

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-43928-2019

Date of Decision: 20.12.2019

Nishamm Monga

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. N.S. Chahal, Advocate,
for the petitioner.

Mr. A.P.S. Gill, D.A.G., Punjab.

Mr. Rajiv Dhawan, Advocate,
for the complainant.

AMOL RATTAN SINGH, J. (ORAL)

The petitioner having been admitted to interim bail in this case on 17.10.2019, the following order was passed on that date:-

“Learned counsel for the petitioner submits that even as per the document (Annexure P-3), a stamp of the proprietor of the New Chahal Roadlines is seen with signatures thereupon, beneath and acknowledgment written in Gurmukhi, (to the effect that the coal as had been sent by the petitioners' truck had been received by the Roadlines).

He therefore submits that once the signatures on the stamp of the Roadlines itself as had issued the goods receipt (bilty), is present on the said document, the petitioner cannot be held guilty for the coal going missing, and it is actually the proprietor of the roadways who should be under investigation.

Without making any comment on the actual merits of the contention raised at this stage, let notice of motion be issued, returnable on 18.11.2019.

In the meanwhile, upon the petitioner joining investigation and complying with all conditions stipulated in Section 438(2) of the Cr.P.C., if he is sought to be arrested, he shall be released on bail, on his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Ilaqa Magistrate.

If the investigating officer does not actually join the petitioner in investigation, he would appear before the learned Ilaqa Magistrate immediately, who would then summon the arresting officer and direct him to join him in investigation, in terms of the order of this Court.”

Subsequently, the interim order having been continued, on the last date of hearing the following order was passed:-

“Adjourned to 20.12.2019.

The Deputy Superintendent of Police under whose jurisdiction Police Station Nehianwala, District Bathinda, falls, is directed to be personally present in Court on the next date of hearing, to explain as to why the official who has ostensibly come to assist learned State counsel is submitting that the driver of the vehicle is not an accused, when the allegation in the FIR very clearly is that the driver, possibly in collusion with the owner (i.e. the petitioner), has usurped goods of the complainant.

If the DSP is not present after being fully conversant with all facts of the case and the investigation carried out so far, the Senior Superintendent of Police, Bathinda, shall be summoned on the very next date.

Interim order to continue, till the next date of hearing only and specifically.

Any request for adjournment on the next date of hearing will entail automatic vacation of the interim order, without any further order required to be passed in that regard.

A copy of this order be given to learned State counsel under the signatures of the Bench Secretary of this Court.”

Today, the DSP, Bhucho Mandi, District Bathinda, is present in Court and has instructed learned State counsel that the driver of the vehicle owned by the petitioner has now been nominated as an accused, though he has still not been joined in the investigation.

Learned counsel for the petitioner reiterates what he has been saying throughout, to the effect that the coal consignment as had been taken by the driver from Gandhidham, Gujarat, to be delivered to the complainant in Mandi Gobindgarh, was actually delivered to New Chahal Road Lines, because it was that Road Lines that had actually 'referred the order' to the petitioner.

Learned counsel for the complainant has pointed out that though that is the stand being taken before this Court, but before the investigating officer the stand was that the petitioners' driver was at fault.

Learned counsel for the petitioner counters by submitting that as a matter of fact that is simply a 'zimini noting' by the investigating officer, which cannot be given any credence.

Having considered that aspect also, what needs to be seen is, as has been pointed out by learned counsel for the complainant, that the stand of the petitioner in paragraph 4 of the petition, is to the effect that the New Chahal Road Lines had not paid advance payment to the petitioner, even though they had

received the amount from the complainant.

Earlier also, the owner of New Chahal Road Lines had not paid Rs. 2,77,000/- for “previous work” allotted to the petitioner.

What is to be further noticed is that as per the FIR, it was the petitioner who gave the drivers' number to the complainant, who upon ringing up the driver, was allegedly abused by him.

It is also not denied that the truck which was carrying the consignment has in fact been brought back by the driver of the petitioner to the petitioner (as has been admitted upon a specific query put by this Court to learned counsel for the petitioner).

Upon query as to why then he did not even inform anybody with regard to the driver having brought back the truck, so that at least the matter could be investigated upon questioning the driver, there is no proper answer forthcoming, except to the effect that in fact the FIR could not have been registered at Bathinda, because the consignment was to be delivered at Gobindgarh, with it having been picked up from Gandhidham, Gujarat.

Learned counsel for the complainant submits that in fact the petitioners' office is located at Goniana Mandi in District Bathinda.

Learned State counsel submits that as a matter of fact the Police Station under whose the jurisdiction the aforesaid office of the petitioner falls, is Nehianwala.

Consequently, keeping in view the aforesaid facts, including the stand taken to the effect that New Chahal Road Lines has not paid the petitioner in advance and thereafter the truck had been brought back by the driver of the vehicle to the petitioner, I see absolutely no reason to continue with this petition, which is consequently dismissed and the interim order dated 17.10.2019 vacated.

However, in view of the fact that even before the learned Additional Sessions Judge, upon a similar petition having been filed by the petitioner, statement was suffered by ASI Parkesh Singh (as recorded in paragraph 5 of that order dated 01.10.2019, copy Annexure P-1), that in fact it was also the driver of the vehicle from whom the recovery of the coal and the truck was to be effected, and thereafter a statement had been made before this Court on the last date of hearing that the driver was not even an accused, though he was implicated as an accused in the FIR also, the Senior Superintendent of Police, Bathinda, is directed to file an affidavit as to the outcome of the disciplinary proceedings initiated against the investigating officer, as have already been initiated (as per learned State counsel on instructions), because obviously, in the aforesaid circumstances, all does not seem to be right.

For that purpose, the case file be put up on 30.01.2020.

A copy of this order be given to the learned State counsel under signatures of the Reader of the court.

December 20, 2019
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(AMOL RATTAN SINGH)
JUDGE