

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

**CRM-M-5135 of 2015 (O&M)
Date of Decision: 31.8.2015**

Vivek Sharma and another

.....Petitioners

Vs.

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Naveen Batra, Advocate
for the petitioners.

Mr. K.D.Sachdeva, Additional A.G. Punjab.

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

RAMESHWAR SINGH MALIK J.

Petitioners, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seek quashing of the impugned FIR No. 49 dated 19.4.2012 under Sections 379/411 of the Indian Penal Code ('IPC' for short) and Section 21 (1) of the Mining and Minerals Act, 1957, registered at Police Station Kiratpur Sahib, District Rupnagar and the consequential proceedings arising therefrom.

Notice of motion was issued and pursuant thereto, reply by way of affidavit dated 1.7.2015, was filed.

On 19.8.2015, following order was passed by this Court:-

“During the course of hearing, it has transpired that offence in question being a compoundable one, was, as a matter of fact, compounded by the complainant-department, after receiving an amount of Rs.80,000/-from the petitioners. Consequently, General Manager-cum-Mining Officer, Rupnagar, vide memo No.1792 dated 19.7.2012 (Annexure P-4), wrote to the Senior Superintendent of Police, Rupnagar, to the effect that offence has been compounded after receiving an amount of Rs.80,000/- and in case FIR No.49 dated 19.4.2012 is cancelled then his office will not have any objection. Cancellation report had been prepared in the present case by the investigating officer which was approved by the Deputy Superintendent of Police, Anandpur Sahib vide Annexure P-5 (colly). However, in spite of the cancellation report, having been duly approved by the Deputy Superintendent of Police, challan was presented in the present case. As per the averments taken in para 3 of preliminary submissions in the reply by way of affidavit dated 1.7.2015 filed by Sh.Sant Singh Dhaliwal, Deputy Superintendent of Police, Anandpur Sahib, challan was presented because

of the alleged verbal directions issued by the then Senior Superintendent of Police, Rupnagar. The specific averment reads as under:-

“But SSP Roop Nagar, other Senior Officer disagreed with the report and verbally directed to present the challan in this case and the challan has been presented in this case.”

In view of the above, the then Senior Superintendent of Police, Rupnagar, is directed to come present before this Court on the next date of hearing, so as to explain as to how the challan came to be presented, in view of the communication dated 19.7.2012.”

In compliance of the abovesaid order, two separate affidavits were filed by the then and the present Senior Superintendents of Police, Rupnagar.

Learned counsel for the petitioners submits that the investigating agency proceeded on a malafide approach, while filing challan against the petitioners, in spite of the fact that offence was compoundable and it had been got compounded by the petitioners, by depositing the compounding fees of ₹80,000/-. He further submits that there was not even a passing reference of the communication dated 19.7.2012 (Annexure P-4), which was written by the competent officer of the complainant department to the Senior Superintendent of Police, Rupnagar, for cancellation of the impugned FIR, in the letter dated 8.3.2013 (Annexure 2/T) filed with the affidavit dated 24.8.2015. He would next contend that this was the reason that once

the respondents were caught by this Court on wrong foot, they were trying to pass the buck on junior officers, with a view to cover up their illegal actions. He concluded by submitting that since the cancellation report had been prepared and approved, filing of the challan without disclosing any reason shows highhandedness of the investigating agency, thereby causing serious prejudice to the rights of the petitioners, forcing them to face the agony of criminal trial. He prays for quashing the impugned FIR alongwith consequential criminal proceedings arising therefrom, by allowing the present petition with exemplary costs.

On the other hand, learned counsel for the State submits that there was no malafide intention on the part of any of the officers of the investigating agency. He further submits that since illegal mining was going on in the area and it was decided as a policy matter to file challan in such kind of cases, the same was presented in the present case as well. He prays for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of 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 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. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record and not in dispute that offence in

question was compoundable. It is also not in dispute that, as a matter of fact, the complainant department accepted the compounding fees from the petitioners to the tune of ₹80,000/- for getting the offence compounded. Further, after compounding the offence, complainant-department itself issued communication dated 19.7.2012 (Annexure P-4) to the Senior Superintendent of Police, Rupnagar, as the concerned police station was falling in his jurisdiction.

