

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

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CRM-M-35309-2019 (O & M)
Date of Decision:29.08.2019

Sher Mohd.

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Munfaid Khan, Advocate
for the petitioner.

MANOJ BAJAJ, J.

Through this petition, filed under Section 482 Cr.P.C., the petitioners have prayed for quashing of FIR No.115 dated 05.04.2018 for the offences punishable under Sections 120-B, 419, 420, 467, 468 and 471 IPC, registered at Police Station Tauru, Distirct Nuh.

After hearing learned counsel for the petitioner and perusing the final report under Section 173 Cr.P.C., this Court finds that the petition is founded on disputed facts and it will not be safe to exercise inherent powers under Section 482 Cr.P.C. Even otherwise, the Hon'ble Supreme Court in **Dharmatma Singh vs. Harminder Singh and others, 2011 (2) Apex Court Judgments (SC) 320** has held that the inherent powers enshrined under Section 482 Cr.P.C. cannot be exercised in regard to the matter specifically covered by the other provisions of the Court. It was further observed that where the final report is filed and the Magistrate is yet to apply mind under Section 190 Cr.P.C., the High Court is not supposed to consider quashing of proceedings. Relevant portion reads as under:-

“13. Section 482 of the Criminal Procedure Code saves the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. It has been held by this Court in R. P. Kapur v. State of Punjab [AIR 1960 SC 866] that Section 561-A of the Criminal Procedure Code, 1898 (which corresponds to Section 482 of the Criminal Procedure Code, 1973) saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice and such inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code and therefore where the Magistrate has not applied his mind under Section 190 of the Cr.P.C. to the merits of the reports and passed order, the High Court ought not to consider a request for quashing the proceedings. In the case of R. P. Kapur (supra) on 10.12.1958, M.L. Sethi lodged a First Information Report against R.P. Kapur and alleged that he and his mother-in-law had committed offences under Sections 420-109, 114 and 120B of the Indian Penal Code. R.P. Kapur moved the Punjab High Court under Section 561-A of the Code of Criminal Procedure for quashing the proceedings initiated by the First Information Report. When the petition of R.P. Kapur was pending in the High Court, the police report was submitted under Section 173 Cr.P.C. and the High Court held that no case had been made out for

quashing the proceedings under Section 561-A of the Criminal Procedure Code, 1898 and dismissed the petition. R. P. Kapur carried an appeal by way of Special Leave to this Court and this Court dismissed the appeal for inter alia the following reasons:

" ... In the present case the magistrate before whom the police report has been filed under Section 173 of the Code has yet not applied his mind to the merits of the said report and it may be assumed in favour of the appellant that his request for the quashing of the proceedings is not at the present stage covered by any specific provision of the Code. It is well established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily, criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage..."

In view of the above, no ground is made out for interference.

Hence, the present petition is dismissed.

However, it shall be open for the petitioner to raise all these issues before the trial Court at the stage of the framing of charges.

29.08.2019

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(MANOJ BAJAJ)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No