

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-30978-2013

Date of decision: 12.10.2015

Dalbir Singh

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Rajesh Punj, Advocate
for the petitioner.

Ms. Anmol Grewal, AAG, Punjab.

Mr. G.S. Nahel, Advocate
for respondent No.2.

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.

Feeling aggrieved against the impugned order dated 27.04.2013 passed by learned Additional Sessions Judge, Ludhiana, whereby he did not accept the application for discharge of the petitioner, he 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 the impugned order.

Notice of motion was issued and pursuant thereto, reply was filed on behalf of respondent-State.

Learned counsel for the petitioner submits that despite a

cancellation report, based on investigation conducted by Superintendent of Police (Detective) vide Annexure P-5, declaring the petitioner to be innocent, the learned trial Court misdirected itself, while passing the impugned order, simply for the reason that the complainant did not agree with the cancellation report and that too without disclosing any reason. He further submits that Inspector Davinder Singh-respondent No.2 was the complainant and he himself became the Investigating Officer, which was also contrary to the basic principles of natural justice. He also submits that in such a situation, the impugned order dated 06.06.2008 (Annexure P-6) passed by the learned Magistrate declaring the petitioner as proclaimed offender, was also patently illegal because the investigating agency found him innocent. He prays for setting aside the impugned orders, by allowing the present petition.

Learned counsel for the State submits that since the petitioner was found innocent in the final investigation conducted by Superintendent of Police (D) vide Annexure P-5 and discharge application was moved by the SHO of the Police Station vide Annexure P-7, let an appropriate order be passed. Similarly, learned counsel for the complainant submits that since the complainant-respondent No.2 stands retired from service, he also does not intend to oppose the present petition.

Having heard the learned counsel for the parties and after careful perusal of the record of the case, this Court is of the considered opinion that present petition deserves to be accepted. Petitioner has been found entitled to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C. Impugned orders (Annexure P-6) as well as Annexure P-11 passed by the learned Courts below are since found suffering from patent illegality, the

same cannot be sustained, for the following more than one reasons.

The relevant part of final investigation conducted by Superintendent of Police (D) vide report (Annexure P-5) at page 26 of the paper book, reads as under: -

“As per the till search, other investigation call details of mobile phone, tower location and from the ownership details of the mobile phone, it has been found that the applicant Dalvir Singh s/o Hardarshan Singh r/o village Latala was at his home till 2 A.M. on the intervening night of 9/10.5.07 and was then watering his land till 4 AM and hence, was not found to be present at the scene of occurrence. Hence, the applicant Dalvir Singh s/o Hardarshan Singh, FIR No.47 dated 9.5.2007 u/s 15 NDPS Act, Police Station Dakha is found to be innocent.”

It seems that petitioner was sought to be implicated in the present case because of mistaken identity. This was the reason that petitioner was found innocent and thereafter, an application for his discharge was moved by the investigating agency itself vide Annexure P-7. However, respondent No.2-complainant did not agree with the discharge report and opposed the application for discharge.

In view of what has been discussed hereinabove, the question that falls for consideration of this Court is whether the complainant himself could be the Investigating Officer. Another question is whether it is the satisfaction of the complainant which matters or it is the satisfaction of the Court which should be decisive factor for acceptance or rejection of the cancellation report.

After giving a thoughtful consideration to the peculiar fact

situation obtaining in the present case, this Court is of the considered view that the complainant himself could not have become the Investigating Officer. It is so said because nobody can be a judge of his own cause. In such a situation, fair and independent investigation would not be expected.

Coming to the second question, if the acceptance or rejection of the cancellation report is made dependent on the satisfaction of the complainant, it would create a very anomalous and unwarranted situation because the complainant would never agree with the cancellation report. Thus, while answering the second question posed hereinabove, it is held that the issue of acceptance or rejection of the cancellation report would be dependent on the satisfaction of the Court and not that of the complainant.

The abovesaid view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court as well as this Court in **State through CBI Vs. Raj Kumar Jain, JT 1998 (5) SC 127, Bhagwant Singh Vs. Commissioner of Police and another, (1985) 2 SCC 537, Guran Ditta Gaba Vs. State of Punjab, 1997 (1) CLR 371 (P&H), Abhinandan Jha Vs. Dinesh Mishra, AIR 1968 Supreme 117 (SC), R. Sarala Vs. T.S. Velu, 2002 (2) RCR (Crl.) 637 (SC), Sarwan Singh and others Vs. State of Punjab and another, 2004 (2) RCR (Crl.) 971. (P&H), Babu Singh Mann etc. Vs. State of Punjab and anr. in CRM-37896-M of 2003, decided on 15.09.2008. (P&H), Sukhwinder Singh Ex-Sarpanch and others Vs. State of Punjab and others in CRM-M-33183-2013, decided on 22.01.2014. (P&H), Harvail Singh Saini Vs. State of Punjab and another in CRM-M-32662-2012, decided on 03.12.2014. (P&H), Darshan Singh Vs. State of Punjab and ors. in CRM-M-22328-2013, decided on 09.09.2015 (P&H),**

Tarlochan Singh Sethi Vs. State of Punjab and anr. in CRM-M-35135-2009, decided on 09.09.2015 (P&H), Kotak Mahindra Bank Limited and others Vs. State of Punjab and another in CRM-M-2621-2014, decided on 10.09.2015 (P&H), Niranjan Singh Vs. State of Punjab, 2003 (2) RCR (CrI.) 843 (SC) and Prithvi Raj Sehgal Vs. State of Punjab, 2007 (3) RCR (CrI.) 438 (SC).

Reverting back to the fact situation obtaining in the present case and respectfully following the law laid down by the Hon'ble Supreme Court as well as this Court, the same analogy has to be applied in the present case for the purpose of accepting the application for discharge. It is so said because once the investigating agency has satisfied itself, while conducting the final investigation by an officer of the rank of Superintendent of Police (D), the learned Court ought to have accepted the application for discharge of the petitioner, which was moved by none else but the investigating agency itself. However, since the Court below has proceeded on a misconceived approach, while passing the impugned order, the same cannot be sustained.

It seems that the learned trial Court proceeded to accept the wholly misplaced contention of the complainant that he did not agree with the cancellation report and that too, without disclosing any reason. It is also pertinent to note here that the complainant was none else but the investigating officer himself. In such a situation, it can be safely concluded that the learned trial Court fell in serious error of law, while passing the impugned order and the same cannot be sustained, for this reason also.

So far as the impugned order (Annexure P-6), declaring the petitioner as proclaimed offender was concerned, the same was also passed by

the learned Magistrate, while proceeding on a misconceived approach because the petitioner had been declared innocent by the investigating agency itself. Having said that, this Court feels no hesitation to conclude that the impugned order (Annexure P-6) as well as the impugned order (Annexure P-11) cannot be sustained, because continuation of criminal proceedings would amount to glaring abuse of process of 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 deserves to be accepted. Consequently, the impugned order dated 06.06.2008 (Annexure P-6) as well as the impugned order dated 27.04.2013 (Annexure P-11) are hereby ordered to be quashed.

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

[RAMESHWAR SINGH MALIK]
JUDGE

12.10.2015
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