

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

(i) CRM No.M-12486 of 2018 (O&M)

H.C. Raj Kumar

...Petitioner

VERSUS

State of Punjab and another

...Respondents

(ii) CRM No.M-5170 of 2018 (O&M)

DCP Parampal Singh

...Petitioner

VERSUS

Princepal Singh

...Respondent

(iii) CRR No.1411 of 2018 (O&M)

Sub Inspector Ramesh Kumar and others

...Petitioners

VERSUS

State of Punjab and another

...Respondents

(iv) CRM No.M-44860 of 2018 (O&M)

Princepal Singh

...Petitioner

VERSUS

State of Punjab and others

...Respondents

Date of Decision: May 20, 2019

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Bipan Ghai, Senior Advocate with
Mr.Vishavjit S. Virk, Advocate

for the petitioner (in CRM No.M-12486 of 2018) and
for the petitioners (in CRR No.1411 of 2018).

Mr.S.K.Garg Narwana, Senior Advocate with
Mr.Vishal Garg Narwana and Mr.Nitin Sachdeva, Advocates
for the petitioner (in CRM No.M-5170 of 2018) and
for respondent No.5 (in CRM No.M-44860 of 2018).

Mr.R.S.Bains, Mr.Mohinder Kumar and
Mr.Sunil Kumar, Advocates
for the petitioner (in CRM No.M-44860 of 2018) and
for the respondent-complainant (in CRM No.M-12486 of 2018),
(in CRM No.M-5170 of 2018) and (in CRR No.1411 of 2018).

Mr.Dhruv Dayal, Sr.DAG, Punjab
for the respondent-State.

INDERJIT SINGH, J.

All the above-mentioned cases are taken up together as these
have arisen from same complaint and subject matter is also the same.

Petitioner H.C. Raj Kumar has filed CRM No.M-12486 of 2018
under Section 482 Cr.P.C. for quashing the criminal complaint No.112
dated 23.02.2016 under Sections 302, 341, 201, 148, 149 and 506 IPC,
summoning order dated 17.08.2017 passed by learned JMIC, Amritsar and
order dated 02.08.2017 passed by learned Addl. Sessions Judge, Amritsar.

Petitioner DCP Parampal Singh has also filed CRM No.M-5170
of 2018 under Section 482 Cr.P.C. for quashing the aforesaid criminal
complaint, summoning order dated 17.08.2017 and judgment dated
25.01.2018 passed by learned Addl. Sessions Judge, Amritsar, whereby, the
revision petition against the summoning order has been dismissed.

Petitioners Sub Inspector Ramesh Kumar and others have filed
this revision petition challenging the order dated 22.03.2018 passed by
learned Addl. Sessions Judge, Amritsar, whereby charges have been framed

against the petitioners.

Petitioner Princepal Singh has filed CRM No.M-44860 of 2018 under Section 482 Cr.P.C. for issuance of directions to respondents No.1 to 3 for conducting high level enquiry into the matter/complaint dated 19.06.2018 and for taking appropriate legal action against respondents No.5 and 6 and concerned police officials for fabricating documents/record and for forging signatures of the petitioner and his uncle Sukhdev Singh, in order to help the accused police officials, who have committed murder of petitioner's uncle namely Mukhjit Singh alias Mukha.

Notice of motion was issued in each case. Learned State counsel as well as learned counsel for the respective respondents appeared and contested the petitions.

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

The perusal of the record shows that Princepal Singh filed a complaint against accused No.1 SI Ramesh Kumar, No.2 HC Rajesh Kumar, No.3 ASI Joginder Singh, No.4 HC Jasbir Singh, No.5 HC Sandeep Kumar, No.6 Constable Navjot Singh, No.7 Ranbir Singh, No.8 HC Raj Kumar, No.9 Constable Satinder Singh and No.10 DCP Parampal Singh under Sections 302, 341, 201, 148, 149 and 506 IPC. The brief facts of the case as noted down in the impugned order dated 17.08.2017 passed by learned JMIC, Amritsar, are as under:-

“1. Heard. File perused. Complainant has moved complaint under sections 302/341/201/148/149/506 of IPC and alleged that the complainant is nephew of Mukhjit Singh @ Mukha, since deceased, who was murdered by accused No.1 to 9 and accused No.10 helped in disappearance of evidence of crime against accused No.1 to 9. Mukhjit Singh @ Mukha aged about

