

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Crl. Misc. No. M-28805 of 2012 (O&M)
Date of decision : 20.03.2015

T.S. Thind & another

....Petitioners

versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rajinder Mahajan, Advocate
for the petitioners

Mr. Daljeet Singh Virk, AAG, Punjab

Mr. G.S. Verma, Advocate
for respondent No. 3

RITU BAHRI, J.

In the present petition filed under Section 482 Cr.P.C, quashing of order dated 12.12.2011 (P-1) passed by Addl. Chief Judicial Magistrate is being sought, vide which the cancellation report was rejected and protest petition was accepted and the investigating agency was directed to initiate further legal action in F.I.R No. 176 dated 20.06.2005 registered at P.S Divn. No. 5, Ludhiana (Punjab) (P-2) with a further prayer to quash the above said F.I.R.

Petitioner No. 1 is retired Chief Engineer from Punjab and petitioner No. 2 was working as Assistant Executive Engineer in the Operation and Enforcement Wing of Punjab State Electricity Board and retired from this post on 31.05.2012.

The above said F.I.R was got registered by respondent

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integrity of this document

No. 2 and respondent No. 3 is the person whose electricity meter was checked by the petitioners on 15.06.2005 while performing their official duties and charged him a sum of Rs.1,68,000/- for theft of electricity on the basis of load. Thus, the above said complaint had been lodged against the petitioners through respondent No. 2. Respondent Nos. 2 and 3 are closely related to each other and this fact came to the knowledge of the petitioners from F.I.R No. 106 dated 24.06.2006 u/s 406/420/506/120-B IPC registered at P.S. Model Town, Ludhiana in which respondent Nos. 2 and 3 were arrayed as an accused (P-4).

The allegations against the present petitioners is that on 15.06.2005 when the complainant was going from Bharat Nagar Chowk to Arti Chowk along with his friend Amarjit Singh on his scooter bearing No. PB-10AR-6473 to show plot at South City, one white colored ambassador car tried to hit his scooter. When the complainant said to car passenger that why you are not driving the car properly then three sardar young men alighted from the car, one of whom had white beard, who was in drunken state, slapped the complainant on his left ear, due to which his turban fell off. One person said to the complainant how dare you speaking with Thind sahib and then Thind's aids Bajwa bring out sticks from the car. Bajwa then attacked the complainant with his stick and it struck on head and shoulder and third person struck hockey on his back and then Thind struck his right arm with some sharp edged object held in his hand, due to which he made a loud noise of save, save. The people gathered at the spot and Jaswant Singh Jdhka

and Sukhdev Singh save his life from the above mentioned accused. Amarjit Singh got the complainant admitted to Civil Hospital Ludhiana in wounded condition, where doctors discharged him from the hospital after administering first aid.

The investigation was firstly conducted by Sh. Gian Chand, ASI and thereafter by S. Balbir Singh, ASI. On 09.11.2006, S. Balbir Singh, ASI prepared the cancellation report. The complainant made the application to ADGP/IVC, Human Rights, Panjab, Chandigarh with a prayer to get the investigation of the case done from an officer outside Ludhiana, who marked re-investigation of the complaint to S. Ranjit Singh, Inspector, IVC who further forwarded the same to SSP Ludhiana on 02.05.2007 for further action (P-5). Thereafter, the petitioners moved an application to D.G.P, Panjab Chandigarh for further investigation (P-6), who marked the investigation to DIG, Ludhiana Range, Ludhiana, vide letter dated 25.3.2008 (P-6) who entrusted the enquiry of case to Gautam Cheema, SSP Khanna, who further submitted his report to DIG on 12.07.2008 and recommended for presentation of challan (P-8). Thereafter, DIG found certain deficiencies in the enquiry report and entrusted the further investigation to Arun Pal Singh, IPS, SSP Khanna. The DIG disclosed these facts to the Registrar, Punjab State Human Rights Commission, Chandigarh in his letter dated 25.09.2008 (P-9). On receipt of the enquiry report of S. Arun Pal Singh, IPS, SSP Khanna and after getting the legal opinion from Joint Director, Prosecution and Litigation, Ludhiana, the police submitted the

cancellation report before the Court of Addl. Chief Judicial Magistrate, Ludhiana, who did not agree with the cancellation report and accepted the protest petition and the investigating agency was directed to initiate further legal action in F.I.R No. 176 in the light of the enquiry conducted by Senior Police Officer i.e, ADGP (IVC) on 04.04.2007, vide order dated 12.12.2011. The relevant extract of the order at para 14 of the impugned order reads as under:-

In the circumstances, cancellation report is rejected. Protest petition is accepted. Police filed to be returned along with attested copy of this order to SHO. P.S Divn. No. 5, Ludhiana under rules against proper receipt with direction to initiate further legal action in the light of the enquiry conducted by Senior Police Officer i.e, ADGP (IVC) on 04.04.2007

Pursuant to the order dated 12.12.2011, the police submitted the challan under Sections 323/324/325/506 IPC on 27.12.2011 in the Court on the basis of the enquiry conducted by Inspector Ranjit Singh working in the office of ADGP (IVC) (P-10). After presentation of the challan, the petitioners were issued notice, vide order dated 02.01.2012. The petitioners thus appeared on 12.05.2012 and the case is fixed for 06.10.2012 for framing of charges. The petitioners filed a petition i.e CRM-M-24347 of 2012 for quashing of the present F.I.R, the petitioners withdrew the petition at that stage, as he had not challenged the order dated 12.12.2011. Hence, the present petition.

