

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

Date of decision : 28.01.2015

1.

CRM-M-22232-2013

Dr.Satish Bhatia and another

... Petitioners

Versus

State of Haryana and others

... Respondents

2.

CRM-M-22233-2013

M/s Naina Estates Pvt. Ltd.

... Petitioner

Versus

State of Haryana and others

... Respondents

3.

CRM-M-22234-2013

Purnima Kohli

... Petitioner

Versus

State of Haryana and others

... Respondents

4.

CRM-M-22235-2013

M/s Shree Bihari Estates Pvt. Ltd.

... Petitioner

Versus

State of Haryana and others

... Respondents

5.

CRM-M-22236-2013

Dr.R.K.Anand

... Petitioner

Versus

State of Haryana and others

... Respondents

6.
Convenience Enterprises Pvt. Ltd.

CRM-M-22237-2013

... Petitioner

Versus

State of Haryana and others

... Respondents

7.
Satya Pal Anand

CRM-M-22238-2013

... Petitioner

Versus

State of Haryana and others

... Respondents

8.
Alka Arora and others

CRM-M-22239-2013

... Petitioners

Versus

State of Haryana and others

... Respondents

9.
Man Mohan Kapur and another

CRM-M-22240-2013

... Petitioners

Versus

State of Haryana and others

... Respondents

10.
Harender Kaur

CRM-M-22241-2013

... Petitioner

Versus

State of Haryana and others

... Respondents

11.
Rohit Ananad

CRM-M-22242-2013

... Petitioner

Versus

State of Haryana and others

... Respondents

12.

CRM-M-22243-2013

Balwinder Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

13.

CRM-M-22244-2013

M/s Kashmira Estates Pvt.Ltd.

... Petitioner

Versus

State of Haryana and others

... Respondents

14.

CRM-M-22245-2013

M/s Convenience Enterprises Pvt.Ltd.

... Petitioner

Versus

State of Haryana and others

... Respondents

15.

CRM-M-22246-2013

Sunita Behl and another

... Petitioners

Versus

State of Haryana and others

... Respondents

16.

CRM-M-22247-2013

Anil Kohli

... Petitioner

Versus

State of Haryana and others

... Respondents

17.

CRM-M-22248-2013

Neelam Anand and another

... Petitioners

Versus

State of Haryana and others

... Respondents

18.

CRM-M-22249-2013

Uma Gajapati Raju and another

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Petitioner in person.
(in CRM-M-22233, 22235-36-37, 22244-22245-2013).

Mr.Akhil Sachar, Advocate &
Mrs.Sheenu Sura, Advocate
for the petitioners.
(in CRM-M-22232, 22234, 22238-22243, 22246-22249-2013).

Mr.Rajesh Gaur, Addl. A. G.Haryana.

Mr.R.S.Cheema, Senior Advocate
with Mr. K.S.Nalwa, Advocate
for respondents No.2 to 11, 14 to 18.

Mr.Manoj Bajaj, Advocate
for respondents No.12 & 13.

REKHA MITTAL, J.

This order will dispose of aforementioned petitions as these involve identical questions of law and facts for adjudication. However, for the sake of convenience, facts are taken from CRM-22232-2013 “Dr.Satish Bhatia and another Vs. State of Haryana and others”.

The brief backdrop of the case is that FIR No.178 dated 08.06.2007 was registered at Police Station DLF Phase II, Gurgaon for offence punishable under Sections 420, 406, 409, 415, 468, 471, 34, 120-B of the Indian Penal Code (in short 'IPC') against the accused.

