

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

124

CRM-M-7965-2020

Date of decision: 26.02.2020

Kiran Kumar and another

.....Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Karanjeet Singh Brar, Advocate
for the petitioner.

Mr. Arun Kaundal, DAG, Punjab
for the respondent assisted by ASI Bhag Singh.

ARUN KUMAR TYAGI, J (ORAL)

The petitioners have filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") for quashing of FIR No.251 dated 01.11.2019 registered under Section 68 of the Punjab Excise Act, 1914 and Sections 290 and 510 of the Indian Penal Code, 1860 (for short, "the IPC") at Police Station City Kharar, District S.A.S. Nagar and all subsequent proceedings arising therefrom.

2. Briefly stated, the facts giving rise to the filing of the present petition are that on 01.11.2019 ASI Bhag Singh, along with ASI Lakhwinder Singh, HC Surjit Singh, HC Prem Chand and Constable Beant Singh, was present at Badala T-point in the course of patrolling duty. Secret information was received that Parshant Rawat owner of Friends *Dhaba* situated in front of Sky Lark Enclave is supplying the glass of water and chicken in front of his *Dhaba* in a car bearing registration No.PB-04-R-6860 in which Lachman Dass and his friend Kiran were sitting. All the three persons were teasing and abusing the

passersby with vulgar comments. *Ruqa* (written communication) was sent by ASI Bhag Singh to SHO Police Station City Kharar on the basis of which FIR in question was registered.

3. The petitioners have filed the present petition for quashing of the above said FIR on the grounds that all the offences are non-cognizable and the police has no power to investigate the same and, therefore, the FIR and all subsequent proceedings arising therefrom may be quashed.

4. Notice of the petition was given to learned State counsel who, on instructions from ASI Bhag Singh, has conceded that all the offences in respect of which the above said FIR was registered are non-cognizable.

5. I have heard learned counsel for the petitioners and learned State counsel and gone through the record.

6. Present FIR was registered in respect of Section 68 of the Punjab Excise Act, 1914 and Sections 290 and 510 of the IPC and it will be apposite to reproduce the same for convenience of reference.

7. Section 68 of the Punjab Excise Act, 1914, which provides penalty for offences not otherwise provided for, reads as under:-

“68. Penalty for offences not otherwise provided for.-- Whoever is guilty of any act or intentional omission in contravention of any of the provisions of this Act, or of any rule, notification or order made, issued or given thereunder, and not otherwise provided for in this Act, shall be punishable for every such act or omission with a fine which may extend to five thousand rupees.”

8. Section 290 of the IPC prescribes punishment for public nuisance in cases not otherwise provided for and the same reads as under:-

“290. Punishment for public nuisance in cases not otherwise provided for.- *Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.”*

9. Section 510 of the IPC, which penalises misconduct in public by a drunken person, provides as under:-

“510. Misconduct in public by a drunken person.- *Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.”*

10. Section 75(1)(b) of the Punjab Excise Act, 1914 provides that no Judicial Magistrate shall take cognizance of an offence punishable under Section 68 of the Punjab Excise Act, 1914 except on the complaint or report of the Collector or an Excise Officer authorized by him in that behalf. In the first schedule to the Cr.P.C. offence punishable with imprisonment for less than 3 years or with fine is classified as non-cognizable. Since offence under Section 68 of the Punjab Excise Act, 1914 is punishable with fine which may extent upto five thousand rupees, the same falls in the category of non-cognizable offence. As per the first schedule to the Cr.P.C. offences punishable under Sections 290 and 510 of the IPC are classified as non-cognizable.

11. Section 154 (1) of the Cr.P.C., which provides for recording of information regarding commission of a cognizable offence by the police, commonly known as First Information Report, reads as under:-

“154(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to

writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:

Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB, section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that—

- (a) in the event that the person against whom an offence under 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB, section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;*
- (b) the recording of such information shall be videographed;*
- (c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.”*

12. Section 155 of the Cr.P.C., which provides for recording of information as to non-cognizable cases and investigation of such cases, reads as under:-

“155. Information as to non-cognizable cases and investigation of such cases.-(1) When information is given to an offence in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by

such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.”

13. Since the offences under Section 68 of the Punjab Excise Act, 1914 and Sections 290 and 510 of the IPC are non-cognizable, no FIR could be registered in respect thereof. On the other hand, the police was required to record DDR in respect of the same and the police could not investigate the above-said offences without obtaining order from the Judicial Magistrate 1st Class having jurisdiction on complaint of the specified officer.

14. In these facts and circumstances of the case, FIR and all subsequent proceedings if any arising therefrom constitute abuse of process and are liable to be quashed.

15. In view of the above discussion, the petition is allowed and FIR No.251 dated 01.11.2019 registered under Section 68 of the Punjab Excise Act, 1914 and Sections 290 and 510 of the IPC at Police Station City Kharar, District S.A.S. Nagar is quashed along with all subsequent proceedings arising therefrom.

26.02.2020

Vinay

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No