

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

CRM No.M-1276 of 2012 (O&M)

Date of Decision: April 03, 2017

Sanjiv Mehan

...Petitioner

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Preetinder S.Ahluwalia, Advocate,
for the petitioner.

Mr.V.P.S.Sidhu, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.Animesh Sharma, Advocate
for respondent No.2.

INDERJIT SINGH, J.

The petitioner has filed this petition under Section 482 Cr.P.C. against respondents State of Punjab and Satinder Singh for quashing the criminal complaint No.23T dated 23.01.2002 titled as 'Satinder Singh vs. Darshan Singh & others' and summoning order dated 05.03.2003 passed by learned Addl. Chief Judicial Magistrate, Patiala, as well as all the subsequent proceedings emanating therefrom.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondent No.2 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.

At the time of arguments, it is admitted fact that FIR No.999

dated 15.10.2001 was got registered in Police Station Sadar Patiala under Sections 307, 458, 323, 148 and 149 IPC.

At the time of arguments, learned counsel for the petitioner brought it to the notice of this Court that cancellation report has already been accepted by learned Addl. Chief Judicial Magistrate, after giving notice to the complainant, where learned counsel for the complainant simply argued that appropriate order may be passed on the application and the cancellation report was accepted.

From the perusal of the record it is clear that qua same occurrence, FIR has been cancelled by learned ACJM, Patiala. It is also admitted fact between the parties that when the complaint was filed, at that time, the police investigation was already pending.

Section 210 Cr.P.C. provides as under:-

“210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.”

In the present case, learned Illaqa Magistrate, neither stayed the proceedings during the pendency of the investigation nor any report has been called. Learned counsel for the petitioner argued that provisions of Section 210 Cr.P.C. are mandatory in nature and he cited judgment passed by the Hon'ble Supreme Court in *Dilawar Singh vs. State of Delhi, 2007(4) RCR (Criminal) 115*. In the present case, mandatory provisions under Section 210 Cr.P.C. are not complied with.

Further, I find that it is the case of the petitioner that at the time of occurrence i.e. on the intervening night of 14/15.10.2001, he was not present in India as per passport. The copy of the passport has been placed on record as Annexure P-4. Nothing has been argued by learned counsel for the respondent qua this passport and the fact that petitioner was in India at that time.

Keeping in view the above facts, I find that filing of the complaint against the present petitioner is nothing but abuse of process of law and amounts to miscarriage of justice.

Therefore, finding merit in the present petition, the same is allowed. The criminal complaint No.23T dated 23.01.2002 titled as 'Satinder Singh vs. Darshan Singh & others', summoning order dated 05.03.2003 and all subsequent proceedings arising therefrom are hereby quashed qua petitioner only.

April 03, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No