

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

CRR--1131-2010

Date of decision :04.09.2017

Yash Pal and others

..... Petitioners

Versus

U.T. Chandigarh and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present : Mr. R.S. Bains, Advocate
for the petitioners.

Mr. Sukant Gupta, Addl. P.P., U.T., Chandigarh.

Mr. J.S. Bedi, Senior Advocate with
Mr. Lovekirat Singh Chahal, Advocate and
Mr. V.K. Sachdeva, Advocate
for respondent No.2.

H.S. MADAAN, J. (Oral)

This criminal revision has been filed by petitioners – Inspector Yash Pal, Inspector Charanjit Singh, Inspector Dilsher Singh, Inspector Jaswinder Singh, Inspector Uday Pal, Inspector Hardit Singh and Sub-Inspector Dilbagh Singh all of them from Chandigarh Police feeling aggrieved by order dated 25.02.2010 passed by Judicial Magistrate Ist

Class, Chandigarh vide which he had accepted the cancellation report submitted by investigating agency in FIR No.80 dated 25.04.2008 under Sections 420, 467, 468, 471 IPC registered with Police Station, Sector 3 Chandigarh.

Briefly stated facts of the case are that Ram Gopal serving as Sub-Inspector in the Chandigarh Police had submitted an application dated 10.11.1997 to Inspector General of Police, Chandigarh for getting promotion for the reason that he had stood first winning a gold medal, thereby, attaining the status of World Champion in the 6th World Yoga Sports Cup organized at Genoa (Italy) from 10.10.1997 to 12.10.1997. According to the petitioners the claim of accused – Ram Gopal is wrong based upon a bogus certificate, since there are material contradiction and discrepancies regarding participation of accused – Ram Gopal in Yoga event at Genoa (Italy) as compared to participation of Bal Mukand, who had actually become world champion in 6th World Yoga Sport Championship, the same are detailed as under:-

- a. The invitation card for participation of accused – Ram Gopal dated 04.09.1997 is for participation in 2nd Inter-Continental Yoga Cup whereas the invitation letter of Bal Mukand who had won the world championship is for participation in 6th World Yoga Sport Championship and he had sought permission for participation in this event vide his letter dated 30.07.1997.
- b. That on the certificate of Ram Gopal the name of the

event has been mentioned as 6th World Yoga Sport Cup, whereas on the certificate of Bal Mukand the name of event has been mentioned as 6th World Yoga Sport Championship.

c. That Bal Mukand was awarded three certificates and all the three certificates are filled in one hand whereas the certificate of Ram Gopal is filled in different hand and probably the same had been filled by Ram Gopal in his own hand.

d. That there are discrepancies in the signatures of the issuing authorities in between the certificates of Ram Gopal and Bal Mukand, which require examination from GEQD.

e. Some columns in the certificate of Bal Mukand have been left blank, which have been filled in the certificate of Ram Gopal.

f. A line "RICONOSCENDONE L IDONEITA PER L INSEGNAMENTO DELLO YOGA SPORTS A LIVELLO" in Italian which means "RECOGNIZING THE ABILITY FOR TEACHING YOGA SPORTS OF THE LEVEL OF" has been struck off in the certificate of Bal Mukand whereas the same is not struck off in the certificate of Ram Gopal.

g. The operative part of certificate of Ram Gopal read as under : "RECOGNISING THE ABILITY FOR TEACHING YOGA SPORTS OF THE LEVEL OF WORLD CHAMPION INDIAN NATIONAL TEAM IN OLYMPIC YOGA SPORT".

The perusal of the same shows that it neither gives any meaning nor suggests that Ram Gopal had won any event.

h. In the certificates of Bal Mukand over the word “IL TITOLRE” Bal Mukand had signed whereas in the certificate of Ram Gopal signatures of some other person are there.

The petitioners contended that the certificate produced by Ram Gopal is false, forged and fabricated; that as per official website of International Yoga Federation and as has been sent to the IGP Chandigarh through E-mail in the Athletic Yoga (Indian Way) or Olympic Yoga Sport, Bal Mukand had become world champion and the name of Ram Gopal is nowhere in the list of winners and in the said year in the team event, the team of Argentina had won.

