

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 08.01.2020

1. CRM-M-6976-2014 (O&M)
Sajjan Pal Kataria and another .. Petitioners
Vs.
State of Haryana ..Respondent
2. CRM-M-26728-2015 (O&M)
Devinder Siwach .. Petitioner
Vs.
State of Haryana ..Respondent
3. CRM-M-31126-2013 (O&M)
Veerbhan .. Petitioner
Vs.
State of Haryana ..Respondent
4. CRM-M-37384-2013 (O&M)
Ram Kishan Sangwan .. Petitioner
Vs.
State of Haryana ..Respondent
AND
5. CRM-M-43550-2013 (O&M)
Rajesh Sharma .. Petitioner
Vs.
State of Haryana ..Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Lakhwinder Singh Sidhu, Advocate for the petitioner(s)
in CRM-M-6976-2014, CRM-M-26728-2015,
CRM-M-31126-2013 and CRM-M-37384-2013.

Mr. P.S. Hundal, Sr. Advocate with
Mr. S.K. Bhardwaj, Advocate
for the petitioner in CRM-M-43550-2013.

Ms. Tanushree Gupta, DAG, Haryana.

.....

Manoj Bajaj, J.

CRM-10-2017 in
CRM-M-43550-2013

Application is allowed, subject to all just exceptions.

Annexures P-19 and P-20 (colly) are taken on record.

CRM-M-6976-2014 (O&M) and connected matters.

This order will dispose off the above petitions filed by petitioners/accused Sajjan Pal Kataria, Devinder Singh, Devinder Siwach, Veerbhan, Ram Kishan Sangwan and Rajesh Sharma for quashing of common impugned FIR No.12 dated 02.08.2005, under Sections 409/420/467/468/471/120-B IPC, registered at Police Station SVB(H), Hisar (Annexure P-6), as well as the final report dated 01.05.2012 filed under Section 173 Cr.P.C. (Annexure P-7). However, the facts are extracted from CRM-M-6976-2014.

The FIR in question was registered after holding an enquiry by Director State Vigilance Bureau, Haryana on a complaint wherein allegations were levelled against the accused persons (petitioners) and others for embezzlement committed while executing various works for the Panchayat Department. The enquiry No.1 dated 04.01.2002 found sufficient evidence and, therefore, through memo No.9817/I-4/SVB(H) dated 07.07.2005, it recommended the registration of the FIR in respect of the allegations No.1, 2, 5, 7, 8 and 9. After registration of the FIR, the investigation was carried out and the final report under Section 173 Cr.P.C. was filed before the Court of competent jurisdiction at Bhiwani.

During the course of hearing, learned Senior counsel appearing on behalf of the petitioners in CRM-10-2017 in CRM-M-43550-2013 has invited the attention of the Court to Annexures P-19 and P-20 (colly) i.e. the statements of three witnesses under Section 161 Cr.P.C. To a pointed query put by the Court, it is not disputed by him that the complete final report under Section 173 Cr.P.C is not on record of this case. He has made a prayer to the Court to ask for the relevant documents from the State counsel, who is assisted by the concerned official. It is further not disputed that the

final report submitted under Section 173 Cr.P.C. is yet to be considered by the Court of competent jurisdiction.

At this stage, this Court is of the opinion that the petitions are not only founded on the disputed facts as is evident from the perusal of the FIR, but at the same time, the statements and other documents collected after investigation have not been placed on record with any of the above petitions, and therefore, this Court is not inclined to invoke the inherent powers under Section 482 Cr.P.C.

Even otherwise, in view of the judgment of the Hon'ble Supreme Court delivered in “***Dharmatma Singh Vs. Harinder Singh and others***”, 2011(3) R.C.R. (Criminal) 38, the power under Sections 482 Cr.P.C. cannot be exercised in regard to matters specifically covered by the other provisions of the Code, which includes the stage where the Magistrate has not applied his mind under Section 190 Cr.P.C. to the merits of the report filed under Section 173 Cr.P.C. The relevant para of the judgment reads as under:

“Section 482 of the Cr.P.C. 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 120-B 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..."

As we have found in the present case that learned Magistrate had not applied his mind to the merits of the reports filed under Section 173 Cr.P.C., we are of the considered opinion that the exercise of power by the High Court under Section 482 Cr.P.C., was at an interlocutory stage and was not warranted in the facts of this case."

In view of the above, this Court is of the opinion that the final report is yet to be considered by the Magistrate and, therefore, it would not be appropriate for this Court to exercise the inherent powers for quashing of the FIR (Annexure P-6) and the final report (Annexure P-7).

The petitions are dismissed. However, it is made clear that the issues raised in the present petitions can be raised by the petitioners before the Court below at the stage of consideration the final report under Section 173 Cr.P.C.

08.01.2020
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No