

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

CRM-M-12784 of 2017 (O&M)

Date of Decision: 11.05.2017

Amarjit Singh

....Petitioner

vs.

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. P.P.S. Duggal, Advocate
for the petitioner.

TEJINDER SINGH DHINDSA, J.

The instant petition has been filed under Section 482 Cr.P.C. seeking quashing of the order dated 06.03.2017, passed by the learned Special Judge, Ferozepur (Annexure P-13) and in terms of which, the cancellation report furnished by the prosecution in FIR No.15 dated 26.12.2008, under Sections 7/13(2) of the Prevention of Corruption Act, registered at Police Station Vigilance Bureau, Ferozepur, has not been accepted and cognizance of the case has been taken and the matter has been posted for consideration on charge.

2. Counsel would submit that the petitioner was working as Public Distribution Clerk, Punsup, Mamdot, District Ferozepur and has since retired upon attaining the age of superannuation in the month of March 2010. FIR has been registered on the statement of Sukhwinder Singh S/o Hari Singh/respondent No.2 on the

allegations that the petitioner was demanding a illegal gratification of Rs.5,000/- in lieu of releasing a cheque of Rs.77,000/-. The occurrence relates to 26.12.2008. It is argued that since the petitioner has retired in the year 2010 and even though the allegations pertain to a point of time when the petitioner was in service, he would be entitled for protection as requisite sanction under Section 197 of the Code of Criminal Procedure and Section 19 of the Prevention of Corruption Act, has not been taken. Further argued that it is a case of no evidence. The prosecution agency has submitted cancellation report and prior thereto had even put up untraced reports on two occasions and yet cognizance has been taken by virtue of the impugned order. It is contended that the impugned order cannot sustain as the petitioner was sought to be implicated only on the statement of respondent No.2. Yet another submission raised is that this Court had earlier in point of time quashed the order dated 04.06.2011, passed by the Special Judge, wherein cognizance of the offence has been taken against the petitioner vide judgment dated 18.10.2012 in **CRM-M-32067 of 2011** and in spite of no fresh evidence against the petitioner, the impugned order has been passed by not accepting the cancellation report.

3. Counsel for the petitioner has been heard at length.

4. Briefly, it may be noticed that the process of law was set into motion on the statement of Sukhwinder Singh/respondent No.2

who made a statement before the police that for the paddy season 2008-2009, 14470 bags of paddy were purchased by Punsup Agency through Public Distribution Clerk-Amarjit Singh (petitioner herein) from the firm of the complainant i.e. M/s Baba Farid Commission Agent, Mandot. An amount of Rs.77,000/- was due against Punsup whereas the remaining amount had already been released. Accused/petitioner Amarjit Singh, Public Distribution Clerk, had kept the cheque of Rs.77,000/- and was not releasing it and was demanding illegal gratification of Rs.10,000/-. As per allegations, the deal was struck for Rs.5,000/-. Thereafter, a trap was laid and tainted money i.e. five currency notes of denomination of one thousand each (total Rs.5,000/-) was stated to have been recovered from accused Amarjit Singh. Even the cheque of Rs.77,000/- was stated to have been recovered from the Maruti Car of accused Amarjit Singh.

5. The investigating agency presented a cancellation report.

6. Vide order dated 19.09.2009, learned Special Judge, ordered for re-investigation of the case. Prosecution again presented cancellation report. However, vide order dated 04.06.2011, learned Special Judge, took cognizance of the offence and thereafter charge was framed against the petitioner under Section 13(2) of the Prevention of Corruption Act. Petitioner filed CRM-M-32067 of 2011 and the same was decided by this Court

vide judgment dated 18.10.2012 (Annexure P-8) and whereby the order dated 04.06.2011, passed by the Special Judge taking cognizance of the offence and the consequential proceedings arising therefrom including chargesheet dated 14.09.2011, were quashed. Learned Special Judge was directed to pass an order afresh in accordance with law. It is against such brief factual backdrop that the impugned order dated 06.03.2017 has now been passed by Special Judge, Ferozepur in not accepting the cancellation report and taking cognizance of the offence.

7. The cancellation report has been filed by the prosecution on the basis that in the paddy supplied by the firm of the complainant, there was a shortage of 6.8 quintals of paddy and which was worth Rs.6,000/-. The complainant had been called upon to pay such amount towards short fall of paddy and as such, the cheque of Rs.77,000/- was held back by the accused Amarjit Singh. Even the recovered amount of Rs.5,000/- was stated to be not bribe money but towards making good the short fall of Rs.6,000/-.

8. In the impugned order while taking cognizance of the offence and not accepting the cancellation report, it has been noticed by the learned Special Judge that the prosecution has not placed on file and relied upon any instruction/notification/rule on the basis of which, a commission agent is liable to make good, the loss of any shortage of paddy detected subsequently. Rather letter

No.4849 dated 28.04.2009, issued by the Punjab Mandi Board and in terms of which, the department has been directed not to recover the amount towards shortage of paddy from commission agent, has been noticed. Furthermore, it has been observed that even in the eventuality of a Public Distribution Clerk, having received Rs.5,000/- in lieu of shortage of paddy supplied by a commission agent, then it was imperative for such official to have issued a receipt in token thereof and which was not the case of the prosecution.

9. The impugned order dated 06.03.2017, passed by the Special Judge, Ferozepur, in not accepting the cancellation report and taking cognizance of the offence against the petitioner, has been passed on valid and cogent reasons.

10. The reliance placed by counsel upon the judgment dated 18.10.2012, passed by this Court in CRM-M-32067 of 2011 (Annexure P-8) would not be of any consequence. Perusal of such judgment would reveal that the matter had not been examined on merits. The order dated 04.06.2011, passed by the Special Judge taking cognizance of the offence and the consequential proceedings arising therefrom had been quashed only on the basis that Special Judge had erred in holding that the complainant had not been joined at the stage of re-investigation of the case, whereas, factually he had been so joined. Under such circumstances, learned Special Judge, had been directed to pass

an order afresh.

11. As regards the aspect of not obtaining sanction for prosecution, it would always be open for the petitioner to raise such issue before the trial Court.

12. For the reasons recorded above, no basis for interference is made out.

13. Petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

11.05.2017
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***Whether speaking/reasoned* : Yes/No**
***Whether reportable* : Yes/No**