

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-23648 of 2015

Date of Decision: September 21, 2015

Om Parkash and others

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.S.Cheema, Senior Advocate with
Mr.K.D.S.Hooda, Advocate
for the petitioners.

Mr.Himmat Singh, Asstt. Advocate General, Haryana
for the respondent-State.

Ms.Hiteshi Arora, Advocate
for respondent No.2.

INDERJIT SINGH, J.

Petitioners Om Parkash, Darshan Singh, Bicha Ram and Manoj Giri have filed this petition against respondents State of Haryana and Dharam Chand under Section 482 Cr.P.C. for quashing of proceedings initiated against the petitioner vide order dated 03.07.2015 passed by learned JMJC, Ambala in case FIR No.143 dated 28.10.2008 under Sections 307 IPC, subsequently converted into Section 302 IPC registered at police Station Barara, District Ambala, in which cancellation report had been filed but now the petitioners have been summoned vide above-said order.

Notice of motion was issued and learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that in the present case, FIR has been registered on the statement of Prem Giri, who stated that for the last 4 years, Sarpanch Om Parkash, Babu Singh Rajput, Darshan Singh Giri and Bhiksha are after him. On 28.10.2008 at about 9.30 A.M., he went to stop them where they wanted to take possession of Subri. There, the accused caught hold him and declared that matter be finished forever and put fire upon him. After that he does not know what happened. Proceedings be taken against these five persons.

Later on, Prem Giri died. The final report was presented before the Court under Section 306/34 IPC and in the report (Annexure P-2), it is written that all that happened because of party faction in the village. From investigation and verification of fact, the story was found to be false and accordingly cancellation report was submitted by SHO, Police Station Barara. Learned Court accepted the cancellation report vide order dated 12.03.2009 as per Annexure P-3. Then Santosh Giri and others filed CRM No.M-14784 of 2009, which was decided by this Court on 17.10.2011 and following order was passed:-

“After hearing learned counsel for the parties, there is a consensus between the parties that order dated 12.03.2009 (Annexure P-8) passed by JMIC does not sustain the test of legal scrutiny as the same has been

passed on the ground that complainant has died. So, all the learned counsel for the parties, except for respondent No.4, have stated at the bar that the said order be set-aside and the case be sent back to the concerned JMIC/Illaqua Magistrate for passing appropriate orders, after hearing the petitioner.

So, the petition stands allowed and the order dated 12.03.2009 stands set-aside. The case stands remitted back to the JMIC/Illaqua Magistrate for fresh decision in accordance with law after going through the record including dying declaration. The, parties are directed to appear before the concerned Court on 07.11.2011.”

As per above order, the matter was remitted back for fresh decision by learned JMIC/Illaqua Magistrate after going through the record including dying declaration and after hearing the petitioners also. As per the record, a protest petition was filed on behalf of Dharam Chand against the cancellation report dated 11.12.2008 in pursuance to the liberty granted by this Court on 17.10.2011 in CRM No.M-14784 of 2009.

Firstly, from the perusal of the order dated 17.10.2011, it is clear that no such liberty was given to file protest petition. Rather, the matter was remitted back for fresh decision by learned JMIC/Illaqua Magistrate after hearing the petitioners in that petition as well as after going through the record including the dying declaration. Otherwise also, as per law, the complainant or the victim has the right to file protect petition against the cancellation report.

As per Annexure R2/2, learned JMIC passed the order dated 16.12.2011 as under:-

“After considering the arguments as well as perusal of the case file, it is deemed appropriate that the Complainant be afforded opportunity to lead the evidence before any decision on cancellation report is taken by this Court.

Now to come up on 17.03.2014 for evidence of the Complainant.”

The perusal of the above order shows that no order has been passed on the cancellation report and it was kept pending and the complainant was directed to lead evidence first. The perusal of the record shows that till today, no order has been passed on the cancellation report accepting it or rejecting it. Rather, as per the order dated 16.12.2011, the complainant was asked to lead evidence before any decision on the cancellation report is taken, which means that cancellation report is still pending before the Court. Annexure R2/2A is the protest petition filed on behalf of Dharam Chand against the cancellation report dated 11.12.2008. The perusal of protest petition shows that first paragraph relates to filing of CRM No.M-14784 of 2009 and the order of this Court vide which the matter was remitted back. Para No.2 of the protest petition states that Prem Giri was residing in Shiv Mandir and was set on fire by Om Parkash, Babu Singh, Darshan Singh, Bicha Ram and Manoj Giri at 9.30 A.M. on 28.10.2008 due to a heavily politicized land dispute of the village and he was rushed to the hospital. Para No.3 relates to only that police recorded the statement of Mahant Prem Giri in the presence of the Judicial Magistrate Ist Class, in which he named five accused. Para No.4 states that due to severe burn injuries inflicted upon him, Mahant Prem Giri died on 02.11.2008 and the FIR was converted into Section 306 IPC.

From the perusal of the protest petition, it is clear that

nowhere it is mentioned in this protest petition as to who has seen the occurrence and who are the witnesses. Rather, it is written that the investigating agency is trying to protect the accused etc. which means that this protest petition is not like a complaint but it relates to documents in the police report. The Court also as per order dated 16.12.2011 asked for leading of evidence by the complainant before taking any decision on the police report, which rather shows that the evidence was called for the decision of the police report from the evidence which was to be produced by the complainant.

The impugned order (Annexure P-5) has been passed for summoning the accused persons under Section 302 IPC read with Section 149 IPC for 01.08.2015. The evidence which was called by the Court was taken as preliminary evidence and the Court while passing the impugned order relied upon the documents which are in the police report. Till the passing of this order dated 03.07.2015 summoning the accused under Section 302 IPC read with Section 149 IPC, no order on the police report has been passed nor the police report, in any way, has been discussed in this impugned order.

The police report is already before the Court and as per the order of this Court, the matter was remitted back to pass fresh order on that report and without complying with that order of this Court, the accused have been summoned. Learned Illaqa Magistrate is to first decide the police report and then should have considered the protest petition as a complaint, if necessity arise i.e. if the Court accepts the cancellation report.

As already discussed, no order has been passed on the police report regarding cancellation of FIR and it is still pending. So, the procedure adopted by learned JMIC, Ambala is not as per law. The Court has neither accepted nor rejected the cancellation report nor discussed the report in any way and has summoned the accused on the protest petition by considering main material from the cancellation report and ignoring the investigation of the case.

In view of the above discussion, I find that the impugned order dated 03.07.2015 is not as per law and the same is set aside. Therefore, finding merit in the present petition, the same is allowed. Learned JMIC, Ambala/Illaqaa Magistrate is directed to decide the cancellation report by accepting or rejecting it or by sending the same for further investigation etc., and in case, learned Magistrate accepts the cancellation report, then to consider the protest petition as per law.

September 21, 2015
Vgulati

(INDERJIT SINGH)
JUDGE