

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 6382 of 2011 (O&M)
Date of decision: 11.1.2016

State of Punjab

.. Petitioner

v.

Kiranbir Singh Kang and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Nilesh Bhardwaj, Deputy Advocate General, Punjab.

Mr. Manish Verma, Advocate for respondent No. 1.

Mr. Kanwaljit Singh, Senior Advocate with
Mr. Jaswant Singh, Advocate for the applicant in
CM No. 16297 of 2011.

...

Rajesh Bindal J.

The State has filed the present petition impugning the order dated 31.1.2011, passed by learned Sessions Judge, Rupnagar, whereby the application filed by the petitioner under Section 321 Cr. P.C. for withdrawal of prosecution qua the respondents, was dismissed.

Learned counsel for the petitioner submitted that FIR No. 159 dated 2.7.2004 was registered on the statement of SI Ramandeep Singh, SHO, Police Station, Kharar under Sections 302, 307, 148, 149, 109 and 120-B of the Indian Penal Code and 25 of the Arms Act. Report under Section 173(2) Cr.P.C. was presented in the competent court on 8.8.2004. Charges were framed against the accused on 28.2.2007. Some of the accused, being aggrieved, filed writ petitions in this court, in which life and liberty of the petitioners therein was directed to be protected. The Director General of Police, Punjab, vide order dated 23.3.2007 directed for

constitution of Special Investigating Team (for short, 'SIT') to submit its report. SIT found the case against the accused to be absolute false. On the basis of the report of SIT, two supplementary reports were submitted before the court. Discharge of the accused was also prayed for. It is the aforesaid application, which was rejected by the court below vide impugned order dated 31.1.2011.

In the aforesaid factual matrix, learned counsel for the petitioner submitted that once in view of various orders passed by this court and Hon'ble the Supreme Court in the petitions filed by the accused, SIT was constituted which, after thorough enquiry, found that in fact the accused already named in the FIR were not real culprits, as the offence had been committed by someone else, the State had rightly filed the application seeking withdrawal of prosecution. No one should have been made to face prosecution if he was not involved in the crime. It has direct relation with his liberty.

On the other hand, learned counsel for respondent No. 1 supported the case set up by the petitioner.

Learned counsel for the applicant submitted that it is a case of blatant misuse of powers by the State. The respondents were accused in the FIR registered initially, however, with change of power, respondent No. 1, who has affiliation with the party in power in the State, got everything turned around. Even after the challan had been presented and charges had been framed against the accused, a fresh SIT was constituted, which gave its tailor-made report in favour of the accused and on that basis, application for withdrawal of prosecution against the accused was filed, which was rightly rejected by the learned court below. He further submitted that special interest of the State in the case in hand is established from the fact that the present petition seeking setting aside of the order passed by the court below rejecting the application under Section 321 Cr.P.C. seeking withdrawal of prosecution was filed by the State impleading only the accused as the respondents. None of the complainants was made the respondent to contest the claim. When the complainants came to know, they moved the application seeking intervention as party. The trial of the accused in the

present case when the charges had already been framed, cannot be said to be abuse of process of law.

Heard learned counsel for the parties and perused the paper book.

In the case in hand, FIR was registered under Sections 302, 307, 148, 149, 109 and 120-B of the Indian Penal Code and 25 of the Arms Act against the respondents. After investigation, challan was presented in court, on which charges were framed against the respondents on 28.2.2007. One of the main accused in the FIR, namely, Kiranbir Singh Kang belongs to the ruling party in the State, which came in power in 2004. Thereafter, the State constituted SIT, without permission of the court and filed two supplementary reports in the court exonerating the accused and implicating another set of the accused. On the basis of the report submitted by SIT, application seeking withdrawal of prosecution against a set of accused was filed, which was dismissed by the court below vide impugned order. The accused, who had been implicated by SIT filed CRM-M-21583 of 2012—Rajbir Singh and others v. State of Punjab and another, and other connected petitions, in this court, which were allowed vide judgment dated 28.10.2015 setting aside the supplementary challans presented on the basis of report of SIT and further acceptance of the supplementary challan by the Illaqa Magistrate.

While disposing of the aforesaid petitions, this court observed that the cases in hand were glaring example of blatant misuse of powers by the investigating agency while conducting repeated investigations, totally changing the nature and scenario of the case, completely exonerating one set of accused persons and implicating another group of persons, that too without permission of the court.

