

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

**Criminal Misc. No. M- 35058 of 2015
Date of Decision: 13.10.2015**

Ishu Sanghar and another

--Petitioners.

Vs.

State of Punjab

--Respondent.

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Ritesh Pandey Advocate
for the petitioners.

RAMESHWAR SINGH MALIK J. (ORAL)

Petitioners, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seek quashing of FIR No. 133, dated 18.9.2015 under Sections 7/13 (2) of the Prevention of Corruption Act, 1988, registered at Police Station Civil Lines, Batala, Police District Batala, District Gurdaspur.

Learned counsel for the petitioners places reliance on a judgment of the Hon'ble Supreme Court in Ramdev Food Products Private Limited Vs. State of Gujarat, 2015 AIR (SC) 1742, to contend that learned Magistrate has exceeded his jurisdiction, while directing the investigating agency to proceed further against the petitioners, even without getting sanction from the competent authority, petitioners being the public servants. He further submits that learned Magistrate failed to apply his judicious mind, while passing the order under Section 156 (3) Cr.P.C. In this view of the matter, the

impugned FIR as well as subsequent criminal proceedings arising therefrom are liable to be quashed. He prays for allowing the present petition, by quashing the impugned FIR.

Having heard the learned counsel for the petitioners, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, 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., for the following more than one reasons.

The allegations against the petitioners are direct and serious in nature. The learned Magistrate has specifically dealt with each and every relevant aspect of the matter, before passing the order, directing the investigating agency to proceed further against the petitioners, in accordance with law and after completing all formalities qua taking sanction for prosecution of the petitioners, from the competent authority.

Although learned counsel for the petitioner has not placed on record a copy of the order passed by the learned Magistrate, yet even if the said order is treated to be the very basis of registration of impugned FIR, as argued by the learned counsel, the learned Magistrate has ensured meticulous compliance of the law laid down by the Hon'ble Supreme Court in Ramdev's case (supra). It is so said, because the learned Magistrate has issued specific directions to the investigating agency to seek sanction for prosecution of the

petitioners from the competent authority.

The relevant part of the order, reproduced in the impugned FIR from pages No. 26 to 28 of the paper book, read as under:-

*"I am the Illaqa Magistrate of Police Station Civil Lines Batala and as per the statement of the Sukhamrit Singh (accused in this complaint) he is owner of the M/s Unique Motors situated on Jalandhar Road, Batala and in which as per the statement of the said Sukhamrit Singh comes under the territorial jurisdiction of P.S. Civil Lines, Batala, and the alleged offence qua demanding the illegal gratification and qua giving threats to the said Sukhamrit Singh by the above stated officials of Labour Department/Factor Department namely Inspector Jagjit Singh and Inspector Ishu Sanghar (Now Assistant Director) has been committed in the territorial jurisdiction of P.S. Civil Lines Batala, i.e. at the showroom of Sukhamrit Singh. Hence, being the Illaqa Magistrate of P.S. Civil Lines Batala this court is having jurisdiction to initiate criminal proceeding against the above stated both officials i.e Inspector Jagjit Singh and Inspector Ishu Sanghar (now Assistant Director). So, SHO/PS Civil Lines Batala is specifically directed to initiate criminal proceedings against both the above stated persons/officials of Labour Department **after***

completing all formalities qua taking the sanction for the prosecution of the above stated officials from the concerned Authorities, under intimation to this Court. A copy of this order be immediately sent to SHO/PS Civil Lines Batala through ASI Nirmal Singh No. 1655 who is present in the Court in some other case. As far as the proceedings of the complaint in hand is concerned titled as Assistant Director of Factories Vs. Sukhamrit Singh is ordered to be sent to the court to Ld. CJM, Gurdaspur with request to transfer to any other for proper adjudication as under the facts and circumstances of this case and also under the circumstances when the court of undersigned has recommended the criminal action against the complainant of this complaint so I do not want to pursue this case. The parties are directed to appear in the court of Ld. CJM Gurdaspur on 8.10.2015 at 9:30 A.M. sharp and Ahlmad is directed to sent the file complete in all respect to the court of Ld. CJM.”

A bare reading of the abovesaid order passed by the learned Magistrate would show that he has not exceeded his jurisdiction, while directing the SHO of the concerned police station to initiate the police proceedings against both the petitioners, however, only after completing all the formalities qua taking sanction for prosecution of the petitioners from the competent authority. The

learned Magistrate was very much competent to do so. Having said that, this Court feels no hesitation to conclude that learned Magistrate has not exceeded his jurisdiction, while passing the impugned order for registration of the impugned FIR and the same is not liable to be quashed, for this reason also.

