

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M-27750-2012
Date of decision:03.11.2015

Jaipal and others

...Petitioners

Versus

State of Haryana

...Respondent

CRM-M-34122-2010

Sanjay Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.R.S.Madan, Advocate for the petitioner(s).
Mr. Manoj Kumar Sangwan, DAG, Haryana.

RAMESHWAR SINGH MALIK, J. (Oral)

These two identical petitions filed by the accused under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), for quashing the same impugned FIR No.172 dated 9.3.2010 registered under Sections 7, 10, and 55 of the Essential Commodities Act, 1955 and under Sections 420/120-B of the Indian Penal Code ('IPC' for short) at Police Station Jind City, are being decided together vide this common order, as both these petitions are based on same set of facts and allegations. However, for the facility of reference, facts are being culled out from CRM-M-27750-2012.

Notice of motion was issued and pursuant thereto reply on

behalf of respondent-State was filed.

Learned counsel for the petitioners submits that the impugned FIR is a result of an action without jurisdiction. The police authorities had no power to conduct raid at the premises of the petitioners nor they were authorized to carry out search and seizure of the vehicle of the petitioners. Since the authorities of the respondent-State have exceeded their jurisdiction in this regard, the impugned FIR and the criminal proceedings arising therefrom cannot be permitted to continue against the petitioners. In this regard, he places reliance on the following judgments of this Court:-

- 1. Kala Devi @ Kala v. State of Haryana, 1995(2) RCR (Crl.) 427;**
- 2. Suresh Kumar v. State of Haryana, 1996(2) RCR (Crl.) 365;**
- 3. Arvind Katcoh v. State of Punjab, 2001(4) RCR (Crl.) 608;**
- 4. Krishna Grover v. State of Haryana, 2003(3) Cri.C.C. 293;**
- 5. Karam Chand and another v. State of Haryana, 2003(4) RCR (Crl.) 622;**
- 6. Raj Narain alias Kuka v. State of Punjab, 2003(2) RCR (Crl.) 88;**
- 7. State of Haryana v. Mahender Kumar, 2004(1) CCJ 147;**
- 8. Mai Ram v. State of Haryana and another, 2004(1) CCJ 149;**
- 9. Vijay Kumar @ Vijay Tina v. State of Punjab, 2012(2)**

RCR (Crl.) 222; and

**10.CRM-M-33361-2011 (Naresh v. State of Haryana),
decided on 2.4.2012 (P&H).**

He prays for quashing the impugned FIR and the criminal proceedings arising therefrom, by allowing both these petitions.

On the other hand, learned counsel for the State submits that all the petitioners have been found involved in illegal activities and they have committed the cognizable offence alleged against them. The allegations against the petitioners were direct, specific and serious. The present was a case of legitimate prosecution and this Court would not be justified in exercising its inherent jurisdiction under Section 482 Cr.P.C. in favour of offenders like the petitioners. He further submits that barring few and minor discrepancies, which were bound to happen in the very nature of things, there is no glaring discrepancy in the case of the prosecution, because of which both these petitions are liable to be dismissed. He prays for dismissal of both these petitions.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that a bare perusal of the impugned FIR leaves no room for doubt that cognizable offences are not only disclosed but have been found to be made out against the petitioners, because of which the impugned FIR cannot be quashed.

In such a situation, important question of law that falls for consideration of this Court is whether legitimate prosecution should be quashed by this Court, by invoking its inherent jurisdiction. The answer to

this question, in the peculiar fact situation obtaining in the present case, is and has to be an emphatic no. It is so said, because it is not even argued case on behalf of the petitioners before this Court that even after taking the allegations levelled against the petitioners to be true on their face value, no offence of any kind, whatsoever, is made out against the petitioners. Once it is so, impugned FIR as well as criminal proceedings arising therefrom cannot be quashed and the same deserves to be upheld.

Technicalities apart, it is a matter of record, which is not in dispute that at the time of search and seizure of the vehicle of the petitioners, two senior officers of the Department of Food and Supplies were present at the spot along with police. Admittedly, residential or business premises of the petitioners were not searched. Having said that, this Court feels no hesitation to conclude that the authorities of the respondent-State have ensured substantial compliance of the relevant provisions of law. Any minor discrepancy, which shall be the subject matter of consideration during the course of trial, cannot be made the basis for quashing any legitimate prosecution, at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

The above-said view taken by this Court also finds support from the Division Bench judgment of this Court in **State of Punjab v.M/s. Ravinder Kumar and Bros. and others, 2007(2) RCR (Crl.) 307**. The relevant observations made by the Division Bench in paras 7 to 11 of its judgment, which can be gainfully followed in the present case, read as under:-

