

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl.Misc. No.M-24537 of 2014
Date of Decision : 6.10.2015

Raj Bala Parwana

.....Petitioner

Vs.

State of Punjab and another

.....Respondents

...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Mr. Harsh Aggarwal, Advocate for the petitioner.
Mr. D.S. Virk, AAG, Punjab.

...

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

RAMESHWAR SINGH MALIK, J

Feeling aggrieved against the impugned order dated 19.11.2013 (Annexure P-13) passed by the learned Additional Chief Judicial Magistrate, Faridkot, petitioner has approached this court by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), for quashing of impugned FIR No.14 dated 22.2.2011 under Section 188 of the Indian Penal Code ('IPC' for short) registered at Police Station Jaitu, Distt. Faridkot (Annexure P-8) and also the order dated 19.11.2013 (Annexure P-13), alongwith consequential criminal proceedings arising therefrom.

Notice of motion was issued and pursuant thereto, reply by way of affidavit dated 24.1.2015 was filed on behalf of respondent-State of Punjab.

However, nobody appeared on behalf of respondent no.2-complainant despite

service.

Learned counsel for the petitioners submits that in view of the law laid down by the Division Bench of this court in **Jiwan Kumar Vs. State of Punjab and others**, 2009(1) RCR (Crl.) 415, impugned FIR could not have been registered against the petitioner under Section 188 IPC because of the statutory bar provided under Section 195(1) Cr.P.C. He further submits that having been caught at the wrong foot, during the petition filed by the petitioner bearing CRM No.M-14763 of 2012, the investigating agency rightly prepared the cancellation report, because of which the above said criminal miscellaneous was dismissed as infructuous. Thereafter, when the cancellation report was presented by the investigating agency, the learned Magistrate proceeded on a wholly misconceived and perverse approach, while passing the impugned order dated 19.11.2013 (Annexure P-13), whereby cancellation report was not accepted simply because the complainant did not agree with the cancellation report and that too without disclosing any reason. The order dated 28.8.2013 passed by this court in above said CRM No.M-14763 of 2012 was misunderstood as an order of dismissal on merits and cognizance was illegally taken against the petitioner. In this regard, learned counsel for the petitioner places reliance on a judgement of the H.P. High Court in **Gian Prakash Vs. State of H.P.**, 2011(1) RCR (Crl.) 360, to contend that it was not the satisfaction of the complainant, which was required, but it was the satisfaction of the learned Magistrate, which would be the decisive factor for acceptance of the cancellation report. He prays for setting aside of impugned FIR, order dated 19.11.2013 (Annexure P-13) and the consequential criminal proceedings arising out of the impugned FIR, by allowing the present petition.

Learned counsel for the State fairly states that since the

cancellation report was prepared, but the same was not accepted by the learned Magistrate, he has nothing much to argue and the petition may be disposed of, by passing an appropriate order thereon, in accordance with law.

Having heard 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 keeping in view the peculiar facts and circumstances of the case, noticed herein above, instant one has been found to be a fit case, warranting interference at the hands of this court, while exercising its inherent jurisdiction under Section 482 Cr.C.C. To say so, reasons are more than one, which are being recorded hereinafter.

Impugned FIR contained in Annexure P-8, reads as under :-

“ To S.H.O., P.S. Jaitu. Sir, it is submitted that on 20.2.2011 at about 10.30 AM, Raj Bala Parwana, Municipal Councilor alongwith her followers have violated the orders of District Magistrate, Faridkot by breaching the peace by raising slogans' by taking out a procession in the shape of agitation and by making jam at Chowk no.3, Bajakhana Road, Jaitu without any permission. They have violated Section 144. In this gather, her husband Mohan Lal Parwana was also present. An action may kindly be taken against them and their followers.”

A bare reading of the above said FIR would show that the allegations against the petitioner and her followers were that they have violated the orders of the District Magistrate. It is not in dispute that the District Magistrate did not lodge the FIR. In this regard, the statutory bar against

taking cognizance has been provided under Section 195 Cr.P.C. and the relevant part thereof contained in sub-section (1) clause (a)(iii), reads as under :-

“ 195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence – (1)

No Court shall take cognizance -

(a) (i) XX XX XX

(ii) XX XX XX

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate”

XX

XXX

XXX

The relevant part of the impugned order dated 19.11.2013 passed by the learned Chief Judicial Magistrate, Faridkot, contained in Annexure P-13, reads as under :-

“ This is case FIR No.14 dated 12.2.2011 under Section 188 IPC registered at P.S. Jaitu at the instance of complainant namely Pardeep Singla. On 21.8.2013, the SHO, P.S. Jaitu presented the cancellation report in the case. Upon notice, the complainant Pardeep Singla turned up in the court on 23.10.2013 but he did not agree with the cancellation report and vide his statement recorded in the court on the said date, he stated that he wants to prosecute the accused and that the case may not be cancelled. The

perusal of the file goes to show that in this case, the accused Rajbala Parwana has filed a writ petition u/s 482 Cr.P.C. for quashing this FIR registered against her but the Hon'ble Punjab and Haryana High Court vide its order dated 23.8.2013 in Criminal Misc.No.M-14763 of 2012 (O&M), has dismissed her petition. Since the complainant Pardeep Singla does not agree with the cancellation report presented by the SHO, PS Jaitu and also the petition filed by the accused Rajbala Parwana u/s 482 Cr.P.C., for quashing the present FIR, has been dismissed by the Hon'ble Court, as such cognizance for the offence in this case has to be taken. Accordingly, taking cognizance in the present case, has to be taken. Accordingly, taking cognizance in the present case, the present cancellation report is ordered to be treated as Challan. The Ahlmad of this court is directed to register the same and make an entry in the relevant register and notice to accused Rajabala Parwana be issued for 30.1.2014.”

