

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

**Criminal Misc.No.M-11789 of 2012(O&M)
Date of Decision: February 17 , 2016**

Megh Nath & Ors.

...Petitioners

Versus

State of Punjab & Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.Karambir Singh Chawla, Advocate,
for the petitioners.

Mr.K.S.Pannu, DAG, Punjab.

Mr.S.K.Sandhir, Advocate,
for respondent No.7.

1. Whether Reporters of Local papers may be allowed to see the judgment?yes

2. To be referred to the Reporters or not? yes

3. Whether the judgment should be reported in the Digest? Yes

Naresh Kumar Sanghi, J.

Prayer in this petition, filed under Section 482, Cr.P.C., is for quashing of FIR No.78, dated 19.12.2009, (Annexure P-1) for the offences punishable under Sections 148, 323, 427, 447, 511, 452 and 506 read with Section 149, IPC, registered at Police Station, Koom Kalan, District Ludhiana, and all the consequential proceedings arising therefrom; for quashing of the report under Section 173, Cr.P.C., dated 12.04.2010 (Annexure P-6); for quashing of the charges framed against the petitioners vide order dated 15.03.2011 (Annexure

P-8) and to award appropriate compensation to the aggrieved persons.

Vide order dated 27.04.2012, notice of motion was issued. Respondent Nos.1 to 4 filed their reply. Despite service, respondent Nos.5 and 6 failed to appear however at a later stage, they appeared through their advocate Mr. H.S.Bedi. On 30.07.2014, despite calling the case twice, when the petitioners failed to appear before this Court then noticing the fact that on the previous date i.e 01.04.2014 also none had appeared on behalf of the petitioners, therefore, the case was dismissed for want of prosecution.

An application for restoration of the case was moved by the petitioners and the notice of the said application was issued to the respondents. When none appeared on behalf of respondent Nos.2 to 7, then this Court vide its order dated 05.12.2014 restored the main petition at its original number and as such, the case has been argued by learned counsel for the petitioners, learned counsel representing the State of Punjab and learned counsel for respondent No.7 only. Before proceeding further, it is made clear that petitioner Nos.1 to 5 earlier filed the similar petition bearing CRM-M-31429 of 2011 which was dismissed as withdrawn on 01.12.2011 under the order of a Co-ordinate Bench. At that time, Jagtar Singh (PW-2) was yet to be

cross-examined in the trial Court. New ground for filing of the present quashing petition as mentioned by the petitioners in para No.59 at page 53 of the present petition is that now Jagtar Singh (PW-2) has been cross-examined, therefore, the present petition is maintainable.

At the very outset, this Court had asked learned counsel for the petitioners that when the earlier petition was filed then all the material questions raised in the present petition were available except the cross-examination of PW-2, in such a scenario how the second petition for quashing was maintainable? The counsel replied that Jagtar Singh (PW-2) had been cross-examined, therefore, the second petition was maintainable. Despite repeatedly pointing out to learned counsel that whatever was raised in the earlier petition for quashing of the proceedings should not be raised once again. It was argued that from the perusal of the FIR and the other material available on record, the pendency of the FIR, charge-sheet (report under Section 173, Cr.P.C.); the charges framed and the pendency of the present case would be abuse of the process of law and as such, the same may be quashed. To buttress his submissions, learned counsel for the petitioners has placed reliance on the following judgments:-

i) Gorige Pentaiah vs. State of A.P. & Ors. 2008 (4)

RCR (Criminal) 171 (SC);

ii) ***Thakkar Dass vs. State of Haryana 1991 (3)***

RCR (Criminal) 235 (P&H);

iii) ***State of Andhra Pradesh vs Bajjoori Kanthaiah & Anr., 2009 AIR (SC) 671;***

iv) ***Manjula Sinha vs. State of U.P. & Others, 2007(3) RCR(Criminal) 778 (SC);***

v) ***The State of Andhra Pradesh vs. Vangaveeti Nagalah, 2010(5) RCR (Criminal) 548 (SC);***

vi) ***State of A.P. vs. Gourishetty Mahesh & Ors., 2010 Cri. L.J.3844(SC);***

vii) ***Shakson Belthissor vs. State of Kerala & Anr., 2009(4) RCR(Criminal) 680 (SC);***