Another important fact noticed is that on the basis of report of SIT, supplementary report dated 17.7.2007 was presented under Section 173 (8) Cr.P.C. before the court, which was rejected vide order dated 13.2.2008. Having failed in that attempt, the State filed application on 8.4.2008 under Section 321 Cr.P.C. seeking withdrawal of prosecution, which was dismissed vide impugned order dated 31.1.2011. After dismissal of the

application under Section 321 Cr. P.C., Kiranbir Singh Kang on the same allegations got DDR No. 19 dated 12.9.2011 registered exactly on the same allegations, on the basis of which another SIT was constituted, which prepared its report and presented challan exonerating the faction of accused affiliated to Kirandeep Singh Kang, whereas involving another faction affiliated to Rajbir Singh. The aforesaid supplementary challan dated 30.9.2011 was rejected by the Magistrate vide order dated 10.12.2011. The order was challenged in revision before the Sessions Court, however, the revision was withdrawn on 4.4.2012.

The conduct of the State and in connivance with the accused is evident from the fact that second supplementary challan dated 30.9.2011, which was rejected by the Illaqa Magistrate and revision against which had been withdrawn on 4.4.2012, was sought to be presented before the learned Sessions Judge on 15.5.2012. On the supplementary challan dated 30.9.2011 presented before the learned Sessions Court, report was sought from the Illaqa Magistrate, who accepted the supplementary challan vide order dated 12.7.2012, which had already been rejected. This Court in Rajbir Singh and others' case (supra) framed the following issues:

- “(i) Whether the investigating agency has conducted only the further investigation or re-investigation and it had no jurisdiction to conduct fresh or re-investigation without prior permission of the Court ?
- (ii) Whether the learned trial Magistrate had exceeded her jurisdiction, while passing the abovesaid impugned order dated 12.7.2012 accepting the supplementary challan under Section 173(8) Cr. P.C. ?
- (iii) Whether this impugned order dated 12.7.2012 amounts to review of the earlier order dated 10.12.2011 (Annexure P-15) ?

All were answered in favour of the petitioners therein, who had been made accused in the supplementary challan based on the investigation conducted by SIT. The strong observations made by this court in the aforesaid case are extracted below:

“So far as the fact situation of the present case is concerned,

the impugned supplementary challan under Section 173(8) Cr.P.C. has been found based on not only further investigation but on a fresh and de novo or re-investigation, which clearly runs counter to the very scheme of the Code of Criminal Procedure. Investigating agency cannot be permitted to blow hot and cold in the same breath, changing its stand from time to time, as per its own suitability.

The argument raised by learned Senior Counsel for the respondent that this Court has granted implied consent to the investigating agency for conducting even the fresh investigation, is only to be noted to be rejected, being a wholly misplaced argument. It is so said because the investigating agency was duty bound to seek prior permission of the learned Court of competent jurisdiction to conduct fresh, de novo or re-investigation. Any post-facto observations made by the Court, and that too in altogether different context, would be of no help to the investigating agency to justify its action without jurisdiction.

In fact what to talk of seeking prior permission of the court, investigating agency kept the learned Court (s) in total dark in this regard, because no Court was ever taken into confidence on this issue, at any relevant point of time. On the other hand, the investigating agency as well as the prosecuting agency of the respondent-State have been found playing hide and seek with the Courts as well, sometimes by withholding the material fact from the notice of the Court and at other time making a factually incorrect and misleading statement so as to get favourable orders.

Such kind of action is neither expected from the investigating or prosecuting agency of the State nor it behove them to misconduct themselves to such an extent that the very credibility of these agencies of the State is shattered. It is so said because the investigating agency as well as the

prosecuting agency of the State are very important agencies who play substantial role in the justice delivery system and are expected to conduct themselves impartially, fairly and diligently. However, both these agencies of the respondent-State have miserably failed in their duty in the present case. This was the reason that the impugned supplementary challan under Section 173(8) Cr.P.C. has been found to be the result of an action without jurisdiction and the same cannot be sustained, for this reason as well.”

There is another good reason available in the case in hand for investigating and prosecuting agencies to have behaved in this manner as the main accused-Kiranbir Singh Kang was elected as Senior Vice President of Shiromani Akali Dal in the year 2004 and contested the elections of Punjab Vidhan Sabha from the same party.

For the reasons mentioned above, when this court in Rajbir Singh and others' case (supra) found that the investigating agency did not have the jurisdiction to re-investigate the matter without permission of the court and the application seeking withdrawal of the prosecution was based merely on the report of SIT constituted even after framing of charges against the accused, in my opinion, there is no error in the order passed by the court below.

Accordingly, the present petition is dismissed.

(Rajesh Bindal)
Judge

11.1.2016
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(Refer to Reporter)