

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

CRR No.2070 of 2013 (O&M)
Date of Decision: September 12, 2018

Pritam Singh

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Atul Lakhanpal, Senior Advocate with
Mr.Amit Sharma, Advocate
for the petitioner.

Ms.Monika Jalota, DAG, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Pritam Singh against respondent State of Punjab, challenging the impugned order dated 04.05.2013 passed by learned Special Judge, Mansa, vide which application filed by the petitioner was dismissed.

Notice of motion was issued. Learned State counsel appeared and contested the petition.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

The perusal of the record shows that an application was filed by present petitioner Pritam Singh for taking cognizance on the cancellation

report and to proceed in accordance with law as well as question of framing

charge.

The brief facts of the case as mentioned in the impugned order passed by learned Special Judge, Mansa, are as under:-

“2. The present case was registered at the instance of Ruldu Singh resident of Talwandi Sabo, who moved written application to the Senior Superintendent of Police, Mansa, on the averments that his son Baldev Singh Mittal was posted as Executive Engineer in Public Health (Water Supply) Department. On 24.03.2004 the Vigilance Bureau, registered a false case against his son Baldev Singh, who at that time was posted in Mansa. After the registration of the case, Pritam Singh son of Mangal Singh resident of Chandigarh, (present accused), who was also friend of Baldev Singh Mittal, met him (complainant Ruldu Singh) in Mansa. Pritam Singh started conversation regarding the case against Baldev Singh because they were under depression. Pritam Singh stated that he was having very good relations with higher officers in the Public Health Department and he would not let the sanction accorded from the Public Health Department before filing the challan against Baldev Singh and said case would be hushed up. He stated to them that they would have to spend Rs.3,50,000/-. On 03.11.2004 he along with his son Rakesh Kumar came in a hotel situated opposite bus stand, Mansa, and in the presence of his son gave Rs.2,50,000/- to Pritam Singh. On 12.01.2005 Pritam Singh called him on telephone and stated that their work has been finalized. He demanded the remaining amount. On 13.01.2005 he along with Gurmail Singh son of Sohan Singh came in the hotel situated opposite bus stand, Mansa and in the presence of Gurmail Singh, he gave Rs.75,000/- to Pritam Singh, but in the month of March 2005 the Government accorded sanction for launching prosecution in the case of his son Baldev Singh. When he enquired regarding this from Pritam Singh, he (Pritam Singh) made excuses and kept on taking time to refund the amount. Now he refused to return the amount. In this manner, Pritam Singh cheated him. On the basis of said application, the case was registered under Sections 8, 9 of the Prevention of Corruption Act and Section 420 IPC.”

From the record, I find that firstly, the challan was presented under Section 173 Cr.P.C. and thereafter, supplementary report was furnished under Section 173(8) Cr.P.C. declaring Pritam Singh as innocent.

Before the trial Court, it was argued that no case is made out against the

accused Pritam Singh and police has also submitted cancellation report under Section 173(8) Cr.P.C., so accused be discharged. It is also argued before learned trial Court that name of public servant has not been mentioned on whose behalf amount was demanded and accepted and provisions of Prevention of Corruption Act are not attracted. It is further argued that vigilance department was only competent to conduct the investigation. Learned Special Judge, Mansa, vide impugned order dated 04.05.2013, dismissed the application and finding prima face case under Section 8 of the Prevention of Corruption Act, ordered for framing of the charges against the present petitioner. Aggrieved from above-said impugned order, present revision has been filed.

At the time of arguments before this Court, learned counsel for the petitioner mainly argued on one point that trial Court is bound to consider the report under Section 173(8) Cr.P.C. and while framing the charges, have to consider that report. The perusal of the impugned order shows that learned Special Judge, Mansa, observed in para No.6 as under:-

“6. The learned counsel for the accused that taking cognizance on the report under Section 173 (8) Cr.P.C., the accused be discharge, is considered. The same do not find any merit in it. Firstly, because in the main report under Section 173 Cr.P.C, the charge sheet was submitted against the accused. Moreover, at the time of framing of charge, the Court is not bound by the report of investigating agency. The Court has to apply its own mind by taking into consideration the allegations and documents on record. So the mere fact that police has submitted report under Section 173 (8), is no ground to discharge the accused when there is sufficient material on record to proceed against the accused.”

The perusal of the impugned order shows that trial Court has considered whatever evidence is available on record and has correctly

observed that mere filing of report under Section 173(8) Cr.P.C. for cancellation of the FIR, is no ground to discharge the accused. Learned trial Court, considered the material before it and has independently decided by applying its judicious mind that accused accepted an amount of ₹2,50,000/- on 03.11.2004 and ₹75,000/- on 13.01.2005 as gratification by inducing the complainant that he has links with higher officers in Public Health and would not allow according of sanction in corruption case against complainant's son Baldev Singh.

I have also gone through the report under Section 173(8) Cr.P.C., which is based on the enquiry conducted by DSP, Nihalsinghwala, in which he reached to the conclusion that FIR has been registered in a deep rooted conspiracy and Pritam Singh is innocent. As per this enquiry report, complainant had concocted a story. The perusal of this report shows that after registration of the FIR, Pritam Singh gave representation about his innocence to ADGP, Crime, Punjab, Chandigarh and investigation on which was conducted by SP(D) Mansa, who concluded that case has been rightly registered. Again, another application was given by Pritam Singh petitioner to DGP, Punjab qua his innocence, in which, necessary directions were given to SSP, Fatehgarh Sahib. Consequently, vide zimni No.56 dated 31.08.2010, case was concluded to be correctly registered. SP, Mansa conducted the investigation and recommended the filing of challan in the Court without arresting the accused and SSP, Mansa, while agreeing with said recommendation, ordered to file challan in the Court.

The perusal of report under Section 173(8) Cr.P.C. shows that enquiry officer has only given his opinion on so many facts that as to why

given at Mansa and regarding motive etc.

It is settled law that trial Court is to frame the charges after perusing the material on record before it i.e. statements of the witnesses and documents etc. on record. The Court, at this stage, is not to weigh the evidence for the purpose of conviction. Even strong suspicion is sufficient to frame the charges. Report under Section 173(8) Cr.P.C., at the most, can be treated as enquiry conducted by DSP but also two enquiries had been conducted and that too by the senior officers and they have found the allegations as correct. So, merely supplementary report under Section 173 (8) Cr.P.C. has been filed showing innocence of accused, alone is not sufficient for discharge of the accused. It is nowhere in the impugned order that Court has not considered the report. Rather, the Court has stated that the Court is not only to rely upon the investigation report but to apply independent mind on the material before it and after considering that material before it, learned trial Court has passed the impugned order for framing of the charge.

In view of the above discussion, I find that the impugned order dated 04.05.2013 passed by learned Special Judge, Mansa, is correct, as per law and does not require any interference from this Court.

Therefore, finding no merit in the present revision petition, the same is dismissed.

September 12, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No