It is further submitted that one of the petitioner namely Hardit Singh had sent an E-mail dated 26.09.2007 to one of the signatories of the certificate; that accused Ram Gopal in order to save himself connived with Mr. Bonivini, Dr. Gopal, Mr. Balmukand and Mr. Madan Lal Vairagi to help him out and all those persons had given false representations contrary to the record and facts; that the Investigating Officer had not considered the fact that the first response of Mr. Bonivini was that Balmukand is World Champion and issuance of certificate is a mistake and the explanation given by Mr. Bonivini was false and after thought having been made in consultation with Ram Gopal; that after registration of the FIR the investigating agency had not been investigating the case in a proper and fair manner and rather had based its conclusion on the statement of the accused

and his co-conspirators, who had actively participated in creating false evidence in support of accused – Ram Gopal; that the Investigating Officer had not investigated the matter that the alleged invitation to the accused was to take part in Zna International Yoga Cup as per letter dated 04.09.1997 and even the permission was granted to him vide order dated 06.10.1997 to participate in 2nd International Yoga Cup, even the official record shows that accused was permitted to participate in 2nd International Yoga Cup at Genoa whereas Balmukand had given application dated 30.07.1997 to participate in 6th World Yoga Sport Championship. The Investigating Officer has not investigated the matter on that aspect.

In the petition the petitioners have pointed out various faults which according to them exist in the certificate produced by Ram Gopal as well as in the investigation. According to the petitioners the Investigating Officer had not tried to join in investigation Mr. Upinder Kumar, who as per the story put up by the accused and his associates, was member of the team alongwith the accused – Ram Gopal and Mr. Balmukand, which won the team championship and all those three persons were issued certificates for being world champions for the Indian National Team; that the Investigating Officer had not properly and fairly investigated the matter and had prepared the cancellation report on the basis of interested witnesses, who had connived with the accused and had also not met with the various queries as raised by the enquiry officer, while recommending the registration of the FIR resulting into complete failure of justice.

That the Investigating Officer while dealing with the

investigation of the present case has not taken into consideration that the main evidence of the present case was to be gathered from Italy, Argentina and other countries, which had participated in the said event and as such in the present matter procedure as laid down under Section 166-A Cr.P.C. was to be followed, whereas the Investigating Officer had carried out the investigation in gross violation of the provisions of Cr.P.C. and the investigation has been conducted in a manner which is unheard of under law. The true copies of the instructions issued by the Government of India have been appended as **Annexures P-17** and **P-18**; that the Investigating Officer has also not taken into consideration the guidelines issued by the Government of India, Ministry of Home Affairs vide No.25016/14/2007 – Legal Cell, wherein it has been laid down that where part of the crime has been committed outside the country or the witnesses and other material evidence are available in another country; that as such whatsoever material the Investigating Officer had allegedly collected from abroad, being in contravention of Section 166-A Cr.P.C. and against the guidelines laid down to that effect is no evidence under law and cannot be looked into for any purpose. As such, the cancellation report whose foundation is laid upon said material is untenable under law and unsustainable on facts and is liable to be rejected; that the Investigating Officer has not dealt with the points, noticed by the enquiry officer Sh. Satbir Singh, DSP, CID, Chandigarh on whose enquiry report the present case was got registered and even the Investigating Officer had not tried to join him in the investigation of the present case, while differing with the opinion of enquiry officer, which has

resulted into miscarriage of justice.

That though there is sufficient evidence on record by way of documents taken into possession by the police as well as statements of the witnesses showing involvement of accused, still the police had sent cancellation report. As a matter of fact the investigating agency has not investigated the case properly and fairly and has not collected the material evidence available. Nevertheless whatsoever evidence and statements have been recorded by the investigating agency are sufficient against accused – Ram Gopal and his other accomplices to face trial in the present case, but the investigating agency has not sent them to face trial although much more evidence is required to be collected in the present case as has been stated hereinabove; that the cancellation report was submitted in haste, without collecting evidence as per law, without taking expert opinion and solely on the statements of interested witnesses who had been indicted for their dubious role in the whole matter by the enquiry officer while recommending registration of present FIR; that the case was adjourned time to time due to non-availability of the Investigating Officer and the matter was delayed for around one year.

Feeling aggrieved, the petitioners filed a **CRM-M-36621-2009** in this Court and this Court vide order dated 12.01.2010 directed the trial Court to decide the application filed by the petitioners within three weeks on receipt of that order; that thereafter the case was taken up by Judicial Magistrate Ist Class, Chandigarh and on the said date the Court sent the case to the Court of Chief Judicial Magistrate, Chandigarh citing inability to

decide the same for personal reasons. Chief Judicial Magistrate, Chandigarh vide order dated 25.01.2010 transferred the case to the Court of Sh. Mahesh Kumar, Judicial Magistrate Ist Class, Chandigarh, who heard the arguments on day to day basis and adjourned the matter to 05.02.2010. The Court of Sh. Mahesh Kumar, Judicial Magistrate Ist Class, Chandigarh vide order dated 05.02.2010 again sent the case to the Court of Chief Judicial Magistrate, Chandigarh citing inability to decide the same on personal reasons. Such case was transferred to the Court of Sh. Sunil Kumar, Judicial Magistrate Ist Class, Chandigarh, who vide order dated 25.02.2010 had rejected the application filed by the petitioners and accepted the cancellation report without appreciating the law.

That the trial Court has not taken into consideration the glaring contradictions and discrepancies in the investigating agency showing the same to be carrying in most defective manner just to help the culprits. In the end, a prayer has been made that the impugned order dated 25.02.2010 passed by the Court of Judicial Magistrate Ist Class, U.T. Chandigarh whereby cancellation report was accepted be set aside and the investigating agency be directed to investigate the matter and prayer also has been made that investigation in this case be handed over to Central Bureau of Investigation.

On the other hand learned State counsel has contended that the petitioners have no locus standi to file the present petition; that the promotion granted to SI Ram Gopal on the basis of the certificate in question has been upheld by Central Administrative Tribunal (for short -

“CAT”) and appeal filed against the said judgment / order has been dismissed, in that way order passed by CAT has attained finality; that before the Illaqa Magistrate learned counsel for the petitioners themselves had limited the prayer one for re-investigation, which prayer was considered by the Magistrate and declined, that the investigating agency after collecting the evidence by sending questionnaire to the persons concerned through the Ministry of Foreign Affairs had come to the conclusion that the certificate in question is valid. Therefore, although procedure provided under Section 166-A Cr.P.C. could not be followed strictly but that does not affect the investigation adversely. Furthermore, the petitioner, had remedy of filing private complaint which they have failed to do, as such, their revision petition needs to be dismissed.

I have heard learned counsel for the parties, besides, going through the record.

Learned counsel for the petitioners has reiterated the contentions made in the petition by way of advancing arguments. In support of his submission that the petitioners have got locus standi to file the present petition, he has referred to authority ***N. Natarajan vs. B.K. Subba Rao 2003 (a) RCR (Criminal) 424*** by the Apex Court wherein it was observed that *it is well settled law that criminal complaint can be lodged by anyone who has become aware of the crime having been committed and thereby set the law into motion.*

He further referred to authority ***Dr. Subramanian Swamy vs. Dr. Manmohan Singh and another 2012 (1) Supreme 577*** wherein the

Apex Court has observed that *there is no provision either in the Prevention of Corruption Act, 1988 or the Code of Criminal Procedure, 1973 which bars a citizen from filing a complaint for prosecution of a public servant who is alleged to have committed an offence.*

Thus in view of above, it is held that the petitioners have locus standi to file the present revision petition.

It may be mentioned here that when cancellation report was filed in the Court, notice thereof was given to the complainants, who put in appearance and filed protest petition opposing the request. The contentions mentioned above were almost the same as taken up in the protest petition.

The Investigating Officer Sh. Madhur Verma, Superintendent of Police had countered the contentions contending that CAT, Chandigarh while dismissing OA No.161-CH-2005 on 23.11.2007 had issued a direction to Inspector General and Home Secretary, Chandigarh to examine the matter minutely as to whether Ram Gopal had really taken them for a ride on some false representation. Thereafter a preliminary inquiry was conducted by DSP, CID who vide his report dated 21.04.2008 came to the conclusion prima facie the certificate did not appear to be genuine and had been misused by Inspector Ram Gopal that report found basis for registration of the FIR. Thereafter the matter was thoroughly investigated and allegations in the FIR were found to be wrong for that reason cancellation report dated 04.09.2008 was prepared and filed in the Court. He has contended that complainants had merely picked up specific words from representation dated 10.11.1997 so as to distort meaning and so far as

the fact of Ram Gopal being member of World Champion Indian National Team is concerned, that has been published in the newspapers, which showed that Ram Gopal was member of Indian Yoga Team which won the event of Athletic Yoga or Olympic Yoga Sport in 6th World Yoga Sport Cup-1997 held at Genova, Italy; that claim of Ram Gopal was examined and considered by competent authorities of police as well as the officials of Chandigarh Administration and after satisfying themselves he (Ram Gopal) was given promotion under 5% Sports Quota as per Rules. Such promotion has been upheld by CAT vide letter dated 19.12.2003 in OA No.650CH-2002 and OA No.161-CH-2005 filed by the complainants. He has further contended that genuineness of the certificate was confirmed and authenticated by the competent authority, as such, there was no need for getting further clarification. As regards the difference in format of certificate issued to Ram Gopal from the certificate of 11th World Yoga Championship, it was submitted that it was due to improvement in the format / language of certificate issued between intervals of almost 8 years.

The Investigating Officer has further pleaded that Mr. Hardit Singh had suppressed the fact of sending second E-mail which was duly replied on 08.09.2006 and only put forward the reply of his first E-mail showing that he had twisted the facts in his favour. The complainants were wrongly quoted Rules 3.3.1, 9.3.4 of IYF for the year 2005 when the event had happened in the year 1997 and there is difference in the Rules. The Investigating Officer had submitted that investigation had been carried out in a fair, proper and expeditious manner.

