

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-35135-2009 (O&M)

Date of decision: 09.09.2015

Tarlochan Singh Sethi

... Petitioner

Vs.

State of Punjab and anr.

... Respondents.

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. P.S. Ahluwalia, Advocate
for the petitioner.

Mr. K.D. Sachdeva, Addl. AG, Punjab.

Mr. S.S. Brar, 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 20.04.2009 (Annexure P-2), passed by learned Additional Chief Judicial Magistrate, Bathinda, whereby cancellation report was rejected on the protest petition filed by the complainant-respondent No.2 and petitioner was summoned to face the criminal trial, for the offences punishable under Sections 406, 420, 465, 467, 468, 471 of the Indian Penal Code ('IPC' for short), 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 the impugned protest petition (Annexure P-1) as well as the impugned summoning order dated 20.04.2009 (Annexure P-2).

Notice of motion was issued and further proceedings were stayed vide order dated 07.01.2010. Reply by way of affidavit was filed on behalf of the respondent-State. Separate reply was filed on behalf of respondent No.2.

Learned counsel for the petitioner, while referring to the detailed reasons given by the investigating agency, in its reply filed by way of affidavit of Sh. Ajay Maluja, Superintendent of Police (Detective), Bathinda, in the Civil Writ Petition No.18059 of 2004 filed by the petitioner, which is available on pages 92-94 of the paper book, submits that each and every relevant aspect of the matter was discussed in minute details, before presenting the cancellation report in favour of the petitioner. He submits that learned Magistrate exceeded his jurisdiction, while not considering the relevant facts and circumstances of the case, before passing the impugned order. Learned counsel for the petitioner further submits that once the investigating agency has conducted an independent and effective investigation, before presenting the cancellation report, mere disagreement of the complainant with the said cancellation report, would not be sufficient to reject the same. In the present case, complainant took a specific stand in the civil suits at Annexure P-20 and P-30 and now he was trying to back out from the same, which was totally unfair on his part. He also refers to a DO letter dated 13.04.2005 written by the Deputy Commissioner, Bathinda to the Home Secretary of the State of Punjab, which speaks volumes in favour of

the petitioner and against the respondent-complainant, including the effective investigation. Leaned counsel for the petitioner would next contend that even if the allegations in the impugned FIR were taken to be true on their face-value, still no offence of any kind, whatsoever, was made out against the petitioner. In support of his contentions, he places reliance on the following judgments: -

1. ***Velji Raghavji Patel Vs. State of Maharashtra, 1965 AIR (SC) 1433. (Hon'ble Supreme Court)***
2. ***V.R. Dalal and ors. Vs. Yougendra Naranji Thakkar and anr., 2008 AIR (SC) 2793. (Hon'ble Supreme Court)***
3. ***Md Ibrahim and ors. Vs. State of Bihar and anr., 2009 (8) SCC 751 (Hon'ble Supreme Court)***
4. ***Prithvi Raj Sehgal Vs. State of Punjab and ors., 2007 (3) RCR (Crl.) 438. (Pb & HR High Court)***
5. ***Kuldip Raj Mahajan Vs. Hukam Chand, 2008 (1) RCR (Crl.) 370. (Pb & HR High Court)***

He concluded by submitting that since the petitioner and the complainant-respondent were closely related with each other, every possible effort was made, before the Mediation and Conciliation Centre of this Court, to arrive at an amicable settlement but it was always the complainant-respondent who never cooperated. In fact, he never came forward to join the mediation proceedings, in spite of the fact that petitioner as well as complainant-respondent are senior citizens. He prays for quashing the impugned protest petition (Annexure P-1) as well as the impugned summoning order (Annexure P-2), by allowing the present petition.

Learned counsel for the State has fairly stated that since the cancellation report was prepared and presented by the investigating agency, let the present petition be disposed of, by passing an appropriate order. However, learned counsel for the complainant-respondent No.2 vehemently opposes the present petition, contending that the protest petition as well as the impugned order passed by the learned Magistrate were fully justified on facts as well as in law and the same deserve to be upheld. Referring to the averments taken in para 3 (v) and (vi) at pages 6 and 7 of the petition, learned counsel for the complainant-respondent No.2 submits that petitioner has admitted the partnership deed between the parties, who had been earlier litigating before the Civil Court, as well. It was the petitioner who tried to back out and revoked the authorization of the complainant-respondent No.2, as authorized signatory and Manager of the partnership firm, by way of Annexures P-4 and P-5. He also refers to para 4 of the impugned order (Annexure P-2) at page 33 of the paper book, wherein the learned Magistrate has discussed numerous documents, before passing the impugned order. He submits that the judgments relied upon by learned counsel for the petitioner were not applicable in the present case. He 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 contentions raised, this Court is of the considered opinion that instant one is a fit case, warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C., so as to prevent any further abuse of process of Court and also to

secure the ends of justice. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record that FIR No.152 dated 10.04.2004 was registered on the complaint made by respondent No.2-complainant (Annexure P-9) under Sections 406, 420, 465, 467, 468, 471, 477A, 120-B IPC, Police Station Kotwali, District Bathinda. The dispute was regarding the petrol pump owned by the father of the petitioner, who happens to be the father-in-law of respondent No.2-complainant. Thus, petitioner and respondent No.2-complainant are closely related, being brothers-in-law of each other. Thorough and effective investigation was conducted. Each relevant aspect was gone into in minute details and thereafter, investigating agency arrived at a conclusion that no offence was made out against the petitioner and if at all, it was a matter of civil nature.

