

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

**CRM No.M-43079 of 2015 (O&M)**

**Date of Decision: January 24, 2017**

Prem

...Petitioner

VERSUS

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.Arvind Bansal, Advocate  
for the petitioner.

Mr.B.S.Virk, Deputy Advocate General, Haryana  
for the respondent-State.

Mr.Tarun Veer Vashist and Ms.Charu Verma, Advocates  
for respondents No.4 to 6.

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**INDERJIT SINGH, J.**

Petitioner has filed this petition under Section 482 Cr.P.C. against State of Haryana and other respondents for quashing of impugned order dated 05.11.2015 passed by learned Judicial Magistrate Ist Class, Kaithal, whereby status/untraced report of the police dated 05.11.2015 in case FIR No.78 dated 25.05.2013 under Section 394 IPC registered at Police Station Rajound has wrongly been accepted and issue necessary direction to learned Magistrate to entertain the representation-cum-protest petition of the complainant-petitioner and to decide the case in accordance with law.

Notice of motion was issued. Learned State counsel as well as

learned counsel for respondents No.4 to 6 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.

From the record, I find that in the present case, FIR was got recorded by the present petitioner Prem and accused Manoj alias Goli has been named and it is the case of the complainant that Manoj gave lathi blow on his right hand. The co-accused who were with him, also caused injuries to complainant and Jai Bhagwan with danda blows. All the 3-4 boys, caused multiple injuries. The police after investigation presented the untraced report and vide impugned order dated 05.11.2015, learned JMIC, Kaithal, accepted the same by stating that during further investigation, Inspector Kartar Singh has made investigation, who has found no evidence against the accused.

The perusal of the impugned order shows that no notice has been given to the complainant-petitioner before passing the impugned order, which is necessary as held by this Court in ***Yash Paul vs. State of Punjab, 2002(1) RCR (Criminal) 562***, wherein it is held as under:-

*“3. On July 15, 1999, S.H.O. P.S. City Sangrur filed an application stating that that investigation had revealed that Raj Kumar, Mohan Lal and Prem Chand were innocent while Rajinder Kumar and his mother Kamlesh Kumari were responsible and it was prayed that Raj Kumar, Mohan Lal and Prem Chand be discharged. It is settled law that in a case whose the Magistrate decides not to take any cognizance of the offence and drops the proceedings by taking the view that there was insufficient evidence for proceeding against some of the accused a notice must be given to the complainant/informant to provide him an opportunity of hearing at the time of consideration of the report. Reference is made to **Bhagwant Singh v. Commissioner of Police and another, AIR 1985 Supreme Court 1285.***

*There is nothing to show that any notice was given to Yash Pal (complainant) before respondents No.2 to 4 were discharged*

*by the learned Chief Judicial Magistrate, on July 24, 1999. The order of discharge is hereby set aside. The learned Magistrate shall consider the application of the prosecution after notifying the complainant and giving him an adequate opportunity of being heard whereafter a fresh order shall be passed. The petition is accepted in the above terms and the impugned order is set aside.”*

Learned counsel for the petitioner also relied upon the law laid down by the Hon'ble Supreme Court in the judgment passed in ***Bhagwant Singh vs. Commissioner of Police, 1985 AIR (SC) 1985***, in which it is held as under:-

*“Now, when the report forwarded by the officer-in charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and*

*effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2) (i) of Section 173 if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate.”*

I have gone through both the above judgments and the same fully apply to the facts of the present case.

In view of the above facts that proceedings have been dropped without giving notice to complainant, therefore, the impugned order dated 05.11.2015 passed by learned JMIC, Kaithal, is set aside.

The matter is remanded back to the lower Court. Learned

Magistrate is directed to consider the untraced report after giving notice to the complainant-petitioner and giving him adequate opportunity of being heard and thereafter, to pass order afresh.

The present petition is allowed accordingly. The parties are directed to appear before the lower Court on 13.02.2017.

January 24, 2017  
Vgulati

(INDERJIT SINGH)  
JUDGE

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|---------------------------|-----|
| Whether speaking/reasoned | Yes |
| Whether reportable        | Yes |