

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM M-27284 of 2015

Date of Decision: October 27, 2016

Karamjit Singh Bhullar

.....Petitioner

Vs.

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Ms. R.K. Thind, Advocate
for the petitioner.

Mr. Jashanpreet Singh, AAG, Punjab.

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M.M.S. BEDI, J.

Petitioner while posted as Assistant Superintendent of Jail, Jalandhar, is alleged to have extorted money from the inmates of the jail on different pretext and under threat. There are allegations that he used to supply intoxicants inside the jail to the inmates. He has approached this Court invoking the jurisdiction under Section 482 Cr.P.C. for quashing of FIR No. 180 dated July 30, 2015 under Sections 384/ 506 IPC, Sections 27 A, 59 (2) of the NDPS Act and Sections 7 and 13 (2) of the Prevention of Corruption Act registered at Police Station Kotwali, District Kapurthala and

all the subsequent proceedings arising out of the said FIR. He also seeks protection of life and liberty at the hands of respondents No.5 and 6 who are ADGP (Prisons) and Officiating DIG (Prisons), respectively. Petitioner claims that on account of his appreciable work as Intelligence Officer he had been given Commendation Certificate on August 15, 2013 and was felicitated on Independence Day. He claims that he has been instrumental in recovering intoxicating substances from the inmates of the jail regarding which criminal case stands registered. He had highlighted number of irregularities in purchase of Canteen items for the prisoners. He was transferred to different places after short intervals of time from Faridkot to Sangrur, Ferozepur, Jalandhar and Rajpura with malafide intentions. Petitioner claims that though he had meritorious record but with malafide intention he was suspended on July 16, 2015 on the ground that he had given statement in the Press in violation of Conduct Rules. Petitioner had filed CWP No. 14888 of 2015 challenging the suspension order in which notice had been issued to the State for July 27, 2015. Petitioner was implicated in case FIR No. 180 dated July 30, 2015 on the allegation that he was running an illicit drug racket inside jail. The petitioner came to know about the said FIR from the news item in The Tribune dated August 1, 2015. He claims that he was not provided copy of the FIR nor the same was sent to the Court with malafide intention. He claims that the FIR is a mode of punishment for having made an attempt to expose senior officers of the Prison Department. The petitioner claims that the FIR is a counterblast to the act of the petitioner

having highlighted the irregularities in purchase of Canteen items from unapproved store Metro or resorting to e-tendering in violation of Punjab Canteen Rules which had resulted in wrongful gain to respondents No.5 and 6. Respondent No.6 who is complainant in the FIR is himself facing inquiry in which petitioner is the main witness. Petitioner claims that he having challenged the order of his suspension highlighting irregularities in the CWP, he has been falsely involved in the case with malafide intentions. Respondent No.6 has got biased inquiry conducted against the petitioner. The inmates Rakesh Pandit, Lakhi Bhullar, Kuldeep Manak, Harvinder Jammu, Parwana, who were allegedly selling drugs at the instance of the petitioner stands transferred to different jails of Punjab for the last one and a half year. So far as Harsh Gosain, a person who was allegedly threatened by the petitioner was caught and a recovery of three working mobile phones was effected from him. The petitioner had earlier also been involved falsely in a case FIR No. 201 dated September 24, 2009 under Sections 42, 45, 120-B IPC Police Station City Ferozepur at the behest of respondent No.6. He has also challenged that the prosecution has been launched without getting sanction from the Government. It is claimed by the petitioner that he has been falsely implicated on the basis of vague and uncertain allegations.

Notice was issued to the respondents. Reply was filed in the shape of affidavit of Additional DGP (Prison). It has been claimed that on the basis of secret information having been received from some jail officials posted in Central Jail, Jalandhar regarding unlawful activity in collusion

with under-trial/ convicts which also included smuggling of narcotic substances in the jail and trafficking thereof amongst the prisoners, respondent No.5 ADGP, (Prison) Jail, required the SSP, Kapurthala to verify the activities of the officials in jail. In the reply, reference has been made to number of memorandums issued to the petitioner. The matter was inquired into and it transpired that few officials of the jail used to supply heroin from outside the jail. A copy of the report of respondent No.6, on the basis of the statements of the under-trials, was sent to SSP, Kapurthala for registration and investigation of the case. Number of documents have been placed on record to substantiate the allegation that the petitioner had been misusing his authority by purchasing the articles for the jail supplied by Metro stores. The allegations of malafide have been denied.

The detailed reference to the allegations in the reply does not appear to be necessary for the decision of the case as the allegation against the petitioner, as reflected in the report under Section 173 (2) Cr.P.C. have to be seen in context to the parameters laid down in the judgment in **State of Haryana and others Vs. Bhajan Lal**, AIR 1992 SC 604. In the said judgment, the Apex Court has held that the FIR in a particular case can be quashed in case the matter falls in any of the following parameters:-

“1) 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.

2) 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 S.156(1) of the Code except under an order of a Magistrate within the purview of S.155(2) of the Code.

3) 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.

4) Where, the allegations in the F.I.R. 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 S.155(2) of the Code.