The allegations raised against the accused are not relevant for adjudication of the present controversy and therefore, it would be an unnecessary exercise to refer to those facts. On completion of investigation, the police submitted cancellation report dated 02.11.2008 Annexure P7. The complainant(s) filed a protest petition to express grievance against the cancellation report submitted by the investigating agency. The Chief Judicial Magistrate, Gurgaon passed order dated 08.03.2011 (Annexure P9) taking cognizance of the offence punishable under Sections 406, 420, 467, 468, 120-B IPC, challenged before this Court under Section 482 of the Code of Criminal Procedure (for brevity 'Cr.P.C.') vide CrI.Misc. No.22933-2011 which came to be dismissed by this Court along with various other petitions on October 05, 2012 (Annexure P13). The order dated 05.10.2012 was challenged before Hon'ble the Supreme Court of India but the accused were unsuccessful in getting any relief and their petition(s) for Special Leave to Appeal was dismissed on 13.12.2012 (Annexure P15) and as a consequence, the order passed by the Chief Judicial Magistrate taking cognizance of offence against the accused was affirmed throughout.

The Judicial Magistrate Ist Class, Gurgaon passed the impugned order dated 18.05.2013 (Annexure P1) fixing the case for pre-charge evidence of the complainant.

Counsel for the petitioners contends that vide order dated

08.03.2011, the trial Court has taken cognizance of the offence on the basis of cancellation report submitted by the police, therefore, the order dated 18.05.2013 calling upon the complainant to adduce pre-charge evidence cannot be allowed to sustain. It is further argued that as the Court has taken cognizance of the offence being a police case, the Court has to follow the procedure prescribed in Chapter XIX Cr.P.C. pertaining to trial of warrant cases by a Magistrate in respect of cases instituted on a police report contained in part A thereof under Sections 238 to 243. The mere fact that the complainant filed a protest petition against the cancellation report cannot be construed to mean that the Court has taken cognizance of the offence otherwise than on a police report warranting procedure laid down in Part B of Chapter XIX under Sections 244 to 247 Cr.P.C. to be followed. It is submitted that order dated 18.05.2013 may be set aside and the trial Court may be directed to proceed with the case in accordance with procedure contemplated in Part A of Chapter XIX Cr.P.C.

Counsel for the contesting respondents, Sh.R. S.Cheema, Senior Advocate assisted by Sh.K.S.Nalwa, Advocate would contend that in the order dated 08.03.2011 (Annexure P9), the trial Court in the concluding part made certain observations and thereafter directed the complainant to file the list of relevant witnesses before the next date and as a matter of fact, the list of witnesses was submitted by the complainant in the Court. It is vehemently argued that had the Court taken cognizance on the basis of police report, there was no occasion for the Court to direct the complainant to furnish the list of witnesses. In addition, it is submitted that for the purpose of taking cognizance of offence against the accused, the trial Court

has relied upon the documents referred to in para 4 (unnumbered) of order dated 08.03.2011 but the cancellation report only refers to one letter dated 20.11.2002 in the list of documents. It is further argued that the other documents taken into consideration by the trial Court were appended with the protest petition and this fact is sufficient to hold that the protest petition is the basis of taking cognizance by the trial Court, therefore, no fault can be found in the impugned order fixing the case for pre-charge evidence.

It has been further argued that Nazneen Bhasin, Deputy Commissioner of Police, East, Gurgaon has filed reply on behalf of the respondent-State of Haryana and in para one of the preliminary submissions, it has been specifically mentioned that Illaqa Magistrate, Gurgaon has issued summoning orders against the accused-respondents on the basis of protest petition filed by them (complainants). Another plea raised by the State is that after submission of cancellation report before the Court at Gurgaon, the case amounts to be a complaint case and not a State case as the State is not pursuing the matter.

Counsel for respondents No.12 & 13 has echoed the arguments advanced by Sh.R.S.Cheema, Advocate representing the co-respondents. He has further relied upon judgment of Hon'ble the Supreme Court *Abhinandan Jha Vs. Dinesh Mishra, (1967) 3 SCR 668*.

I have heard counsel for the parties and perused the records.

A short point which requires adjudication is, whether the Court has taken cognizance of the offence on the basis of police report or protest petition filed by the complainant. It is pertinent to mention that the expression protest petition is alien to Cr.P.C. but in a number of judgments,

this expression has been used by holding that protest petition may be treated as a complaint.

