizance and adjourned the matter for evidence of the complainant for 08.10.2005. The police had submitted the cancellation report. The

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cancellation report is available on record which shows that upon presentation of the cancellation report on 18.9.2006 notice was ordered to be issued to the complainant. The matter was adjourned to 30.9.2006 and then to 30.11.2006. On 18.11.2006 the complainant was present in the Court and the following order was passed:-

Present : APP for State

Complainant Kulwinder Kaur with counsel

Be put up on 23.11.2006 for consideration, when connected complaint is pending.

Gurjant Singh, PCS
SDJM/18.11.06

The following order was passed on 23.11.2006 :-

Present : APP for State

Complainant in person

This cancellation report be clubbed with complaint case already pending separately for today titled as “Kulwinder Kaur vs. Bikram Singh etc.”

Pronounced 23.11.2006 Gurjant Singh, PCS
SDJM

The cancellation report was ordered to be clubbed with the complaint case and, therefore, there is a reference to the clubbing of both the mattes in number of orders passed by the Magistrate. The argument was that there was no order is not correct. The petitioners had made available the zimni orders of the complaint case and not the order which was passed on the cancellation report.

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It would be relevant to quote Section 156 and Section 210 Cr.P.C. which read as under:-

> *"156. Police officer's power to investigate cognizable cases. - (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.*
>
> *(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.*
>
> *(3) Any Magistrate empowered under Section 190 may order such an investigation as above mentioned."*
>
> ***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 office 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.*

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> *(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.*

Learned counsel for the petitioner had referred to Pawan Kumar's case (supra) it is necessary to notice the facts of that case. A complaint was filed in the Court of Magistrate where the accused was summoned. The complainant had also lodged an FIR on the same allegation. The police investigated the case and filed challan against the two persons who were arrayed as an accused in the complaint case under Section 498-A, 556 IPC. The petitioners approached the Court for quashing the complaint and the summoning order and the proceedings pending before the Court on the ground that the petitioners were being prosecuted for the same allegations and offence in two Courts one in a police case and second in a criminal complaint case. After referring to the provisions contained in Section 210 Cr.P.C. It was held that:-

> *"6. It appears from the perusal of Sub Section 2 of Section 210 Cr.P.C. that the criminal complaint case and the police challan case are to be clubbed together and the criminal complaint cases is to be treated as having been instituted on a police report. However, the difficulty at present in the case seems to be the two different states in which the two cases are pending. The criminal complaint case is pending in the Court of Patiala in the State of Punjab while the police challan case is pending in the Court of Ambala in the State of Haryana.*
>
> *7. Having considered the facts and circumstances of the case, I deem it appropriate to direct the transfer of the criminal complaint case from the Court of JMIC, Patiala to the Court of learned*

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Magistrate, at Ambala dealing with the aforesaid police challan case and with a direction to deal with the cases in accordance with the provisions contained under Section 210(2) Cr.P.C. @ RESULT=Ordered accordingly and disposed"

In ***Dilawar Singh's case (supra)*** Apex Court was hearing the appeal against the judgment of the Single Judge of Delhi High Court which had dismissed the appeal filed by the appellant affirming his conviction. In that case the Court had occasion to examine the provisions of Section 210 Cr.P.C. and para 9 reads as under:-

9. The complainant has attempted to explain the delay by stating that the matter was reported to the police but the police did not take any action. Such statement can hardly be taken to have explained the delay. It is the simplest of things to contend that the police, though report had been lodged with it, had not taken any steps. But it has to be established by calling for the necessary records from the police to substantiate that in fact a report with the police had been lodged and that the police failed to take up the case. The principle has been statutorily recognised in Section 210 of the Cr.P.C. which enjoins upon the Magistrate, when it is made to appear before him either during the inquiry or the trial of a complaint, that a complaint before the police is pending investigation in the same matter, he is to stop the proceeding in the complaint case and is to call for a report from the police. After the report is received from the police, he is to take up the matter together and if cognizance has been taken on the police report, he is to try the complaint case along with the G.R. Case as if both the cases are instituted upon police report. The aim of the provision is to safeguard the interest of the accused from unnecessary harassment. The provisions of Section 210 Cr.P.C, are

