

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

Civil Writ Petition No. 21596 of 2012

Date of Decision: 27.7.2016

Naginder Singh

.....Petitioner

Vs.

The State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. S.S. Aulakh, Advocate for
Mr. S.S. Narula, Advocate
for the petitioner.

Mr. Yatinder Sharma, Additional A.G. Punjab.

Mr. Atul Gaur, Advocate for
Mr. Sumeet Goel, Advocate
for respondent No.4.

Mr. H.S. Gill, Sr. Advocate with
Mr. Nitin Rampal, Advocate
for respondents No. 5 and 6.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the alleged defective investigation at the hands of investigating agency in FIR No. 163 dated 1.8.2008 under Sections 302/201/364 of the Indian Penal Code, registered at Police Station Phillaur, District Jalandhar, petitioner has approached this Court, by way of instant writ petition under Article 226/227 of the Constitution of India, seeking a writ in the nature of Mandamus directing the respondent-State to

hand over the investigation to Central Bureau of Investigation-respondent No.4.

Notice of motion was issued and pursuant thereto, separate written statements have been filed on behalf of respondents. Thereafter, more than one status reports were filed on the directions issued by this Court from time to time.

During the course of hearing, it has transpired that after completion of the investigation, investigating agency filed the cancellation report in the abovesaid FIR. Since the petitioner was not satisfied with the investigation conducted, he filed a protest petition, upon which the learned Magistrate erroneously ordered re-investigation vide order dated 27.2.2010. Said order passed by the learned Magistrate was challenged by the private respondents before this Court by way of CRM-M No. 11246 of 2010.

In the abovesaid petition, this Court passed order dated 4.3.2011, reproduced in para 8 of the present writ petition, and the same reads as under:-

"In view of the facts and law position as mentioned above, impugned order dated 27.2.2010 is set aside and the trial court is directed to consider afresh all the material available on record and after going through the evidence, if the trial court comes to the conclusion that there is evidence on record or some requirement is there for further investigation, then necessary order be passed within a period of three months"

When the learned Magistrate proceeded further in compliance of the abovesaid order passed by this Court, petitioner stopped appearing

before the learned Magistrate and filed the present writ petition. Correctness of this material fact has not been disputed by learned counsel for the petitioner. Once this Court has passed the abovesaid order Annexure P-5, with a specific direction to the learned Magistrate to consider all the material available on record afresh and after going through the evidence, if the court comes to the conclusion that there is evidence on record or some requirement is there for further investigation, then necessary order would be passed by the learned Magistrate, petitioner was expected to cooperate with the learned Magistrate for proceeding further in compliance of the order dated 4.3.2011. However, petitioner did not do so for the reasons best known to him.

At this stage, learned senior counsel for respondents No. 5 and 6 referred to para 9 of the reply filed on behalf of respondents No. 5 and 6, to contend that very many adjournments were sought by the petitioner with a view to produce his preliminary evidence as complainant but the petitioner failed to produce any evidence.

Specific averments taken by respondents No. 5 and 6 in para 9 of the written statement which have gone undisputed, read as under:-

" That referring to para No. 9 of the petition it is submitted that thereafter the police conducted further investigation and later on the court again considered the cancellation report and gave notice of the same to the petitioner who did not agree with the cancellation report and the same was ordered to be treated as a complaint as per the request of the petitioner. The Ld. Sub Divisional Judicial Magistrate, Phillaur, after passing of order for

treating the report as a complaint, adjourned the case to 3.10.2011 for evidence of the complainant. On this date no evidence of the complainant was present and on request of the complainant the case was adjourned to 21.10.2011. On 21.10.2011 again no evidence of the complainant was present and on request of his Counsel case was adjourned to 19.11.2011. On 19.11.2011 again no evidence of the complainant was present and the case was adjourned to 3.12.2011. On 3.12.2011 also complainant did not produce any evidence and on his request the case was adjourned to 7.1.2012. On 7.1.2012 again on similar grounds the case was adjourned to 18.2.2012. Again on 18.2.2012 on the request of complainant the case was adjourned for his evidence to 24.3.2012. Thereafter again there were number of adjournments on similar requests of the complainant and ultimately instead of producing any evidence in support of his allegations, the complainant has filed the present petition."

When confronted with the abovesaid material fact situation, learned counsel for the petitioner had no answer and rightly so, it being a matter of record. Under these circumstances, it is unhesitatingly held that instant writ petition is not maintainable in the present form, because the petitioner was expected to cooperate with the learned Illaqa Magistrate, in compliance of the abovesaid order passed by this Court. Further, no difficulty of any kind, whatsoever, has been pointed out on behalf of the petitioner as to why he stopped appearing before the learned Magistrate and

did not lead his evidence as complainant.

It is also not in dispute that the petitioner has not leveled any malafide against any officer of the investigating agency who might have conducted the alleged tainted investigation. No doubt, it was an unfortunate fact situation but it is equally true that no innocent person can be held guilty until and unless, cogent and reliable evidence is found available against any accused.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that instant writ petition has not been found to be a fit case for transferring the investigation to CBI. However, petitioner shall be at liberty to pursue his remedy, if still available to him, in compliance of the order dated 4.3.2011 passed by this Court.

With the abovesaid observations made, present writ petition stands disposed of, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

27.7.2016
Ak Sharma

Whether speaking/reasoned/non-speaking

Whether reportable: Yes/No