

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.12405 of 2018

Date of Decision: 11.07.2018

Subhash Chander

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Navkiran Singh, Advocate,
for the petitioner.

Ms. Akanksha, AAG, Punjab.

Mr. L.S. Sidhu, Advocate,
for respondent No.6.

RAJIV NARAIN RAINA, J.(Oral)

1. Learned counsel are ad idem that the directions issued by NRI Commission to the effect that the challan be presented in the Court after completing the investigation expeditiously are not within the jurisdiction of the Commission nor of a Court of law in view of the settled legal position in a catena of judgments including the Division Bench judgment of this Court in Jatt Ram v. Punjab State Human Rights Commission, 2005 (3) RCR (Criminal) 716 holding that the matter can be re-investigated and final report be filed under Section 173 of the Cr.P.C. but not that the challan has to be presented. With the filing of the challan, the prosecution starts but in the final report, a discharge order can be made when no cognizable offence is found to be made out. In para.58 the Lordship of the Division Bench has observed as follows:-

“58. As a result of the aforesaid discussion and

keeping in view the law laid down by the Apex Court in various judgments noticed above, and the provisions of the Act and the Regulations, we have no hesitation in holding that the Commission, or the State Commission, in exercise of the powers under the Act have no power to issue directions, for ordering reinvestigation in a matter, which is being investigated and or has been investigated by the investigating agency nor have any powers to order the cancellation of FIRs nor can entertain the complaints on the allegations that an FIR against a complainant had been wrongly recorded. As noticed above, entertainment of the aforesaid complaints on the said allegations and issuance of any such directions, by the Commission would not only amount to thwarting the investigation at the initial stages or interference with the same but shall also not be permissible in view of the fact that even in exercise of inherent powers of the High Court, the Apex Court has laid down certain restraints. In these circumstances, when the Commission does not even have the inherent powers, the power to interfere in investigation either on the asking of the complainant or on the asking of the accused in the FIR or suo-moto obviously cannot be inferred in favour of the Commission.”

2. Besides this, the report of the District Family Welfare Committee is in favour of the petitioner, the father-in-law of the complainant and this fact would be considered by the police and ought not to have been brushed aside. The report is a valuable input to fair investigation.

3. With these observations, the petition is allowed to the extent that the parties are ad idem. Accordingly, the directions regarding presentation of challan are liable to be ignored being in excess of

jurisdiction not backed by statute. The police would thus proceed in accordance with law.

11.07.2018
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned Yes

Whether reportable No