A reading of the above said impugned order would show that it was an order without jurisdiction, being contrary to the above said statutory provisions contained in Section 195 (1)(a)(iii) Cr.P.C. It is so said, because the learned Magistrate had no jurisdiction to take cognizance in the matter. Since the learned Magistrate has exceeded the jurisdiction, while passing the impugned order, it being contrary to the above said provisions of law under Section 195 Cr.P.C., as well as the law laid down by a Division Bench of this court in **Jiwan Kumar's case (supra)**, the same cannot be sustained.

The relevant observations made by the Division Bench in paras 8 and 10 of its judgement in **Jiwan Kumar's case (supra)**, which can be gainfully followed in the present case, read as under :-

“ Coming to the attack of the petitioner in regard to the registration of the FIR, it may be noticed that proceedings under Section 188, Indian Penal Code can only be initiated on the basis of a complaint in writing of the public servant concerned made to the court or to some other public servant to whom he is administratively subordinate. Section 195(1) of the Code restrains the court from taking cognizance of any offence punishable under Section 188, Indian Penal Code unless a complaint in writing is made to it by the public servant concerned. In other words, no FIR can be registered by the police. It would not be open to the police to register a case against the offender for offence under Section 188, Indian Penal Code and then to submit a report under Section 173 of the Code to the concerned court. Reliance in this regard can be placed on **Jagtar Singh V. Union Territory, Chandigarh, 1996 (1) RCR 669**, wherein this court held as under :-

“These facts are not disputed. Language of Section 195(1) of the Code does not leave scope for any ambiguity and is the section which has to be construed strictly. In accordance with the settled principles of interpretation applicable to criminal jurisprudence the provisions of Criminal Procedure

Code or Penal Laws have to be strictly construed so as to be given meaning except what is intended by the Legislature in the language used itself. The relevant portion of Section is that, “No court shall take cognizance except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.”

The intention appears to be clear that where an offence is committed under Section 188, Indian Penal Code, the Legislature has made it obligatory that the public servant before whom such an offence is committed, he will file a complaint to the Magistrate and the cognizance of the offence by the concerned court is dependent upon the complaint in writing by such officer or an officer superior to such officer.

The counsel for the petitioner has relied upon **Sawaran Singh Vs. The State of Punjab, 1994 (3) Recent CR 352 and Bhagat Ram V. The State of Punjab, 1991 (1) Recent CR 192.** In both these cases the court has indicated that the scope of Section 195(1) of the Code does not contemplate investigation in a normal way by the police and filing of the challan, but the complaint has to be presented directly to the concerned court. In the present case though the complaint is stated to be addressed to the court, but as it appears it was not presented to the court and the

court did not pass any orders at that stage.”

It is, thus, clear that the proceedings against the petitioner under Section 188, Indian Penal Code have been initiated on the basis of the FIR and not on the basis of any complaint in writing of the public servant concerned as is required by Section 195(1) (a) of the Code. The registration of FIR and the launching of proceedings thereafter against the petitioner is not permitted by the Code and thus, cannot be allowed to be sustained.”

Learned Magistrate has also failed to appreciate that disagreement of the complainant with cancellation report and that too without disclosing any reason, would not be decisive factor, but it is the satisfaction of the court which is the decisive factor, for acceptance or rejection of the cancellation report.

The abovesaid view taken by this court also finds support from the judgements of this court in CRM No.M-22328 of 2013 (**Darshan Singh Vs. State of Punjab and others**) decided on 9.9.2015, CRM No.M-2621 of 2014 (**Kotak Mahindra Bank Ltd. and others Vs. State of Punjab and another**) decided on 10.9.2015, CRM No.M-35135 of 2009 (**Tarlochan Singh Sethi Vs. State of Punjab and another**) decided on 9.9.2015, **Prithvi Raj Sehgal Vs. State of Punjab** 2007 (3) RCR (Crl.) 438 (P&H) and **Gian Parkash's case (supra)**.

Reverting back to the fact situation obtaining in the present case and respectfully following the law laid down, in the cases referred to herein above, it is unhesitatingly held that the learned Magistrate has exceeded the jurisdiction, while accepting the protest petition, which was without any

substance. The impugned order dated 19.11.2013 (Annexure P-13) has resulted in miscarriage of justice, thus, the same cannot be sustained.

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 the present petition deserves to be accepted. Consequently, the impugned FIR No.14 dated 22.2.2011 under Section 188 IPC registered at Police Station Jaitu, Distt. Faridkot (Annexure P-8), impugned order dated 19.11.2013 (Annexure P-13), as well as the consequential criminal proceedings arising out of the impugned FIR, are hereby ordered to be quashed, so as to prevent any further abuse of process of court and also to secure the ends of justice.

Resultantly, with the above said observations made, instant petition stands allowed, however, with no order as to costs.

6.10.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE