

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

CRR No. 4833 of 2015 (O&M)
Date of Decision: 3.7.2018

Sukhdev Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Preetinder Singh Ahluwalia , Advocate
for the petitioner.

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

JAISHREE THAKUR, J.

1. The petitioner herein is challenging order dated 29.10.2015 passed by Additional Sessions Judge, Patiala, whereby charges have been framed against the petitioner for offence under Sections 354 and 306 IPC, while relying upon report presented under Section 173 of the Code of Criminal Procedure.

2. In brief, the facts as stated are that a FIR No. 8 dated 7.1.2008 , was registered at Police Station Tripari, District Patiala, for offences punishable under Sections 306 and 109 IPC. In the FIR, it was alleged by the complainant that the petitioner herein had teased his daughter on 05.01.2008, when she was returning home from the Nagar Kirtan, which led to the daughter of the complainant committing suicide. In fact, there was a dispute between the petitioner and his wife, who left her matrimonial home and in this regard the complainant and the in-laws of the petitioner had gone

to the police to report the matter. It was on this account that the petitioner was holding a grudge against the respondent/complainant. On the registration of the FIR , the matter was duly investigated and an inquiry was conducted by SP (Detective), Patiala, who, after conducting a detailed inquiry, arrived at a conclusion that no such occurrence took place. Pursuant to the inquiry report, the cancellation report was submitted by the investigating agency under Section 173 of the Cr.P.C, stating that no offence was made out. Since the cancellation report had been submitted, a protest petition was also filed by the complainant on 21.08.2010 and the Magistrate took cognizance of the same and the cancellation report was ordered to be treated as a challan case. In the meanwhile, respondent No. 2 also instituted a private complaint under Sections 354, 306, 109, 506, 120-B of the Indian Penal Code against the petitioner and 16 other co-accused. Thereafter, the trial court passed an order, by virtue of which the complaint case was ordered to be consolidated with the challan filed and the petitioner were summoned along with 4 other co-accused. The said order dated 21.8.2010 was challenged by the petitioner before this this Court by way of CRM-M No 5102 of 2011 titled as Sarom Singh and others Versus State of Punjab and Another, in which proceedings were stayed before the trial court by order dated 18.5.2011. Eventually the matter was disposed of with a direction that the summoning order was bad as the Magistrate committed a patent error in ordering the summoning of accused in the State case without recording at the first instance preliminary evidence of the complainant. The matter was remanded back with a direction to pass fresh orders in accordance with law. Preliminary evidence was led by the complainant and

thereafter, the court came to the considered view that there were sufficient grounds made out to proceed against accused No. 1 Sukhdev Singh the petitioner herein. Aggrieved against the charge sheet framed the instant revision has been filed.

3. Mr. Preetinder Singh Ahluwalia, learned counsel appearing of behalf of the petitioner herein, contends that the charges have been framed without taking into consideration the inquiry done after the registration of the FIR and the cancellation report filed. It is submitted that initially cancellation report was submitted by the police to which a protest petition was filed as well as a complaint case. Both were clubbed and summoning order issued was set aside as preliminary evidence had not been recorded. It is contended that now even though preliminary evidence has been recorded, the summoning order has failed to consider the cancellation report on the record and the petitioner has to face charges as framed. Reliance has been placed upon a judgment rendered in **Kuldeep Raj Mahajan versus Hukam Chand Patel 2008 (1) RCR (criminal) 370**.

4. The only question that needs to be dealt with at this stage is, whether there is any illegality in the framing of charges as the cancellation report pending in the same court has not been considered while doing so.

5. A perusal of the pleadings would reflect that the cancellation report exonerating the petitioner has not been referred to, while framing charges despite the fact that court is aware that the same is before it. In **Kuldeep Raj Mahajan (supra)**, a judgment referred to by the counsel for the petitioner, the this Court in similar circumstances set aside the summoning order. In the aforesaid case complainant lodged FIR in which

investigation was conducted by police and cancellation report submitted thereafter a complaint was filed before the same court on the same incident where summoning order was issued without considering the cancellation report. While quashing the summoning order, it was held that without considering the investigation report/cancellation report of the police, the impugned summoning order could not have been illegally passed by the Magistrate.

6. Facts of the instant case are similar since this court finds that after the matter was remanded back for leading preliminary evidence, the summoning order and framing of charges was done without considering the cancellation report already before the court. Placing reliance upon the judgment rendered in **Kuldeep Raj Mahajan (supra)**, this court has no hesitation in setting aside the order framing charges.

7. The proceedings have already been stayed in this court by an order dated 31st of March 2016. The matter is remanded back to the trial court to consider the cancellation report before summoning the petitioner and framing charges in accordance with law. Since the incident in hand complained of pertains to an F.I.R No. 8 dated 07.01.2008 and a complaint filed in the year 2010 the proceedings be conducted expeditiously.

8. The revision petition stands disposed of on the above terms.

(JAISHREE THAKUR)
JUDGE

3.7.2018
prem

Whether speaking/reasoned
Whether reportable

Yes
No