

In the High Court of Punjab & Haryana at Chandigarh.

CRM-M-33439-2016

Date of decision: 21.02.2018

Joginder Singh and others

..... Petitioners.

VS.

State of Haryana and others

..... Respondents.

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Kuldeep Sheoran, Advocate for
Mr. Arun Khatri, Advocate,
for the petitioners.

Mr. Naveen Sheoran, DAG, Haryana.

Mr. Anshuman Dalal, Advocate,
for respondent No.5.

Mr. Navneet Singh, Advocate,
for respondent No.7.

ARVIND SINGH SANGWAN,J.(ORAL)

Prayer in this petition is for setting aside the order dated 12.10.2015 (Annexure P1) passed by the trial Court, vide which Untraced Report submitted by the police in FIR No. 278 dated 06.09.2012, under Sections 420/467/468/471/506/120-B/34 IPC, registered at Police Station Kundli, District Sonapat, before the trial Court, was accepted on the same day of its presentation.

Counsel for the petitioner submits that the procedure adopted by the trial Court is illegal as the petitioner(s)/complainant has a right to be heard before accepting Untraced Report and perusal of the impugned order shows that on the date of its submission by the police before the trial Court, it was accepted on the same day.

This factual position is not denied by learned counsel appearing for the State as well as counsel for respondents No. 5 and 7.

Counsel for the petitioners has relied upon the law laid down in **Bhagwant Singh vs. Commissioner of Police and another**, (1985) 2 SCC, 537, wherein the Hon'ble Supreme Court has held that in case on submission of report under Section 173 (2) (i) Cr.P.C., 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. Similar view is taken by Hon'ble Supreme Court of India in **Union Public Service Commission vs. S. Papaiah and others**, (1997) 7 SCC, 614.

It is further submitted on behalf of the petitioners that as per provisions of Section 173 (8) Cr.P.C., the complainant still has a right to move an appropriate application before the Magistrate for further investigation in the case in respect of which the FIR was got registered when the cancellation or untraced report under Section 173 Cr.P.C. is submitted.

Since, the factual position has not been disputed by the learned counsels appearing for the respondents that the petitioner(s) was never issued any notice by the trial Court before passing impugned order dated 12.10.2015 rather the impugned order shows that on the day, the Untraced Report was submitted by the police, it was accepted on the same day. Therefore, the impugned order is set aside and the matter is remanded back to the trial Court for decision afresh.

The trial Court will pass an order afresh after affording an

opportunity of hearing to the complainant, in accordance with law. The parties are directed to appear before the trial Court on 19.03.2018.

Disposed of.

21.02.2018
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(ARVIND SINGH SANGWAN)
JUDGE

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