

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-6082-2018

Date of Decision: 09.05.2018

Amarjit Singh and others

.....Petitioners

Vs.

Naginder Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. R.S. Randhawa, Advocate,
for the petitioners.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioners seek quashing of Protest Petition No. 45 of 20.01.2012, (as shown in Annexure P-2, but with the prayer clause stating that it was dated 21.11.2011), by which the complainant in the FIR registered in respect of the alleged commission of an offence punishable under Section 302 IPC, was contesting the cancellation report filed by the investigating agency in respect of the said offence. They also challenge the summoning order dated 07.12.2017 (Annexure P-1), passed by the learned Judicial Magistrate Ist Class, Ludhiana, whereby the petitioners have been summoned to face trial for the commission of offences punishable under Sections 302 and 201, read with Section 34 IPC.

Mr. Randhawa, learned counsel for the petitioners, at the outset had submitted, which he has reiterated over various dates till today, that the cancellation report filed by the investigating agency, though has been referred to in the impugned summoning order, however, no detailed reasoning whatsoever has been given by that Court while disagreeing with the findings of the police, with it

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simply having accepted the evidence of the complainant in the protest petition, and on the basis of that having issued summons to the petitioners.

He therefore submits that there is a violation of the provisions of Section 210 of the Cr.P.C.

He next reiterates his arguments as have been reproduced in the order of this Court dated 14.02.2018, which runs as under:-

Learned counsel for the petitioners submits that a Special Investigating Team was constituted by the Director General of Police, Punjab, to go into the allegations made in the FIR, with regard to the alleged murder committed of the complainants' son, Hardip Singh, by the petitioners, i.e. the former SHO of Police Station Delhon, a former ASI in the same police station and a Head Constable in the said police station. The "alleged death" is stated to have taken place in the year 2005.

Pursuant to the findings of the Special Investigating Team headed by a Superintendent of Police, a cancellation report was filed before the competent Court, a copy of which has been annexed as Annexure P-5 with the petition.

Learned counsel specifically points to that part of the cancellation report wherein the finding of the Special Investigating Team is recorded, to the effect that the allegedly deceased Hardeep Singh escaped from police custody on 25.08.2005, after which his father, i.e. the complainant Naginder Singh, took mobile phone connections through various fake addresses and in fact even spoke to his son, who had been residing at various places including Surajpur in District Panchkula.

The aforesaid finding of the Special Investigating Team is stated to have been made on the statement made before the investigating team by one Ram Swaroop, in whose house Hardeep Singh is alleged to have stayed after escaping from police custody.

The statement of one Surinder Kaur, a relative of the complainant (as per the police report), is also stated to have been recorded by the SIT, to the effect that she had helped Hardeep

Singh take the aforesaid room in Ram Swaroops' place, on rent.

One Mathura Dass is also stated to have identified Hardeep Singh from photographs, stating that he (Hardeep Singh) had lived at Surajpur on rent, from 08.10.2005 and 28.11.2005, i.e. after the date when he is stated to have died in police custody on 17.09.2005.

The mobile phone stated to have been taken by the complainant Naginder Singh, on a fake address etc., is also traceable to a tower location in Pinjore on 07.10.2005.

Mr. Randhawa further points out that in fact there is a violation of the procedure under Section 210 Cr.P.C by the learned Magistrate while issuing the impugned order summoning the petitioner, on a protest petition filed by the complainant (treated as a criminal complaint), inasmuch as the cancellation report has not been discussed at all by the Magistrate, though he has referred to it in the last part of the impugned order Annexure P-1.

Having considered the aforesaid argument made by learned counsel for the petitioner, it is seen that though undoubtedly the findings in the cancellation report filed under Section 173 Cr.P.C., have not been referred to in any detail at all by the learned Magistrate, however, he has referred to the witnesses of the complainant, i.e. CWs 1, 2, 3 and 4, with CW-4 being the complainant himself, CW-3 being one Dr. Rohit K. Singla, CW-2 being a co-villager and CW-1 Satpal Singh being a person stated to be in the business of sale of mobile phones.

