

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-36733-2014
Date of Decision:28.05.2019

Sohan Lal and another

...Petitioners

Versus

State of Punjab and another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.G.S.Bedi, Advocate for the petitioners.
Mr.Bhupinder Beniwal, AAG, Punjab.

ANIL KSHETARPAL, J.

This petition has been filed under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short) for quashing the order dated 3.7.2014 passed by Judicial Magistrate 1st Class, Hoshiarpur.

Learned counsel for the petitioners has submitted that the petitioners is only aggrieved of the directions issued by the Judicial Magistrate to the Investigating Officer to file the complete challan, after rejecting untraced report filed by the police. He has further submitted that the Judicial Magistrate was competent to take cognizance of the offence and reject the untraced report, however, the Judicial Magistrate was not competent to direct Investigating Officer to file the challan. He has relied upon a judgment passed by Hon'ble the Supreme Court in the case of ***Abhinandan Jha and others Vs Dinesh Mishra, 1968 AIR (SC) 117.***

On the other hand, learned counsel for the State has submitted that the aforesaid judgment passed by Hon'ble the Supreme Court in the case of ***Abhinandan Jha*** (supra) has been distinguished in a later judgment

passed in the case of **Minu Kumari and another Vs State of Bihar and others, 2006(3) RCR (CrI.) 271.**

The Hon'ble Supreme Court in the case of **Abhinandan Jha** has dealt with the aforesaid issue **in detail.** Para 17 of that judgment is extracted as under:-

“We have to approach the, question, arising for consideration in this case, in the light of the circumstances pointed out above. We have, already referred to the scheme of Chapter XXIV, as well as the observations of this Court in Rishbud and Inder Singh’s Case AIR 1955 Supreme Court 196 that the formation of the opinion as to whether or not there is a case to place the accused on trial before a Magistrate, is left to the officer in-charge of the police station. There is no express power, so far as we can see, which gives jurisdiction to pass an order of the nature under attack; nor can any such powers be implied. There is certainly no obligation, on the Magistrate, to accept the report, if he does not agree with the opinion formed by the police. Under those circumstances, if he still suspects that an offence has been committed, he is entitled, notwithstanding the opinion of tile police, to take cognizance, under Section 190(1) (c) of the Code. That provision, in our opinion, is obviously intended to secure that offences may not go unpunished and justice may be invoked even where persons individually aggrieved are unwilling or unable to prosecute. or the police, either wantonly or through bona fide error, fail to submit a report, setting out the facts constituting the offence. Therefore, a very wide power is conferred on the Magistrate to take cognizance of an offence. not only when he receives information about the commission of an offence from a third person, but also where he has knowledge or even suspicion that the offence has been committed. It is open to the Magistrate to take cognizance of the offence, under Section 190 (1) (c), on the ground that, after having due regard to the

final report and the police records placed before him, he has reason to suspect that an offence has been committed. Therefore, these circumstances will also clearly negative the power of a Magistrate to call for a charge-sheet from the police, when they have submitted a final report. The entire scheme of Chapter XIV clearly indicates that the formation of the opinion, as to whether or not there is a case to, place the accused for trial, is that of the officer in-charge of the police station and that opinion determines whether the report is to be under Section 170, being a 'chargesheet', or under Section 169, 'a final report'. It is no doubt open to the Magistrate, as we have already pointed out, to accept or disagree with the opinion of the police and, if he disagrees, he is entitled to adopt any one of the courses indicated by us. But he cannot direct the police to submit a charge-sheet, because, the submission of the report depends upon the opinion formed by the police, and not on the opinion of the Magistrate. The Magistrate cannot compel the police to form a particular opinion, on the investigation, and to submit a report, according to such opinion. That will be really encroaching on the sphere of the police and compelling the police to form an opinion so as to accord with the decision of the Magistrate and send a report, either under Section 169, or under Section 170, depending upon the nature of the decision. Such a function has been left to the police, under the Code."

As regards argument of learned counsel for the State after relying upon the judgment passed in the case of **Minu Kumari (supra)**, it may be noted that the facts in the aforesaid case were entirely different. In para 10 of the judgment, the Hon'ble Supreme Court discussed the judgment passed in the case of **Abhinandan Jha** (supra), however proceeded to decide the aforesaid case in the facts and situation available in the case of **Meenu Kumari** (supra). The judgment passed in the case of **Abhinandan**

Jha (supra) has neither been held to be laying down incorrect proposition of law nor it is in any manner diluted.

Still further, Section 190(c) of the Code of Criminal Procedure enables the concerned Magistrate to either accept the report and take cognizance of the offence and issue process or may disagree with the report to drop the proceedings or may direct further investigation under Section 156(3) Cr.P.C. and require the police to make a further report. Hence, Section 190 Cr.P.C., which deals with powers of Magistrate to take cognizance, does not empower the court to compel the police to form a particular opinion, on the investigation and to submit a report, according to such opinion formed by the Magistrate. The Hon'ble Supreme Court in the case of **Abhinandan Jha** (supra) has held that this would amount to encroaching on the sphere of the police and compelling the police to form an opinion so as to be in accord with the decision of the Magistrate. Such a function has been left to the police under the code.

In view of the aforesaid discussion, the present petition is partly allowed. In the impugned order passed, direction to the Investigating Officer to file the complete challan is set aside. However, remaining part of the order which is in accordance with law shall stand. Accordingly, the learned Judicial Magistrate, Hoshiarpur, would proceed with the case, in accordance with law.

28.05.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No