

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

CRM-M-22328-2013 (O&M)

Date of decision: 09.09.2015

Darshan Singh

... Petitioner

Vs.

State of Punjab and ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. P.S. Sikand, Advocate
for the petitioner.

Ms. Anmol Grewal, AAG, Punjab.

None for respondents No.2 & 3.

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

RAMESHWAR SINGH MALIK, J.

Petitioner, by way of present petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C' for short), prays for quashing of impugned FIR No.251 dated 24.06.2003 (Annexure P-1) under Sections 406, 420 of Indian Penal Code ('IPC' for short), registered at Police Station City Samana, District Patiala and also the order dated 14.03.2013 (Annexure P-14) passed by the learned Sub Divisional Judicial Magistrate, Samana, District Patiala ('SDJM' for short), whereby cancellation report was not accepted and further investigation was ordered.

Notice of motion was issued for 03.09.2013 vide order dated 22.07.2013 and further investigation pursuant to the impugned order dated 14.03.2013 was stayed. On 03.09.2013, the case was adjourned to 26.11.2013. Learned counsel for respondent No.2 filed his Power of Attorney, which is available on record. However, neither anybody has ever appeared on behalf of respondents No.2 & 3 despite service nor any reply has been filed. Short reply was filed on behalf of respondent No.1-State of Punjab.

Learned counsel for the petitioner, while referring to the notice of motion order dated 22.07.2013, which is a detailed one, submits that cancellation reports have been prepared and presented before the learned Court of competent jurisdiction for five times, but the learned Magistrate has been exceeding his jurisdiction every time, while directing further investigation and re-investigation. He submits that earlier petition i.e. CRM-M No.36643 of 2010 filed by the petitioner was dismissed as withdrawn on 19.11.2012, because at that stage cancellation report had been filed in the learned trial Court.

He further submits that first cancellation report was dealt with by the learned SDJM, Samana, vide order dated 19.03.2007 (Annexure P-6). Thereafter, cancellation report dated 17.03.2008 was filed vide Annexure P-7 but the learned SDJM, Samana vide order dated 09.12.2008 (Annexure P-8) ordered re-investigation, which was beyond his jurisdiction. Third cancellation report was dated 28.07.2009 (Annexure P-9) which was again not accepted by the learned SDJM, Samana vide order dated 05.09.2009 (Annexure P-10). In the meantime, in complaint No.10T dated 01.01.2006 (Gurbhej Singh Vs. Bhupinder Singh @ Bhinder Singh) under Sections 406,

467, 471 IPC filed by brother of the petitioner, respondent No.3-Bhupinder Singh @ Bhinder Singh came to be convicted vide judgment of conviction dated 18.03.2010 (Annexure P-11) qua the same vehicle i.e. Jeep bearing registration No.HR-08-B-4715 about which impugned FIR was got registered against the petitioner. Fourth cancellation report was filed vide Annexure P-12 but the learned SDJM, Samana again misdirected himself, while passing an order without jurisdiction on 04.09.2010 (Annexure P-13) directing re-investigation. Thereafter, fifth cancellation report was presented, which was also not accepted by the learned SDJM, Samana vide impugned order dated 14.03.2013 (Annexure P-14). He prays for allowing the present petition.

Learned counsel for the State was fair enough to submit that since the investigating agency has prepared and presented cancellation reports as many as five times, let the present petition be disposed of, by passing an appropriate order.

After hearing the learned counsel for the parties and careful perusal of the record of the case, this Court is of the considered opinion that it is a fit case warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C., so as to prevent any further abuse of process of Court and also to secure the ends of justice. To say so, reasons are more than one, which are being recorded hereinafter.

A combined reading of the orders Annexures P-6, P-8, P-10, P-11, P-13 and P-14 passed by the learned SDJM, Samana would show that the learned Magistrate had been passing the repeated orders, which were without jurisdiction, besides being patently illegal. In the process, it was the petitioner who has been made to suffer in a totally unwarranted manner. Perusal of the

detailed inquiry report (Annexure P-2) running into more than 20 pages, would show that the cancellation report was rightly prepared and presented before the learned SDJM, Samana.