38 years was eminent leader of Akali Dal Badal Party. On 16.06.2015 at about 6.30 PM complainant along with his relative Sukhdev Singh was coming from village Pandher to Verka on motorcycle. Deceased Mukhjit Singh @ Mukha was going on his I-20 Car make Hyundai to Mudal side and when he reached near NRC Rubber Factory at Verka, he noticed complainant and his relative Sukhdev Singh coming on motorcycle, deceased Mukhjit Singh slowed down his car and started blowing horn of his car and signaled the complainant and Sukhdev Singh to stop. The complainant stopped his motorcycle. When the complainant stopped his motorcycle and was about to meet his deceased uncle Mukhjit Singh, in the meantime one bolero Jeep, one Innova Car and one Verna Car came across I-20 car of deceased and surrounded his I-20 Car. Complainant further alleged that Innova Car was intentionally stopped right in front of car of deceased where as Bolero Jeep was intentionally stopped on the side of car of deceased. Hence, car of deceased was surrounded by above said three cars from three sides, thereby restricting his movement and movement of his car. Thereafter, all the accused armed with weapons alighted from the said three cars. The complainant was able to identify the officials as they were officials of Punjab Police and was posted in Amritsar and all accused were in Civil Dress. Accused Rajesh Kumar armed with assault Rifle went towards driver side of I-20 Car where deceased Mukhjit Singh was sitting, accused SI Ramesh Kumar and ASI Joginder Singh armed with pistol went to front side of I-20 Car, accused HC Jasbir Singh and HC Sandeep Singh armed with pistols stood on one side of car, accused C Navjot Singh, HC Ranbir Singh, HC Raj Kumar and C Satinder Singh armed with assault rifles stood at a distance towards driver side of I-20 car. Thereafter, HC Rajesh Kumar is resident of Verka and knew Mukhjit Singh very well earlier to the incident. Thereafter, accused Ramesh Kumar raised Lalkara and asked his fellow police officials/co-accused that he is the same person by taking name of Mukhjit Singh @ Mukha and he be not spared today. After raising lalkara, accused Ramesh Kumar opened fire upon Mukhjit Singh with his pistol. Then accused ASI Joginder Singh also started firing from his pistol at Mukhjit Singh. HC Rajesh Kumar also opened fire upon Mukhjit Singh with his assault rifle. It is further alleged that by the complainant that ASI Joginder Singh exhorted co-accused to kill Mukhjit Singh by taking his name by pumping bullets and said that "Is nu Goliyan naal bhun deo". Upon which, accused C Navjot Singh, HC Ranbir Singh, HC Raj Kumar and C Satinder Singh started firing from their assault rifles towards Mukhjit Singh from their respective weapons. Hence, all accused, all of a sudden, opened fire upon deceased Mukhjit Singh @ Mukha from all directions from a close range. The complainant got shocked upon noticing such brutal and inhuman act of all accused. However, the complainant

who witnessed the entire occurrence alongwith Sukhdev Singh recollected themselves and gathered courage and raised hue and cry and people got gathered at the spot. Thereafter, accused DCP Parampal Singh alongwith ACP Jagjit Singh Walia also come to the spot with more police force and cordoned off the I-10 car and deceased Mukhjit Singh. Then accused Parampal, DCP directed one to the police official to remove the registration number plate of car of deceased Mukhjit Singh, which was then removed by one of the official on his directions, then Ramesh Kumar in order to open door of car of accused pulled its handle of driver side door, which got broken. It is further alleged by the complainant that local residents agitated against such brutal and inhuman act on part of police and blocked the highway seeking action against the guilty accused. The senior police officials assured the complainant and other family members of deceased that they will take action against the guilty police officials. However, later on a false case has been registered against deceased Mukhjit Singh @ Mukha bearing FIR No.242 dated 16.06.2015 at PS. A Division under Section 307 of IPC read with section 25/27 of Arms Act where as he was completely innocent in the entire incident. A Special Investigation Team (SIT) was constituted headed by Sh. Nageshwara Rao, Inspector General of Police (Crime), Punjab to conduct fair and impartial enquiry in the matter. He visited on the spot and recorded statement of complainant, Sukhdev Singh and other relevant witnesses and also took into possession video footage of CCTV Camera installed at NRC Rubber Factory in the presence of complainant, Sukhdev Singh and other witnesses, in which the reality of entire occurrence was very much evident. On 17.06.2015 post mortem of dead body of deceased Mukhjit Singh @ Mukha was conducted and 23 Fire arm injuries were noticed on his dead body. The news were published in the newspapers wherein local police commissioner gave their version that police had killed Mukhjit Singh @ Mukha by mistaken identity for gangster Jagdeep Singh @ Jaggu Bhagwanpuria. It is further alleged by the counsel for the complainant that the local police after few days arrested Jagdeep Singh @ Jaggu Bhagwanpuria, but surprisingly he was arrested and not killed, which shows that the Mukhjit Singh has been murdered by all the accused in conspiracy with each other in a pre-planned manner. Even state Government has issued a cheque to the complainant family to the tune of Rs.5,00,000/- issued by Indian Red Cross Society, thereby admitting foul play of police machinery. Hence, this complaint.”

