

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-31668 of 2013

Date of Decision: January 29, 2015

Ravinder Kataria

...Petitioner

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGHPresent: Mr.Sandeep Arora, Advocate
for the petitioner.Mr.A.S.Klar, Asstt. Advocate General, Punjab
for the respondent-State.Mr.C.M.Munjal, Advocate
for respondent No.2.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of FIR No.285 dated 09.11.2009 under Sections 406, 420, 467, 468, 471 and 120-B IPC registered at Police Station Division No.5, Civil Lines, Ludhiana qua the petitioner and all subsequent proceedings including the order dated 25.04.2012 passed by learned ACJM, Ludhiana whereby the cancellation report submitted by the police was rejected and further investigation was ordered.

Notice of motion was issued in this case and learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petition and respondent No.2 also filed reply.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that FIR in the present case has been registered on the basis of complaint filed by respondent No.2 Pawan Kataria. In the complaint, it is stated that applicant is respectful and law abiding citizen carrying on his transport business. Ravinder Kataria is his youngest brother. Ravinder Kataria came to the complainant at Delhi in the month of March 2007 and showed his desire to get the complainant's tourist bus bearing registration No.DL-1PA-1680 on hire with the assurance that he would pay ₹20,000/- per month to the complainant. After the delivery of said bus, Ravinder Kataria paid ₹20,000/- only for one month and after that he did not made any payment. Rather, the complainant found that the petitioner has sold the above-said bus to Ashok Kumar on 23.05.2007 for ₹2,40,000/-, although the bus was in the ownership of Ravinder Kataria. On the receipt, the signatures of the complainant were forged. It is further stated in the complaint that under a planned criminal conspiracy hatched between petitioner and above-said Ashok Kumar, petitioner has sold the bus which was entrusted to him.

As per the record, the police after investigation of the case and enquiry by Assistant Commissioner of Police, Ludhiana (East) found the case to be false and cancellation report was ordered to be submitted. Cancellation report was presented in the Court of learned ACJM, Ludhiana, which was not accepted and it was observed that he is not satisfied with the investigation made by the police and police

should make further investigation in this case in depth. Then enquiry was conducted and again the case was found to be false and again cancellation report dated 29.11.2011 (Annexure P-5) was submitted before the Court, but it was not accepted and it was rejected by learned ACJM, Ludhiana vide impugned order dated 25.04.2012.

The perusal of the record shows that as per Annexure P-4, which is order of learned ACJM, Ludhiana dated 11.06.2011, the Court was not satisfied with the investigation and it had ordered that the investigation be made through some Gazetted Officer. As per Annexure P-5, after enquiry by the Gazetted Officer, again detailed cancellation report has been produced and it is in the cancellation report that Forms No.29 and 30 regarding sale of bus bear the signatures of Pawan Kataria and he also admitted the signatures to be of his own. It is further in the report that it is also suspicious that had Pawan Kataria not sold the bus, then why he would have signed Forms No.29 and 30. It is also the finding in the report that Ravinder Kataria and his wife filed a civil suit against Pawan Kataria in the Court at Ludhiana on 15.10.2009 and it is stated that since the year 2007 till the filing of civil suit i.e. 15.10.2009, no complain was moved by Pawan Kataria anywhere regarding this bus nor he got registered any case. The cases with regard to the bus and property have been got registered only after filing of civil suit by Ravinder Kataria. It is further in the report that when Pawan Kataria himself admits the signatures on Forms No.29 and 30 and these documents are produced by Pawan Kumar himself, then there is no question to get

the signatures compared from FSL. Annexure P-6 is the order of the Court, in which the Court held that no fair and thorough investigation has been conducted by the police. No prejudice is going to be caused to accused if handwriting sample and signatures are compared. Rather, it will help the accused to come clear of the allegations and the cancellation report was rejected and direction was given to conduct further investigation by learned ACJM, Ludhiana vide impugned order dated 25.04.2012.

Learned counsel for the petitioner argued that Court cannot reject cancellation report time and again. In support of his argument, learned counsel for the petitioner cited judgment passed by this Court in ***Prithvi Raj Sehgal vs. State of Punjab and others, 2007(3) RCR (Criminal) 438***, in which it is held that if the Magistrate is of the opinion that sufficient material against the accused is available on the record, he can take cognizance of the offence under Section 190(1) IPC but time and again he cannot order for reinvestigation of the matter. Learned counsel for the petitioner further cited judgment passed by this Court in ***Harinder Pal Singh vs. State of Punjab, 2004(2) RCR (Criminal) 307***, in which also it is held that police investigated the offence and submitted cancellation report but Magistrate did not accept report and police investigated the case two more times on order of Magistrate and again submitted the cancellation report. The Magistrate cannot order the police to investigate for the third time. The Magistrate can, however, take cognizance under Section 190(1) IPC.

In view of the law cited by learned counsel for the petitioner, I find that the cancellation report filed second time after enquiry conducted by a Gazetted Officer, is detailed one and with reasoning. Therefore, the Court cannot order reinvestigation time and again as held in above-cited judgments. If the Court feels that there is some material on the record to take the cognizance, the Court can take cognizance but cannot order further investigation time and again.

In view of the above discussion, I find that the impugned order dated 25.04.2012 passed by learned ACJM, Ludhiana rejecting the cancellation report is not as per law and the same is set aside as during investigation, no case is made out against present petitioner.

Therefore, finding merit in the present petition, the same is allowed. FIR No.285 dated 09.11.2009 under Sections 406, 420, 467, 468, 471 and 120-B IPC registered at Police Station Division No.5, Civil Lines, Ludhiana and all subsequent proceedings including the order dated 25.04.2012 passed by learned ACJM, Ludhiana are hereby quashed, qua the petitioner.

January 29, 2015
Vgulati

(INDERJIT SINGH)
JUDGE