

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

CRM No.M-8179 of 2017 (O&M)

Date of Decision: March 15, 2017

Jagbir Choudhary and others

...Petitioners

VERSUS

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sartej Singh Narula, Advocate
for the petitioner.

INDERJIT SINGH, J.

Petitioners have filed this petition under Section 482 Cr.P.C. for quashing of FIR No.105 dated 16.04.2014 under Sections 148, 149, 323, 324, 325, 326, 452, 506 IPC and Section 25 of the Arms Act along with all subsequent proceedings arising therefrom.

At the time of arguments, learned counsel for the petitioners argued that FIR in the present case has been registered on the basis of the complaint under Section 156(3) Cr.P.C. Thereafter, the police conducted the investigation and prepared cancellation report dated 27.06.2015 and thereafter, the police is re-investigating the case. Learned counsel for the petitioners, therefore, argued that FIR should be quashed as false complaint has been filed.

I have heard learned counsel for the petitioners and have gone

through the record.

From the record, I find that it is admitted fact that final report has not been presented before the Court and it is still with the police, though as per petitioners, the cancellation report was already prepared. Learned counsel for the petitioner argued that the preparation of cancellation report amounts to completion of the investigation and he cited judgment passed by the Hon'ble Calcutta High Court in ***Pappa Rao vs. State, 1985 Cr.LJ 546***. I have gone through the above-cited judgment. This cited judgment is under section 167(5) Cr.P.C. and deals with the matter for the purpose of completion of investigation in the summons case within six months from the arrest of the accused. Learned counsel for the petitioners also relied upon the judgment passed by the Hon'ble Supreme Court in ***Vinay Tyagi vs. Irshad Ali @ Deepak and others, 2013(2) RCR (Criminal) 197***, in which police investigated into the offence and filed final report under Section 173 (8) Cr.P.C. and it is held that Magistrate has no jurisdiction to direct fresh or *de novo* investigation. However, once the report is filed, the Magistrate has jurisdiction to accept the report or reject the same right at the threshold. It is further held that even after accepting the report, it has the jurisdiction to discharge the accused or frame the charge and put him to trial but there are no provisions in Cr.P.C. which empower the Magistrate to disturb the status of an accused pending investigation or when report is filed, to wipe out the report and its effects in law.

I have gone through the above-cited judgments and the same having distinguished facts will not apply in the present case as admittedly in the case in hand, no final report has been submitted before the Court.

Learned counsel for the petitioners contended that the

sent by Superintendent of Police, Bhiwani to Deputy Superintendent of Police, Loharu, in which it is stated that the case file pertaining to FIR No.105 dated 03.02.2014 registered at Police Station Badhra was perused, wherein a cancellation report dated 27.06.2015 has been prepared. It is further stated that the complainant of the present case came present before the undersigned and made a complaint that in the present case, satisfactory investigation has not been conducted and in this letter directions were issued with immediate effect that you yourself (DSP Loharu) shall conduct further detailed re-investigation of the case so that truth can be surfaced and action be taken as per law.

From the perusal of these directions, in no way, it can be held that no such directions can be given by the Superintendent of Police to his Subordinate Officer. The re-investigation has not been ordered by the Court as no final report has been submitted before the Court. The matter is still pending before the Investigating Officer, though it is stated that cancellation report has been prepared. I have gone through the cancellation report, which is placed on the record. The perusal of the cancellation report nowhere shows as to how the Investigating Officer of this case reached to the conclusion that no evidence has been found during the course of investigation to effect arrest of the accused nor any such incident found to have taken place. When the complainant is filing the complaint qua the occurrence and also regarding causing the injuries, therefore, this will be treated as evidence for the purpose of filing the report. It is in the FIR that complainant was taken to CHC Jhojhu and got treated there. There is nothing in the cancellation report whether the treatment record was available in the CHC Jhojhu or not. Nothing has been discussed about that.

No reasoning or evidence has been discussed that on which basis the Investigating Officer has stated that no evidence has been found.

In my view, only on the basis that cancellation report has been prepared by the Investigating Officer, which has not been agreed to by the SP and he has asked for re-investigation in the shape of further investigation of the FIR, the FIR is not liable to be quashed at this stage. It is like further investigation because it is nowhere the case that now some other persons are to be substituted. It is only to look into the matter whether there is some evidence or not against the accused. Even in this report, it is nowhere specifically mentioned that witnesses are making false complaints.

It is the prerogative of the investigating agency to collect the evidence etc. and then to decide whether the final report under Section 173 (2) Cr.P.C. against the accused is to be presented or cancellation report is to be filed. Furthermore, the fact that whether the allegations are false or not, is firstly to be looked into by the investigating agency. Even otherwise, after presentation of cancellation report, the Court may not agree with it and can take cognizance or ask for further investigation. At this stage, I do not find any ground to quash the FIR in this case.

Resultantly, the present petition being premature stands dismissed.

However, nothing stated above will constitute my opinion on merits of the case.

March 15, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No