

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M-4184-2012

Date of decision:6.4.2015

Prem Kumar Rattan

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Amit Bakshi, Advocate for the petitioner.

Ms.Anmol Grewal, AAG, Punjab.

Mrs. Baljeet Kaur Mann, Advocate for respondent No.2.

RAMESHWAR SINGH MALIK, J. (Oral)

Petitioner, by way of instant petition Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks quashing of FIR No.359 dated 15.12.2005 registered under Sections, 420, 467, 468, 471 and 120-B of the Indian Penal Code ('IPC' for short) and Section 12 of the Passport Act, 1967, at Police Station, Civil Lines, Patiala (Annexure P-1), order of framing charge dated 2.6.2009 (Annexure P-3), charge-sheet dated 2.6.2009, Annexure P-3 (colly) passed by the learned Judicial Magistrate First Class, Patiala, as well as quashing of the order dated 6.2.2010 passed by the learned Additional Sessions Judge, Patiala (Annexure P-5), dismissing the revision of the petitioner, while upholding the order of framing of charge.

Shorn of unnecessary details of the matter, it would suffice to note that after conclusion of investigation, police report under Section 173

Cr.P.C. was filed against the petitioner. Charges were framed against the petitioner, along with his two sisters namely Kiran Sharma and Raj Kumari, by the learned Judicial Magistrate First Class, Patiala, under Sections 420, 467, 468, 471 and 120-B IPC, vide his order dated 21.11.2007. Petitioner challenged this order of framing charge by way of revision before the learned Additional Sessions Judge, Patiala, who dismissed the said revision qua the present petitioner, however, the same was allowed qua the above-said two sisters of the petitioner vide order dated 10.10.2008 (Annexure P-2), holding that prima facie allegations against the petitioner were made out. The order dated 10.10.2008 passed by the learned Additional Sessions Judge was challenged by the complainant-respondent No.2 namely Smt. Sumna Devi before this Court by way of CRR No.2564-2008. However, the present petitioner did not challenge the said order dated 10.10.2008, thus, accepted the charges framed against him, vide order dated 21.11.2007.

The above-said criminal revision petition, filed by respondent No.2 before this Court, was dismissed vide order dated 9.12.2008 (Annexure R-2/1), whereby it was observed by this Court that there was no infirmity in the reasons assigned by the learned Additional Sessions Judge, in his order dated 10.10.2008, holding that it was only Prem Kumar Rattan who was involved in forgery and the charge could be framed only against him, i.e. the present petitioner. In compliance of the above-said order dated 10.10.2008 passed by the learned Additional Sessions Judge, Patiala and upheld by this Court vide above-said order dated 9.12.2008, the learned trial Court again found a prima facie case against the petitioner and framed the charge against him vide impugned charge-sheet dated 2.6.2009, Annexure P-3 (colly). Although the charges were the same, which were earlier framed

against the petitioner by the learned trial Court vide order dated 21.11.2007, yet the petitioner filed his revision petition before the Sessions Court at Patiala, which came to be dismissed by the learned Additional Sessions Judge, Patiala, vide his impugned order dated 6.2.2010 (Annexure P-5). Hence this petition under Section 482 Cr.P.C. for quashing of the impugned FIR, charge-sheet as well as the order passed by the revisional Court.

Notice of motion was issued and pursuant thereto, reply by way of affidavit dated 13.7.2012 was filed on behalf of respondent No.1, whereas a separate written statement was filed on behalf of respondent No.2.

Learned counsel for the petitioner submits that no charge-sheet was liable to be framed against the petitioner. The learned revisional court also failed to appreciate the true facts of the case, while passing the impugned order dated 6.2.2010 (Annexure P-5). He further submits that in fact reading of impugned FIR does not disclose any offence against the petitioner and the same was liable to be set aside. He prays for allowing the present petition.

Per contra, learned counsel for respondent No.2-complainant vehemently contended that the petitioner was guilty of concealment of material facts from the notice of this Court. The present one was a second revision petition under the garb of a petition under Section 482 Cr.P.C. and the same was not maintainable. She further submits that the petitioner has, as a matter of fact, accepted the charge framed against him vide order dated 21.11.2007 passed by the learned trial Court as he did not challenge the order dated 10.10.2008 (Annexure P-2) passed by the revisional court. The present petition was not even maintainable. She concluded by submitting

that all the material witnesses have already been examined but the petitioner was not allowing the trial to conclude by misusing the process of law.

Similarly learned counsel for the State, while endorsing the above-said arguments raised by learned counsel for respondent No.2, submits that since the petitioner was misusing the process of law, present petition is liable to be dismissed with exemplary costs.

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 rival contentions raised, this Court is of the considered opinion that in view of the peculiar facts and circumstances of the case noticed hereinabove, present one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its inherent powers under Section 482 Cr.P.C. Since the present petition is nothing but wholly unwarranted and misconceived petition, it is liable to be dismissed with costs. To say so, reasons are more than one, which are being recorded hereinafter.