In order to decide the core controversy, it is appropriate to extract a relevant part of order dated 08.03.2011 which invites interpretation in the light of contesting claims of the parties, quoted thus:-

“It is settled law that the court, if from the facts of the case, a cognizable offence appears to have been committed, can disagree with the police report. In view of law laid down in Minu Kumari and Another Versus State of Bihar and Others, 2006(4) SCC 359 and Jagdish Ram Versus State of Rajasthan and another, AIR 2004 SC 1734, the Court is competent to take cognizance of the offences despite the cancellation report by the police. In this view of the matter the cognizance is taken against the accused persons for commission of offence under Sections 406/420/467/468/120-B IPC. This case is based on documentary evidence. Apart from complainants, the officials of the banks of the accused and of the complainants and officials of Municipal Corporation of Greater Mumbai would be witnesses in the case. The complainant is directed to file the list of the relevant witnesses before next date. A copy of the order be placed on all the above mentioned 17 files.”

There cannot be any dispute that in warrant cases instituted on a police report, the Court has to follow the procedure prescribed in Part A of Chapter XIX Cr.P.C. laid down in Sections 238 to 243 whereas in cases instituted other than a police report, the procedure laid down in Part B of Chapter XIX under Sections 244 to 247 is to be followed.

A careful reading of the order dated 08.03.2011 particularly concluding para extracted hereinbefore leaves no manner doubt that the

Court has taken cognizance on the basis of police report and not on the basis of protest petition. This apart, had the Court decided to take cognizance otherwise than on a police report (cancellation report), the Court would have accepted the cancellation report and then proceeded with the complaint (protest petition) as envisaged in Chapter XV Cr.P.C. i.e. complaints to Magistrate (Sections 200 to 203).

Sh.R.S.Cheema has pressed into service two grounds to support the impugned order i.e.:-

1. The Court while passing the summoning order has taken into consideration certain documents which are not part of the cancellation report.
2. The complainant has been called upon to submit the list of witnesses when otherwise in a police case, the complainant can never be allowed to be in the driver's seat to steer the proceedings.

Counsel for the petitioner has seriously disputed if the trial Court has taken into consideration any materials other than what is part of cancellation report.

Be that as it may, even if the Court has taken into consideration any materials more than that of cancellation report, the same would not change the import, nature and implications of order dated 08.03.2011 which has withstood the test of judicial scrutiny upto Hon'ble the Supreme Court of India. The accused were at liberty to raise this issue in those proceedings and if so raised, the same is deemed to be rejected. Even otherwise, the letter dated 20.11.2007 by the Executive Engineer, Bldg. Proposal (W.S.)

K/W & P Ward, Municipal Corporation of Greater Mumbai to Inspector/SHO, P.S.DLF Ph-II, Gurgaon and letter and status report dated 19.02.2007 written by the accused persons to the complainants, considered by the Court and referred to in para 4 (unnumbered) are part of cancellation report.

The plea in regard to direction issued to the complainant to file the list of witnesses and/or filing of such a list in pursuance of directions issued by the Court cannot be construed to mean that the Court has taken cognizance on the basis of complaint filed by the petitioners. The order, to this extent, may be an irregularity committed by the Court but it cannot enure to benefit of the accused as they failed in their attempt to assail legality and correctness of the summoning order upto the Apex Court.

Analysed from any angle, I find merit in the contention of the petitioner that the trial Court (Judicial Magistrate) has fatally flawed by fixing the case for pre-charge evidence instead of following the procedure of warrant case instituted on a police report.

For the reasons aforesaid, the impugned order dated 18.05.2013 is set aside and the trial Court is directed to proceed with the case in accordance with law by following the procedure prescribed in Part A of Chapter XIX Cr.P.C.

(REKHA MITTAL)
JUDGE

January 28, 2015.

DK