On the basis of preliminary evidence, accused No.1 to 9 were

summoned to face trial for offence under Sections 302, 341, 148 and 149

IPC whereas accused No.10 DCP Parampal Singh was summoned under Section 201 IPC. The complaint was committed to the Court of Session and learned Addl. Sessions Judge, Amritsar, framed the charges against accused No.1 to 9 under Sections 148, 149 and 302 read with Section 149 IPC and qua accused No.10 DCP Parampal Singh, as proceedings were already stayed by this Court, therefore, charges were not framed. Aggrieved from the order framing the charges against SI Ramesh Kumar etc., a revision petition was also filed before this Court.

Learned counsel for the petitioner Head Constable Raj Kumar argued that earlier FIR was got registered regarding the occurrence by the police, qua which, after enquiry by SIT constituted of very senior officers, cancellation was recommended and cancellation report was filed before the Court but learned trial Court returned it for further investigation. He further argued that even as per the report of SIT, Head Constable Raj Kumar was not armed with weapon, therefore, causing of any injury to the deceased by him, does not arise. Learned counsel for the petitioner Head Constable Raj Kumar next contended that even as per report of SIT, ASI Joginder Singh and HC Sandeep Kumar, had also not fired from their official weapons, therefore, he argued that complaint against ASI Joginder Singh and HC Sandeep Kumar is also liable to be quashed and qua other accused, the order framing of charges is also liable to be set aside and even if a person has been killed due to mistaken identity, the accused are not liable for any offence, as they were performing their official duty.

On the other hand, learned counsel for the complainant argued that even as per enquiry report given by SIT, Head Constable Raj Kumar,

ASI Joginder Singh and HC Sandeep Kumar etc. i.e. accused No.1 to 9 were

present at the spot. He argued that as per report of SIT, the version given by the police that deceased fired on police party, was found false and SIT recommended for cancellation of the FIR got registered by the police after the occurrence under Section 307 IPC etc. He next contended that it is case of fake encounter and accused No.1 to 9 have killed Mukhjit Singh @ Mukha without any reason. He next argued that, at this stage, prima facie case is made out against these accused and they have been rightly charge-sheeted. There is no ground to quash the FIR against Head Constable Raj Kumar or to set aside the order framing the charges against other accused.

After hearing learned counsel for the parties as well as learned State counsel, I find that the complainant has specifically named these accused No.1 to 9 in the complaint and complainant and one another witness, have seen the occurrence and have deposed in preliminary evidence regarding alleged fake encounter. Furthermore, report of SIT is also there showing the occurrence and as argued, there is also a CCTV footage, which is taken from a CCTV camera installed at a nearby premises. At this stage, keeping in view the averments in the complaint and preliminary evidence and material on record, I find that complaint against Head Constable Raj Kumar cannot be quashed only on the ground that SIT formed in this case, states that Head Constable Raj Kumar was without any weapon but admittedly, he was with the police party, which killed Mukhjit Singh @ Mukha, allegedly in a fake encounter. Similarly, ASI Joginder Singh and HC Sandeep Kumar were also with the same police party and other accused have been charge-sheeted by the trial Court for firing upon Mukhjit Singh @ Mukha without any reason by stopping him on the road by placing vehicles in front and back side of vehicle of Mukhjit Singh @ Mukha. In

these circumstances, prima facie case is made out to frame the charges. No illegality has been committed by learned trial Court while framing the charges against accused No.1 to 9 as mentioned in the complaint.

In view of the above discussion, I do not find any ground to quash the complaint qua Head Constable Raj Kumar nor the order framing the charges against other accused is illegal. Rather, charges have been framed as per law. Otherwise also, at the time of framing of the charge, the trial Court is not to weigh the evidence or to appreciate the evidence minutely but the Court is only to see prima facie case.

Therefore, finding no merit in the CRM No.M-12846 of 2018 filed by Head Constable Raj Kumar and CRR No.1411 of 2018 filed by SI Ramesh Kumar and others, both are dismissed.