viii) ***Md Ibrahim & Ors. vs. State of Bihar & Anr., 2009(4) RCR(Criminal)369 (SC); and***

ix) ***Chandran Udayar vs. Kasivel, 2008(3) RCR (Criminal) 498 (Madras).***

On the other hand, learned counsel for the State submitted that the petitioners were raising wall in the land owned by the Gram Panchayat. On receipt of the information, Ranjit Singh (husband of Kuldeep Kaur, Sarpanch) and Jagtar Singh Panch reached at the spot and stopped the petitioners from constructing the wall then the petitioners raised quarrel with respondent No.7 and extended threat to teach him a lesson. At that time, the petitioners were armed with deadly weapons. Gurdeep Singh to save his life ran away from the spot and entered into the house of his brother Gurmail Singh. The

petitioners also followed Gurdeep Singh and not only tress passed into the house of Gurmail Singh but also gave beating to Gurmail Singh and his wife. However, during investigation, Section 452, IPC, was deleted. He further submitted that finding a prima facie case against the petitioners, learned trial Court after framing the charges, posted the case for recording of the prosecution witnesses and as such, the testimony of the said witnesses is being recorded and hence, no ground for quashing the proceedings is made out. It was also pointed out that second petition on the same ground was not maintainable.

I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

After decision of the first petition filed by petitioner Nos.1 to 5, regardless of repeated questions, learned counsel for the petitioners could not show the new grounds to entertain the present petition. Despite that learned counsel for the petitioners was heard at length. All the issues raised and the infirmities pointed out by him during arguments were smeared with the disputed questions of facts which are to be answered on the basis of the evidence to be led during trial. The submission of learned counsel for the petitioners that ASI Karamjit Singh, Investigating Officer, had manipulated things to

implicate the petitioners cannot be sustained at this stage. So far as the findings of learned trial Court framing the charge after arriving at a conclusion that prima facie case was made out had to be challenged by the petitioners by way of criminal revision petition before the Court of Session at first instance but they failed to do so and straightway came before this Court. In support of the above, this Court may refer to **Mohit alias Sonu & Anr. vs. State of U.P. & Anr., 2013(3) RCR (Criminal) 673**, where Hon'ble the Supreme Court held that when there was a specific remedy provided by way of appeal or revision, the inherent power under Section 482 Cr.P.C could not be exercised.

Perusal of the facts of the case in hand would clearly spell out that prima facie case for proceeding against the petitioners is made out.

In the case of **Bhaskar Lal Sharma & Anr. vs. Monika & Ors.** 2014 (1) RCR(Criminal) 987, while discussing the scope and ambit of the Court's power to quash a criminal proceeding, it was held as under:-

“10. The facts, as alleged, therefore will have to be proved which only be done in the course of a regular trial. It is wholly unnecessary for us to embark upon a discourse as regards the scope and ambit of the Court's power to quash a criminal proceeding. Appreciation, even in a summary manner, of the averments made

in a complaint petition or FIR would not be permissible at the stage of quashing and the facts stated will have to be accepted as they appear on the very face of it. This is the core test that has to be applied before summoning the accused. Once the aforesaid stage is overcome, the facts alleged have to be proved by the complainant/prosecution on the basis of legal evidence in order to establish the penal liability of the person charged with the offence.”

(emphasis added)

In the matter of State rep. by the Inspector of Police,'Q' Branch C.I.D., Tirunelveli Range, Tamil Nadu v. Mariya Anton Vijay, 2015 (3) R.C.R. (Criminal) 576, Hon'ble the Supreme Court held that material/factual questions, which had a bearing over the issues involved in the case, could be answered one way or other on the basis of evidence to be adduced by the parties in the trial but not otherwise. It was further held that the High Court had no jurisdiction to appreciate the materials produced like an appellate court while hearing the petition under Section 482 of the Code or/and Revision Petition under Section 397 *ibid.*

In the matter of Minakshi Bala _ vs Sudhir Kumar & Ors. (1994) 4 SCC, 142, Hon'ble the Supreme Court held as under:-

“3. Having carefully gone through the impugned order we are constrained to say that the entire approach of the

