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

CRM-M No.6893 of 2012 (O&M)

Date of Decision: 21.05.2015

Jarnail Singh

.....Petitioner

Vs

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ashu Kaushik, Advocate
for the petitioner.

Mr. Varun Sharma, A.A.G., Punjab.

Mr. J.S. Gill, Advocate
for respondents No.2 to 4.

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

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 17.12.2011 passed by Special Court, Tarn Taran, whereby untraced report submitted by the State in FIR No.11 dated 11.01.2009, under Section 18 of N.D.P.S. Act, P.S. Tarn Taran has been accepted.

[2]. Petitioner alleged that he has no antecedent record of any criminal activity. He was beaten by respondents No.3 and 4 on 08.08.2008 and a case bearing FIR No.76 dated 17.08.2008 under Sections 325/326/324/323/148/149 IPC was registered against the aforesaid persons. The cross case got registered against the

petitioner was ultimately dropped.

[3]. Petitioner alleged that he was under tremendous pressure of the Police at the instance of private respondents not to pursue the aforesaid case and to compromise the issue. Keeping in view the aforesaid, a raid was conducted at his house on 01.01.2009 under the pretext of recovery of some contraband. Sarpanch and other respectables of the village also came to the spot. In the search, no incriminating thing was found. Petitioner became suspicious and over apprehensive that something may not be planted in his house, therefore, after the departure of Police he along with Sarpanch and other members of the Panchayat themselves conducted a thorough search in his house and found that a polythene bag containing opium was lying under a cow dung cake.

[4]. Petitioner along with members of Panchayat met SSP Tarn Taran and handed over the contraband to him. Resultantly, FIR No.11 dated 11.01.2009 was registered under Section 18 of N.D.P.S. Act against unknown persons.

[5]. When no action was taken by the Police in the aforesaid FIR, petitioner filed **CRM-M No.15579 of 2011** for the issuance of direction to Police to present final report in the case. The Police submitted before the Court that the Investigating Agency has decided to submit an untraced report in the Court within stipulated period. In view of that petition was disposed of vide order dated 23.05.2011.

[6]. Police filed untraced report before the Court. Though the petitioner has submitted in the pleadings that he filed a protest petition but nothing is forthcoming except statement made by him before the Court on 29.10.2011, in which he improved his earlier version in the FIR and alleged attributability of contraband to Amritpal Singh, Darshan Singh and Gurdev Singh. The reason for such attribution was stated to be the rivalry between the groups and raid conducted by the Police was claimed to be off-shoot of such rivalry. In the FIR no such attribution was made nor anything was deposed before the Police during course of investigation when untraced report was prepared by the Police.

[7]. The Special Court, Tarn Taran vide order dated 17.12.2011 accepted the untraced report presented by the Police on the ground that petitioner has alleged that some intoxicant was thrown in his house by his adversaries. During course of investigation Police could not collect any evidence to connect any person with the act of throwing said intoxicant substance in the house of the complainant. On finding no connectivity between the intoxicating substance and the culprit, cancellation report was accepted.

[8]. In the reply submitted by respondent No.1, categorical stand has been taken that the FIR was registered against unknown persons, petitioner did not name any suspect present at that time, nor the Police could come to know as to who had thrown the said intoxicant in the house of petitioner. Accordingly cancellation report

was submitted. Reply to para No.2 in the context of filing protest petition was that the contents of this para are matter of record.

[9]. Private respondents No.2 to 4 have also filed short reply to say that the claim of the petitioner that he has no previous criminal record is factually wrong, rather petitioner was convicted in a case under Section 18 of N.D.P.S., Act, bearing FIR No.160 dated 23.07.2000, Police Station Valtoha in which he was sentenced to undergo rigorous imprisonment for 5 years along with fine of Rs.5,000/-.