7. In Dalchand v. Municipal Corporation, Bhopal and another, AIR 1983 Supreme Court 303, the Hon'ble Supreme

Court observed as under :-

"The weighing of the consequence of holding a provision to be mandatory or directory is vital and, more often than not, determinative of the very question whether the provision is mandatory or directory. Where the design of the statute is the avoidance or prevention of public mischief, but the enforcement of a particular provision literally to its letter will tend to defeat that design, the provision must be held to be directory, so that proof of prejudice in addition to non-compliance of the provision is necessary to invalidate the act complained of. It is well to remember that quite often many rules, though couched in language which appears to be imperative, are no more than mere instructions to those entrusted with the task of discharging statutory duties of public benefit. The negligence of those to whom public duties are entrusted cannot by statutory interpretation be allowed to promote public mischief and cause public inconvenience and defeat the main object of the statute."

8. As regards reason Nos. (ii) and (iv), we are of the view that respondent No. 2 being proprietor and respondent No. 4 being Production Manager, could not be exonerated on the ground that they were not responsible for the business of the dealer or the manufacturer.

9. Absence of company being impleaded, could also be no ground for proceeding with the prosecution.

10. It has been held by the Hon'ble Supreme Court in **State of Madras v. C.V. Parekh and others, AIR 1971 Supreme Court 447** that even if the company has not been proceeded against, the accused persons, who are the functionaries of the company, are not absolved from being proceeded against only on that ground. This view was affirmed by the Hon'ble Supreme Court in **Sheoratan Agarwal and another v. State of Madhya Pradesh, 1985(1) RCR(CrL) 53 (SC) : AIR 1984**

Supreme Court 1824 and Anil Hada v. Indian Acrylic Limited, 2000(1) RCR(CrL) 1 (SC) : AIR 2000 Supreme Court 145. Moreover, in the present case,. respondent Nos. 1 and 3 had been duly impleaded.

11. As regards reason No. (iii), prosecution was not vitiated merely for not joining of independent witnesses, as per the requirement of Section 100(4) of Code of Criminal Procedure. Procedure under Section 100(4) Criminal Procedure Code and Clause 28(2) of the 1985 Order, cannot be held to be mandatory so as to vitiate taking of sample. In **Ronny alias Ronald James Alwaris etc. v. State of Maharashtra, 1998(2) R.C.R.(Criminal) 270 : AIR 1998 Supreme Court 1251**, considering the fact of not joining of independent witnesses as required under Section 100(4) Criminal Procedure Code, Hon'ble Supreme Court observed :

"29. If there is intrinsic merit in the evidence of the witness of search the same cannot be rejected solely on the ground that witness is not from the locality of search or that he was brought by the police with it."

Again in **Kalpnath Rai v. State (through CBI), 1997(4) RCR (CrL) 788 (SC) : AIR 1998 Supreme Court 201**, Hon'ble Supreme Court observed :

"90. ...Non-examination of independent witness or even presence of such witness during police raid would cast an added duty on the Court to adopt greater care while scrutinizing the evidence of the police officers. If the evidence of the police officer is found acceptable it would be an erroneous proposition that Court must reject the prosecution version solely on the ground that no independent witness was examined"

Coming to the judgments relied upon by the learned counsel for the petitioners, there is no dispute about the law laid down therein.

However, on close perusal of the cited judgments, none of them has been

found to be of any help to the petitioners, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others**, 2002 (3) SCC 533

Reverting back to the peculiar fact situation of the present case and respectfully following the law laid down by the Division Bench of this Court in **M/s. Ravinder Kumar's case (supra)**, it is unhesitatingly held that since the cases in hand do not fall within any of the seven broad principles of law laid down by the Hon'ble Supreme Court, for quashing the criminal proceedings, in its celebrated judgment in the case of **State of Haryana versus Bhajan Lal and others**, AIR 1992 SC 604, which has been consistently followed in a catena of judgments at a later points of time by the Hon'ble Supreme Court, as well as different High Courts including this Court, the present cases have not been found to be fit cases for quashing the impugned FIR. The petitioners have not been found entitled for invoking the inherent jurisdiction of this Court under Section 482 Cr.P.C. Allegations against the petitioners were direct, specific and serious, because of which impugned FIR deserves to be upheld.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that both these petitions are wholly misconceived, bereft of merit and without any substance, thus, these must fail. No case for

interference has been made out

Resultantly, with the above-said observations made, both the above-said petitions stand dismissed, however, with no order as to costs.

03.11.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE