

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

CRM-M No.36279 of 2015 (O&M)

Date of decision: 27th May, 2016

Gurlal Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Dinesh Trehan, Advocate
for the petitioners.

Mr. Gurveer Sidhu, Asstt. Advocate General, Punjab
for respondent No.1/State.

None for respondents No.2 to 5.

FATEH DEEP SINGH, J.

The essential facts that needs to be recapitulated in this petition under Section 482 Cr.P.C. whereby the petitioner Gurlal Singh has sought quashment of the FIR No.186 dated 17.11.2009 registered at Police Station Mehta, District Amritsar under Sections 304-A/279/337/338/427 IPC (Annexure P1) and the brief history leading to this case is that the complainant Kulwinder Singh made a statement before the police that on 17.11.2009 around 7.00 p.m. he along with his cousin Gurmukh Singh were going for some business purpose on their motorcycle and ahead of them three persons namely Gurvinder Singh, Jagbir Singh (both deceased) and Sahba Singh (injured) were going on a

bullet motorcycle which was being driven by Gurvinder Singh. It is near the bridge drain of Gurudwara Cheleana when a tractor trolley make Mahindra 575 ferrying cattle came from the opposite side and hit the motorcycle of the three persons on account of rash and negligent driving by its driver leading to two deaths. Upon investigations, as is the admitted fact, complainant Kulwidner Singh entered into a compromise with the accused party and his statement too was recorded by the learned Judicial Magistrate 1st Class, Baba Bakala on 15.11.2013 when the police had filed cancellation report (referred to as 'untraced report' at certain places) and as a consequence of which learned Court accepted the said report vide orders dated 23.11.2013 and consigned the records.

It is by another quirk of fate, vide impugned order dated 06.12.2014 learned Judicial Magistrate 1st Class, Baba Bakala did not accept the cancellation report and ordered further investigations. The same is subject matter of challenge in this petition.

Upon hearing the respective counsel for the parties and after going through the records of the case. Under the first schedule of the Code of Criminal Procedure (in short, 'the Code') Section 304A provides imprisonment for 2 years or fine or both and is detailed as cognizable and bailable, triable by a Magistrate of the first class. By virtue of Section 320 of the Code, it is not denoted to be a compoundable offence though it is duly conceded to this effect by the learned counsel representing the two sides. Even otherwise, keeping in

view that Kulwinder Singh though is an eye witness as well as complainant of the case but is not personally a victim of the crime nor learned counsel for the petitioner could convince this Court of his any affinity or relationship with the deceased persons. No doubt, if a person who is otherwise competent to compound dies, his legal representatives may also compound the offence after obtaining permission of the Court. Though at certain places the learned Magistrate has confused the term 'cancellation report' as well as 'untraced report' and which are two entirely different aspects of criminal justice system. Rather to the mind of this Court, the present circumstances reflect that it is a withdrawal from the prosecution in terms of Section 321 of the Code. To make the things all the more clear, the provisions of this Section are reproduced to lay emphasis which reads as follows:

“321. Withdrawal from prosecution :- The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried ; and, upon such withdrawal --

(a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences ;

(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences:

Provided that where such offence

(i) was against any law relating to a matter to which the executive power of the Union extends ; or

(ii) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946) ; or

(iii) involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government ; or

(iv) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty,

and the Prosecutor in charge of the case has not been appointed by the Central Government, he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution.”

Thus, it is no-where reflected that the Court below has sought to seek the stand of the State/Public Prosecutor in this case who even if so called upon has to act objectively with a rider that the Court has unbridled powers to go either way as it deems necessary in the interests of justice.

No doubt, the courts are vested with immense powers under Section 482 of the Code to meet the ends of justice. Learned counsel for the petitioner could not convince if, as is reflected in the impugned order, as to why the statement of the injured Sahba Singh a vital witness has not been recorded in this compromise, rather is another distressing feature that goes against the petitioner as injured too happens to be the victim of this crime.

It is well settled law, reference of which can be taken note of the ratio laid down by Hon'ble the Supreme Court in '**Messrs India Carat Pvt. Ltd. v. State of Karnataka**' 1989(1) RCR(Criminal) 395 which provides that a Magistrate can ignore the police report and it is well within the competency of the Magistrate to take cognizance of an offence under Section 190 Cr.P.C. and is not bound to follow the procedure laid down in Sections 200 and 202 of the Code.