[10]. On presentation of closure report/untraced report before the Court, Magistrate while rejecting closure report cannot directly ask the Police to file report under Section 173 Cr.P.C. Magistrate cannot transgress or impinge upon the jurisdiction of Police by compelling to change the opinion formed by Police. Investigation is the prerogative of the Investigating Agency. The Court cannot channelise the behavior of Investigating Officer to investigate the case in the manner suggested by the Court. The principles laid down in **AIR 1968 Supreme Court 117 Abhinandan Jha v. Dinesh Mishra** can be relied in the aforesaid context.

[11]. Even after police report or untraced report that no case is made out, still Magistrate can take cognizance on application of independent mind. However, there would be two options available before the Magistrate. First option is under Section 190 Cr.P.C., where the Magistrate may take cognizance (a) upon receiving complaint of facts which constitute such offence (b) upon police

report of suspect (c) Upon information received from any person other than a Police officer, or upon his own knowledge, that such offence has been committed.

[12]. Under Section 190(2) Cr.P.C., the Chief Judicial Magistrate may empower any Magistrate to second class to take cognizance under the aforesaid provision who is within his competence to inquire into and try. The Magistrate can ignore the conclusion arrived at by the Police and can apply independent mind to the facts brought on record by the Police after investigation and take cognizance of the same. This is the mechanism where Magistrate can directly take cognizance on the police report under Section 190(1) (b) Cr.P.C., and in such eventuality Magistrate is not bound to follow the procedure laid down under Section 200 and 202 of Cr.P.C. Second option is under Section 203 Cr.P.C. On police report Magistrate may not agree with untraced report and can direct inquiry under Section 202 Cr.P.C. After such an inquiry, Magistrate can take cognizance under Section 203 Cr.P.C. This situation is at par with that of pre-cognizable stage where Magistrate can call for report of the Police under Section 202 Cr.P.C., before taking cognizance on a complaint case. For such a course there should be a complaint filed before Magistrate.

[13]. The aforesaid principles have been elaborately discussed by the Hon'ble Supreme Court in **2012(1) R.C.R. (Crl.) 588, Vasanti Dubey v. State of Madhya Pradesh.**

[14]. In taking or refusing cognizance by the Magistrate, only a

prima facie nature of case is to be seen at this stage. Cognizance is the stage where Court applies its mind. In the facts narrated before this Court, it has come on record that the FIR was registered by the petitioner even after case registered by him against the private respondents in the year 2008 in respect of injuries. Still complainant kept mum in naming those persons in the FIR in question and the FIR was registered only against unknown persons. The Police could not collect any material to connect culprit with the incident of throwing contraband in the house of the petitioner. Therefore, no *prima facie* case can be presumed in favour of the petitioner at this stage when untraced report was filed before the Court and the same was accepted by the Magistrate.

[15]. Even if it is presumed that the petitioner filed some protest petition before the Magistrate (though nothing has come on record except bald statement made by petitioner before the Court at the time of acceptance of the untraced report). Till the date of recording statement of petitioner there was no incriminating material collected by the Police nor any criminal complaint was ever moved by the petitioner, warranting any cognizance by the Court.

[16]. No *prima facie* material was available before the Court to take cognizance at that time, therefore, untraced report appears to have been rightly accepted by the Magistrate. Secondly learned counsel for the private respondents has vehemently argued that no petition under Section 482 is maintainable in view of the fact that impugned order is not interlocutory order. The impugned order has

decided valuable right of the parties, therefore, it cannot be considered to be an interlocutory order.

[17]. The submission made at the bar is also worth acceptance because the powers under Section 482 Cr.P.C., are to be exercised very sparingly. The impugned order cannot be held to be interlocutory order and, therefore, revision was maintainable. On this score also the petition deserves to be dismissed.

[18]. Looking to the entirety of facts and circumstances of the case, this Court is of the view that impugned order dated 17.12.2011 does not require any interference by this Court in exercise of powers under Section 482 Cr.P.C.

[19]. Accordingly the petition is dismissed.

May 21, 2015

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(RAJ MOHAN SINGH)
JUDGE