On presentation of cancellation report, learned Chief Judicial Magistrate passed the following order on 02.07.2004: -

“Present: - APP for the State.

Cancellation report presented today. It be registered. Notice to the complainant be issued for 30/10/2004.

sd/-

CJM

2/7/04”

Without waiting for the date fixed i.e. 30.10.2004, complainant-respondent No.2 filed his protest petition dated 14.07.2004 (Annexure P-10) and the learned Magistrate passed the following order: -

“Statement of Avtar Singh son of Balwant Singh resident of Gali

No.5, Ajit Road, Bathinda on SA.

I am complainant of this case. I do not agree with the cancellation report submitted by the Local Police and I want to pursue the case and I will produce the fresh evidence to the Investigating Officer. As such it is therefore requested that cancellation report may kindly be declined.

Sd/- RO & AC

CJM 14/7/04”

On the same day, learned Chief Judicial Magistrate, Bathinda declined the cancellation report, by passing the following order: -

“Present: - APP for the State.

File taken up today on the application of complainant Avtar Singh who has been identified by ASI Chanan Singh No.125, PS City Mansa and in view of the statement made by the complainant to the effect that he is not agree with the cancellation report and further want to pursue the case, the cancellation report submitted by the Police is declined and file is ordered to be returned to the SHO, PS Kotwali, Bathinda.

Announced

Sd/-

14/7/04

CJM Bathinda”

As a consequence of the abovesaid orders, the investigation of the case was entrusted to Superintendent of Police (HQ), Mansa. Since the petitioner was apprehending an unfair investigation, he approached this Court, by way of Civil Writ Petition No.18059 of 2004 and further investigation was stayed by a Division Bench of this Court, vide order dated 20.11.2004 (Annexure P-12). Reply was filed on behalf of the State in the

said writ petition, wherein complainant-respondent No.2 was impleaded as respondent No.8. In the reply filed on behalf of the respondent-State, it was clarified that petitioner was sole proprietor of the firm M/s Manohar Singh and Sons, Bathinda and respondent No.8 i.e. complainant-respondent No.2 herein, was not a partner earlier and he was to become partner only w.e.f. 01.10.2003 but the said partnership deed was revoked by the petitioner, before it could become operative, by giving legal notice dated 26.09.2003.

After conducting the further investigation, the investigating agency again filed the cancellation report on 11.07.2006 and the learned Additional Chief Judicial Magistrate, Bathinda passed the following order dated 11.07.2006: -

“Present: - APP for the State.

Cancellation report presented today. It be registered. Notice to complainant be issued for 8.9.2006.

sd/-

*Addl. C.J.M.,
Bathinda”*

On the next date of hearing, learned Additional Chief Judicial Magistrate, Bathinda rejected the cancellation report merely on the disagreement of the complainant. Protest petition (Annexure P-1) filed by the complainant was treated as a complaint, by passing the following order on 08.09.2006: -

“8/9/06

Present: - APP for the State.

*Complainant with counsel Harpinder Singh
Advocate.*

Complainant has appeared and filed separate protest petition and disagree with cancellation report. The protest petition is hereby treated as complaint. For statement of complainant and his witness to come up on 18/9/06.

Sd/-

Addl. C.J.M.”

Thereafter, the impugned summoning order dated 20.04.2009 (Annexure P-2) was issued. Entire case of respondent No.2-complainant is based on the partnership deed dated 15.09.2002 (Annexure P-3), which was to become operative w.e.f. 01.10.2003. However, before this partnership deed (Annexure P-3) would be operative, it was revoked by the petitioner, by way of legal notice dated 26.09.2003 (Annexure P-6). Because of this unwarranted litigation between the parties, the Bharat Petroleum Corporation Ltd stopped supply to the petrol pump and requisite licence thereof, was also cancelled, as stated by learned counsel for the parties, thus, business also came to be closed. However, the tussle of ego between the close relatives goes on.

While rejecting the cancellation report, the learned Magistrate was duty bound to record his own satisfaction instead of accepting mere disagreement of the complainant. It is so said because it is not the satisfaction of the complainant which matters, but it is the satisfaction of the Court which should be relevant factor for rejection or acceptance of a cancellation report, as held by this Court in **Prithvi Raj Sehgal's** case (supra) as well as in **Kuldip Raj Mahajan's** case (supra). It was further held that the learned Magistrate would be exceeding his jurisdiction, in case the summoning order

is issued without considering the cancellation report. This is what is the fact situation of the present case, because learned Magistrate has not at all adverted to the cancellation report which was a self-contained document, before issuing impugned summoning order. Having said that, this Court feels no hesitation to conclude that the impugned protest petition as well as the summoning order, cannot be sustained.

