

Sr. No.116

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM No. M-32613 of 2016 (O&M)

Date of Decision:16.03.2017

Rajiv Kumar

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Vikram Sheoran, Advocate,
for the petitioner.

TEJINDER SINGH DHINDSA, J.(ORAL)

The instant petition has been filed under Section 482 Cr.P.C. for directing the official respondents to proceed further in the matter and to conduct a fair and impartial investigation pertaining to FIR No.90 dated 25.10.2010, under Sections 420, 120-B of Indian Penal Code, registered at Police Station Sohana, District Mohali.

Counsel for the petitioner has been heard at length.

Concededly, the FIR in question came to be registered on the complaint of the petitioner. After conclusion of investigation, an untraced report was filed before the concerned Area Magistrate. At that stage, the present petitioner contested such report and directions were issued to conduct further investigation. It is submitted by counsel that the investigating agency yet again filed an untraced report and which was accepted by the competent Court in the light of order dated 31.10.2014.

Pleadings on record would indicate that the petitioner then preferred a revision against the order dated 31.10.2014 and the same was

accepted on 29.05.2015 and the matter was remanded back to the Area

Magistrate to decide the same afresh after hearing both the parties.

The relevant extract of the order dated 29.05.2015 passed by the learned Additional Sessions Judge, SAS Nagar, Mohali is in the following terms:

“Through this revision petition, the petitioner has challenged the impugned order dated 31.10.2014 mainly on the ground that opportunity of being heard was not afforded to him and the untraced report has been accepted without assigning any reason. Perusal of record reveals that notice was issued to the complainant through summons and bailable warrants of arrest. But his presence could not be procured and the Area Magistrate while observing that from the perusal of report of bailable warrants, it seems that complainant has not come forward to proceed with the instant FIR and, therefore, the cancellation report is accepted. However, the learned Area Magistrate did not assign any reason for accepting the untraced report, which is referred as cancellation report in the impugned order. The impugned order as narrated herein above shows that the untraced report was accepted only on the ground that the complainant had not come forward to proceed with the FIR. There is total non-application of mind at the time of accepting the untraced report. Therefore, the impugned order is illegal and is liable to be set aside.

In view of the above observation, this revision petition is accepted; impugned order dated 31.10.2014 is set aside and the matter is remitted back to the learned Area

Magistrate to decide the same afresh. Parties are directed to appear before the Court of Area Magistrate on 10.06.2015. Lower Court Record be transmitted along with the copy of this judgment forthwith. Police record be returned. Record of the revision petition be consigned to the Record Room.”

As per counsel, the matter is still pending before the Area Magistrate.

Under such circumstances, the prayer made in the instant petition under Section 482 Cr.P.C. for directing the police authorities to take action against the private respondents cannot be entertained at this stage.

The petition is, accordingly, disposed of in terms of granting liberty to the petitioner to avail of his remedy in accordance with law.

Disposed of.

16.03.2017

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE**

Whether speaking/reasoned

Yes

Whether Reportable

No