After receiving the communication from the complainant-department to the effect that the offence has been got compounded and it has no objection, in case the impugned FIR is cancelled, the cancellation report dated 28.7.2012 under Section 173 Cr.P.C. was prepared and was put up for approval. The Deputy Superintendent of Police, Anandpur Sahib, after careful perusal of the cancellation report, accorded his approval.

However, surprisingly, challan was still presented against the petitioners which was a result of malafide intentions of the respondent authorities, above the rank of Deputy Superintendent of Police, who accorded his approval to the cancellation report. Having said that, this Court feels no hesitation to conclude that police officer, whosoever he may be, exceeded his jurisdiction for extraneous consideration and for undisclosed reasons, while issuing verbal directions to the investigating agency for filing the challan.

As it can be noticed from the abovesaid order dated 19.8.2015 passed by this Court, the Deputy Superintendent of Police, in para 3 of preliminary submissions of his reply filed by way of

affidavit dated 1.7.2015, has taken specific averments that it was the then Senior Superintendent of Police, Rupnagar and other senior officers, who did not agree with the cancellation report and verbally directed to present the challan. It was the only reason for presentation of the challan. Thus, the impugned FIR alongwith subsequent proceedings arising therefrom, including the challan under Section 173 Cr.P.C., cannot be sustained and the same are liable to be set aside.

So far as the material and important official communication in the form of Annexure P-4, written by the General Manager-cum-Mining Officer, District Industry Centre, was concerned, the same has gone undisputed on record, because in all the three affidavits filed on behalf of respondent No.1, this communication was never disputed. Once the complainant department has accepted the compounding fees, because the offence was compoundable and thereafter, requested the investigating agency by way of the abovesaid official communication dated 19.7.2012 (Annexure P-4) to cancel the impugned FIR, the investigating agency was not having any jurisdiction to proceed further in the matter. Presentation of challan in such a situation, would certainly amount to misuse of process of law.

Further, a reading of the abovesaid facts would show that there was hardly any coordination between the complainant department and the investigating agency. Two wings of the same State Government were not aware about the functioning of each other, because right hand was totally ignorant about what the left hand was doing. Once the cancellation report was prepared on the

basis of a material fact recorded in the communication dated 19.7.2012 (Annexure P-4), regarding compounding of offence and it had also been approved, the then Senior Superintendent of Police, Rupnagar, would have no authority to direct the investigating agency to present the challan and that too, by way of verbal directions. As a result thereof, petitioners have been put to wholly unwarranted harassment which, on the face of it, is the highhandedness of the concerned police officers and the same is deprecated by this Court.

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 since the present case has 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., present petition deserves to be allowed with costs, which are quantified at ₹50,000/-.

Consequently, impugned FIR No. 49 dated 19.4.2012 under Sections 379/411 IPC and Section 21 (1) of the Mining and Minerals Act, 1957, registered at Police Station Kiratpur Sahib, District Rupnagar, alongwith the consequential criminal proceedings arising therefrom, are hereby quashed.

The payment of costs of ₹50,000/- shall be deposited by the then Senior Superintendent of Police, Rupnagar with the Punjab State Legal Services Authority, Chandigarh, within a period of two months, failing which it shall be the responsibility of the Collector, Rupnagar, to recover the said amount by arrears of land revenue and

deposit the same with the Punjab State Legal Services Authority. However, it shall be open to the authorities concerned to recover the amount of ₹50,000/-, from the concerned officers/officials, if found responsible for the same.

Resultantly, with the abovesaid observations and directions issued, present petition stands allowed with costs, as indicated above.

Registry is directed to send a copy of this order to the Deputy Commissioner-cum-Collector, Rupnagar, the then Senior Superintendent of Police, Rupnagar and the Secretary, Punjab State Legal Services Authority, Chandigarh, for compliance.

(RAMESHWAR SINGH MALIK)
JUDGE

31.8.2015
Ak Sharma