

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

CRM-M No.25149 of 2013 (O&M)

Decided on: 25.09.2019

Suneet Kumar Monga

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Ms. G.K. Mann, Advocate for the petitioner.

Mr. Jagmohan Ghuman, DAG, Punjab
assisted by ASI Lakhwinder Singh.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of FIR No.43 dated 18.02.2012 registered under Section 409 of the Indian Penal Code, 1860 (in short 'IPC') at Police Station Raja Sansi, District Amritsar(Rural).

This petition is pending since 2013 and the proceedings were stayed before the trial Court.

Brief facts of the case are that the FIR was registered at the instance of Naib Tehsildar, Ajnala, District Amritsar by moving a complaint dated 18.11.2011 with the allegation that the petitioner Suneet Kumar was serving as a Patwari in Circle Uthian and he was transferred from that Circle, however, he has failed to hand over the charge to the new Patwari. In this regard, proceedings were initiated for taking orders from the Sub-Divisional Judicial Magistrate, Ajnala in which some record was handed over as per the list attached and some record was not accounted for. Despite giving repeated notices, the petitioner being the Patwari has failed to hand over the record and

misappropriated the same with *mala fide* intention.

Counsel for the petitioner has argued that in fact the petitioner had challenged his transfer by way of filing a petition i.e. CWP No.14315 of 2011 which was disposed of on 08.08.2011 with a direction to the Deputy Commissioner/Collector, Amritsar to consider his request sympathetically for his retention in Circle Uthian or a nearby place. It is further submitted that, therefore, the petitioner made a representation dated 16.08.2011 to the Collector that he being a handicapped person be accommodated in Patwar Circle, Sorian. It is further argued that on 25.08.2011, the petitioner gave a representation to the Sub-Divisional Judicial Magistrate, Ajnala, District Amritsar that till the decision of the Collector, he may not be relieved from his present place of posting. It is further argued that thereafter, the petitioner was summoned by the Collector for personal hearing on 30.08.2011 and he was transferred to Circle Jhanjhoti. It is worth noticing here that while issuing this order, the Collector has directed the petitioner to deposit his record of Uthian with Tehsildar Ajnala.

Counsel for the petitioner has also submitted that on the same day, as per the order of the Tehsildar, the record of the Circle Uthian was handed over to Balwinder Singh, Patwari by breaking open his almirah in the presence of certain persons and thereafter, an enquiry was conducted by the Sub-Divisional Judicial Magistrate, Baba Bakala, regarding not handing over the charge of Circle Uthian and as per the enquiry report dated 15.01.2013, it was held that the charges against the petitioner is not proved as the Successor Patwari of the petitioner Balwinder Singh, could not give satisfactory reply.

Counsel for the petitioner has, thus, argued that the FIR has been registered against the petitioner with a *mala fide* motive as he has filed a writ petition before this Court challenging his transfer order in which the Collector was directed to transfer him to a nearby place of his residence.

In reply, counsel for the State has submitted that on completion of the investigation, the challan has already been presented before the trial Court on 18.02.2012 as the Investigating Officer/SHO, Police Station Raja Sansi, District Amritsar (Rural) has held that ASI Manjit Singh had asked the petitioner to join the investigation time and again and to hand over the documents but he failed to join the investigation or hand over the record to the department and thus, he has misappropriated the record. In the report under Section 173 Cr.P.C., it is also found, on the basis of the enquiry that the registers pertaining to the Mutation No.3781 to 3868, the original daily diary registers pertaining to the year 2006 to 2011 (05 registers), daily diary on work registers pertaining to the year 2006 to 2011 (05 registers) were not handed over by the petitioner despite the notice given by ASI Manjit Singh and therefore, the finding that *prima facie* offence under Section 409 IPC is made out, and the challan was presented.

