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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-36376-2015

Date of Decision : December 3rd, 2015

Shripad Dalip Tikaram and another

.... Petitioners

Versus

Union Territory, Chandigarh and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporters or not? | |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Present Ms. Tanu Bedi, Advocate,
for the petitioners.

Mr. J.S.Toor, Addl. P.P. U.T. Chandigarh.

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure for quashing of FIR No. 9 dated 11.1.2014 [Annexure P/1] under Sections 420, 467, 465, 471 and 120-B of IPC registered at Police Station Sector 26, Chandigarh has been filed by the petitioners, who are employees of Corporation Bank. Petitioner No.1 is the Assistant General Manager and petitioner No. 2 has already been superannuated. As per the petitioners, they have no role to play in the allegations levelled in the FIR. More so, no cause of action has taken place in/at Chandigarh and although the FIR was registered on 11.1.2014, the investigating agency failed to submit report under Section 173 Cr.P.C. till date.

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Learned counsel appearing for Union Territory, Chandigarh has taken the plea that cause of action had also arisen in the territorial jurisdiction of Chandigarh. More so, the investigation is going on and the present petition for quashing of FIR is not maintainable at this stage.

Learned counsel for the petitioners contended that quashing petition was filed on legal ground of territorial jurisdiction and this Court had issued notice of motion after hearing the counsel for the petitioners. State has not filed any reply to the legal question raised in the petition and as such, the plea raised by learned State counsel is legally not tenable. In support of her arguments, learned counsel for the petitioners placed reliance upon decision from Hon`ble Supreme Court in **Ramesh and others Vs. State of Tamil Nadu, 2005 [2] RCR [Criminal] 68**, where the Apex Court closed the matter keeping in view the territorial jurisdiction and over all view of the matter.

Learned counsel for the petitioners also placed reliance upon judgment of Hon`ble Supreme Court in **State of Haryana and others Vs. Bhajan Lal and others, 1991 [1] RCR [Crl.] 393** wherein, it has been held that if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property, then the Court has the power under Section 482 Cr.P.C. to quash such investigation.

Having considered the matter especially in view of the fact that the investigation is still pending and the Investigating Agency is seeking report from Document Expert so as to complete the investigation, this Court is of the considered view that it would not be proper to quash the FIR at

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this stage. In **Bhajan Lal's case [supra]**, the Apex Court had also dealt with the power of Investigating Agency as well as power to quash FIR under Section 482 Cr.P.C. by this Court and it has been observed by the Apex Court that power under Section 482 Cr.P.C. can be exercised by the High Courts either to prevent abuse of process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formula and to give an exhaustive list of myriad kinds wherein such powers should be exercised :-

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act,

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providing efficacious redress for the grievance of the aggrieved party.

- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

The facts of the present case do not fall in either of the above grounds.

Hon`ble Apex Court also observed in **Bhajan Lal's case [supra]** that non-filing of a written statement by the competent authority of the State Government by way of reply to the averments made in the writ petition cannot also be said to be such a serious flaw at this stage.

Identical are the facts of the present case that even non-filing of any written statement or reply by Union Territory, Chandigarh and taking the plea that petition for quashing of FIR is not maintainable at this stage, when the investigation is going on, is legally tenable. Such observations are being made because as per Section 154[1] Cr.P.C., the police have a statutory right under Section 156[1] Cr.P.C. to investigate any cognizable offence. The investigation of any cognizable offence is exclusively within the domain of the investigating agencies over which the Courts cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions relating to investigation and that it is only in a case wherein a police officer decides not to investigate an offence. More so, during the investigation, when there are only allegations of recriminations but no evidence, this Court cannot anticipate the result of the investigation and render a finding on the question of *mala fides* on the materials.

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In view of the above, the present petition for quashing of FIR is not maintainable at this State. The petition stands dismissed.

(SHEKHER DHAWAN)
JUDGE

December 3rd, 2015
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