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> *mandatory in nature. It may be true that noncompliance of the provisions of Section 210, Cr.P.C., is not ipso facto fatal to the prosecution because of the provision of Section 465 Cr. P.C., unless error, omission or irregularity has also caused the failure of justice and in determining the fact whether there is a failure of justice the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings. But even applying the very same principles it is seen that in fact the appellant was in fact prejudiced because of the nonproduction of the records from the police. Delay in filing the complaint because of police inaction has to be explained by calling for the records from the police was explained by this Court in Khedu Mohton and others v. State of Bihar (AIR 1971 SC 66). Where the Court took exception to the fact that the complaint lodged with the police had not been summoned or proved, no satisfactory proof of any such complaint had been adduced before the Court, and none of the documents as would have become available under Sec. 173, Cr. P.C., had also been brought on record.*

In the above judgment the Apex Court had observed that the provisions of Section 210 Cr.P.C. are mandatory in nature but at the same time non-compliance of provisions of Section 210 Cr.P.C. were not ipso facto fatal unless error, omission or irregularity is shown to have caused failure of justice.

In ***H.S. Bains case (supra)*** the Apex Court was dealing with the provisions contained in Section 156 Cr.P.C. and the course to be adopted. There is specific reference to when cognizance of offence is taken in Section 190(1)(a) and Section 202 Cr.P.C. In the present case we are not faced with the issue raised before the Apex

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Court.

A perusal of the record shows that the Magistrate had taken cognizance of the offence on the complaint filed before it. He did not send the case for investigation to the police under Section 156(3) Cr.P.C. He adjourned the case for examination of the complainant on oath. The Magistrate had the discretion in the matter. He could have adopted two course either to forward the complaint to the police for investigation or as an alternative to take cognizance of the offence itself. It is settled that power under Section 156(3) Cr.P.C. can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a) Cr.P.C. However, if he once takes such cognizance and embarks upon the procedure and embodied in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156(3) Cr.P.C.

Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives:

> *(a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightaway issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.*
> *(b) The Magistrate can postpone the issue of process and direct an enquiry by himself.*
> *(c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.*
> In case the Magistrate after considering the statement of

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the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceeding he can dismiss the complaint.

Where a Magistrate orders investigation by the police before taking cognizance under Section 156(3) of the Code and receives the report thereupon he can act on the report and discharge the accused or straightaway issue process against the accused or apply his mind to the complaint filed before him and take action under Section 190 of the Code.

It would be useful to refer to Section 190 and Section 200 Cr.P.C. as well.

> ***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.*
> *"200. 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*

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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 202 deals with postponement of issue of process. It say that a Magistrate on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him under Section 192, may postpone the issue of process against the accused and either inquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding under the said Section. From the scheme of the Act it appears that Section 156(3) and Section 202 operate in different spheres. A Magistrate passes an order under Section 156(3) before taking cognizance of the matter and under Section 202, after having taken cognizance thereof.

Adverting to the facts of the present case it will be seen that the Magistrate on 19.9.2005 passed an order for registration of the complaint and adjourned the matter to 08.10.2005 for preliminary

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evidence of the complainant. The statement of the complainant, however, was recorded on 17.12.2005 and it is thereafter that the cancellation report had been submitted in September 2006. The expression taking cognizance of an offence by the Magistrate had not been defined in the Court but the ways in which such cognizance can be taken are set out in Clause B and C of Section 190(1) Cr.P.C.

If the matter is examined from another angle it is found that on remand of the case by the District and Sessions Judge, the Magistrate noticed that the complaint case and the State case had been clubbed but since cognizance had already been taken and the cancellation report had been submitted the course available to it was only to adopt the procedure as envisaged under Section 210 Cr.P.C. and according to it, it was to try the case with the complaint case and the case arising out of the police report as it were the case instituted on the police report. It appears that while dealing with the matter, the title of the complaint case was given though in the end, the Magistrate had directed the State to file the list of witnesses. The case was being tried as a State case. The direction was not to the complainant to give the list of witnesses. The Court was conscious of the fact that it was trying the case as a complaint case. I am of the view that these proceedings are only an attempt to delay the proceedings and prevent the Court to decide the case and it has resulted in wasting the precious time of the Court. Even otherwise if it is taken that there was non-compliance of the provisions of Section 210 Cr.P.C. it can not be said that it is fatal. It has not resulted in failure of justice nor has caused any prejudice because the title is

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that of a complaint case.

The petition is dismissed.

There was stay in operation for the last three years and the trial could not proceed. The parties are directed to appear before the Court below on 05.01.2016.

The trial Court would expeditiously dispose of the case as it is already delayed. Lower Court record be sent back.

December 22, 2015 **(ANITA CHAUDHRY)**
reena/sunil **JUDGE**

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