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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-No. 42764 of 2018
Decided on: September 28, 2018

Ramandeep Kaur

..... Petitioner

Versus

State of Punjab and others

..... Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Satnam Chauhan, Advocate
for the petitioner.

Rajbir Sehrawat, J. (Oral)

This is a petition under Section 482 of the Code of Criminal Procedure seeking quashing of the enquiry report dated 26.3.2018 (Annexure P-19) submitted by the NRI Wing, Punjab Police, Ludhiana whereby it has been recommended to cancel the FIR No. 329 dated 23.12.2016 registered under Section 406,420,120-B IPC at Police Station City Khanna, District Ludhiana.

The allegations in the present petition are that husband of the petitioner/complainant was working in Abu Dhabi. When he was abroad then the couple planned to purchase certain land in India. The husband of the petitioner talked to the accused/respondents qua purchase of the land for a specified price. The land which was agreed to be sold to the petitioner was 25 Kanals. The money charged by the accused from the petitioner, was for 25 Kanals of land. However, ultimately two separate sale deeds were executed by the accused in favour of husband of the petitioner. Out of those

was supposed to be for 18 Kanals and 9 Marlas; to complete the total holding of 25 Kanal; which was agreed to be sold by the accused. In the second sale deed executed in favour of the husband of the petitioner, although, the land described on the top of the sale deed is 18 Kanals 9 Marlas, however, in the body of the sale deed it has been mentioned as 8 Kanals 9 Marlas. Therefore, as per the allegations levelled by the petitioner, the petitioner has been cheated qua 10 Kanals of land. In relation to that, the matter was referred to the police in the year 2016. Resultantly, the FIR No. 329 dated 23.12.2016 was registered by the police.

It is contended by the counsel that the police had conducted enquiries seven times and found that the allegations contained in the FIR have substance. However, eighth time again the enquiry was conducted and it has been concluded that there is no substance in the FIR and that the cancellation report for the same be presented before the Court. Counsel further contends that the earlier enquiries were conducted by the higher officers; upto the rank of Deputy Inspector General of Police, however, the latest enquiry has been conducted by the officer of the level of SHO, DSP and SP. Therefore, the enquiry has been conducted by the lower level officers and has recorded the conclusion different than the one recorded by higher officers. Hence the same is illegal.

It is further contended that once the substance has been found in seven enquiries, then the eighth enquiry becomes totally illegal also.

Counsel for the petitioner has further argued that merely the fact that alternative remedy is available, would not operate as bar against this Court in exercising power under Section 482 Cr.P.C., in case the

petitioner has directly approached the High Court. The counsel further contends that the Court has the power to interfere at the stage of investigation, if it is brought to the notice of the Court that the investigation was conducted in a mala fide manner. He has relied upon the judgments of Hon'ble Supreme Court in **Dhariwal Tobacco Products Ltd. and others Vs. State of Maharastra and another, 2009 (1) RCR (Cr.)677** and another judgment of Supreme Court in case of **Kedar Narayan Parida and others Vs. State of Orissa and another 2009 (4) RCR(Criminal) 479.**

Counsel for the petitioner further submitted that, if the ingredients of offence are satisfied, the FIR is not to be quashed. In this regard he has relied upon the judgment of this Court in **Raj Kumar Vs. The State of Punjab 2003 (4) RCR (Criminal)647.** Therefore, it is contended by the counsel for the petitioner that enquiry conducted by the police deserves to be quashed and the police deserve to be estopped from filing cancellation report before the Court.

Having heard learned counsel for the petitioner, this Court does not find any substance in the argument raised by learned counsel for the petitioner. Admittedly, the police are still at the stage of investigation and they can carry out the investigation in the manner they deem appropriate. The court is not supposed to interfere into the investigation, unless any patent mala fide of investigation officer is brought on record; and even in that situation the Court can interfere for the limited purpose of ensuring fair investigation. By any means, the Court is not to issue direction to the police to investigate the case in a particular manner and in a particular direction. So far; the investigation has not been finalized by the police. In any case, after finalization of the investigation, the police

are under the obligation to present a report under Section 173 Cr.P.C. In the eventuality of the report going against the present petitioner, who happens to be the complainant in the case, the petitioner would be entitled to file objections to the report submitted by the police. The objections, if any, which the petitioner would be having are required to be decided by the Magistrate of a competent jurisdiction. Therefore the entire matter is premature. This Court is not to interfere at such a pre-mature stage, where even the primary court is yet to apply its mind to the facts of the case.

Although, there is no dispute qua the proposition of law that merely because of availability of alternative remedy, there is no bar for this Court to exercise powers under Section 482 Cr.P.C, yet the Court has also to observe the self imposed restraint that once there is a specific provision or remedy available to the petitioner, then the Court would not resort to exercise of its power under Section 482 Cr.P.C so lightly and merely on asking of the petitioner. The petitioner would be required to make out an extra ordinary case for exercise of this extraordinary power.

In the facts and circumstances of the present case, the matter is still at the stage of investigation. The matter is yet to be examined by the Court of competent jurisdiction. Otherwise also, this Court does not find any extraordinary circumstances to interfere in the matter, while exercising powers under Section 482 Cr.P.C.

The next argument of the learned counsel for the petitioner that since seven enquiries have been conducted in the complaint made by the petitioner, therefore, the eighth enquiry could not have been conducted, and therefore, the same is illegal, is also contradictory in itself.

If seven enquiries can be conducted by the police then the eighth enquiry

cannot be termed to be illegal on the ground that it has gone against the petitioner. Otherwise, there is no provision under any provision of Cr.P.C that enquiry be conducted by the police. Neither the challan can be filed on the basis of the mere 'enquiry' nor the cancellation report can be filed. Whenever the cancellation report, if any, is to be filed by the Investigating officer of the case; it would be on the basis of 'investigation' conducted by the investigating officer and not on the basis of 'enquiry' as such. As mentioned above, as and when; and if any, cancellation report is filed by the Investigating officer then the petitioner would be having her remedies to question that cancellation report. Admittedly, that stage has not arrived so far.

Although, counsel for the petitioner has advanced one more argument, that once all the ingredients of offence are satisfied the FIR cannot be quashed, however, this Court finds that this argument is totally irrelevant for the purpose of the present case. This Court is not seized of any proceedings where the quashing of the FIR has been sought by any party. Therefore, the argument advanced by the counsel for the petitioner is liable to be rejected.

In view of the above, this Court does not find merit in the present petition. The same is accordingly dismissed.

September 28, 2018
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[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned *Yes*
Whether Reportable *Yes*