

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No.M-32215 of 2014 (O&M)

Date of decision : 28.9.2018

Shishan Kumar

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Ashit Malik, Advocate
for the petitioner.

Mr. Ashok Muthreja, DAG, Haryana.

Mr. A.P.S.Deol, Senior Advocate with
Mr. Vishal Rattan Lamba, Advocate
for respondent No.2.

RAJ SHEKHAR ATTRI, J.(Oral)

The petitioner has preferred the instant petition under Section 482 Cr.P.C. for quashing of complaint No.41 dated 18.02.2012 (Annexure P-3) as well as impugned order dated 15.10.2013 (Annexure P-4), passed by the learned Sub Judicial Magistrate, Gohana vide which the petitioner was summoned to face trial for the offences under Sections 217 and 218 IPC.

Petitioner has been working as an Assistant Sub Inspector of Police in State of Haryana and, thus, is a public servant in view of the provisions of Section 21 of the Indian Penal Code (in short 'the Code').

On 27.06.2011, the petitioner, while acting as an Assistant Sub Inspector of Police, was present in police station Baroda then one Virender

Singh son of Zile Singh appeared before him and suffered statement with regard to the murder of Pardeep Kumar son of Randhir Singh. The informant had disclosed that on that date at about 6:30 p.m. he heard the sound of fire shots. Then he saw that two boys while running who came from the side of park. After coming out of the gate, they fired two shots and fled away with their third companion who was waiting for them on a motorcycle. When informant Virender Singh went inside the park, he noticed that one boy namely Pardeep son of Randhir was lying dead on receiving the fire arm injuries.

On the statement of said informant, formal FIR under Section 302 IPC was registered and the police swung into action. Inquest report was prepared; blood stained earth, three empty cartridges and three bullets were lifted from the spot and those were taken into possession. After investigation, accused Pardeep alias Joni son of Ramesh was arrested and put to trial.

During trial, the material witnesses turned hostile. Ultimately, said accused Pardeep was acquitted vide judgment dated 27.01.2014, passed by the learned Sessions Judge, Sonapat.

After acquittal of said Pardeep alias Joni son of Ramesh, Paramjeet son of Randhir Singh (respondent here) filed a complaint under Sections 217, 218, 219, 320, 34 and 120-B IPC on the allegations that petitioner Shishan Kumar alongwith DSP Tula Ram and SHO Jaswant Singh, while acting as public servants, disobeyed the direction of law with intent to save the real accused from the punishment and further that they framed an incorrect record.

It is specifically mentioned that deceased Pardeep son of

Randhir, brother of complainant-respondent Paramjeet, was murdered by Raj Singh, Jai Bhagwan and Pardeep son of Raj Pal as they had a prior enmity with him. It has been alleged that present petitioner Shishan Kumar while taking undue advantage of his post and in collusion with co-accused introduced one of the accused namely Pardeep son of Raj Pal as a witness of the case, who infact had called the deceased from his house to Haryali Bazar and his conduct itself established that he did not inform anybody especially parents and the family members of the deceased regarding the incident. It is specifically mentioned in para Nos.3 and 4 as under:-

“That very surprisingly, the I.O. Of the case i.e. I.O. Sishan Kumar, accused No.8 taking undue advantage of his post and in collusion with other accused No.1 to 3, introduced one of the accused as a witness of the case namely Pardeep s/o Raj Pal, r/o Vill. Butana, Distt. Sonapat i.e. Accused No.4, who infact, called deceased from his house and took him to Haryali Bazar, and was present at the time of murder at the side of occurrence and his guilt is evident from the fact that after the incident of murder, he left the spot without informing anyone about the incident and also did not inform any of the family members of the deceased or to the police. The involvement of the abovesaid accused No.4 Pardeep s/o Raj Pal is also clearly established by the disclosure statement of the accused Pardeep @ Joni dated 31.8.2010 (who is facing trial in abovesaid case of FIR No.93 dated 27.6.2011) pending in the court of Shri Kuldeep Jain, Ld. Sessions Judge, Sonapat and is fixed for 22.3.2012) in which he has clearly stated that on 27.6.2011 firstly Vikas @ Bablu (who has been declared P.O. in FIR No.93 dated 27.06.2011 mentioned above) made telephonic call to someone and thereafter he informed accused Pardeep @ Joni and accused Bhola accused No.6, that person whom they want to murder is present in Haryali Bazar of Village Bultana, and thereafter they reached Haryali Bazar,