Section 210 (2) of the Cr.P.C. requires that once a report is made by an investigating officer under Section 173 Cr.P.C., on the same cause of action as a complaint has been instituted, the Magistrate would try both the cases together, as if they were arising out of a police report.

That being so, in the prima facie opinion of this Court, the Magistrate simply having issued summons on the basis of preliminary evidence led before him, he was not bound to discuss the findings in the police report in detail at this stage.

However, Mr. Randhawa wishes to address arguments on the basis of judgments holding to the contrary.

On his require, adjourned to 16.02.2018.

He further submits that one Dilbara Singh, who is alleged to have identified the dead body that was recovered from a pond, and is stated to have told the complainant that the dead body was that of his son, was a person who was not examined in the preliminary evidence and therefore, the most material witness to contradict the findings of the police in its cancellation report, to the effect that the son of the complainant was actually alive, goes to the root of the matter and as such, before issuing summons, the Magistrate should have recorded some reason at least for differing with the report under Section 173 Cr.P.C., other than simply referring to the details of the enquiry report submitted by the learned Sessions Judge, Ludhiana, (in an enquiry conducted on the directions of this Court), with the said enquiry report finally concluding as follows:-

“I have already pointed out glaring irregularities in getting the dead body cremated by the police, which speaks volumes that intentionally and knowingly the dead body was cremated without informing the complainant party for obvious reasons. The complainant is able to establish that the dead body recovered from the pond on 17.09.2005 was of his son Hardeep Singh. This point is answered in favour of the complainant.

In view of the above discussion it is held that the complainant is able to establish his case that his son Hardeep Singh was eliminated by the police in police custody.”

Having considered the aforesaid contentions, without making any comment whatsoever on the culpability or otherwise of the petitioners in the commission of the alleged crime, in the opinion of this Court, specific detailed reasons for differing with the report under Section 173 Cr.P.C. would not be necessary to be given by the learned Magistrate, while issuing summons in the

form of a protest petition by the complainant, in view of the detailed reasoning given as regards the preliminary evidence led by the complainant.

It is not the case of the petitioners that the protest petition and the cancellation report submitted pursuant to the FIR registered are not being heard together by the learned Magistrate, in terms of Section 210 Cr.P.C.

The contention only is that detailed reasoning should have been given by that Court before issuing summons.

In this regard, the following judgments of the Supreme Court need to be cited:-

1. **Sonu Gupta vs. Deepak Gupta and others** 2015 (2) RCR (Criminal) 32
2. **Nupur Talwar vs. Central Bureau of Investigation and another** 2012 (3) RCR (Criminal) 595.

Though in the first case it was not a question of a criminal complaint having been filed in the Court by the complainant along with a cancellation report submitted by the investigating agency, however, as regards rejection of a cancellation report, it was held as follows:-

In Sonu Guptas' case

“8. It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there

are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial.”

In Nupur Talwars' case

11. On the basis of the foundational facts already recorded above, I shall examine the merits of the first submission advanced before the Court. First and foremost it needs to be remembered, that the CBI had submitted a closure report on 29.12.2010. The Magistrate could have accepted the report and dropped proceedings. The Magistrate, however, chose not to accept the CBI's prayer for closure. Alternatively, the Magistrate could have disagreed with the report, by taking a view (as she has done in the present case) that there were sufficient grounds for proceeding further, and thereby, having taken cognizance, could have issued process (as has been done vide order dated 9.2.2011). A third alternative was also available to the Magistrate. The Magistrate could have directed the police to carry out further investigation. As noticed hereinabove, the Magistrate inspite of the submission of a closure report, indicating the absence of sufficient evidence, having taken cognizance, chose to issue process, and thereby, declined the third alternative as well. Since the CBI wanted the matter to be closed, it was appropriate though not imperative for the Magistrate to record reasons, for differing with the prayer made in the closure report. After all, the CBI would have surely wished to know, how it went wrong.”

