

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-32409-2009 (O&M)
Date of decision: 08.07.2015

Ramesh Kumar

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. R.K. Singla, Advocate
for the petitioner.

Mr. Daljit Singh Virk, AAG, Punjab.

Mr. Sushil Jain, Advocate
for respondent No.4.

Mr. Ankit Joshi, Advocate for
Mr. V.C. Chathrath, Advocate
for respondent No.5.

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.(ORAL):

Present petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short) is directed against the order dated 31.08.2009 passed by the learned Special Judge, Mansa, whereby the cancellation report submitted by the investigating agency in FIR No.10 dated 05.06.2007 under Sections 7, 13 (2) of the Prevention of Corruption Act, 1988, Police Station Vigilance Bureau, Bathinda, was accepted by the learned Special Judge, after notice and granting opportunity of hearing to the complainant-petitioner.

Notice of motion was issued and pursuant thereto, reply by way of affidavit dated 08.01.2010 was filed on behalf of respondents No.1 & 2. A separate reply by way of affidavit dated 10.03.2010 was filed on behalf of respondent No.3. Respondent No.4-accused also filed his reply by way of affidavit dated 04.08.2014.

The case was admitted for regular hearing vide order dated 22.01.2013. That is how, this Court is seized of the matter.

Learned counsel for the petitioner submits that Smt. Manisha Bala, wife of the petitioner was unemployed and she applied to the General Manager, District Industries Centre, Mansa for providing financial assistance under the Prime Minister's Rozgar Yozna for educated unemployed youths on 17.05.2006. Her interview was conducted on 21.08.2006 and it was recommended by the State Bank of Patiala, Jhunir to advance her a loan of Rs.50,000/- for running a Karyana Shop. Consequently, vide letter dated 06.03.2007, an intimation was sent to Smt. Manisha Bala that a loan of Rs.40,000/- has been sanctioned by the State Bank of Patiala, Branch Jhunir, which was repayable within five years. Smt. Manisha Bala started preparing for the business. She purchased some wooden material from Jai Durga Furniture House, Mansa for Rs.10,200/-, vide bill dated 18.03.2007 which was submitted by her to the State Bank of Patiala, Branch Jhunir, for disbursement of first installment of her loan in favour of M/s Jai Durga Furniture House, Mansa. He further submits that when the wife of the petitioner was to get second installment of the loan amount, she along with the petitioner approached respondent No.4-accused, who was Assistant Manager of State Bank of Patiala, Branch Jhunir, District Mansa, on 31.05.2007.

However, accused-respondent No.4 demanded an amount of Rs.2,000/- as illegal gratification from the petitioner which he did not want to pay. The deal was finally stuck for Rs.1,000/- and the petitioner returned back home assuring the accused that he will come back with the demanded amount of Rs.1,000/- on 05.06.2007. In the meantime, petitioner contacted his friend Vicky Jindal son of Megh Raj, who advised him not to pay the illegal gratification to the accused. Accordingly, on 05.06.2007, petitioner along with his friend Vicky Jindal came and informed Vigilance Officers about the illegal demand put by the accused. Petitioner handed over 10 currency notes of 100 denomination each, total being Rs.1,000/- to the police officer. Statement of the petitioner was recorded and the contents thereof were found to be reliable. A raiding party was constituted. Accused-respondent No.4 was caught red-handed in the presence of the shadow witnesses and recovery of Rs.1,000/- was effected from the accused.

Based on the abovesaid allegations levelled by the petitioner against respondent No.4-accused, argued learned counsel for the petitioner, appropriate and effective investigation was not conducted. He submits that in the circumstances of the case, the State police ought to have referred the investigation to the Central Bureau of Investigation ('CBI' for short), because the State police was not having any jurisdiction in this regard, as the accused-respondent No.4 was not the employee of the State Government but was a bank employee. Learned counsel for the petitioner submits that no enmity was alleged against the petitioner for false implication of respondent No.4. Recovery was effected from the accused, in accordance with law. Learned counsel for the petitioner would next contend that the investigating agency