and abovesaid Vikas @ Bablu firstly confirmed the identity of deceased Pardeep i.e. brother of complainant, and then they fired shots upon the deceased Pardeep as a result of which he died, which clearly shows that the accused No.4 Pardeep s/o Raj Pal was having nexus with the killers and he has provided them the space to kill the deceased Pardeep. However, the abovesaid Pardeep s/o Raj Pal accused No.4 acted, as such, on the directions of the accused Nos.1 to 3.

That the accused No.7 – Tula Ram D.S.P. Knowingly and intentionally concealed the above mentioned facts while filing his affidavit to the petition no.Crl. Misc.No.25602-M of 2011 titled as Randhir Vs. State of Haryana and other, before the Hon'ble High Court of Punjab and Haryana, Chandigarh. It is also pertinent to mention that the I.O. Sishan Kumar i.e. accused No.8 and the accused No.7 Tula Ram D.S.P. Gohana have never introduced complainant or other members of his family as witness in this case except for the identification of the dead body and never recorded their statement in this case. It is further worthy to mention that the disclosure statement of abovesaid Pardeep @ Joni clearly indicated that the said Pardeep @ Joni and Vikas @ Bablu and accused No.6 Bhola had no motive or reason to murder deceased Pardeep. Rather they were acting on the directions of someone else, who were none the accused Raj Singh, Jai Bhagwan, Manish and Krishan.”

After recording the preliminary evidence, learned Sub Divisional Judicial Magistrate, vide order dated 15.10.2013, summoned the petitioner as an accused while observing in para No.19 as under:-

“From the contents of the complainant, preliminary evidence, particularly statement of Virender CW-3 who has stated that he never gave statement to the police regarding murder of deceased, and his signatures were obtained by the I.O. Sisan Kumar on an application under threat/force, and that he does not know about the contents of the documents on which his

signatures were obtained and documents placed upon record, sufficient ground are made out to summon accused No.1, 2, 4, 5 and 6 under Section 302 read with Section 120-B IPC. Further from the discussion made above, it comes out that I.O. of the case has not conducted proper and he intentionally left the lacunas in the investigation/challan, intentionally/knowingly framed incorrect record to save accused No.1 to 6 from legal punishment and he is therefore liable to be summoned under Sections 217, 218 IPC.”

The instant petition has been filed on the ground, *inter alia*, that there is no material available on the record to establish if the petitioner being the investigating officer of the said case failed to perform his official duties in accordance with law.

The State has submitted the reply and has specifically pleaded that the petitioner while acting as an investigating officer performed his duty legally and properly by investigating the case FIR No.93 dated 27.06.2011, registered under Section(s) 302/34 IPC and Section 25 of the Arms Act at Police Station Baroda Tehsil Gohana District Sonipat.

Respondent No.2 i.e. complainant Paramjit Singh has also filed reply wherein he has reiterated the version of the complaint and contested the petition on the ground that the petitioner has failed to perform his duties in accordance with law.

I have heard learned counsel for the parties and have gone through the record.

In this case, one fact is undisputed i.e. the petitioner was the investigating officer in case FIR No.93 dated 27.06.2011, registered under Section(s) 302/34 IPC and Section 25 of the Arms Act at Police Station Baroda Tehsil Gohana District Sonipat. He has submitted the final report

under Section 173 Cr.P.C. Ex.R1.

It is also an admitted fact that after trial of case FIR No.93 dated 27.06.2011 under Section(s) 302/34 IPC and Section 25 of the Arms Act at Police Station Baroda Tehsil Gohana District Sonipat, the sole accused Pardeep alias Joni was acquitted vide judgment dated 27.01.2014, passed by the learned Sessions Judge, Sonapat (Annexure P-5). Turning hostile of the material witnesses was a sole ground behind the acquittal.