Now, coming to the petition i.e. CRM No.M-5170 of 2018 filed by DCP Parampal Singh, I find that the allegation against DCP Parampal Singh is only that he ordered some police official to remove the number plate of the car. Learned counsel for petitioner DCP Parampal Singh argued that admittedly, DCP Parampal Singh was not present at the time of occurrence and even as per complainant's version, he came later on and at that time, many people gathered on the road and road was blocked. He further argued that for the first time, the allegations were levelled against DCP Parampal Singh when the complaint was filed. The SIT, which was formed to look into the present occurrence, nowhere found any allegation against DCP Parampal Singh. He next argued that there is no evidence of any type that in the CCTV footage anybody was seen changing the number plate or DCP Parampal Singh was asking for change of number plate.

complainant is relying upon the report of SIT and as per SIT report and report of FSL, no number plate was found on the car. It is further argued that there is no cogent evidence on record that number plate was changed after the occurrence to give benefit to the accused. He next contended that it looks unnatural that in the presence of so many people, who blocked the road, police will change the number plate and people will not protest or anybody will not see to it. Therefore, he argued that in the facts and circumstances of the present case, there is no cogent evidence on the record, except the statements of the complainant and one eye witness and in these circumstances, sanction under Section 197 Cr.P.C. is also necessary. The DCP Parampal Singh along with other police officials is supposed to reach the spot in such type of occurrence which took place, to enquire into the matter immediately and further to look into the law and order situation on the spot. Learned counsel for the petitioner DCP Parampal Singh, therefore, argued that without sanction under Section 197 Cr.P.C., the complaint is also liable to be quashed qua him.

After hearing the counsel for the parties, I find that, first of all, admittedly DCP Parampal Singh was not present at the time of occurrence when alleged fake encounter took place. As per complainant's version himself, DCP Parampal Singh came at the spot after some time along with police party. Even as per version of the complainant, there is no allegation against DCP Parampal Singh regarding any conspiracy or connivance to kill Mukhjit Singh @ Mukha. The only allegation against petitioner DCP Parampal Singh is under Section 201 IPC. Learned counsel for the complainant also relied upon the report of SIT qua other accused, which is

against petitioner DCP Parampal Singh. SIT report itself says that earlier report was not clear qua number plate on the car and it was again sent to other lab and it was found that there was no number plate on the car. There is no evidence on record that anybody else has seen changing/removing of number plate of the vehicle. When the occurrence had already taken place and so many persons were on road, then it looks improbable that in these circumstances, the people will allow to tamper with the evidence. Rather, at that time, the senior officer is to control the law and order situation. Furthermore, it is not the case of the complainant that in the CCTV footage, there is anything that number plate was removed at the spot. There is also nothing, who had heard the words stated by DCP Parampal Singh to change/remove the number plate. Only general and vague allegations have been levelled that at the direction of DCP Parampal Singh, number plate of the vehicle was changed.

Keeping in view the allegations against the present petitioner DCP Parampal Singh, who was senior officer at that time and who reached the spot to enquire into the matter along with other police officials, I find that the sanction under Section 197 Cr.P.C. is necessary to prosecute him. The purpose of Section 197 Cr.P.C. is to protect the public servant from unnecessary harassment and purpose is also to be firstly looked into by the department itself that whether the allegations against a public servant are frivolous, baseless or not. As there is no allegation regarding any connivance of the present petitioner DCP Parampal Singh in the alleged fake encounter, therefore, I find that sanction under Section 197 Cr.P.C. is also necessary.

In view of the above discussion, I find that filing of complaint

against petitioner DCP Parampal Singh is nothing but abuse of process of law and amounts to miscarriage of justice.

Therefore, finding merit in CRM No.M-5170 of 2018 filed by petitioner DCP Parampal Singh, the same is allowed. The criminal complaint No.112 dated 23.02.2016 under Sections 302, 341, 201, 148, 149 and 506 IPC, summoning order dated 17.08.2017 passed by learned JMIC, Amritsar as well as all the subsequent proceedings, are hereby quashed qua petitioner DCP Parampal Singh.

As regarding petition i.e. CRM No.M-44860 of 2018 filed by complainant Princepal Singh, I find that, on the basis of complaint, the trial Court has already taken the cognizance and charges have been framed against the accused. The allegations of the complainant Princepal Singh that statements recorded in the inquest proceedings, do not bear signatures of the complainant or are forged one etc., are to be seen by the trial Court, if these are produced in the evidence. At this stage, there is no necessity to get the parallel enquiry into the matter when the trial Court is already seized of the matter. If the statements, which are stated to have been recorded in the inquest proceedings under Section 175 Cr.P.C., for the purpose of identification of dead body, are used or relied upon in the trial Court and finding of trial Court comes that these are forged documents etc., then the petitioner will be at liberty to avail remedies available to him, as per law. At this stage, there is no necessity to give direction to see whether the statements are correct or not or whether these are signed by the witnesses or not.

At this stage, as no ground is made out for giving any direction,

therefore, CRM No.M-44860 of 2018 filed by petitioner-complainant

Princepal Singh, stands dismissed.

May 20, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No