

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.32817 of 2011

Date of decision: 31st August, 2015

S.S. Dalal and another

... Petitioners

Versus

Suresh Chikkara

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. J.S. Bedi, Senior Advocate with
Mr. Sonpreet Singh, Advocate
for the petitioners.

Mr. Rajesh Lamba, Advocate
for the respondent.

FATEH DEEP SINGH, J.

This is a petition preferred under Section 482 of the Code of Criminal Procedure praying for quashing of a complaint (Annexure P2) and summoning orders dated 31.08.2010 (Annexure P3) as well as order passed in revision dated 20.09.2011 (Annexure P6) along with all subsequent proceedings arising therefrom.

The brief facts that necessitates reproduction are that an FIR bearing No.4 dated 03.01.2010 under Section 498A/406/323/304B IPC (Annexure P1) was registered at Police Station Sector 17/18,

Gurgaon, Haryana against S.S. Dalal, his wife Nirmala Dalal, their son Ankit Dalal (husband) and Anika Dalal (husband's sister) on the allegations that they had harassed deceased Neha Chikkara for dowry, who is alleged to have died on 31.12.2009 under mysterious circumstances having fallen from a ship in the area of Bahamas, USA.

While investigations were still being carried on, complainant Suresh Chikkara father of the deceased present respondent filed a complaint on 16.07.2010 under Section 408A/406/304B/120B IPC (Annexure P2) against Ankit Dalal husband, Nirmala Dalal and S.S. Dalal parents-in-law and Ms.Anika Dalal sister-in-law of the deceased, on similar facts.

Meanwhile, the police submitted report under Section 173 Cr.P.C. by way of cancellation report against accused persons.

The Court of learned Judicial Magistrate 1st Class, Gurgaon through impugned orders dated 31.08.2010 summoned Ankit Dalal, Nirmala Dalal, S.S. Dalal as accused under Section 498A/406/304B/120B IPC, against which order the in-laws S.S. Dalal and Nirmala Dalal filed revision petition and the Court of learned Additional Sessions Judge, Gurgaon who through impugned orders dated 20.09.2011 (Annexure P6) dismissed the revision petition. It is this very process which has led to this invocation of these powers by the accused petitioners.

Heard Mr. J.S. Bedi, Senior Advocate assisted by Mr.Sonpreet Singh, Advocate representing the petitioners and Mr.Rajesh Lamba, Advocate on behalf of the respondent.

It is conceded to by both the sides that at the time when the complainant filed the private complaint, the investigations in the criminal case were still underway. Thus, the moot point that comes forth before this Court is what legal recourse the Magistrate ought to have taken, fully aware of these two proceedings before it.

To buttress his arguments, Mr. J.S. Bedi, Senior Advocate assisted by Mr. Sonpreet Singh, Advocate representing the petitioners has heavily placed reliance on **‘Jhanda Singh v. State of Haryana and another’** (CRM-M No.13711 of 2009 decided on 04.05.2010); **‘Savera Sidhu v. Harleen Sidhu and another’** 2011(2) RCR (Criminal) 442; **‘Kuldip Raj Mahajan v. Hukam Chand’** 2008(1) RCR (Criminal) 370; **‘Annadata Chandra Shekhar Rao v. Battiprolu Venkata Basava Subb Rao’** 2003(3) RCR (Criminal) 729, **‘Abhi and others v. Arjuna Charan Sutar’** 1995(3) Crimes 607; **‘Rajni Thareja and another v. B.C. Jasan and another’** (CRM-M No.9968 of 2011, decided on 06.09.2012); **‘O.P. Jindal and others v. State of Punjab and another’** (CRM-M No.1454 of 2010, decided on 08.11.2010) and **‘Anu Garg and another v. State of Punjab and another’** (CRM-M No.11186 of 2009, decided on 06.11.2009) and to controvert the same Mr. Rajesh Lamba, Advocate representing the respondent has

cited '**Sankaran Moitra v. Sadhna Das & another**' reported in 2006 **AIR (SC) 1599**.

Appreciating the arguments of the two sides, the only bone of contention is whether the embargo laid down in Section 210 Cr.P.C. comes into play or not?

The Hon'ble Supreme Court of India in **Sankaran Moitra's case** (ibid) has extensively re-appraised the provisions of Section 210 Cr.P.C. and has held that the purpose of this Section and the motive behind its enactment is intended to ensure that private complaints do not interfere with the course of police investigations as well as to prevent accusation of the accused twice for the same very offence. While considering applicability of Section 210 Cr.P.C., the Court has laid down the following four eventualities:

1. There must be a complaint pending for inquiry or trial.
2. Investigation by the police must be in relation to the same offence.
3. A report must have been made by the police officer under Section 173 and
4. The Magistrate must have taken cognizance of an offence against a person who is accused in the complaint case.

A plain reading of Section 210(1) Cr.P.C. ensures, as the wording goes, which is reproduced below to lay emphasis:

“210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence. –

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.”

From the present case, it is explicitly clear that the learned Magistrate in spite of having come to know of the pendency of the criminal complaint as well as the State case proceedings, has miserably failed to call for a report on the matter from the police concerned which was conducting the investigations.

It is not disputed that the allegations and the set of accused in both these proceedings are same and similar and since it was necessitated that both cases ought to have been clubbed together before the same Court and should have proceeded parallel as the prosecution version and the complaint case version were akin to each other even after receipt of the report under Section 173 Cr.P.C. for cancellation which apparently has escaped the attention of the trial Court. Since neither the learned Magistrate has called for such

a report nor any such report was submitted and since the Magistrate has taken cognizance of an offence in the complaint case against the accused together with the fact that the police has filed cancellation report in the State case necessitates that the complainant's right for redressal of his grievance by resorting to the provisions of Section 156(3) read with Section 190 Cr.P.C. cannot be subverted by such a mistake of the Court and at this stage it would be preposterous to stay proceeding in the complaint case by the Magistrate as cancellation report has already been filed in the Court. Holding that such a remiss is only a procedural error neither causing any immense prejudice nor could be pointed out by learned counsel for the petitioners. Thus, at this juncture it would not be in the fitness of things and neither for the interests of justice to show indulgence and therefore, none of the reliefs being prayed for needs to be granted.

The petition as such stands dismissed.

(FATEH DEEP SINGH)
JUDGE

August 31, 2015
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