It is the settled principle of law that the learned trial Court is only required to see that a prima facie case is made out for framing of the charge. At the stage of framing of charge, the learned trial Court has no jurisdiction to evaluate the quality of evidence nor it is the requirement of law that the evidence should be sufficient for recording the conviction of the accused. This was the reason that the learned Additional Sessions Judge, while dismissing the earlier revision of the present petitioner against the charge framed, exactly on similar lines as framed now, vide earlier order passed by the learned trial Court, observed that there were allegations against the accused Prem Kumar Rattan and a prima facie case for having

committed the alleged offence by him, has been made out against petitioner-Prem Kumar Rattan only. This order dated 10.10.2008 (Annexure P-2) passed by the learned Additional Sessions Judge, Patiala, has become final against the petitioner as he did not challenge the same before this Court.

It is also pertinent to note here that this order dated 10.10.2008 (Annexure P-2) came to be upheld by this Court also, however, while dismissing CRR No.2564 of 2008 filed by the complainant-respondent No.2, vide its order dated 9.12.2008. Thus, in this manner, the initial order dated 21.11.2007 passed by the learned Judicial Magistrate First Class, Patiala, whereby exactly the similar charge was framed against the present petitioner, has already been upheld up-to this Court. Since the initial charge-sheet framed against the three accused namely Kiran Sharma, Raj Kumari as well as the present petitioner, was set aside only qua Smt. Kiran Sharma and Raj Kumari by the learned Additional Sessions Judge, vide above-said order dated 10.10.2008 (Annexure P-2) and was also upheld by this Court vide order dated 9.12.2008, the learned trial Court rightly passed the order dated 2.6.2009 for framing the charge only against the petitioner.

Accordingly, petitioner was charge-sheeted vide charge-sheet dated 2.6.2009, Annexure P-3 (colly). Since the charge was the same, which has been upheld by this Court, as noticed above and there was no change in the circumstances, even the revision petition of the petitioner before the learned Sessions Judge at Patiala, was not maintainable. It is so said, because that would amount to abuse of process of law, as the petitioner did not challenge before this Court the above-said order dated 10.10.2008 passed by the learned Additional Sessions Judge, Patiala, dismissing his earlier revision petition, against framing of the charge for these very

offences.

Further, the learned Additional Sessions Judge, Patiala, while passing the impugned order dated 6.2.2010 (Annexure P-5), discussed each and every relevant aspect of the matter in detail, before arriving at a judicious conclusion, for dismissing the revision petition of the petitioner. The relevant observations made by the learned Additional Sessions Judge, Patiala in para 14 of the impugned order dated 6.2.2010 (Annexure P-5), which deserve to be referred here, read as under:-

“Viewing the facts of the present case from the above said position of law enunciated by the Hon'ble Apex Court, the complainant Sumna Devi who has rolled the machinery of law into motion. In this case, her application dated 12.08.2005 shows that she has leveled categorical allegations against the revisionist Prem Kumar Rattan that Prem Kumar Rattan has given wrong address of the husband of the complainant and by way of changing the name of his sister's daughter from Bhawna to Sadhbhawna and by way of changing the name of her mother Raj Rani to Kiran Sharma, has got prepared a fake passport No.DINP No. 3382 of the file No.151836/03. In an inquiry conducted by the DSP (II), it was found that Prem Kumar had got prepared ration card of Bhawna Sharma by giving her wrong address of F-II, Malwa Colony, Patiala. Then, on the basis of that ration card, he got manoeuvred matriculation certificate of Bhawna Sharma by showing her wrong parentage, on the basis of which a fake passport was got prepared. The report of FSL Punjab date 14.11.2006 has also shown the complicity of the accused/revisionist Prem Kumar Rattan in getting forged the document in question. It was only because of this, that the court of Shri Harpal Singh, the then learned Additional Sessions Judge, Patiala, had dismissed the revision petition preferred by the present revision petition vide order dated 10.10.2008. The Hon'ble