However, it was the learned Magistrate who has been misdirecting himself time and again, while passing the orders directing re-investigation, which was beyond his jurisdiction. It is so said because the orders passed by the learned Magistrate directing re-investigation were contrary to the law laid down by the Hon'ble Supreme Court in **K. Chandrasekhar Vs. State of Kerala, 1998 (5) SCC 223, Ramachandran Vs. R. Udhaya Kumar and others, (2008) 5 SCC 413, Mithabhai Pashabhai Patel Vs. State of Gujarat (2009) 6 SCC 332, Vinay Tyagi Vs. Irshad Ali @ Deepak and others, (2013) 5 SCC 762, Mrs. Priyanka Srivastava and another Vs. State of Uttar Pradesh, 2015 (2) RCR (criminal) 1034 and Rupan Deol Bajaj Vs. Kanwar Pal Singh Gill, 1995 (6) SCC 194.**

A bare reading of the self-contained judgment dated 18.03.2010 (Annexure P-11) passed by the learned Magistrate in complaint No.10T dated 01.01.2006 titled as Gurbhej Singh Vs. Bhupinder Singh @ Bhinder Singh under Sections 406, 467, 471 IPC, filed by none else but brother of the petitioner, respondent No.3 came to be convicted qua the same vehicle i.e. Jeep bearing registration No.HR-08-B-4715, about which the impugned FIR was registered against the petitioner. However, the cancellation report dated 25.06.2010 (Annexure P-12) presented by the investigating agency was still not accepted by the learned SDJM, Samana vide order dated 04.09.2010 (Annexure P-13) and re-investigation was directed, which was again an order

without jurisdiction.

In fact, reading of the numerous abovesaid orders would show that the learned SDJM, Samana has miserably failed to appreciate either the facts of the case or the relevant provisions of law applicable thereto, including the law laid down by the Hon'ble Supreme Court as well as this Court, besides wasting the valuable time of the Court. Had the true facts of the case been gone into carefully at least once, there would have been no scope, whatsoever, for passing of the impugned orders.

Further, it is not the mere choice of the complainant not to agree with the cancellation report, which may be treated as a guiding factor for acceptance or rejection of the cancellation report. It is the satisfaction of the Court, of course, based on reasons to be recorded, which should be and has to be the only relevant factor for acceptance or rejection of the cancellation report. The learned Magistrate is always under legal obligation and duty bound to see that complainant is not permitted to resort to the abuse of process of Court, while not agreeing with the cancellation report, without there being any justified reason. Learned Magistrate is expected to apply his judicious mind, before passing a non-speaking order, directing further investigation.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court: -

1. ***Abhinandan Jha Vs. Dinesh Mishra, AIR 1968 Supreme Court 117 (Hon'ble Supreme Court).***
2. ***R. Sarala Vs. T.S. Velu, 2002 (2) RCR (Crl.) 637 (Hon'ble Supreme Court)***
3. ***Sarwan Singh and others Vs. State of Punjab and another, 2004 (2) RCR (Crl.) 971. (Pb & HR High Court)***

4. *Babu Singh Mann etc. Vs. State of Punjab and anr. in CRM-37896-M of 2003, decided on 15.09.2008. (Pb & HR High Court)*
5. *Sukhwinder Singh Ex-Sarpanch and others Vs. State of Punjab and others in CRM-M-33183-2013, decided on 22.01.2014. (Pb & HR High Court)*
6. *Harvail Singh Saini Vs. State of Punjab and another in CRM-M-32662-2012, decided on 03.12.2014. (Pb & HR High Court)*

No other argument was raised.

In view of what has been discussed hereinabove, impugned order dated 14.03.2013 (Annexure P-14), is hereby set aside, last and fifth cancellation report is accepted and the impugned FIR No.251 dated 24.06.2003 (Annexure P-1) under Sections 406, 420 IPC, registered at Police Station City Samana, District Patiala, as well as all the consequential proceedings arising therefrom, are hereby ordered to be quashed.

Resultantly, with the abovesaid observations made, present petition stands allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

09.09.2015
vishnu