After hearing the rival contentions I find that there is no merit in this revision petition and the same is bound to fail. The scope of revision petition is quite limited. The revisional Court is to interfere only if the order passed by the Court below is patently illegal and perverse which means the error in the order must be apparent on the face of it and the order passed should have been in gross violation of settled principles of criminal jurisprudence. The order in hand does not suffer from any such infirmity. It is well settled principle that revisional Court is not be upset the order passed by the Court below in a light manner simply because of the reason that another view in the matter is possible. In the present case the proper course for the petitioners was to file revision petition in the Court of Sessions challenging the impugned order but for some unexplained reasons the complainants have filed criminal revision petition in this Court in the process by-passing the Court of Sessions which does affect its maintainability.

Secondly the bone of contention between the parties has been the authenticity genuineness of the certificate issued by Foreign Authorities, the Investigating Officer by way of sending a questionnaire to the authorities concerned in Italy through Ministry of Home Affairs had got the genuineness of that certificate determined. Though strictly speaking procedure under Section 166-A Cr.P.C. was not followed, but that does not render the information so gathered by the investigating agency to be meaningless or redundant.

Learned State counsel has referred to citation ***Abdul Latif***

Adam Momin vs. Union of India through Central Bureau of Investigation 2014(2) R.C.R. (Criminal) 54 by Division Bench of this Court wherein while dealing with scope of Section 166-A Cr.P.C. it was observed that *in terms of Section 166-A Cr.P.C. evidence collected and transmitted to India is deemed to be evidence collected during the course of investigations under Chapter XII of the Code – But it does not preclude the investigators in India to obtain information from other countries through normal diplomatic channels.*

As is clear from perusal of the order learned counsel appearing on behalf of the complainants had confined his argument and relief claimed to the extent of conducting re-investigation in the matter only and the Magistrate by giving reasoning come to the conclusion that re-investigation in the matter was not called for.

Admittedly, the Magistrate had three options to him; first accepting the cancellation report, secondly sending it for re-investigation and thirdly asking for further investigation. The trial Magistrate did not find it a fit case to ask for re-investigating or further investigation and keeping in view all the facts and circumstances observed that the cancellation report deserves to be accepted. The complainants have the option of filing the private complaint which they have has not availed of, the promotion granted to SI Ram Gopal on the basis of the sport certificate in Yoga has been upheld by CAT, though said judgment is not binding upon criminal Court but then it is fairly a relevant piece of evidence.

The learned Magistrate after discussing the contentions put

forward by both the parties and perusal of record has given detailed reasoning for accepting the cancellation report which shows due application of mind. He has noticed that merely due to signatures of Dr. Gopalji on his statement under Section 161 Cr.P.C. that does not render the statement without force and statement of Bonivini was recorded through senior officials of Embassy of India at Rome (Italy), so there was no need of Investigating Officer to visit Rome personally for recording statement of Bonivini. He further noticed that it was for Investigating Officer to collect evidence to reach at some conclusion in any manner he adopted because the information can be obtained through the diplomatic process also. As per guidelines issued by Government of India, Ministry of Home Affairs vide order No.25016/14/2007-Legal Cell. He has successfully met with all the objections raised by the complainants in the protest petition. Coming to the Investigating Officer not taking recourse under Section 166-A Cr.P.C., the Magistrate has observed that the Investigating Officer after carefully considering the facts disputed by the complainants and on the basis of documents collected during course of investigation, he (learned Magistrate) was of the view that there was no irregularity on the part of the Investigating Officer who had investigated all the facts which were required to be investigated in order to arrive at right conclusion and Section 166-A Cr.P.C. comes into operation only when an application in that regard is made to the Court and provisions contained therein are not such provisions which are mandatory to be followed by Investigating Officer while investigating a case wherein investigation is required to be made with

regard to facts committed / occurred outside India. The conclusion drawn by learned Magistrate was as follows:-

*“Keeping in view the facts and law discussed above, since the application for re-investigation has been moved by the applicants which is not legally permissible as is held in **Krishan Lal vs. Dharmendra Bafna and another 2009(3) RCR (Criminal), SC.** So far as the fact of further investigation of the present case is concerned, that is also not required in the present case because all the facts have been thoroughly investigated by the Investigating Officer in the present case. Resultantly, the cancellation report is accepted. However, applicants are at liberty to lodge their grievance, if any, by way of private complaint, as available under the law. File be sent back to, concerned quarter through Naib Court against receipt along with copy of this order and judicial papers be consigned to the record room.”*

Therefore, I do not find any reason to interfere with the impugned order, rather the criminal revision petition is found to be without any merit and is dismissed accordingly.

04.09.2017

Gaurav Sorot

**(H.S. MADAN)
JUDGE**

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**