

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No.M-2609 of 2018 (O&M)

Date of decision : 07.08.2018

Gurtej Singh and another

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Parveen Kumar Garg, Advocate
for the petitioners.

Mr. V.G.Jauhar, Senior DAG, Punjab

Mr. Satnam Singh Gill, Advocate
for respondent Nos.2 and 3.

RAJ SHEKHAR ATTRI, J.(Oral)

The petitioners have preferred the instant petition under Section 482 Cr.P.C. for quashing of FIR No.74 dated 27.11.2015, registered under Section 302/34 IPC and Section 3/4 of the Scheduled Castes and Scheduled Tribes, at Police Station Dharamgarh, District Sangrur and proceedings emanating therefrom including order dated 16.12.2017, passed by the learned Judicial Magistrate Ist Class, Sunam.

On 22.01.2018, this Court passed the following order:-

“One Jarnail Singh son of Ghungru Singh had died on the night intervening 25/26.11.2015 but there had been no injury on the dead body of the deceased. After his death, his son Gurdeep Singh arouse suspicion with regard to the death of his father. Accordingly, FIR No.74 dated 27.11.2015 under Sections 302, 34 IPC and Section 3, 4 of SC/ST Act, 1989 was registered at PS Dharamgarh, District Sangrur against the

petitioners on the statement of said Gurdeep Singh. The post mortem examination was conducted and viscera was sent to the Chemical Examiner. After analysis, the Chemical Examiner reported that the deceased died due to use of excessive alcohol as 'Ethyl Alcohol' was found in the contents of the viscera and the blood, blood- alcohol estimated to be 109.25 mg per 100 ml. However, no poison was detected in the contents of the viscera. Ultimately, after completion of investigation, the Station House Officer submitted cancellation report by observing as under : -

“.... During investigation, I, SI reached the spot and at the time of preparing the documents of the postmortem, inspected the body of above deceased Jarnail Singh. On the body, no injury of any kind was found on his body from which it could be presumed that above deceased Jarnail Singh has died due to beatings and during investigation, this fact has also came to light that some unscrupulous element have got above case registered by misleading the complainant party. As such, during the inquiry in the above application as per above statements and panchayat nama and facts came to light during investigation of the case and my inquiry report, case no.74 dated 27.11.2015 U/S 302/34 IPC and 3/4 SC/ST Act, 1989 police station Dharamgarh is found to be falsely registered due to which, appropriate order may kindly be issued to submit cancellation report in the above case.”

The Deputy Superintendent of Police also conducted separate inquiry and observed as under : -

“....As such, during the inquiry in the above application as per above statements and panchayat nama and facts came to light during investigation of the case and inquiry report of Head Officer, Police Station, Dharamgarh, case no.74 dated 27.11.2015 U/S 302/34 IPC and 3/4 SC/ST Act, 1989 police station Dharamgarh is found to be falsely registered. If acceptable, appropriate order may kindly be issued to Head Officer, Police Station Dharamgarh to submit cancellation report in the above case.”

Thus, the cancellation report was submitted before the learned Area Magistrate who issued notice to complainant Gurdeep Singh. On receipt of notice, the complainant appeared and suffered the following statement : -

“Stated that I go recorded the statement on the basis of

which present FIR was registered against Gurtej Singh son of Kapur Singh and Pargat Singh son of Bana Singh, both resident of village Gaga. I agree with the cancellation report and do not want to further pursue the case, so the present cancellation report may kindly be accepted. My father was a habitual drinker and he has died due to drinking alcohol in excess.”

In spite of the above, the cancellation report was not accepted rather police was directed to submit the charge sheet. The learned Magistrate passed the following order on 16.12.2017:-

“Consideration made. Since the offence involved in the present cancellation report is serious in nature. Though the complainant has suffered a statement that he has no objection if the present cancellation report moved by the police be accepted. But, no compromise can be effected in the non-compoundable offence as per Section 320 Cr.P.C. So, the cancellation report submitted by the police in this case cannot be accepted. Hence, cancellation report is ordered to be returned. The police are directed to present the challan against the accused. However, prosecution/police/accused can avail alternative remedy available by approaching the Hon'ble Punjab & Haryana High Court and get the proceedings quashed as per Section 482 Cr.P.C. Judicial file be consigned to record room and police papers be returned to quarter concerned.”

A bare perusal of the record shows that this order is based on no evidence. After thorough investigation and after going through the report of Chemical Examiner, the investigating agency opined that no case is made out against the petitioners, hence, cancellation report was submitted. Even the complainant has consented for acceptance thereof. However, the learned Magistrate ordered the investigating agency to submit the challan but failed to assign any reason for the same. To the mind of this Court, learned Magistrate has exceeded his jurisdiction by doing so. In these circumstances, let explanation of the concerned Magistrate be called through learned District & Sessions Judge, Sangrur as to under what circumstances he ordered the investigation agency to submit the challan.

List on 19.2.2018.

In the meanwhile, further proceedings shall remain

stayed.”

Thereafter inquiry was conducted which transpires that deceased Jarnail Singh died due to consumption of excessive alcohol. Cancellation report has already been submitted.

In view of above, this Court is of the opinion that the said FIR and proceedings emanating therefrom including order dated 16.12.2017, passed by the learned Judicial Magistrate Ist Class, Sunam are abuses to the process of law.

Therefore, the instant petition stands allowed. FIR No.74 dated 27.11.2015, registered under Section 302/34 IPC and Section 3/4 of the Scheduled Castes and Scheduled Tribes, at Police Station Dharamgarh, District Sangrur and proceedings emanating therefrom including order dated 16.12.2017, passed by the learned Judicial Magistrate Ist Class, Sunam stand quashed qua the petitioners.

(RAJ SHEKHAR ATTRI)
JUDGE

07.08.2018
mamta

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No