

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl.Misc. No.M-8894 of 2015
Date of Decision : 8.9.2015

Rachhpal Singh and another

.....Petitioners

Vs.

State of Punjab

.....Respondent

...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Mr. Daldeep Singh, Advocate for the petitioners.
Mr. D.S. Virk, AAG, Punjab.

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

RAMESHWAR SINGH MALIK, J

Petitioners seek quashing of impugned order dated 6.2.2015, passed by the learned Sub Divisional Judicial Magistrate ('SDJM' for short), Samrala, whereby petitioners were declared proclaimed offenders, inspite of the fact that cancellation report dated 1.12.2014, based on the enquiry report dated 17.11.2014 and duly approved by the competent authority, had been presented before the learned court of competent jurisdiction.

Notice of motion was issued and in the meantime, operation of the impugned order was stayed. Reply by way of affidavit dated 3.8.2015 was filed by the Deputy Superintendent of Police, Samrala, Police District Khanna, Distt. Ludhiana.

Learned counsel for the petitioners submits that once the cancellation report was prepared, declaring the petitioners to be innocent by the investigating agency itself, petitioners were under bonafide impression that they would not be required to appear before the learned court of SDJM. However, when the police came to arrest the petitioners after quite some time, they were taken by surprise and were shocked, as to why they were sought to be arrested. After enquiry, petitioners came to know that the investigating agency as well as the prosecuting agency, were misconducting themselves in a most irresponsible manner, while getting the petitioners declared proclaimed offenders, vide impugned order dated 6.2.2015 (Annexure P-7), inspite of the fact that cancellation report, in favour of the petitioners, had been presented before the court, long ago. The unwarranted harassment caused to the petitioners was very much avoidable, had the investigating and prosecuting agencies performed their respective duties well. He further submits that in fact, petitioners were innocent right from day one. However, the investigating and prosecuting agencies of the respondent-State have forced the petitioners to face this situation like criminals for a long period of more than two years. He prays for allowing the present petition with exemplary costs.

On the other hand, learned counsel for the State submits that although it is a matter of record that enquiry conducted by a senior police officer was concluded in favour of the petitioners, which was duly approved by the higher police officers and accordingly a supplementary challan under Section 173(8) Cr.P.C., was presented in favour of the petitioners, before the learned trial court, yet, the petitioners were declared proclaimed offenders by the learned SDJM-cum-Illaqa Magistrate, vide impugned order dated 6.2.2015.

The investigating as well as prosecuting agencies of the State were not at fault

in this regard. He further submits that since nobody proceeded on a malafide approach against the petitioners, let the present petition be disposed of, by passing appropriate orders, but imposition of any costs on the respondent-State or its functionaries is not warranted.

After hearing learned counsel for the parties at considerable length, careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this court is of the considered opinion that since the investigating and prosecuting agencies of the respondent-State have caused wholly unwarranted harassment and irreparable prejudice to the petitioners, 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., and the present petition deserves to be allowed with costs. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record that petitioners were accused in FIR No.121 dated 10.7.2013 under Sections 306/34 IPC registered at Police Station Samrala, Distt. Ludhiana. It is also not in dispute that the challan dated 10.10.2014 under Section 173 Cr.P.C., was presented only against Tarlochan Singh, co-accused of the present petitioners, who also came to be acquitted of the charges framed against him, vide judgement of acquittal dated 27.3.2015 passed by the learned Additional Sessions Judge, Ludhiana.

So far as the present petitioners are concerned, they alongwith their co-accused namely; Balwinder Singh, brother of petitioner no.1, submitted a joint representation dated 26.9.2014 (Annexure P-2) to the Deputy Inspector General of Police, claiming complete innocence. The matter was marked to Senior Superintendent of Police, Khanna, who further marked it for investigation to the Deputy Superintendent of Police, Samrala. The Deputy

Superintendent of Police conducted the enquiry and submitted his report dated 17.11.2014 to the Deputy Inspector General of Police, Ludhiana, reporting that there was no incriminating evidence against the above said three persons, including the petitioners and they were declared innocent.

The above said enquiry report was approved by the Senior Superintendent of Police, Khanna on 21.11.2014 (Annexure P-3). Accordingly, a supplementary challan under Section 173 (8) Cr.P.C., was prepared on 1.12.2014 (Annexure P-4), declaring the petitioners and Balwinder Singh as innocent. This supplementary challan came to be filed on 8.12.2014 before the learned court of Additional Sessions Judge, Ludhiana, where trial against the above said accused Tarlochan Singh, who was co-accused of the petitioners, was going on. However, copy of said supplementary challan dated 1.12.2014 (Annexure P-4) was not placed before the learned SDJM, Samrala, for the reasons best known to the investigating/prosecuting agencies. Having said that, impugned order dated 6.2.2015 (Annexure P-7), declaring the petitioners as proclaimed offenders cannot be sustained.

Respondents have unsuccessfully tried to justify their action in getting the petitioners declared as proclaimed offenders. Had the factum of supplementary challan (Annexure P-4) been appropriately brought to the notice of the learned SDJM by way of application dated 27.11.2014 (Annexure P-5) in reply to warrant of arrest, there would have been no scope left for the learned SDJM to declare the petitioners proclaimed offenders by way of impugned order dated 6.2.2015 (Annexure P-7). However, in the reply filed, it has been pointed out that at the initial stage, local police obtained warrant of arrest for the petitioners from the court of learned SDJM, Samrala. The plea raised on behalf of the respondent-State has been found to be wholly

misplaced. Thus, the impugned order is liable to be set aside, for this reason also.

When the case came up for hearing on 13.8.2015, following order was passed :-

“ It is very sorry state of affairs that inspite of having been declared innocent by the investigating agency itself, an officer of the rank of Deputy Superintendent of Police has filed reply to the present petition by way of his own affidavit dated 3.8.2015, opposing the instant petition, going beyond the official record. The impugned order passed by the court apart, atleast the respondent police authorities must have gone through their official record before filing the reply to this petition, but they failed to do so for the reasons best known to them.

In view of the above, Deputy Superintendent of Police, Samrala, Sub Division Samrala, Police Distt. Khanna, Distt. Ludhiana, who has filed the instant reply is directed to explain his conduct before this court on or before the next date of hearing, by filing his affidavit.

List on 8.9.2015.

A copy of this order under signatures of the Special Secretary, attached to this Bench, be supplied to learned counsel for the State for onward transmission to the concerned authorities.”

Necessity for passing the above said order arose, because in the

earlier reply filed by way of affidavit dated 3.8.2015, dismissal of the present petition was sought defending the impugned order passed by the learned SDJM. In the preliminary submissions of the reply dated 3.8.2015, it was sought that the impugned order passed by the learned Illaqa Magistrate was well reasoned and speaking one, hence, the present petition deserves dismissal. Thereafter, almost in every para of the reply dated 3.8.2015, the impugned order dated 6.2.2015 was defended and dismissal of the present petition was sought, including in the prayer clause. In fact, the reply dated 3.8.2015 was found contrary to the official record.

In compliance of the above said order dated 13.8.2015 passed by this court, short reply by way of affidavit dated 8.9.2015 by another Deputy Superintendent of Police, Samrala, filed in the court today has been taken on record and copy thereof was supplied to learned counsel for the petitioners. The reply dated 8.9.2015 makes out an entirely different case. Having been caught on the wrong foot, apology has been sought to be tendered, by the authorities concerned. However, the material fact remains the same that the investigating and prosecuting agencies of the respondent-State conducted themselves so irresponsibly that the petitioners were got declared proclaimed offenders, inspite of the fact that supplementary challan under Section 173 (8) Cr.P.C., (Annexure P-4) had been presented to the learned court of competent jurisdiction, in favour of the petitioners, whereby they were declared innocent.

It was the issue of liberty of the petitioners, which has been taken by the investigating as well as prosecuting agencies of the State, in a most casual manner. Once the enquiry was conducted fairly by a senior officer of the police department and was approved by the competent authority, thereafter, it was the bounden duty of the investigating agency to put a copy thereof before

the learned SDJM, making a request through the Public Prosecutor, to withdraw the warrant of arrest, earlier issued against the petitioners. However, they failed to do so for the reasons best known to them, because no reasons much less cogent reasons are forthcoming in this regard.

In the meantime, even Tarlochan Singh, co-accused of the petitioners, against whom charge sheet was filed, has also been acquitted by the learned Additional Sessions Judge, Ludhiana, vide his judgement of acquittal dated 27.3.2015. The relevant observations made by the learned Additional Sessions Judge, qua the petitioners, in his judgement of acquittal dated 27.3.2015, read as under :-

“ On the basis of the statement suffered by complainant, the case was registered against accused Tarlochan Singh, Rashpal Singh, Balwinder Singh and Manjit Kaur. Investigation was conducted and during investigation, accused Rashpal Singh, Balwinder Singh and Manjit Kaur were found innocent and after completion of investigation challan was presented before the court of Illaqa Magistrate only against Tarlochan Singh.

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Since neither the complainant nor eye witness have supported the prosecution version, the learned Additional Public Prosecutor for the State closed the prosecution evidence.”

A bare reading of the above said observations made by the learned Additional Sessions Judge would show that on one hand no sufficient evidence was being produced by the prosecuting agency even against above said

Tarlochan Singh, co-accused of the petitioners, during the course of trial before the learned Additional Sessions Judge, Ludhiana and on the other hand, petitioners who have been declared innocent by the investigating agency itself, have been got declared as proclaimed offenders. It is so said, because the impugned order dated 6.2.2015 was passed in the presence of learned Additional Public Prosecutor.

Further, in the reply dated 3.8.2015, the impugned order was sought to be defended, hotly contesting the present petition, without making any sincere effort to look into the official record, whereby the investigating agency itself had declared the petitioners innocent, by way of its detailed report Annexure P-4. Thus, in the present case, the conduct of the investigating as well as prosecuting agencies of the respondent-State, is highly deprecable, because the innocent persons have been got declared as proclaimed offenders, compromising with their fundamental right. In this view of the matter, instant petition deserves to be allowed with costs.

The above said view, qua imposition of costs, finds support from the judgement of the Hon'ble Supreme Court in **Mary Angel Vs. State of Tamil Nadu**, 1999 (5) SCC 209, judgements of this court in **Harmail Singh Vs. Punjab State**, 2003 (3) RCR (Crl.) 595, **Balwinder Singh Vs. M/s Kamal Motors and another**, 2014 (4) RCR (Civil) 678 and **Thakdar Dass Vs. Chiman Lal and others**, (CRM No.M-39562 of 2014) decided on 16.7.2015.

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 deserves to be allowed with costs, so as to prevent any further abuse of process of court and also to secure the ends of

justice.

Consequently, the impugned order dated 6.2.2015 (Annexure P-7) passed by the learned SDJM, Samrala, whereby petitioners were declared proclaimed offenders, is hereby set aside. The costs are quantified at Rs.50,000/-, which shall be deposited by the office of Senior Superintendent of Police, Police District Khanna, District Ludhiana, with the Punjab State Legal Services Authority, Chandigarh, within a period of two months, failing which the Collector, Ludhiana, shall recover the amount of costs from the office of Senior Superintendent of Police, Police District Khanna, District Ludhiana, as arrears of land revenue and shall deposit the same with the Punjab State Legal Services Authority, Chandigarh.

However, it is made clear that the office of Senior Superintendent of Police, Police District Khanna, District Ludhiana, shall be at liberty to recover the amount of costs from the officers/officials,whosoever might be found responsible.

Resultantly, with the above said observations made, present petition stands allowed with costs, as indicated above.

8.9.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE