

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

CRM-M No.33742 of 2015

Date of decision: 30th November, 2015

Ajaypal Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

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. Harpal Singh Bal, Advocate
for the petitioner.

Mr. Gurveer Sidhu, Asstt. Advocate General, Punjab.

FATEH DEEP SINGH, J.

Petitioner Ajaypal Singh, who is complainant in case got registered by way of FIR No.39 dated 27.02.2015 under Sections 420/406/120-B IPC and Section 24 of the Emigration Act pertaining to Police Station Kamboj, District Amritsar, through the invocation of the powers of this Court under Section 482 Cr.P.C. has sought directions to respondent No.2, Senior Superintendent of Police (Rural), Amritsar to withdraw investigations of this case from respondent No.3 SHO of the Police Station and hand over the same to some superior officer not below the rank of Superintendent of Police or in the alternative has

sought directions for constituting a Special Investigating Team to investigate the case.

Brief facts, that are undisputed and have become integral part of the arguments of the two sides, are that the petitioner claims that he is 10+2 pass and is residing in village Loharka Kalan, Tehsil and District Amritsar and that one Gurmeet Kaur resident of his village was acquainted with the mother of the petitioner namely Jeet Kaur and who used to implore mother of the petitioner that one Mohabbat Pal Singh was known to her who sends people abroad and that since petitioner was unemployed, she could facilitate the same. Thereafter, said Gurmeet Kaur introduced Mohabbat Pal Singh to the family of the petitioner and who promised to send him to Malaysia on work permit. The deal was settled for a sum of ₹2.50 lacs and as a first installment ₹20,000 was taken by Mohabbat Pal Singh and thereafter he took ₹1,30,000 on 11.04.2014 and thereafter arrangement was made through one Harjinder Singh, an agent, and while in the process of entering Malaysia the petitioner was apprehended and thereafter it is alleged that accused person fleeced ₹50,000; ₹40,000 and ₹10,000; in all totaling to ₹1,00,000 from the family of the petitioner on being stranded midway. It is thereafter, through a local acquaintance in Malaysia, the petitioner was got released who had to spend ₹70,000 for his return back and on the basis of allegations the present case was got registered.

It is claim of the petitioner that accused persons are trying to politically pressurize the investigations and that in spite of the best

endeavours no worthwhile investigations are progressing and thus, came up before this Court by way of the instant petition.

The official respondents in their reply have termed the allegations qua the Investigating Agency to be bereft of truth, taking a stand that on the complaint of the petitioner a case has already been registered and that in spite of drastic efforts of the police, accused could not be apprehended and that an officer of the rank of Superintendent of Police is conducting the investigations and rather it is the petitioner who has filed declaration (Annexure R1) and compromise (Annexure R2) before the police along with statement of his father (Annexure R3) about the compromise that has been arrived at between the parties at the behest of the villagers, and therefore, termed the entire allegation to be concocted and false one. However, the police on the basis of stand of the complainant were intending to file cancellation report.

During the course of arguments, when confronted with the own compromise documents (Annexure R1 to R3), Mr. Harpal Singh Bal, Advocate for the petitioner could not controvert the same. The police, when initially complaint was made to them, finding it to be a cognizable offence had registered an FIR in terms of Section 154 Cr.P.C. and it is subsequent thereto the compromise arrived between the parties has led to the police taking a stand of filing of cancellation report. Since evidently in terms of Section 320 Cr.P.C. provides offence of cheating to be compoundable at the behest of person so cheated and since it is the own stand of the petitioner of having

effected a compromise, thus, nothing can be found fault with in the investigations who have acceded to this request and so is the case with Section 406 IPC. Moreover, it is the very prerogative of the Investigating Agency to collect the evidence and to submit the challan and it is within the domain of the Court either in terms of Section 227 or 239 Cr.P.C. to discharge or not to discharge the accused. More so, even in case the police does not hold the persons, against whom the allegations have been levelled, to be culpable for commission of any such offence, the petitioner has a right if so aggrieved to invoke jurisdiction of the appropriate Court in terms of Sections 190 and 156(3) Cr.P.C. It is, by now, well settled preposition of law, reliance of which can be placed upon '**Vinay Tyagi v. Irshad Ali @ Deepak and others**' reported as **2013(2) RCR (Criminal) 197**, whereby elaborating provisions of Section 173(2) and 173(8) of Cr.P.C. Hon'ble the Supreme Court considering the situation held that no Investigating Agency is empowered to conduct fresh, de-novo or re-investigations in relation to the offence for which it has already filed a report in terms of Section 173(2) Cr.P.C. and it is only upon orders of the higher Court empowered to pass such orders that aforesaid investigation can be conducted, and in which the higher Court will have to pass a specific order with regard to the fate of the investigations already conducted and the report so filed before the Court of the learned Magistrate.

Learned counsel for the petitioner could not convince this Court how there has been misuse of the powers by the Investigating Agency which has led to blatant denial of legitimate rights and to the

prejudice of the petitioner. It is only in the rarest of the rare cases where ends of justice demand the higher Court needs to show indulgence in the exercise of its extraordinary inherent powers under Section 482 Cr.P.C. Apparently, nothing can be brought to light which necessitates exercise of such a discretion in favour of the petitioner. The petition is wholly without any merits and thus stands dismissed.

(FATEH DEEP SINGH)
JUDGE

November 30, 2015
rps