

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

**CRM No.M-8778 of 2015 (O&M)
Date of Decision: October 19, 2016**

Kulwant Singh and another

...Petitioners

VERSUS

Mandeep Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sunil K. Nehra, Advocate
for the petitioners.

Mr.Zorawar Singh, Advocate
for respondent No.1.

Ms.Shivali, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

Petitioners have filed this petition under Section 482 Cr.P.C. against respondents Mandeep Kaur and State of Punjab for quashing of complaint No.4/15 dated 02.02.2015 pending in the Court of learned Addl. Sessions Judge, Jalandhar, order dated 29.03.2010 vide which the cancellation report was treated as complaint and the order dated 21.08.2014 passed by learned JMIC, Phillaur, vide which the petitioners have been summoned to face trial under Sections 364/365 IPC.

Notice of motion was issued. Learned counsel for respondent No.1 and learned State counsel appeared and contested the petition.

I have heard learned counsel for the parties as well as learned

State counsel and have gone through the record.

The perusal of the record shows that in the present case the FIR No.25 dated 06.02.2009 under Sections 364 and 365 IPC was registered. The cancellation report has been presented before the Court by the police and learned JMIC, Jalandhar, passed the following order on 29.03.2010:-

“Heard. The instant cancellation report has been presented by police of police station Nurmahal, Office report seen. It be registered.

Complainant came present and made statement that she does not satisfy with the investigation conducted by the police and she also does not agree with the cancellation report, filed by the police. In these circumstances, present cancellation report be treated as complaint and complainant is directed to produce her preliminary evidence on 19.05.2010.”

The perusal of the above order shows that the Court has not discussed the grounds given by the Investigating Officer for filing the cancellation report. No other facts or reasoning have been given. The impugned order dated 29.03.2010 nowhere specifically shows that whether the Court rejected the cancellation report or accepted it. Rather, the order has been passed that cancellation report be treated as complaint and complainant to produce her preliminary evidence.

Learned counsel for the petitioner cited judgment passed by Hon'ble Delhi High Court in ***Mukesh Aggarwal and others vs. M.R.Jindal and others, 2009(2) JCC 1056***, in which, Magistrate neither rejected the cancellation report nor took cognizance on the basis of the original complaint and for recording of the complainant's evidence the learned MM impliedly opted for taking cognizance on the basis of original complaint, it is held that if the learned MM was rejecting the cancellation report, it would

be necessary for him to record reasons for doing so and the case was remanded. In the present case also, no reasoning was given for rejecting the cancellation report and treating it as a complaint by the Court. Learned counsel for the petitioner also placed reliance upon the judgment passed by the Hon'ble Himachal Pradesh High Court in ***Gian Prakash vs. State of H.P., 2011(1) RCR (Criminal) 360***, in which the Court did not give the reasoning as to why he not satisfied and it was held that any person whose complaint is being cancelled would obviously not be satisfied by the action of the police. It is further held that merely stating that the complainant is not satisfied is no justification for not accepting the cancellation report.

Learned counsel for the petitioner further cited judgment passed by this Court in ***Harvail Singh Saini vs. State of Punjab and another, 2015(3) RCR (Criminal) 198***, in which it is held that rejection of cancellation report only on the ground that complainant was not agreeing with the same is not sufficient. I have gone through all the above-cited judgments and the same fully apply to the facts of the present case.

In view of the above discussion, I find that learned Magistrate taking the cognizance on the original complaint without specifically rejecting the cancellation report and further without giving any reasoning for rejecting the cancellation report except the reasoning that complainant is not agreeing with the cancellation report, is not as per law and the same is liable to be set aside. Therefore, the impugned order dated 29.03.2010 passed by learned JMIC, Jalandhar and all subsequent proceedings arising therefrom are set aside.

Resultantly, finding merit in the present petition, the same is

The matter is remanded back and learned JMIC, Jalandhar is directed to re-consider the cancellation report and to pass speaking/reasoned order on the same, as per law.

October 19, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No