

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

CWP No. 1272 of 2018
Date of Decision: 27.08.2018

MANJINDER KAUR

..... Petitioner

V/s.

STATE OF PUNJAB AND ANOTHER

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.

Present: Mr. Vijay Lath, Advocate
for the petitioner.

Mr. Sahil Sharma, DAG, Punjab.

RAKESH KUMAR JAIN, J. (Oral)

The petitioner is aggrieved against the order dated 23.08.2017 (Annexure P-6) i.e. the report submitted by the Commission of Inquiry recommending action to be taken against her by way of prosecution under Section 182 of the Indian Penal Code.

In brief, the petitioner registered an FIR No. 122 dated 17.10.2013 under Sections 323, 324, 148, 149 of the Indian Penal Code at Balachaur, District Shaheed Bhagat Singh Nagar. Pursuant thereto, the challan was presented under Section 173 of the Criminal Procedure Code but the trial Judge acquitted the accused vide order dated 14.07.2016 giving them benefit of doubt. The appeal filed by the State of Punjab against the said order was also dismissed on 02.08.2017. In the meantime, while the appeal was pending, Government of Punjab, Department of Home Affairs and Justice, issued a notification dated 05.04.2017, appointing a Commission headed by a retired Judge of this Court alongwith a retired District and Sessions Judge as a Member under the Commission of Inquiry Act, 1952

(hereinafter referred to as ‘the Act’) to make inquiry on the following terms of reference:-

“1. The Commission would:

- a) Inquire into the cases where persons are said to have been wrongly implicated in allegedly false and baseless cases/FIRs (First Information Report) in the State of Punjab during last 10 years and submit its report to Government after such inquiry;*
- b) Recommended to the Government measures to be adopted to ensure that for the future such instances do not recur;”*

Apropos the notification, the Commission submitted its report to the Government of Punjab on 23.08.2017 making recommendations to the cases enquired into by it including the case of Major Jarnail Singh Vs. Manjinder Kaur, purported to have been registered by the petitioner vide FIR No. 122 dated 17.10.2013 and opined that *“accused-applicant was acquitted by the Court. Prosecution of Manjinder Kaur under Section 182 of the IPC recommended”*.

Thereafter, Government of Punjab, Department of Home Affairs and Justice took into consideration the report of the Commission and started the proceeding to initiate the FIR under Section 182 of the IPC against the petitioner.

Learned counsel for the petitioner has submitted that in case any adverse report is submitted by the Commission of Inquiry, an opportunity of hearing has to be given to the person(s) who will be adversely affected. In

this regard, he has referred to Section 8-B of the Act which is reproduced as under: -

“8B. Persons likely to be prejudicially affected to be heard –

*If, at any stage of the inquiry, the Commission-
considers it necessary to inquire into the conduct of any
person or*

*(b) is of opinion that the reputation of any person is likely
to be prejudicially affected by the inquiry.*

*The commission shall give to that person a reasonable
opportunity of being heard in the inquiry and to produce
evidence in his defence.*

*Provided that nothing in this section shall apply where the
credit of a witness is being impeached.”*

Learned counsel for the petitioner, in support of his contentions, has relied upon the decision of Hon’ble the Supreme Court rendered in the case of State of Bihar Vs. Lal Krishna Advani and others; 2003 AIR (SC) 3357, the decision of the Allahabad High Court rendered in the case of Jai Parkash Associates Ltd., Lucknow Vs. State of U.P. and others; 2004 AIHC 3621, and the decision of the Delhi High Court rendered in a case titled as Radhey Mohan Singh Vs. Kaushalya Devi and Others; 2004 (2) RCR (Civil) 225

Learned State counsel has though argued vehemently in favour of the report of the Commission but he could not deny the mandate of law provided under Section 8-B of the Act which says that in case passing of any adverse observations, an opportunity of hearing is a must to the party to produce evidence in his/her defence. In this case, admittedly, the opportunity of hearing is conspicuous by its absence which is otherwise a *sine qua non*.

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Thus, in view thereof, the report of the Commission is patently erroneous being in contravention of the provisions of Section 8-B of the Act and the law laid down by the Hon’ble Supreme Court and other High Courts which are referred to hereinabove.

In view of the above, the present petition is allowed and the impugned recommendations of the Commission of Inquiry and the proceedings initiated thereupon under Section 182 of the IPC against the petitioner are hereby set aside.

August 27, 2018
Ess Kay

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking / reasoned :	✓ Yes / No
Whether Reportable :	Yes / No