also failed in its duty to seek sanction for prosecution from the competent authority. It was beyond the control of the petitioner to seek sanction for prosecution of the accused and it was obligatory on the part of the investigating agency to do so. Since the investigation conducted was defective on the face of it, the cancellation report based on such a defective investigation would amount to abuse of process of law. He further submits that since the learned Special Judge, Mansa misdirected himself, while passing the impugned order, accepting the patently illegal cancellation report, the same was not sustainable in law. In support of his submissions, learned counsel for the petitioner places reliance on a judgment of the Hon'ble Supreme Court in **State of Madhya Pradesh Vs. Shambhu Dayal Nagar, 2006 (8) Supreme Court Cases 693** and a Full Bench judgment of the Calcutta High Court in **Pawan Kumar Ruia Vs. S.P.C.B.I. (Economic Offence Wing), Cal., 1995 (1) R.C.R. (Criminal) 677**. He prays for setting aside the impugned order, by allowing the present petition.

Per contra, learned counsel for the State submits that a purposeful and effective investigation was carried out by the investigating agency. Entire relevant record was taken into consideration. Since the case was found doubtful right from day one, accused-respondent No.4 was not arrested and the higher police authorities were intimated in this regard, on the date of incident itself i.e. 05.06.2007, vide Annexure R-1. Controverting the arguments raised by learned counsel for the petitioner, learned counsel for the State submits that the State police was very much competent, having jurisdiction, to carry out the investigation in the present case. In this regard, he also places reliance on a communication dated 14.07.2005 received from the

CBI to the effect that CBI was not able to take up such investigations. Answering the enmity part, learned counsel for the State submits that enmity was such an issue which would work as a double-edged weapon. So far as recovery was concerned, learned counsel for the State would submit that recovery was effected from the accused-respondent No.4, however, he added that the recovered amount was not found having been received by the accused-respondent No.4, as illegal gratification. Replying the last argument raised by learned counsel for the petitioner, learned counsel for the State submits that since it was not found to be a fit case, even for preparation of challan against the accused, it was not thought appropriate to seek any sanction for prosecution of the accused, from the competent authority. He prays for dismissal of the petition.

Similarly, learned counsel for the accused-respondent No.4 submits that the investigating agency has, as a matter of fact, delved deep into the matter before preparation of the cancellation report. All the relevant record was considered. He submits that in fact, the accused-respondent No.4 never demanded any illegal gratification from the petitioner nor there was any occasion for him to do so, because the loan had already been sanctioned and first installment thereof had already been released in favour of the loanee-wife of the petitioner. While referring to the averments taken in paras 5 & 6 of preliminary objections in his reply, learned counsel for respondent No.4-accused submits that the cancellation report prepared by the investigating agency was placed before the higher authorities of the Vigilance Department of the State. Senior Superintendent of Police, Vigilance Bureau, Bathinda as well as the Director, Vigilance Bureau of Punjab agreed with the cancellation

report and also recommended initiation of proceedings against the petitioner under Section 182 of Indian Penal Code, for making a false complaint to the police. He also refers to the order dated 09.08.2008 passed by learned Special Judge, Mansa, whereby further investigation was directed to be conducted. In compliance of this order dated 09.08.2008 passed by learned Special Judge, further investigation was carried out, however, no new facts could be brought to the notice of the investigating agency, at the instance of the petitioner. Accordingly, cancellation report No.6 dated 28.07.2009 was again presented to the learned Special Judge. Still not satisfied, petitioner filed his protest petition against the cancellation report. Learned counsel for the accused-respondent No.4 concluded by submitting that since the learned Special Judge felt fully convinced about the quality of investigation conducted by the investigating agency, the impugned order was rightly passed and the same deserves to be upheld. He also prays for dismissal of the present petition.

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 rival contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, instant one has not been found to be a fit case warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. To say so, reasons are more than one, which are being recorded hereinafter.

Taking the first argument first, learned counsel for the petitioner failed to substantiate his argument, while referring to any provisions of law that the investigation conducted by the State police was an action without jurisdiction. Learned counsel for the respondents have been found fully

justified to refer to the communication dated 14.07.2005 (Annexure R-2) in this regard, whereby CBI has expressed its inability to carry out such kind of investigation, as was required in the present case. So far as the second argument raised by learned counsel for the petitioner regarding no enmity between the parties is concerned, factually he has been found to be correct because no such enmity has been alleged against the petitioner. However, this Court has found substance in the argument raised by learned counsel for the State that the enmity works as a double-edged weapon. Coming to the third argument raised by learned counsel for the petitioner regarding recovery, it has gone undisputed on record that recovery was effected from the accused. However, learned counsel for the State has rightly contended that the recovered amount was not found having been paid by the petitioner towards illegal gratification. Having said that, this Court feels no hesitation to conclude that learned Special Judge has committed no error of law, while passing the impugned order and the same deserves to be upheld.

