

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

CRM-M No.42408 of 2016.

Date of Decision: 16.12.2016.

Dr. Satnam Singh Baghchi

....Petitioner.

VERSUS

State of Punjab

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Ms. Jatinder Kaur, Advocate for
Mr. M.K. Saajan, Advocate for the petitioner.

SNEH PRASHAR, J.

The instant petition invoking the provisions of Section 482 of the Criminal Procedure Code (for short, "Cr.P.C.") has been filed by Dr. Satnam Singh Baghchi (petitioner) for quashing of order dated 29.08.2016 passed by learned Additional Sessions Judge, Ferozepur and part of order dated 15.10.2014 passed by learned Additional Chief Judicial Magistrate, Ferozepur whereby the application filed by him under Section 173(8) Cr.P.C. for further investigation of First Information Report No.211 dated 08.12.2010 had been declined.

The submissions made by Ms. Jatinder Kaur, learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner points out that under the

the petitioner, Financial Commissioner (Revenue), Punjab had directed Deputy Commissioner, Ferozepur to conduct enquiry into the representation given by the petitioner wherein he had intimated that false and fabricated record parallel to the record maintained by the revenue authority with regard to possession of the land had been got prepared by Balwinder Kumar (respondent No.2) in collusion with his brother and some other persons. The Financial Commissioner had also directed the enquiry officer to take strict action for major punishment against the erring revenue officer/official in case any discrepancy in the record was established. On the basis of the enquiry held, Deputy Commissioner, Ferozepur got registered First Information Report No.211 dated 08.12.2010 under Sections 420, 465, 466, 467 and 471 of the Indian Penal Code (for short, "IPC") against Balwinder Kumar.

Learned counsel contends that the enquiry was held in haste without following the procedure laid down by law and even after registration of the First Information Report, the investigation was not conducted thoroughly and in a fair manner. In fact, the report was prepared with a sole motive to favour the accused. The petitioner-complainant was not joined in investigation and his statement under Section 161 Cr.P.C. was not recorded. The relevant record was also not taken in possession by the investigation officer. As such, the final report filed in the case by the prosecution was incomplete. Only when the petitioner came to know about the aforesaid facts, he filed an application (Annexure-P3) under Section 173(8) Cr.P.C. before learned trial Court with a prayer for direction to the investigating agency to further investigate the matter and submit a fresh report after collecting proper evidence. However, the application filed by

the petitioner was dismissed by learned trial Court vide order dated 15.10.2014 (Annexure-P4). The petitioner preferred a revision petition but that too was dismissed by learned Additional Sessions Judge, Ferozepur vide order dated 29.08.2016 (Annexure-P5).

Learned counsel asserts that the investigation in a criminal case has to be fair, transparent and judicious. A tainted investigation cannot give rise to a valid charge sheet. The petitioner being the person who highlighted the discrepancy in the revenue record was the actual complainant and had a right to file an application for further investigation of the matter as postulated under Section 173(8) Cr.P.C.

There appears to be no force in the argument of learned counsel for the petitioner. From the impugned order dated 29.08.2016 passed by learned Additional Sessions Judge, Ferozepur, it transpires that the enquiry into the representation given by the petitioner eventually led to registration of First Information Report No.211 dated 08.12.2010 against Balwinder Kumar son of Kewal Krishan for commission of offence under Sections 420, 465, 466, 467 and 471 IPC. Final report (challan) was presented against the said accused on 07.03.2012. Learned Magistrate took cognizance and vide order dated 10.04.2012 served a charge sheet to the accused and the case was posted for evidence of the prosecution. It is thereafter that the petitioner moved an application under Section 173(8) Cr.P.C. for further investigation into the matter.

The aforesaid facts clearly indicate that the learned Magistrate had taken cognizance of offence on the basis of the police report and had initiated trial after charge sheeting the accused. Since the enquiry into the

petitioner, he at the most had the status of a *defacto* complainant. On application given by a *defacto* complainant under Section 173(8) Cr.P.C., the Magistrate could not direct reinvestigation into the matter. Such a course of action was beyond the jurisdictional competence of a Magistrate. In **Reeta Nag vs. State of West Bengal & Ors., 2009(4) R.C.R. (Criminal) 207**, where learned Magistrate had directed reinvestigation of the matter upon an application under Section 173(8) Cr.P.C. filed by the *defacto* complainant, the Hon'ble Apex Court had laid down as under:-

“What emerges from the above-mentioned decisions of this Court is that once a charge-sheet is filed under [Section 173\(2\)](#) Cr.P.C. and either charge is framed or the accused are discharged, the Magistrate may, on the basis of a protest petition, take cognizance of the offence complained of or on the application made by the investigating authorities permit further investigation under Section 173(8). The Magistrate cannot suo moto direct a further investigation under [Section 173\(8\)](#) Cr.P.C. or direct a re- investigation into a case on account of the bar of [Section 167\(2\)](#) of the Code.”

Same is the law laid down in **Randhir Singh Rana vs. The State being the Delhi Administration, 1997(2) R.C.R. (Criminal) 297.**

Since no application had been filed by the investigating authorities for conducting further investigation as provided under Section 173(8) Cr.P.C., the other course of action, if required for administration of justice, open to the Magistrate is to take recourse to the provisions of Section 319 Cr.P.C. at the stage of trial.

Thus, there is no illegality or perversity in the order dated 15.10.2014 passed by learned trial Court and the order dated 29.08.2016 passed by learned revisional Court and the petition being devoid of merit is dismissed.

(SNEH PRASHAR)
JUDGE

16.12.2016
jitender sharma

Whether speaking/ reasoned : Yes

Whether Reportable : Yes