

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH
Sr. No.: 224

Criminal Miscellaneous No.M-37463 of 2011 (O & M)
Date of Decision: *February 03, 2016*

Ramesh Kumar

..... PETITIONER

VERSUS

State of Punjab & others

..... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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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?

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PRESENT: Mr. Surinder Garg, Advocate, for the petitioner.

Mr. Rajpreet Singh Sidhu, Assistant Advocate General,
Punjab.

Mr. Lovedeep Singh Sodhi, Advocate, for respondent
Nos.3 and 4.

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Jaspal Singh, J

1. Through the instant petition, petitioner – Ramesh Kumar has sought quashing of Calendra under Section 182 IPC filed by SHO, Police Station Baghapurana, District Moga (Annexure P-5),

summoning order dated October 1, 2008 (Annexure P-12) and consequent proceedings.

2. Briefly stated, the facts giving rise to instant petition are that petitioner moved an application for registration of case against respondent Nos.3 and 4 at Police Station, Baghapurana, District Moga with the allegations that respondent No.4 – Makhan Singh used to proclaim that both of his sons namely Himmat Singh (respondent No.3) and Manvinder Singh are living in Canada and he can make an arrangement for sending his son Navdeep Kumar to Canada on receipt of a sum of ₹ 10 lac. However, the matter was settled for ₹ 9.5 lac which was paid by the petitioner to Himmat Singh. Subsequently, neither Navdeep Kumar was sent to Canada nor the amount was returned. A thorough enquiry was conducted into the allegations unfolded in the complaint but the allegations were found to be false by SI Gurpreet Singh, Economic Offences Wing, Moga. Accordingly, he recommended the initiation of proceedings under Section 182 IPC against the petitioner. A Calendra was presented in the court of Area Magistrate, on the basis of which, petitioner has been summoned to face trial vide order dated October 1, 2008, which necessitated the filing of instant petition.

3. In response to notice, petition has been resisted by the State as well as by private respondents.

4. Undisputably, after presentation of Calendra under Section 182 IPC against the petitioner, he filed a private complaint

under Sections 415, 416, 418, 420/34 IPC against respondent Nos.3 and 4. On the strength of preliminary evidence adduced by the petitioner, respondent Nos.3 and 4 were summoned to face trial under Sections 418, 420/34 IPC vide order dated August 30, 2012.

5. The contention of learned counsel for the petitioner is that once, on the complaint filed by petitioner, on the similar allegations, respondent Nos.3 and 4 have been summoned to face trial, proceedings initiated against him by the police under Section 182 IPC for giving false information to them, are abuse of process of law and liable to be quashed on this score alone.

6. Neither official respondents nor respondent Nos.3 and 4 have disputed the lodging of private complaint by the petitioner on the similar allegations as well as summoning of respondent Nos.3 and 4 in the said complaint by the trial court. The pendency of the complaint is also not a disputed fact.

7. By now, it is pretty settled that proceedings initiated by the police u/s 182 IPC are not legally maintainable, especially in the circumstances that on the basis of similar allegations, persons named as accused in the complaint are being tried. In Banta Singh vs. State of Haryana, 1995(3) RCR (Criminal) 133, first information report was registered at the instance of petitioner, the contents of which were found to be false during investigation and the proceedings under Section 182 IPC were initiated against him. The petitioner filed a complaint on the same set of allegations, on which, he had lodged a complaint with the police. Accused were summoned to face trial. It was

held that the prosecution of the petitioner under Section 182 IPC during pendency of the complaint, was clearly an abuse of process of court and the proceedings were quashed. Similarly, the Hon'ble Apex Court in Gopal Vijay Verma vs. Bhuneshwar Prasad Sinha, 1982(3) SCC 510 and H.S. Bains vs. State (Union Territory of Chandigarh), AIR 1980 Supreme Court 1883 has held that Magistrate, even after accepting the final report, after hearing the complainant, can still take cognizance upon a complaint on the same or similar allegations of fact. Identical observations were made by a Division Bench of Patna High Court in case Munilal Thakur vs. Nawal Kishore Thakur, 1985 Criminal Law Journal 437 which was subsequently relied upon by this Court in Ramesh Chand vs. State of Haryana, 2006(4) RCR (Criminal) 718.

8. Taking into consideration aforesaid aspect of the case and the observations made in the above referred judgments, this Court is of the considered view that initiation of proceedings against the petitioner under Section 182 IPC is an abuse of the process of court. Thus, Calendra under Section 182 IPC filed by SHO, Police Station Baghapurana, District Moga (Annexure P-5), summoning order dated October 1, 2008 (Annexure P-12) and consequent proceedings are quashed, by way of acceptance of the petition.

February 03, 2016
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(Jaspal Singh)
Judge