Coming to the last limb of argument raised by learned counsel for the petitioner regarding non-seeking of sanction for prosecution of respondent No.4-accused, it would suffice to say that since the amount of Rs.1,000/- paid by the petitioner to respondent No.4-accused was not found having been paid as illegal gratification, the investigating agency was fully justified, on facts as well as in law, not to seek the sanction of competent authority for prosecuting the accused-respondent No.4. Coming to the impugned order passed by the learned Special Judge, it is pertinent to refer to the earlier order dated 09.08.2008 (Annexure P-14), whereby the learned Special Judge directed the investigating agency to carry out further investigation. This order was passed

in the presence of the petitioner. However, during the further investigation conducted by the investigating agency, petitioner again failed to substantiate the allegation levelled against the accused-respondent No.4. Having been left with no other option, the investigating agency was fully justified to reiterate its stand taken earlier, while preparing the fresh cancellation report No.6 dated 28.07.2009.

The gist of investigation carried out by the investigating agency and referred in para 3 (c) of preliminary submissions in the reply filed on behalf of respondents No.1 & 2, reads as under: -

“During the course of investigation conducted at the spot, it came in evidence that the loan to complainant's wife was sanctioned under the Prime Minister's Rozgar Yojna (PMRY). As per provisions of said scheme, 95 percent of the amount required for the venture was to be given by the bank as loan and remaining 5 percent amount was to be given out of margin money deposited by the debtor, in his/her saving account in the Bank. Earlier Rs.10200/- were disbursed to the complainant's wife as loan, out of which Rs.9700/- were paid by the bank and Rs.500/- were from her bank account. Now while disbursing the second installment of Rs.29800/-, a sum of Rs.28,300/- was to be paid by the Bank and Rs.1500/- were to be paid out of the saving account of Manisha Bala. But the balance in her account was only Rs.1400/- and after withdrawing the margin money of Rs.1500/- a balance of Rs.500/- was required to be maintained in the account as per banking regulations. Thus a sum of Rs.600/-

was required to be deposited in the saving account No.650116678237 of Mrs. Manisha Bala to make payment of the second installment of loan. It came out in evidence that the petitioner/complainant had given Rs.1000/-/- to accused Rajinder Pal Goel for depositing in the Saving Account of her wife Manisha Bala as there was heavy rush with the Cashier. Thus the tainted currency notes were not received by the accused as bribe, but for the purpose of depositing in Manisha Bala's account. On account of this, the accused was not arrested and intimation in this regard was given to higher authorities of the Vigilance Bureau on the same day through TPM messages, Annexure R-1.”

So far as the judgments relied upon by learned counsel for the petitioner are concerned, there is no dispute about the law laid down therein. However, on perusal of the cited judgments, none of them have been found of any help to the petitioner, being distinguishable on facts. In the judgment of **Shambhu Dayal Nagar (supra)**, the recovery was fully corroborated by evidence of PW-1 and two independent witnesses. However, in the present case, no such corroboration was there and the allegations levelled by the petitioner could not be substantiated either during the first investigation or during the further investigation.

Similarly, the Hon'ble Full Bench of Calcutta High Court was dealing with a case of quashing of FIR whereas in the present case, the issue is entirely different. Further, it is the settled proposition of law that peculiar fact situation of each case is to be examined, considered and appreciated first

before applying any codified or judge-made law thereto. Sometimes, difference of one additional circumstance or material 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.**

During the course of hearing, learned counsel for the petitioner could not point out any jurisdictional error or patent illegality in the impugned order, which may warrant interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. It is also equally pertinent to note here that although inherent jurisdiction of this Court under Section 482 Cr.P.C. is wide enough, yet it is equally true that the jurisdiction under Section 482 Cr.P.C. is to be exercised by this Court sparingly and with circumspection. Present one has not been found to be a fit case exercising the inherent jurisdiction under Section 482 Cr.P.C., at the hands of this Court.

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 present petition is misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

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

[RAMESHWAR SINGH MALIK]
JUDGE

08.07.2015
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