Learned counsel for the petitioners has argued that as per the chronology of the facts stated above, after registration of F.I.R by respondent No. 2, the cancellation report was prepared by ASI Balbir Singh but before it could be presented before the Illaqa Magistrate, re-investigation was marked to S. Ranjit Singh on an application given by the complainant, who recommended for presentation of challan and forwarded the same to SSP Ludhiana on 02.05.2007 for further action (P-5). Thereafter, the petitioners moved an application to D.G.P, Panjab Chandigarh for further investigation (P-6), who marked the investigation to DIG, Ludhiana Range, Ludhiana, vide letter dated 25.3.2008 (P-6) who entrusted the enquiry of case to Gautam Cheema, SSP Khanna, who further submitted his report to DIG on 12.07.2008 and recommended for presentation of challan (P-8). Thereafter, DIG found certain deficiencies in the enquiry report and entrusted the further investigation to Arun Pal Singh, IPS, SSP Khanna, who in his report agreed with the cancellation report prepared on 09.11.2006 and the police after getting the legal opinion from Joint Director, Prosecution and Litigation, Ludhiana, submitted the cancellation report before the Court of Addl. Chief Judicial Magistrate, Ludhiana, who did not agree with the cancellation report and passed the impugned order dated 12.12.2011. A perusal of this order shows that the enquiry report given by Gautam Cheema, SSP Khanna directing the police to present the challan has been wrongly ignored and cancellation report has been recommended by Arun Pal Singh, IPS, SSP Khanna. Some police officials are bending upon

exonerating the accused.

Now the report of Gautam Cheema, SSP Khanna requires to be examine at first stage, who vide his report dated 12.07.2008 submitted that the case is about 03 years old and no other thing came before at site of incident and recommended for submission of challan. No other finding has been recorded in the enquiry report except that the case is 03 years old. Reference can be made to letter dated 02.05.2007 (C-4) whereby ADGP also recommended departmental action against ASI Balbir Singh for his dereliction of duty. Even Punjab State Human Rights Commission vide order dated 07.11.2008 expressed anguish about non-acceptance of report of inquiry conducted by senior police officers like ADGP. The Court below accepted the protest petition and rejected the cancellation report submitted by the police with a further direction to the police to initiate further legal action in the light of the enquiry conducted by Senior Police Officer i.e, ADGP (IVC) on 04.04.2007

In compliance of order of the trial Court (P-1), the S.H.O presented the challan in the Court on 23.12.2011, on the basis of the enquiry conducted on 04.04.2007 against the petitioners

The question for consideration before this Court is that whether the Magistrate can give directions to the police to present the challan once the cancellation report was filed.

Section 156, which forms part of Chapter XII, deals with the power of an Officer in-charge of a police station to investigate cognizable cases and provides as follows :

“156. Police Officer’s power to investigate cognizable cases.- (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.”

The Investigating Agency on an order passed by the Magistrate under Section 156(3) Cr.P.C while making investigation of the cognizable and non-cognizable offence can file a report on completion of investigation under Section 173 (2) Cr.P.C. Further, under Section 173(8) Cr.P.C, the police can be given a direction to conduct further investigation of an offence, after the report under Section 173(2) Cr.P.C is forwarded to the Magistrate.

In the present case, when the cancellation report was presented before the Magistrate, the same was rejected, vide order dated 12.12.2011 and the respondents were directed to initiate further legal action, in the light in the light of the enquiry conducted by Senior Police Officer i.e, ADGP (IVC) on 04.04.2007. Thereafter, the challan was presented on 27.12.2011. As per provisions of Section 173(8) Cr.P.C, the Magistrate was competent to give directions for further investigation. As per order dated 12.12.2011, the Magistrate did not direct the respondents to file

challan rather he gave directions to initiate legal action, in the light of the enquiry report dated 04.04.2007.

Since there was no direction to the respondents to present challan, order dated 12.12.2011 (P-1) has been thus passed in accordance with Criminal Procedure Code, by Addl. Chief Judicial Magistrate and no ground is made out to quash F.I.R No. 176 dated 20.06.2005 registered at P.S Divn. No. 5, Ludhiana (Punjab) (P-2).

The petition stands dismissed.

20.03.2015
G Arora

(RITU BAHRI)
JUDGE