

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-7748-2013 (O&M)

Date of decision: 05.12.2017

Ramesh Chand

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. N.S. Shekhawat, Advocate
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

Mr. Sunil Sihag, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of the order dated 31.10.2012 (Annexure P-1) passed by the Additional Sessions Judge to the extent that certain observations/strictures passed against the petitioner, while disposing of bail application filed by one of the accused persons be set aside.

Brief facts of the case are that the petitioner, at the given time, was posted as Inspector, State Crime Branch, Madhuban, District Karnal. An FIR No.165 dated 21.02.2012 under Sections 147, 148, 323, 324, 506 of the Indian Penal Code ('IPC' for short) was registered on the complaint of one Wahid son of Ibrahim against accused persons namely Khalil, Sokat, Denu, Liyakat, Gani and Imrat etc. Later on, a cross FIR No.166 dated 23.05.2012 under Sections

147, 148, 341, 323, 324, 341, 356, 285, 307, 506 IPC was also registered at Police Station Hathin, District Palwal on the basis of statement of Khaleel Ajad against 17 accused persons. During the investigation of that FIR No.166, the Director General of Police, Crime (H), Panchkula passed an order dated 02.08.2012 vide (Annexure P-8), assigning the investigation of this FIR to the petitioner with immediate effect. The petitioner was further directed to collect the police file, visit the scene of crime and investigate the case by holding day to day proceedings and it was further directed that scrutiny report and further plan of action be submitted to the office of Sr. Superintendent of Police, State Crime Branch (H), Madhuban within 07 days. The petitioner, in pursuance to the said order, when contacted the Investigating Officer of Police Station Hathin, he was informed that since the period prescribed for presentation of challan was going to expire, report under Section 173 Cr.P.C. was submitted before the Court vide (Annexure P-10) on 09.08.2012. In this report, it was mentioned that the investigation was done by Balwan Singh ASP and an order has been passed for investigation of the case by State Crime Branch.

The petitioner, in pursuance to a Standing Order dated 07.07.2010 (Annexure P-14) issued by DGP, Haryana directing that Investigating Officer should get an opinion from a Govt. Hospital, where an injured person/complainant is getting treatment from a private hospital in order to get the opinion of the Govt. Hospital qua the injured Khalil Ajad in FIR No.166, who was receiving the treatment in a private hospital, moved an application dated 31.08.2012 (Annexure P-11) to Medial Officer, Metro Hospital Institute, Sector-16, Faridabad and demanded certain documents. The petitioner obtained the opinion from the said hospital vide Annexures P-12 and P-13 and thereafter,

in pursuance to the aforesaid Standing Order dated 07.07.2010, applied to Medial Superintendent, PGIMS, Rohtak for giving an opinion regarding the injured Khalil Ajad and requested that a Medical Board be constituted and re-examination of said Khalil Ajad be got conducted on priority basis. In pursuance thereof, Director, PGIMS, Rohtak vide letter dated 27.09.2012 (Annexure P-16) send the re-examination report of Khalil Ajad to SSP, State Crime Branch, Madhuban, District Karnal. As per this report, which is attached as Annexure P-16, it was opined by the Medical Board that *“Based on general physical, clinical & radiological findings, we are of opinion that injuries No.1 & 6 are grievous in nature.”*

In the meantime, the District Attorney, Palwal, vide his letter dated 25.10.2012 (Annexure P-18) informed SSP, State Crime Branch, Karnal to submit the status report in FIR No.166 and to direct the petitioner, being the Investigating Officer to come personally along with status report of the case as the bail application of one of the accused was listed for 26.10.2012. Accordingly, on instructions of SSP, State Crime Branch, Madhuban, the petitioner submitted the status report (Annexure P-19) to the District Attorney in which it was observed that *“In view of the report of scene of crime of mobile FSL team Palwal and the statements of eyewitnesses, the commission of offence u/s 307 IPC was not found to have been committed so Section 307 IPC was deleted in this case.”* It was further submitted in this report that report under Section 173 (8) Cr.P.C. will be submitted in the Hon’ble Court soon through the senior officer.

While deciding the said bail application, the Additional Sessions Judge passing the impugned order dated 31.10.2012 (Annexure P-1) and

observed as under: -

“.....However, the Investigating Officer had power to further investigate the matter against the remaining co-accused but he has started re-investigation which is clear cut interference in the proceedings in the Court as it has been opined in 2010 (4) RCR (Criminal) 93 (supra). Keeping in view the nature and gravity of offence, this Court does not consider it appropriate to release the applicant-accused Arshad on bail. Hence, the bail application which is devoid of merits is hereby dismissed. A copy of this order be sent to Director General of Police, Haryana for taking necessary action against the Investigating Officer for doing the act which was not within his purview but he has certainly interfered in the proceedings of the Court with regard to the present applicant-accused because charge has already been framed against the accused in this case. Papers be attached the main file.

*Sd/-
Randhir Kumar Dogra,
Addl. Sessions Judge,
Palwal. 31.10.2012”*

Aggrieved against the said adverse observations made by the Additional Sessions Judge, present petition has been filed with a prayer that the same be quashed to the extent of observations made against the petitioner.

In pursuance to the order of notice of motion, reply of Deputy Superintendent of Police, Hathin on behalf of respondent No.1 was filed in which details of the investigation have been given and the fact that the Director General of Police, Crime, Haryana, Panchkula had ordered further investigation of the case and deputed the petitioner as an Investigating Officer, is not denied.

Separate reply on behalf of respondent No.2 Khalil Azad has also been filed. In the reply, it is submitted that the petitioner has no right to start re-investigation of the case by invoking the provisions of Section 173 (8) Cr.P.C. without there being any order of the Court. It is further submitted that the complainant has moved a complaint under Sections 217/218/219 IPC against the petitioner before the SDJM, Hathin and vide order dated 03.07.2013, the petitioner has already been summoned in that case. Counsel for respondent No.1 has thus prayed for dismissal of the petition.

The learned counsel for the petitioner has inter alia argued that while passing the impugned order dated 31.10.2012 (Annexure P-1), Additional Sessions Judge, Palwal has not afforded any opportunity of hearing before passing the strictures against the petitioner, as the petitioner was acting in discharge of his official duties in compliance of the directions given by the DGP, Crime, Haryana, Panchkula and the petitioner was appointed as an Investigating Officer by name and he has followed the proper procedure in conducting the further investigation of the case.

After hearing learned counsel for the parties, I find merit in the present petition. Vide impugned order dated 31.10.2012, the Additional Sessions Judge, while deciding the bail application of an accused person, has observed that the petitioner has started re-investigation of the case, which is clear cut interference in proceedings of the Court, therefore, it was directed that a copy of the order be sent to DGP, Haryana for taking necessary action against the petitioner being the Investigating Officer for doing an act which was not within his purview and thus he has interfered in the Court proceedings. The said observation has been made by the Additional Sessions Judge, Palwal without

issuing any show cause notice to the petitioner or allowing him to file a reply to give his defence in order to prove his innocence or to prove that he was acting in discharge of his official duties on the directions of his higher officers.

In view of the above, the impugned order dated 31.10.2012 qua the aforesaid observations/strictures made by the Additional Sessions Judge, Palwal against the petitioner is set aside and the matter is remanded back to Additional Sessions Judge, Palwal/his predecessor to pass a fresh order, after affording an opportunity of hearing to the petitioner, in accordance with law.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

05.12.2017

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No