5) 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.

6) 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.

7) 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.”

Ms.R.K. Thind, counsel for the petitioner was directed to make available entire report under Section 173 (2) Cr.P.C. and to satisfy this Court that the parameters laid down in **Bhajan Lal's** case (supra) are satisfied warranting quashing of the FIR. The report has been placed on record.

Counsel for the petitioner has drawn the attention of this Court to the statement of Lakhbir Singh @ Lucky Bhullar recorded on July 8, 2015 and other statements recorded on August 4, 2015 under Section 164 Cr.P.C., who along with Balwinder Singh Rangeela, Shabo Khusra, Jagtar Parwana, Jammu and others had allegedly indulged in the business of heroin in Modern Jail, Kapurthala. It is claimed that they all are procured witnesses.

I have gone through the statement of Chander Dheer, Raju Singh, Sukdhev Singh @ Bhutto, Sukhwinder Singh, Ravi Shankar, Simarjit Singh, Jaskaran Singh Kalsi, Harsh Gusain Amarbir Singh Bajwa and Kullu. The said witnesses have alleged payment of money to the petitioner for the period during his posting in Modern Jail, Kapurthala.

Learned counsel for the petitioner has submitted that the petitioner joined in Modern Jail, Kapurthala on May 30, 2013 and was again transferred from this Jail on October 24, 2013. Order of transfer was stayed on November 7, 2013. Petitioner was given the duty of security of outer towers and make entry in daily office report book and that he did not enter the jail after November 19, 2013. He claims that on August 2, 2013, his duty was fixed at Barooni Gate as Probation Officer. It is claimed that the allegations against the petitioner are too general and at the most would constitute extortion but no offence under Section 7 or 13 of the Prevention of Corruption Act is made out. It has been alleged that the allegations are vague and uncertain. Counsel for the petitioner has referred to number of contradictions in the statements of the witnesses. Emphasis was made on the provisions of Section 59 of the NDPS Act which provides punishment on account of failure of officer on duty on his connivance at the contravention of the provisions of the Act. It was argued that as no duty under NDPS Act has been imposed upon the petitioner and there is no order in this regard, as such the allegation that he was given the custody of any addict or any other person charged with an offence under this Act is not correct. It is claimed

that there was no specific order for the petitioner to be officer on duty under NDPS Act. Reference was made to the provisions of Section 59 (2) of the NDPS Act to argue that no Court shall take cognizance of any offence punishable under Section 59 of the Act except on the complaint in writing made with the previous sanction of the Central Government. Similarly, it was argued that no offence under Sections 7 and 13 of the Prevention of Corruption Act is made out and that the challan has been presented without any specific report to indicate that the investigation was completed by Special Investigating Team in the present case.

With the assistance of counsel for the petitioner, I have carefully gone through the entire report under Section 173 (2) Cr.P.C. and taken into consideration the statements of various witnesses recorded during the course of investigation. It is pertinent to mention here that the service record of the petitioner being good may constitute a good defence. The detailed pleas of malafide on the part of prosecution agency has been highlighted by the petitioner which can also not be appreciated at the initial stage but the said material can be used at the time of cross-examination of the material witnesses.

I have intentionally avoided the detailed discussion on the pleas of defence raised by counsel for the petitioner lest it should prejudice him for having disclosed the defence at initial stage. Whether the contentions of counsel for the petitioner fall under any of the parameters laid down for quashing in **Bhajan Lal's** case (supra) but appreciation of evidence in

context to the relevancy and admissibility will not be appropriate to arrive at a conclusion that the FIR deserves to be quashed. In case any charges have been wrongly framed against the petitioner and there is no material on the record to substantiate the allegation, it will always be open to the petitioner to avail the remedy under Section 216 Cr.P.C. to establish that a particular offence is not made out. It is expected that if any such application is filed, the same would be decided on merits by passing a speaking order by the Court of competent jurisdiction. It will not be appropriate for this Court to comment on the adequacy or nature of the evidence which has been gathered by the prosecution agency and to deliver a judgment as if the trial is concluded. It will be open to the petitioner to put his defence to the prosecution witnesses.

In view of the above, no ground is made out for quashing of the FIR especially when the charge-sheet has been filed and it is open to the petitioner to satisfy the trial Court on the basis of the material forming part of the report under Section 173 (2) Cr.P.C. to seek discharge in a particular offence.

Counsel for the petitioners has cited following judgments:-

- i) Harmela Ram Vs. State of Haryana, 2013 (3) RCR (Crl.) 141;
- ii) K.K. Ashraj Vs. State of Kerala, 2011 (6) RCR (Crl.) 1699;
- iii) Sumesh Vs. State of Kerala, 2012 (4) Ker. L.J. 635; and

iv) R. Dineshkumar @ Deena Vs. State, 2015 (2) CCR 88;

I have gone through the said judgments and I am of the opinion that in peculiar circumstances of the present case, the above said judgments are not applicable at this stage for quashing of the FIR.

No ground is made out for quashing of the FIR.

Dismissed.

October 27, 2016
sanjay

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether Reportable:	Yes/No.