Counsel for the State on the basis of the 02 affidavits i.e. one filed by the Deputy Superintendent of Police, Sub-Division Raja Sansi, District Amritsar (Rural) dated 28.10.2014 and the other affidavit filed by the Deputy Superintendent of Police, Sub-Division Ajnala, District Amritsar (Rural) dated 10.10.2018, has argued that during the investigation, the Successor Patwari of the petitioner has given an

information to the Tehsildar regarding the non-availability of the aforesaid registers in the record. It is further submitted that in the statement of the complainant/Tehsildar Ajnala recorded under Section 161 Cr.P.C., it is stated that the petitioner has handed over only one Godrej Almirah and one Roznamcha for the year 2001 to 2002 on 01.02.2012.

Counsel for the State has also submitted that in the statement of ASI Manohar Singh, it has come that he has given number of notices/reminders to the petitioner to hand over the charge of the aforesaid documents but the petitioner failed to record the same and therefore, the *prima offence* under Section 409 IPC is made out and the challan has been produced before the Illaqa Magistrate and the case is now fixed for framing of the charge when this petition was filed and the proceedings were stayed.

In rebuttal, counsel for the petitioner has argued that the entire record is available on the website of the department and there is no complaint regarding misappropriation of any record from the general public and therefore, the FIR may be quashed. However, on a pointed query raised by the Court whether the petitioner has handed over the original registers as noticed above, counsel for the petitioner could not give any reply regarding handing over the original registers and relied upon the enquiry report dated 15.01.2013, in this regard.

After hearing the counsel for the parties, I find no ground to quash the FIR for the following reasons:

- 1. *There are disputed questions of facts.***
The FIR has been registered by the Tehsildar with

the allegations that after the petitioner was transferred from Circle Sorian to Jhanjhoti. He has failed to hand over the complete charge to his Successor Patwari, Balwinder Singh, detail of which are given in the various notices issued by the Investigating Officer as well as in the report under Section 173 Cr.P.C. These are the original registers pertaining to the Mutations, Daily Diary Registers pertaining to 05 years and being public record, the petitioner, who was assigned the charge of these records, has failed to hand over the same. The documents relied upon by the petitioner are not per se admissible and can be proved by leading defence evidence at appropriate stage. Moreover, it is well settled principal of law that the Court cannot relied upon the documents of an accused while deciding a petition seeking quashing of FIR, in exercise of power under Section 482 Cr.P.C.

2. *The argument of the petitioner that in the enquiry report, the petitioner was exonerated by Sub-Divisional Judicial Magistrate, Ajnala is factually not correct. As per the own document of the petitioner (Annexure P-9) when the petitioner had taken over the charge of Circle on 31.05.2007, the aforesaid record was duly handed over to the petitioner and while handing over the charge to his Successor, it was the duty of the petitioner to hand over the complete record, however, there is nothing on record to show that the petitioner has handed over the record to his Successor Balwinder Singh Patwari, and therefore, the departmental enquiry wherein, this fact is not noticed or discussed by the Enquiry Officer while exonerating the petitioner is factually incorrect.*

3. *It is not disputed that even during the*

investigation, the Investigating Officer has given notices to the petitioner to hand over the complete charge and in case the petitioner had handed over the entire charge, the investigation could have resulted into recommendation for cancellation of the FIR. Therefore, once in the investigation it is found that the petitioner has failed to hand over the entire charge i.e. the public documents/the original mutation, daily diary registers, etc. pertaining to 05 years, prima facie offence under Section 409 IPC is made out against the petitioner.

4. The argument made by counsel for the petitioner that the entire record is available on the website of the department do not absolve the liability of the petitioner as the original record is always maintained by department and only a copy is uploaded on the website.

5. There is nothing to suggest that action of Tehsildar in registration of the FIR is on account of any mala fide on his part as he in discharge of his official duty is bound to protect the interest of State.

In view of what has been discussed hereinabove, finding not ground, the petition fails and is accordingly dismissed.

Since the proceedings in this petition remain pending for a period of about 06 years, the trial Court is directed to conclude the trial expeditiously preferably within a period of 01 year from today.

(ARVIND SINGH SANGWAN)
JUDGE

25.09.2019

yakub

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No