The petitioner is seeking protection of Section 197 Cr.P.C. The object of the section is to enable public servants to perform their duties fearlessly by protecting them from vexatious, 'mala fide' or false prosecutions for acts done in the performance of their duties. In order to ensure this fearless performance of their duties, the law provides that acts done by them in the course of performance of their duties should not be the subject of prosecution until a superior authority, after due consideration of the matter, is of opinion that the acts may constitute an offence and sanction such prosecution. What the court has to see is whether it can take cognizance of the case without previous sanction and for this purpose, the court has to find out if the act complained against is committed by the accused while acting or purporting to act in the discharge of his official duties.

Before this section may be invoked, the following conditions must be satisfied:

- (i) the person accused of an offence is or was a public servant.*
- (ii) the person accused of an offence must be a person removable from his office only with the sanction of the state government or of the Central Government*

according to whether the person is employed in connection with the affairs of the state or of the Central Government;

(iii) the person must be accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties;

(iv) the person accused of an offence is or was employed, at the time of commission of the alleged offence, in connection with the affairs of the Union or the State, as the case may be.”

But the section is not intended to put a wall around public servants so as to protect them from prosecution for criminal offence committed by them. That obviously could not be the object of the said provision of law or intention of the legislature.

Admittedly, the petitioner was acting as a public servant while acting or purporting to act in discharge of his official duty as an investigating officer.

The information received by him from said informant Virender Singh was reduced into writing. He conducted the investigation in accordance with law. The investigation conducted by the petitioner was supervised by senior police officers.

He submitted the final police report under Section 173 Cr.P.C. and on its basis the committing magistrate found a prima facie case and that is why the case was committed to the court of sessions. Thereafter, learned Sessions Judge relying upon the evidence collected during investigation had framed the charge.

If during the trial, the material witnesses had turned hostile, it was not his fault.

Nothing has been shown if he has acted in an unfair manner or with malafide intention solely to save the accused facing trial which culminated in the judgment Annexure P5.

There is no material on the record to infer that the petitioner had knowingly disobeyed any direction of law as to the way in which he is to conduct himself as such public servant. There is no material available on the record that he had intended to save or knowingly or likely to save accused Pardeep alias Joni from legal punishment. Nor there is any material, if he being a public servant, and being as such public servant charged with the preparation of any record or other writing, frames the record or writing in a manner, which he knows to be incorrect.

Apart from it, this case is based on circumstantial evidence and no direct evidence is available. In these circumstances, it cannot be said that the petitioner, being a public servant, has disobeyed any direction of law. Even there is no material if he had prepared incorrect record. Hon'ble Supreme Court in **Raghubansh Lal vs. State of U.P. 1957 AIR (Supreme Court) 486** has held as under:-

“It is true that the High Court found that the accused knew of the litigation between Mahura Kuar and Adit Pande and in spite of this he had made an incorrect entry. But in order to sustain the conviction it is not sufficient that the entries are incorrect, it is essential that the entry should have been made with the intention mentioned in Section 218, Penal Code. Direct evidence proving the necessary intention is, in this case, lacking and the circumstantial evidence is too meagre to support any safe conclusion as to the intention with which the appellant made the entry complained of. His case, was that the sapurdar, Shubhkaran never got possession from Adit Pande. Shubhkaran was not a witness, may be for the reason

already stated, and it was contended that in the absence of the testimony of Shubhkaran the case of the prosecution cannot be held to have been proved at least it is not free from doubt, But the courts below have considered this fact and taking all the circumstances into consideration have held in favour of the complainant on the question of possession.”

To the mind of this Court, the petitioner acted in discharge of his official duties as an investigating officer, therefore, the proceedings against him including the summoning order does warrant interference under the provisions of law.

Thus the impugned order is not sustainable in the eye of law as such, the same is hereby set aside qua the petitioner. Consequently,the complaint qua petitioner Shishan Kumar stands dismissed.

28th Sept., 2018
mamta

(RAJ SHEKHAR ATTRI)
JUDGE

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