

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

**Crl. Misc. No. 17793 of 2015(O&M)
Date of decision : 27.05.2015**

Gurpreet Singh Chhina

..... Petitioner

versus

State of Punjab

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

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. P.S. Hundal, Senior Advocate with
Mr. Dinesh Trehan, Advocate
for the petitioner.**

ANITA CHAUDHRY, J.

The petitioner is seeking quashing of FIR No. 43 dated 14.03.2014, registered under Section 408 IPC at Police Station Division No.5, Ludhiana and also the final report submitted in the case.

The petitioner joined as a Clerk in the office of District & Sessions Judge, Ludhiana on 13.03.2013. He tendered his resignation on 04.10.2013, which was accepted on 15.10.2013. Case was registered against the petitioner on the allegations that while posting as a Clerk in the Record Room, he was entrusted with the judicial file of a decided case titled as State Vs. Gurmit Singh. In that case the accused was convicted by the trial Court but was acquitted by the appellate Court below. The State went in appeal before this Court. When the record of the case was requisitioned, it came to the light that the file was not traceable.

The case was registered, investigated and on completion of investigation, final report has been filed against him.

It was urged on behalf of the petitioner that after submitting the resignation, charge was handed over by the petitioner to the successor Clerk and since then till the date of registration of case, 3/4 more Clerks were posted and the investigating agency had erred in holding that the petitioner alone was liable for loss of file. It was further urged that no evidence was collected by the prosecution that there was dishonest intention on the part of the petitioner, which is sine quo non for proving the charge under Section 408 IPC. It was further urged that the petitioner was not imparted any special training for handling judicial files and due to heavy pendency of files, the loss may be due to circumstances beyond the control of the petitioner. Reliance has been placed on **Sardar Singh Vs. State of Haryana 1977 AIR(SC) 1766** and **Manju Khanna Vs. The Registrar General, Delhi High Court, Writ Petition (C) No. 891 of 2013, decided on 09.05.2014.**

Broad guidelines have been framed by the Hon'ble Apex Court for exercise of powers under Section 482 Cr.P.C. in the case of **State of Haryana and others Vs. Ch. Bhajan Lal and others**, AIR 1992 SC 604, which read as under:-

"105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise

of the extra-ordinary power under Article 226 or the inherent powers Under

Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. Do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not

constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

The powers under Section 482 Cr.P.C. have to be exercised sparingly and with circumspection, that too in rarest of rare cases, which does not exist in the present case. A perusal of the challan (Annexure P-2), reveals that the file was received by the petitioner during his posting as Record Clerk and he had issued the receipt. The grounds on which the petitioner is seeking

the quashing of the FIR, namely, that he was not custodian of the file at the relevant time, a number of Clerks had changed after his resignation, he was overloaded with files, there was no dishonest intention on his part. There are questions of facts and are subject matter of evidence that would come on record. No finding can be recorded at this stage

In Sardar Singh's case (supra) it was only after the full fledged trial, that a finding was recorded, while in Manju Khanna's case (supra) the issue was entirely different.

No ground for quashing is made out. Dismissed. However, whatever has been said hereinabove is without prejudice to the case on merit. The petitioner will be at liberty to raise all the pleas before the appropriate forum and at the appropriate stage.

May 27, 2015
Jiten

(ANITA CHAUDHRY)
JUDGE