No doubt, in the present case initially vide first order dated 23.11.2013 learned Magistrate had accepted this report of the police on the basis of the compromise totally remaining in oblivion that the offence was not compoundable, together with the anomaly of the

seriousness of the offence whereby two young persons have lost their precious lives whereas the third one was maimed, are matters which certainly calls upon the judicial conscience to act upon such a provision of law with more care and caution. Even otherwise, as has been the position of law, support of which is sought from '**Nupur Talwar v. Central Bureau of Investigation and another**' 2012(3) RCR(Criminal) 595, whereby it is well enunciated principle of law that the Magistrate has power to reject the closure report and issue process to the accused and which arguments could not be controverted by any of the counsels, though much stress is sought to be made by learned counsel for the petitioner Mr. Dinesh Trehan, Advocate that a Magistrate cannot recall or review its order earlier passed. However, a delineation needs to be made in the present case within the narrow compass of the undisputed circumstances that while passing the impugned orders calling upon the Investigating Agency, the Magistrate has sought to lay emphasis for directing the Investigating Agency for further investigations and the primary concern before the Magistrate was that the injured victim was never taken into the fold at the time of submission of this report, certainly could not be controverted on behalf of the petitioner side.

Looking from another angle, the petitioner has sought quashment of the FIR (Annexure P1). The Hon'ble Supreme Court in the case of '**State of Haryana and others v. Ch.Bhajan Lal and**

others' 1992 AIR SC 604, has laid down the following principles under which such a recourse can be adopted by the Courts:

- (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 Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 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 FIR 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 Section 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.

The present orders (Annexure P9) subsequent to the orders (Annexure P7) are entirely on different grounds and the learned counsel for the petitioner could not prevail upon this Court how the Magistrate was debarred from proceedings ahead into the matter in the exercise of its judicial powers on fresh grounds which have come to light. Thus, to the mind of this Court, even if no chargesheet is submitted recommending trial against the accused, the Magistrate is not so powerless that it cannot act into the matter and is thus within his judicial

powers to exercise his discretion irrespective of the view expressed by the police in its report for which, as it appears from the records and the orders, the Court has given the orders on revelation of fresh grounds and evidence to it and was of the opinion that the allegations in the FIR as well as police report prima-facie make out a case against the accused and thus the orders in question. Reliance is placed on '**Hari Shankar Pandey v. State of Jharkhand**' 2011(7) RCR(Criminal) 1830 and '**Surender Kumar Sharma v. State and another**' 2016(1) JCC 1 where the Delhi High Court in **Surender Kumar Sharma's case (ibid)** had relied upon the maxim of '*Contra veritatem lex nunquam aliquid permit it*' which means in brief that the law never serves anything contrary to the truth, but sometimes it allows a conclusive presumption in opposition to truth and therefore, applies to the exercise of powers by the Magistrate while granting approval or declining to accept the report submitted before it by the Investigating Agency.

A similar akin situation arose in the case of '**Rakesh & another v. State of U.P. & another**' in SLP (Criminal) No.3308 of 2013 wherein the Hon'ble Apex Court has sorted out the issue that only because the learned Magistrate has accepted the final report, in itself cannot come in the way to take cognizance of the offence subsequently either on a protest petition or a complaint, and in this case fresh facts have been brought to light and therefore, squarely answers the opposition raised by learned counsel for the petitioner that a Magistrate

cannot review his own orders and there is a need for constructive and positive interpretation of Sections 156 and 190 of the Code to further the ends of justice and what appears to the mind of this Court, the impugned orders (Annexure P9) have been passed to supplement the initial investigations on the fresh grounds that have come to the notice of the Court that one of the injured persons, the actual victim, was never taken into so called compromise by way of compounding of offence and thus, had exercised its powers to direct re-investigation and which is within the prerogative of the learned Magistrate in such a situation.

In the light of what has been detailed and discussed above, there is no merit in the present petition which stands dismissed. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

May 27, 2016

rps

Whether speaking/reasoned	Yes/No
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Whether reportable	Yes/No
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