Complainant was defendant No.2 in Civil Suit No.99 of 1979 (Amarjit Singh Vs. Tarlochan Singh and others). He filed his separate written statement (Annexure P-29) and stated therein that he had no concern with the firm M/s Manohar Singh and Sons, Bathinda. This specific averment taken by the complainant is at page 121 of the paper book. Similar was the stand taken by the complainant, while filing his written statement as defendant No.3 in Civil Suit No.744 dated 23.09.1989, titled as Punjab and Sind Bank, The Mall Bathinda Vs. M/s Manohar Singh and Sons, Bathinda and four others (Annexure P-30). Petitioner has been claiming himself throughout to be the sole proprietor of the firm M/s Manohar Singh and Sons, Bathinda, while filing the Income Tax Returns (Annexures P-15 to P-27) and this fact is also based on record. Since the learned Magistrate has failed to consider all these material aspects of the matter, the impugned protest petition as well as the summoning order are nothing but sheer abuse of process of Court and the same cannot be sustained, for this reason also.

A bare reading of the DO letter dated 13.04.2005 written by the Deputy Commissioner, Bathinda, to the Home Secretary, State of Punjab, makes an interesting reading. However, this Court restrains itself from making any further observations in this regard, because neither the said DO

letter is part of judicial record nor it is desirable to comment. In fact, this letter written by the Deputy Commissioner, Bathinda speaks volumes about the functioning by the State authorities. Thus, less said the better.

However, perusal of the record shows that even if the allegations levelled by the complainant against the petitioner, are taken to be true on their face-value, still no offence of any kind, whatsoever, has been made out against the petitioner. In such a situation, petitioner cannot be forced to face the criminal trial, because it would amount to glaring abuse of process of Court and would also result in miscarriage of justice, therefore, the impugned protest petition as well as the impugned summoning order cannot be sustained, for this reason as well.

Further, even if the claim of the respondent-complainant, that he was partner in the partnership firm is accepted, for the sake of argument and not on merits, still no case is made out against the petitioner, because the Hon'ble Supreme Court in **Velji Raghavji Patel's** case (supra), held that any such partner would not be guilty of any criminal breach of trust. In this regard, the relevant observations made by the Hon'ble Supreme Court in para 6 of the judgment, read as under: -

“It seems to us that the view taken in Bhuban Mohan Rana's case by the later Full Bench of the Calcutta High Court is the right one. Upon the plain reading of Section 405, Indian Penal Code it is obvious that before a person can be said to have committed criminal breach of trust it must be established that he was either entrusted with or entrusted with dominion over property which he is said to have converted to his own use or

disposed of in violation of any direction of law etc. Every partner has dominion over property by reason of the fact that he is a partner. This is a kind of dominion which every owner of property has over his property. But it is not dominion of this kind which satisfies the requirements of Section 405. In order to establish "entrustment of dominion" over property to an accused person the mere existence of that person's dominion over property is not enough. It must be further shown that his dominion was the result of entrustment. Therefore, as rightly pointed out by Harris C.J., the prosecution must establish that dominion over the assets or a particular assets of the partnership was, by a special agreement between the parties, entrusted to the accused person. If in the absence of such a special agreement a partner receives money belonging to the partnership he cannot be said to have received it in a fiduciary capacity or in other words cannot be hold to have been "entrusted" with dominion over partnership properties."

Again, in a similar fact situation, Hon'ble Supreme Court in **V.R. Dalal's** case (supra), held that since such a dispute would be of civil nature, criminal proceedings cannot be allowed to go on. The observations made by the Hon'ble Supreme Court in paras 12 & 13 of its judgment in **V.R. Dalal's** case (supra), read as under: -

"It may be true that in the event the court finds that the dispute between the parties is civil in nature, it may not allow the criminal proceedings to go on. But, no law, in our opinion, as

such can be laid down as in a given case both civil suit and criminal complaint would be maintainable although the cause of action for both the proceedings is the same.

We, however, in this case are satisfied that the appellants by no stretch of imagination can be said to have committed an offence particularly when admittedly the new firm has been cancelled from its very inception. If the new firm has not derived any income, the question of depriving the claimant therefrom does not arise. Whether the constitution of the said firm was illegal or mala fide, thus, need not be gone into as by reason thereof the respondent No. 1 cannot be said to have suffered any loss.”

Similar was the view taken by the Hon'ble Supreme Court in **Md Ibrahim's** case (supra).

Reverting back to the fact situation of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court as well as this Court in the cases referred to hereinabove, it is unhesitatingly held that the learned Magistrate has exceeded his jurisdiction, while accepting the protest petition which was without any substance and the impugned summoning order 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 present petition deserves to be accepted. Consequently, the impugned protest petition (Annexure P-1) as well as the impugned summoning order (Annexure P-2), 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 abovesaid observations made, instant petition stands allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

09.09.2015
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