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Secondly, the complainant (Dr. Rajesh Talwar) had filed a protest petition dated 25.1.2011, praying for a direction to the police to carry out further investigation. This implies that the CBI had not been able to procure sufficient evidence on the basis whereof, guilt of the perpetrators of the twin murders of Aarushi Talwar and Hemraj could be established. Whilst, the rival parties

were pleading insufficient evidence, the Magistrate's order dated 9.2.2011 issuing process, implies the availability of sufficient material to proceed against the accused. This second aspect in the present controversy, also needed to be explained, lest the Magistrate who had chosen to issue process against all odds, would have been blamed of having taken the decision whimsically and/or arbitrarily. Before rejecting the prayer made in the closure report, as also, the prayer made in the protest petition, it was appropriate though not imperative for the Magistrate to narrate, why she had taken a decision different from the one sought. Besides the aforesaid, there is yet another far more significant reason for recording reasons in the present matter. The incident involving the twin murders of Aarushi Talwar and Hemraj are triable by a Court of Session. The authority of the Magistrate was limited to taking cognizance and issuing process. A Magistrate in such a situation, on being satisfied, has the authority to merely commit the case for trial to a Court of Session, under [Section 209](#) of the Code of Criminal Procedure. [Section 209](#) is being extracted hereunder:

“Commitment of case to Court of Session when offence is triable exclusively by it – When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall –

- (a) commit, after complying with the provisions of [section 207](#) or [section 208](#), as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;
- (b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;
- (c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;
- (d) notify the Public Prosecutor of the commitment of the case to the

Court of Session.” In this background, it was essential for the Magistrate to highlight, for the perusal of the Court of Session, reasons which had weighed with her, in not accepting the closure report submitted by the CBI, as also, for not acceding to the prayer made in the protest petition, for further investigation.”

In the aforesaid case, undoubtedly, after effectively holding that it is appropriate though not imperative for a Magistrate to record reasons rejecting a closure report, the Supreme Court went on to hold that it would have been appropriate in the circumstances to have recorded reasons for rejecting the report (especially as the complainant himself had been eventually summoned as an accused).

In the present petition, in the opinion of this Court, the detailed reasons given by the Magistrate for issuing summons to the petitioners-accused on the basis of the preliminary evidence led in the protest petition, as also by referring the report of the learned Sessions Judge, would be acceptable as reasons enough for differing with the cancellation report submitted by the police.

Of course it needs to be observed that the petitioners have come to this Court at the stage of summons only, and though even being summoned in a criminal case is not a small matter, however, in the circumstances where deceased is alleged to have been done to death in police custody, with an enquiry report (not investigation) of the Sessions Judge also at least *prima facie* holding to that effect, I find no fault in the order of the learned Magistrate.

In the opinion of this Court, though Mr. Randhawa has cited a judgment of a co-ordinate Bench of the Delhi High Court in Atma Ram Singhal vs. State 2007 (5) AD (Delhi) 717, as also of this Court in Vipin Aggarwal and another vs. State of Haryana and another 2015 (1) RCR (Criminal) 173, to submit that reasoning in fact needs to be given by the trial Court even while

differing with a cancellation report, in the opinion of this Court, that cannot be accepted in the face of what has been held by the Supreme Court in the aforesaid two judgments.

Undoubtedly, the situations are not identical, as already stated hereinabove; however, if for rejecting a cancellation report filed by the police, the Magistrate is not required to give detailed reasons, I see no difference in the situation where the Magistrate while rejecting the cancellation report, in the present case, has in fact given detailed reasons to accept, *prima facie* at least, the contentions of the protest petition and therefore, has issued summons.

The reasoning in fact given for issuing the summons, would be sufficient for rejecting the cancellation report at that stage, with it only being a preliminary stage and not obviously being reasoning for either acquitting or convicting any accused.

That being so, in my opinion, the challenge in this petition to the summoning order is misplaced and consequently, the petition is dismissed in *limine*.

However, nothing stated hereinabove, will be taken at any stage during the pendency of the criminal proceedings before the Courts below, to be an observation of this Court on the merits of the case for or against the petitioners, which would naturally be gone into by those courts wholly on the basis of evidence led.

May 09, 2018
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes