

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-33717-2010 (O&M)  
Date of decision: 24.07.2015

Gurmail Singh

... Petitioner

Vs.

State of Punjab and ors.

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK**

Present: Mr. D.K. Kaushal, Advocate  
for the petitioner.

Ms. Anmol Grewal, AAG, Punjab.

Mr. H.R. Nohria, Advocate  
for respondents No.3 & 4.

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

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**RAMESHWAR SINGH MALIK, J.**

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks quashing of the impugned order dated 15.07.2009 (Annexure P-1) passed by learned Judicial Magistrate 1<sup>st</sup> Class, Barnala, whereby cancellation report under Section 173 Cr.P.C. in case FIR No.57 dated 18.08.2004 under Sections 498-A, 406, 420/34 of the Indian Penal Code ('IPC' for short), was accepted and also the order dated 03.07.2010 (Annexure P-2) passed by learned Additional Sessions Judge, Barnala, whereby abovesaid order dated 15.07.2009, was upheld.

Notice of motion was issued and pursuant thereto, reply by way of affidavit dated 20.07.2011 was filed.

Learned counsel for the petitioner submits that both the learned Courts below have misdirected themselves, while passing the impugned orders. He submits that since the petitioner-complainant was staying in Canada, no notice was served upon him, before accepting the cancellation report. He further submits that it was mandatory for the learned trial Court to ensure service on the petitioner, granting him an opportunity of being heard. In support of his contentions, learned counsel for the petitioner places reliance on the judgment of Hon'ble Supreme Court in **Sanjay Bansal and anr. Vs. Jawaharlal Vats and ors., 2007 (13) SCC 71**. He prays for setting aside the impugned orders, by allowing the present petition.

Per contra, learned counsel for the respondents would contend that petitioner has been glaringly misusing the process of law right from the day one. Not only the petitioner but all of his family members are staying in Canada since long. Petitioner has not approached this Court with clean hands and concealed true facts from the notice of this Court. Marriage of Ms. Gurjit Kaur Dhillon, daughter of the petitioner was solemnized as far back as on 15.04.2003 with Iqbal Singh-respondent No.2. Since Ms. Gurjit Kaur Dhillon was a Non-resident Indian ('NRI' for short), she stayed with her husband-Iqbal Singh only for about two months and thereafter, she went back to Canada. She sponsored Iqbal Singh who also went to Canada on 21.12.2003 where both of them stayed together. However, since matrimonial relation between Ms. Gurjit Kaur Dhillon and Iqbal Singh-respondent No.2 were no more cordial, Ms. Gurjit Kaur Dhillon left the company of her husband and reported the

matter to the Canadian Police. She never levelled any allegation of demand of dowry. This was the reason, she never came forward to lodge the FIR. They next contended that although the petitioner was very much aware about the progress of the case, including the cancellation report but he did not take any interest in the matter nor gave his address of Canada to anybody, because he was interested only in causing maximum harassment to the respondents on one pretext or the other. Finally, they pray for dismissal of the present petition with exemplary costs, it being a frivolous litigation.

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 in the peculiar facts and circumstances noticed hereinabove, 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.

It is a matter of record that petitioner, along with all of his family members, is staying in Canada. Instant proxy litigation is being pursued by the petitioner through his attorney Smt. Harbir Kaur, on the basis of General Power of Attorney dated 25.01.2006. It is neither pleaded nor argued on behalf of the petitioner before this Court that after registration of FIR against the respondents-accused, at the instance of the petitioner, he ever came to India. Again, neither it is pleaded nor argued before this Court that while leaving for Canada, petitioner intimated the investigating agency in this regard or gave his address of Canada, requesting for any intimation to him regarding the progress of the investigation or result thereof. Having said that, this Court

feels no hesitation to conclude that the learned Courts below committed no error of law, while passing the impugned orders and the same deserve to be upheld.

Petitioner has set the criminal law into motion with a malafide intention only to cause maximum harassment to the accused-respondents. The actual aggrieved party, if any, was Ms. Gurjit Kaur Dhillon, daughter of the petitioner. She never came to India for lodging any kind of complaint in this regard. Whatever complaint she made against her husband that was made only to Canadian Police. It is pertinent to note here that in the absence of the petitioner-complainant, law had been taking its own course, even after the petitioner has gone to Canada, showing no respect for the justice delivery system of this country. Then, after conducting an effective investigation, the investigating agency prepared cancellation report and presented to the learned Court of competent jurisdiction.

However, the learned Court did not accept the said cancellation report and directed the investigating agency to conduct the further investigation. In compliance of the order passed by learned Magistrate, Senior Superintendent of Police, Barnala constituted a Special Investigation Team headed by a senior officer of the rank of SP (H), Barnala and SI Jaswinder Kaur, Incharge Women Cell, Barnala as well as ASI Palwinder Singh, SHO, Police Station Sehna, being its members. The said SIT investigated the matter thoroughly and on conclusion of the investigation, it was found that the case was totally baseless. Accordingly, the cancellation report was prepared and presented to the learned Court.

It is also pertinent to note here that during the course of

investigation, Puran Singh son of Makhan Singh and proprietor of Meena Gas Agency, Kotakpura, both relatives of the petitioner, appeared before the SIT. Both of them stated that complainant-Gurmail Singh was residing in Canada along with his daughter Ms. Gurjit Kaur Dhillon and there was no chance of his visiting India in the near future. They further informed the SIT that they will inform the complainant. However, complainant never shown any interest in the case after registration of the FIR.

Further, in spite of the abovesaid sheer negligence on the part of the petitioner, the learned Judicial Magistrate 1<sup>st</sup> Class, Barnala issued notice to the petitioner by way of registered post on his address of Canada, which was provided to the Court by the investigating agency. Said notice issued to the complainant-petitioner, by way of registered post, was not received back unserved. In such a situation, the learned Magistrate was fully justified to draw inference and presumption that the registered cover was duly received by the complainant-petitioner.

It is also pertinent to note here that in view of the peculiar facts of the case, no offence of any kind, whatsoever, was found to be made out against the respondents-accused. During the course of arguments, when a pointed question was put to learned counsel for the petitioner as to how the present one was a bonafide litigation and how the judgment of the Hon'ble Supreme Court in **Sanjay Bansal's** case (supra) would be of any help to the petitioner, in this given situation, he had no answer and rightly so, it being a matter of record. Under these circumstances, it can be safely concluded that since the impugned orders passed by both the learned Courts below have not been found suffering from any patent illegality or perversity, the same deserve

to be upheld, for this reason also.

Further, during the course of hearing, learned counsel for the petitioner could not point out any patent illegality or jurisdictional error in either of the impugned orders passed by the learned Courts below, so as to convince this Court to interfere in the matter, while exercising its inherent jurisdiction under Section 482 Cr.P.C. It is also important to note that although the powers of this Court under Section 482 Cr.P.C. are wide enough, yet it is equally true that such powers are to be exercised sparingly and with circumspection. In view of the peculiar facts of this case, noticed hereinabove, present one has not been found to be a fit case for exercising the inherent jurisdiction under Section 482 Cr.P.C., at the hand of this Court and the impugned orders deserve to be upheld, for this reason as well.

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 wholly 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 stands dismissed, however, with no order as to costs.

**[ RAMESHWAR SINGH MALIK ]**  
**JUDGE**

24.07.2015  
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