Punjab and Haryana High Court at Chandigarh in Criminal Revision No.2564 of 2008 decided on 9.12.2008 preferred by complainant of the present case, though had dismissed the revision petition against the other accused persons by way of upholding the order of revisional court of Shri Harpal Singh, the then learned Additional Sessions Judge, Patiala. But, the Hon'ble Court had also found in its order dated 9.12.2008 that only Prem Kumar Rattan was involved in the forgery. So, charge could be framed only against the said person i.e. Prem Kumar Rattan. Now, that very person Prem Kumar Rattan is again preferring the revision petition against the order of framing of charge against him vide order dated 2.6.2009. But the only difference is that previously the learned trial court had framed the charge against all the three accused vide order dated 21.11.2007 and now in compliance with the orders of Hon'ble High Court, the learned lower court has framed the charge against Prem Kumar Rattan only. Even if the array of charges framed against accused in charge sheet dated 2.6.2009 is taken one by one, one can see that prima facie there are allegations against accused Prem Kumar Rattan that he had forged a ration card showing the name of Bhawna Sharma as Sadhbhawna Sharma. Then, he had forged the adoption deed dated 30.11.92 ration card as well as matriculation certificate in the name of Sadhbhawna Sharma. Prima facie there are allegations to the effect that the accused had used the ration card and matriculation certificate for procuring a fake passport for Bhawna Sharma. In this way, at this stage, prima facie, there is substantial material on record to frame the charge against the accused/revisionist Prem Kumar Rattan under Sections 420/467/468/471 IPC and as such, the learned lower court has not committed any illegality or irregularity in framing the charge sheet dated 2.6.2009 against Prem Kumar Rattan revisionist/accused. Even otherwise also, the matter has already been decided by the court of Shri Harpal Singh, the then learned Additional

Sessions Judge, Patiala and then by the Hon'ble Punjab and Haryana High Court. So, now no interference is warranted in the order dated 2.6.2009.”

Faced with the above-said impugned order dated 6.2.2010 (Annexure P-5), petitioner found himself to be in a difficult situation. Proceeding further on a clever device, present petition was filed under Section 482 Cr.P.C., seeking quashing of the FIR as well as the above-said impugned orders, so as to show that the petition is maintainable in the present form. However, during the course of hearing, when a pointed question was put to the learned counsel for the petitioner, as to how the petitioner can claim that in spite of treating the allegations against him leveled in the impugned FIR to be true on their face value, no case, whatsoever, is made out, learned counsel for the petitioner had no answer and rightly so, because it was a matter of record. Even the charge has been framed against the petitioner, which as a matter of fact, has been upheld up-to this Court in earlier round of litigation. Having said that, this Court feels no hesitation to conclude that the present one is a glaring example of blatant misuse of the process of law and this petition is liable to be dismissed with costs, for this reason also.

It is the cardinal principle of law that the FIR and subsequent proceedings arising therefrom, would be quashed by this Court, while exercising its inherent powers under Section 482 Cr.P.C., only when despite accepting the allegations levelled against the accused-petitioner in the impugned FIR, to be true on their face value, without adding anything thereto and without subtracting anything therefrom, no offence, whatsoever, is made out against the accused-petitioner. However, instant one has not been found to be a fit case warranting interference at the hands of this

Court, while exercising its jurisdiction under Section 482 Cr.P.C. for the purpose of quashing of the impugned FIR.

The above-said view taken by this Court also finds support from the celebrated judgment of the Hon'ble Supreme Court in **State of Haryana versus Bhajan Lal and others, AIR 1992 SC 604**. The relevant observations made by the Hon'ble Supreme Court, laying down seven broad principles, which can be gainfully followed in the present case, read as under:-

(a) 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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

(c) 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;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer

without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) 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;

(f) 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, providing efficacious redress for the grievance of the aggrieved party;

(g) 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 present case has not been found to be falling in any of the above-said guidelines framed by the Hon’ble Supreme Court. It is pertinent to note here that although powers of this Court under Section 482 Cr.P.C. are wide enough, yet it is equally true that the discretionary powers are to be exercised sparingly and with circumspection, only to prevent the abuse of the process of court or to secure the ends of justice. So far as the instant case is concerned, interference by this Court would indirectly amount to

review the earlier order dated 9.12.2008 passed by this Court, whereby legality of an identical charge-sheet in this very case against this very petitioner has already been upheld. Thus, such an interference is not permissible in law. In these circumstances, it can be safely concluded that the learned Additional Sessions Judge, Patiala, committed no error of law, while passing the impugned order and the same deserves to be upheld, for this reason as well.

During the course of hearing, learned counsel for the petitioner could not point out any jurisdictional error or patent illegality apparent on the record of the case, so as to convince this Court to take a different view than the one taken by the learned courts below. It is also a matter of record that the impugned FIR is of year 2005. Petitioner is delaying the trial on one pretext or the other by misusing the process of law. This is yet another reason for dismissing the present petition with costs.

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 the present petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out. Consequently, since this Court has found that the petitioner has been misusing the process of law for a pretty long time, not allowing the criminal trial to proceed and has caused inordinate long delay, the FIR being of 2005, imposing of cost of Rs.20,000/- on the petitioner will meet the ends of justice. Ordered accordingly.

The petitioner shall deposit cost of Rs.20,000/- with the Punjab State Legal Services Authority within a period of one month from the date

of receipt of a copy of this order, failing which the learned trial court shall take necessary steps against the petitioner, in this regard,

Resultantly, with the above-said observations made, the instant petition stands dismissed with costs.

6.4.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE