

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Writ Petition No. 144 of 2015

Date of decision : July 25, 2016

Gurmit Singh

....Petitioner

versus

State of Punjab and others

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. NP Bhardwaj, Advocate, for the petitioner

Mr. J.S.Brar, AAG, Punjab, for respondent nos. 1 to 5

Fateh Deep Singh, J. (Oral)

Petitioner Gurmit Singh has invoked the jurisdiction of this Court under Article 226/227 of the Constitution of India seeking issuance of writ in the nature of mandamus seeking directions against respondents no. 2 to 5 to initiate criminal prosecution against private respondents no. 8 to 11.

The brief averments and allegations which forms the very basis of this petition are that younger brother of the petitioner namely Sukhwinder Singh then aged around 20 years, as a consequence of conspiracy hatched

by the private respondents at Patiala on 22.8.2013 took his brother to Madhya Pradesh on a harvest Combine as a helper but thereafter was never heard of. In between it is alleged that on 1.9.2013, the petitioner had a telephonic conversation with his said younger brother and on 24.11.2013, private respondents reached the village where the petitioner tried to know the whereabouts of his brother but could not get any satisfactory reply from the private respondents and as a consequence of which the petitioner moved the local police but to no avail and has relied on his representation Annexure P/1 and missing report lodged by him on 11.9.2013 Annexure P/2. It is the allegations that the concerned police after marking inquiry turned away the petitioner on the pretext that the occurrence if any has taken place in the State of Madhya Pradesh and has sought to place reliance on documents Annexure P/6 and P/7.

Upon notice to official respondents, they filed reply by way of affidavit of Sh. Harvinder Singh Virk, Deputy Superintendent of Police (Rural), Patiala through learned State counsel whereby it was admitted that a complaint was certainly made to the Senior Superintendent of Police, Patiala by the petitioner regarding which inquiry Annexure P/7 was held and it transpired that the younger brother of the petitioner accompanied the private respondents on harvest Combine as a helper and was seen and heard on in the area of State of Madhya Pradesh and that as per the stand of the State taken during the course of inquiry that on 8.10.2013 around 11.00 PM said Sukhwinder Singh @ Kaku took away his belongings and disappeared

and thus could not be traced out regarding which dis-appearance report was lodged with Police Station Harda (Madhya Pradesh) and that since the incident has taken place in the State of Madhya Pradesh, the police at Patiala did not have territorial jurisdiction to look into the grievance of the petitioner though admitting that it was on 22.8.2013 the younger brother of the petitioner had left with the private respondents on a harvest Combine from Patiala and has sought to reiterate that the statutory provisions enacted by way of section 177 of the Code of Criminal Procedure (in short, Cr.P.C.) to hammer home the point that only courts in the State of Madhya Pradesh were competent to act in the matter.

Heard Mr. NP Bhardwaj, Advocate, for the petitioner and Mr. J.S.Brar, AAG, Punjab, for respondents no. 1 to 5 and perused the record.

The provisions of section 177 read with section 178 as well as section 181 (2) of the Cr.P.C. the latter specially deals with cases of kidnapping, makes it emphatically clear that in no uncertain terms that every offence shall ordinarily be inquired into as well as tried at places within whose local jurisdiction the same was committed and where such uncertainty prevails as to the place of the commission of offence then by virtue of section 178 Cr.P.C. where part of the offence is committed shall also have the jurisdiction and section 168(b) of the Code does not envisages a position in which one ingredient of the offence is committed at one place and the other is committed in another place but rather reflects and means to say that when an offence is committed partly in one place and partly in

other, both the places can have territorial jurisdiction to take cognizance and therefore, answers squarely the opposition that has sought to be made by the counsel for the State.

Precisely in this case it is there in the averments of the petition and so are the contentions of the counsel for the petitioner that younger brother of the petitioner namely Sukhwinder Singh was taken away by the alleged persons from Patiala in consequence of criminal conspiracy so hatched inter-se between them and seeking support from **Vishwanath Gupta vs State of Uttaranchal, 2007(2) R.C.R. (Criminal) 511**, this Court is on the opinion that the Police Station as well as Courts at Patiala certainly is bestowed with such a jurisdiction to investigate, try and decide the present matter. Thus ploy which is sought to be set up by the State to evade investigations and action into the matter is un-sustainable and is contrary to these statutory provisions as well as settled position of law. Keeping in view that there are serious allegations of disappearance of younger brother of the petitioner and which needs to be comprehensively investigated to unravel the truth and therefore, necessitates allowing the present writ petition thereby directing official respondents no. 1 to 5 to register an FIR on the basis of the complaint so received by them in the light of the law laid down in **Lalita Kumari vs State of U.P., (2014) SCC 1** and ensure that the same is investigated by a senior functionary of credible track record. Official respondents no. 6 and 7 to ensure that they assist the local police of

the State of Punjab for that very matter.

The petition thus stands disposed off in those terms.

July 25, 2016
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(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?
Whether Reportable ?

Yes/No
Yes/No