High Court in dealing with the matter is patently wrong and opposed to settled principles of law. As earlier noticed, the petition under Section 482, Cr.P.C. was filed in the High Court at a stage when the police had already submitted charge-sheet on completion of investigation and when the petition came up for hearing a competent court had not only taken cognizance thereupon but framed charges also. In spite thereof, the High Court, surprisingly enough, proceeded to deal with the matter as if it was called upon to decide whether the FIR disclosed any offence and, for that matter, whether investigation should be permitted to continue. This will be evident from the following observations made by the High Court:-

'The principles relating to the quashing of the FIR at its initial stage were considered by their Lordships of the Supreme Court in State of W.B. Vs Swapan Kumar Guha, (1982) 1 SCC 561. Their Lordships observed therein that once an offence is disclosed, an investigation into the offence must necessarily follow in the interest of justice. If, however, no offence is disclosed, an investigation cannot be permitted, as any investigation, in the absence of any offence being disclosed, will result in unnecessary harassment to a party, whose liberty and property may be put to jeopardy for nothing.'

The documents produced by the petitioners which are not part of the case pending before learned trial Court cannot be taken into consideration by this Court at this stage while exercising jurisdiction under Section 482, Cr.P.C., this

view is supported by the judgment delivered by Full Bench of Hon'ble the Supreme Court in the matter of **Vijayander Kumar & Ors.** vs. **State of Rajasthan & Anr.**, 2014(1) RCR (Criminal) 983.

In the matter of **Gorige Pentaiah's** case (supra) Hon'ble the Supreme Court while dealing with the scope of power of High Court under Section 482, Cr.P.C., held that

(1) *Where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;*

(2) *Where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;*

(3) *Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.*

(4) *Wholesome power under Section 482, Cr.P.C., entitles the High Court to quash a proceedings when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed- The inherent power should not be exercised to stifle a legitimate prosecution.*

(5) *When a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. 1998(1) RCR(Criminal) 565*

(SC).

(6) Power under Section 482, Cr.P.C., has to be exercised by the High Court, inter alia, to prevent abuse of the process of any court or otherwise to secure the ends of justice. 2000(4) RCR(Criminal) 762 (SC) relied.

(7) Inherent powers under Section 482, Cr.P.C., should be exercised for the advancement of justice- If any abuse of the process leading to injustice is brought to the notice of the Court, then the Court would be fully justified in preventing injustice by invoking inherent powers of the Court.

In the matter of **State of Andhra Pradesh vs. Bajjoori Kanthaiah's** case (supra) it was ruled by Hon'ble the Supreme Court that inherent powers under Section 482, Cr.P.C., are to be exercised subject to the guidelines and relevant factors described in the case titled as **State of Haryana vs. Bhajan Lal**, **1991 (3) RCR (Criminal) 583**. It further held that quashing of the FIR on the ground of insufficiency of the material alone is not sustainable.

In the matters of **Manjula Sinha** and **The State of Andhra Pradesh vs. Vangaveeti Nagalah's** cases (supra) it was held by Hon'ble the Supreme Court that no hard and fast rule could be laid down in regard to cases in which the High Court would exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

In the matter of **State of A.P. vs. Gourishetty Mahesh & Ors.**'s case (supra) it was held that interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution.

In the matter of **Shakson Belthissor's** case (supra) Hon'ble the Supreme Court reiterated the principles laid down in **Bhajan Lal's** case (supra) and held that examples quoted therein were purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court could quash the proceedings.

In the matter of **Mh. Ibrahim & Ors's** case (supra) Hon'ble the Supreme Court was pleased to interpret the meaning of word 'fraud'.

In the matter of **Chandran Udayar's** case (supra) Hon'ble Madras High Court held that there was no legal bar for a judge using his own eyes to compare disputed writing however such powers should be sparingly used that too with caution.

In the matter of **Thakkar Dass's** case (supra) a Division Bench of Hon'ble this Court has held that second quashing petition would be maintainable if there had been change in the circumstances. The second petition on the same facts amounts to review of the earlier order.

The substance of the judgments cited by learned counsel for the petitioners and discussed hereinabove is that there is no absolute bar for the High Court to quash the proceedings if the things so warranted. However, such powers should be exercised sparingly.

In view of the facts and circumstances of the present case and the case law discussed hereinabove this Court finds no ground to terminate the criminal proceedings of the present case at this stage.

Dismissed.

February 17, 2016
seema

(Naresh Kumar Sanghi)
Judge

