

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Misc. No. M-30266 of 2014

Date of Decision: 25.08.2015

Bharat Singh and Others

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Ajay Tewari.

Present: Mr. Mansur Ali, Advocate
for the petitioner(s).

Mr. Chetan Sharma, Assistant Advocate
General, Haryana for respondents No.1 & 2.

Ms. Loveleen Dhaliwal, Advocate
for respondent No.3.

Ajay Tewari, J.

The present petition has been filed to quash the order dated 3.7.2014, whereby the cancellation report has been accepted.

Learned counsel for the petitioner has argued that in the impugned order, it is recorded on the previous date that the complainant was present but on the date in question, she has died. In these circumstances, it was incumbent upon the Court to issue notice to next of the kin of the petitioner to enable him to participate in the cancellation proceedings.

Learned counsel for the private respondent as well as learned Assistant Advocate General have tried to emphasize that the cancellation report was accepted after thorough investigation and it was the second cancellation report and on both occasions, the offence has been investigated under the supervision of a senior police officer.

Be that as it may, the issue is whether it was incumbent upon the Magistrate to have issued notice to the present petitioner.

Learned counsel for the petitioner has argued that the definition of the word "victim" in newly added Section 2(wa) Cr.P.C. would include guardian or legal heir of the victim and, therefore, the petitioner being the brother should have been put to notice of the cancellation report. Learned counsel for the private respondent and learned Assistant Advocate General have argued that the petitioner cannot be taken to be either the guardian or the legal heir.

The salutary requirement of issuing notice to the complainant before acceptance of a cancellation report has been engrafted on to the criminal jurisprudence by a series of judicial decisions and even if it is argued that petitioner is not a guardian or legal heir, in the facts and circumstance of the present case, I am of the opinion that he should be allowed to oppose the cancellation report without deciding the question of his legal status vis-à-vis the victim.

Resultantly, the impugned order (Annexure P3) is set aside and the petitioner is permitted to appear before the Illaqa Magistrate on 6.10.2015. The Investigating Officer is also issued notice through the Assistant Advocate General to appear on the said date and thereafter, on any date on which the Magistrate requires the parties. The Magistrate is directed to pass a fresh order, in accordance with law.

Petition stands disposed of in the above terms.

(Ajay Tewari)
Judge

August 25, 2015

"DK"