In view of what has been discussed hereinabove, it is unhesitatingly held that the learned Magistrate has rightly invoked his power under Section 156 (3) Cr.P.C., referring the matter to police to exercise its power of investigation under Chapter XII of the Code of Criminal Procedure. The relevant observations made by the Hon'ble Supreme Court in later part of para 34 of its judgment in Ramdev Food Products Private Limited's case (supra), which can be gainfully followed in the present case, read as under:-

“In Devrapalli Lakshminaryanan Reddy & Ors. V. V. Narayana Reddy & Ors. (1976) 3 SCC 252 , National Bank of Oman V.. Barakara Abdul Aziz & Anr. (2013) 2 SCC 488 , Madhao & Anr. V. State of Maharashtra & Anr. (2013) 5 SCC 615 , Rameshbhai Pandurao Hedau V.. State of Gujarat (2010) 4 SCC 185 , the scheme of Section 156(3) and 202 has been discussed. It was observed that power under Section 156(3) can be invoked by the Magistrate before taking cognizance and was in the nature of pre-emptory reminder or intimation to the police to exercise its plenary power of investigation beginning Section 156 and ending

with report or chargesheet under Section 173. On the other hand, Section 202 applies at post cognizance stage and the direction for investigation was for the purpose of deciding whether there was sufficient ground to proceed.

It goes without saying that if appropriate sanction would not be granted by the competent authority against the petitioners, no court would be competent to take cognizance. Powers of the police to investigate, have the statutory sanction, as envisaged under the Code of Criminal Procedure. These powers were recognised by the Privy Council as far back as in 1945 in the case of **Emperor Vs. Khwaja Nazir Ahmad, 1945 AIR (PC) 18** and the said view has been consistently followed by the Hon'ble Supreme Court as well as different High Courts of the country, including this Court.

Speaking for 5 judges Bench of the Privy Council, **Lord Porter**, in para 12 and 13 of the judgment in Khwaja Nazir Ahmad's case (supra), held as under:-

In their Lordships' opinion, however, the more serious aspect of the case is to be found in the resultant interference by the Court with the duties of the police. Just as it is essential that every one accused of a crime should have free access to a court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in

matters which are within their province and into which the law imposes upon them the duty of enquiry.

In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course subject to the right of the Court to intervene in an appropriate case when moved under [Section 491](#) of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it and not until then. It has sometimes been thought that [Section 561A](#) has given increased powers to the Court which it did not possess before that section was enacted. But this is not so. The section

gives no new powers, it only provides that those which the Court already inherently possess shall be preserved and is inserted, as their Lordships think, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Code of Criminal Procedure and that no inherent power had survived the passing of that Act.

No doubt if no cognizable offence is disclosed, and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation, and for this reason Newsam J. may well have decided rightly in **25 AIR 1938 Madras 129: 173 IC 14, MMST Chidambaram Vs. Shanmugam Pallai**, but that is not this case.

In the present case the police have under [Sections 154](#) and [156](#) of the Criminal Procedure Code a, statutory right to investigate a cognizable offence without requiring, the sanction of the Court, and to that extent the case resembles **AIR 1916 PC 64 Chhatrapat Singh Dugan v. Kharag Singh Lachmiram**, in which as the High Court has pointed out their Lordships' Board expressed the view that to dismiss an application on the ground that it would be an abuse of the powers of the Court

might be to act on treacherous grounds. Of course, in the present case, as in the petition brought by Mr. Gauba, no prosecution is possible unless the necessary sanction under [Section 197](#) of the Criminal Procedure Code has first been obtained. But that stage like the stage at which the Court may legitimately intervene has not in their Lordships' opinion yet been reached. The question so far is one of investigation, not prosecution. In accordance with their view, their Lordships will humbly advise His Majesty that the appeal should be allowed, the decree and order of the High Court quashed and the investigation permitted to proceed.

Since there was no sanction available with the learned Magistrate to prosecute against the petitioners, he rightly did not take cognizance. It was also not found necessary to postpone the issuance of process, because learned Magistrate found that a case was made out to proceed against the petitioners, therefore, he rightly issued directions to the police under Section 156 (3) Cr.P.C. However, learned Magistrate directed the SHO of the police station concerned to proceed against the petitioners only after completing all the formalities for taking sanction for prosecution of the petitioners from the competent authority, thus, the learned Magistrate has been found well within his jurisdiction to pass an order, on the basis of which the impugned FIR came to be registered on 18.9.2015.

Respectfully following the law laid down by the Hon'ble

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authenticity of this document

Supreme Court and also the Privy Council, in the cases referred to hereinabove, keeping in view the legislative intent behind Chapter XII in the scheme of the Code of Criminal Procedure, as well as the statutory right and also the duty of police to investigate, it is unhesitatingly held that this Court would be certainly exceeding its jurisdiction to interfere in the matter of investigation, particularly at the very inception when the investigation is yet to start. In these peculiar circumstances, petitioner has not been found entitled to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C.

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 misconceived, bereft of merit and without any substance. Thus, it must fail. No case for bail pending trial 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

13.10.2015
AK Sharma

Whether to be referred to the reporters? Yes/No