

CRR-3100-2013(O&M) &
CRM-M-26579-2013(O&M)

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

(1)

CRR-3100-2013(O&M)

Phool Singh and another

...Petitioners

Versus

The State of Haryana and another

...Respondents

(2)

CRM-M-26579-2013(O&M)

Phool Singh and another

...Petitioners

Versus

The State of Haryana and another

...Respondents

Date of decision:13.2.2020

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Ashish Aggarwal, Sr. Advocate with
Ms.Malika Aggarwal, Advocate for the
petitioners in both cases.

Ms.Harpreet Kaur, AAG, Haryana.

Mr.Parminder Singh, Advocate
for respondent No.2 in both cases.

H.S. MADAAN, J.

Vide this order, I propose to dispose of CRR-3100-2013(O&M) and CRM-M-26579-2013(O&M) filed by petitioners Phool Singh and another.

CRM-M-26579-2013 has been filed by petitioners praying for quashing of the impugned order dated 19.7.2013 passed by Judicial Magistrate Ist Class, Karnal vide which he had declined to accept the cancellation report at that stage, took cognizance of the offence mentioned in the complaint filed by Gian Singh and directed complainant Gian Singh to appear along with other witnesses to give preliminary evidence in the Court.

Whereas CRR-3100-2013 is directed against the judgment dated 19.7.2013 passed by the Court of Judicial Magistrate Ist Class, Karnal vide which accused Gian Singh was acquitted of the charge for the offence under Section 182 IPC.

Briefly stated, facts of the case are that a calender (calandra) under Section 182 IPC was submitted by the police of Police Station Butana against accused Gian Singh on the allegations that a complaint under Section 156(3) Cr.P.C., which was submitted by Gian Singh had been received by the police for getting a case registered and investigated alleging therein that Gian Singh was a co-sharer with his brothers, namely, Phool Singh and Dalel Singh in the land measuring 14 kanals 9 marlas; in the family settlement Gian Singh was given share by allotting him land comprised in killa No.13/2 (6-9), whereas land bearing killa No.18(8-0) fell to the share of his other brothers; Phool Singh and Dalel

Singh got a civil decree passed in their favour with regard to share of Gian Singh by producing some other person in his place without his knowledge and thereafter got mutation with regard to the said land sanctioned in their favour; Gian Singh tried his level best to resolve the matter with his brothers but to no effect, therefore, he filed criminal complaint in question.

During the course of investigation police collected the evidence including signatures of Gian Singh and thereafter documents were sent to FSL, Karnal and report therefrom was received. The opinion of Legal Advisor was taken and then a cancellation report was prepared and sent to the Court. Notice of the cancellation report was given to the complainant, who in turn lodged his dissatisfaction. Therefore, the matter was sent to the police for further investigation. However, the police filed calender against Gian Singh. Along with the calender, the police had also filed cancellation report with regard to the FIR in question for the second time.

Firstly taking up Calender under Section 182 IPC.

After completion of the provisions of Section 207 Cr.P.C., finding a prima facie case charge for the offence under Section 182 IPC, accused Gian Singh was charge-sheeted, to which he pleaded not guilty and claimed trial.

The prosecution had examined in as many as four witnesses, namely, PW1 ASI Dharampal, PW2 Jagdish Singh, Inspector (Retd.), PW3 Phool Singh and PW4 Mahinder Singh, DSP (Retd.).

With that the prosecution evidence stood closed.

Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to him but he denied the allegations and pleaded false implication.

Accused did not lead evidence in defence.

After hearing arguments, learned Judicial Magistrate Ist Class, Karnal acquitted the accused of the charge framed against him. The reasons given for arriving at such conclusion were as follows:

- (i) During the investigation of the case in FIR No.504 dated 5.10.2005, the police had taken the specimen signatures of Gian Singh on 12.12.2005 for getting the same compared with the signatures allegedly appended by Gian Singh on the papers of the Civil Suit No.88 of 1987 titled as 'Phool Singh and others Versus Gian Singh', which was decreed on 17.3.1987 but those specimen signatures were not sent to FSL, Madhuban for getting the same compared with the questioned signatures.
- (ii) The police sent some other documents alleged to have been signed by accused Gian Singh for getting the same compared with questioned signatures on the papers in the said suit, which fact was verified from the report of FSL, wherein it is clearly mentioned that red enclosed admitted signature Mark A1 to A17 were stated to be of Gian Singh, which means that some other documents were procured by the police, which were sent to FSL by stating that those documents were also signed by accused Gian Singh despite the fact that police itself took the specimen signatures on 12.12.2005. The

fact of non-sending of specimen signatures taken by the police itself on 12.12.2005 to FSL, Madhuban for getting the same compared with the questioned signature on the papers attached in the aforesaid civil suit is suicidal for the prosecution case. This fact itself shows that the specimen signatures were not sent to the FSL, Madhuban by the police only with only one motive to falsely implicate the accused Gian Singh under Section 182 IPC for giving false information to the police despite the fact that it was duty of the police to investigate the matter, which had been sent to it by Illaqa Magistrate under Section 156(3) Cr.P.C.

(iii) It has come in the cross-examination of PW1 Dharam Pal, ASI, the Investigating Officer of the case that he had taken the specimen signatures of the plaintiff Ex.PW1/B but did not send the specimen signature sheet Ex.PW1/B to FSL, Madhuban. As admitted by PW1 Dharam Pal, he did not involve expert Ram Dhan Babbar in the investigation, which was filed by accused Gian Singh (complainant in the complaint case) in criminal complaint against his brother.

(iv) The accused had also filed one document Ex.D1 in his defence, which is the deposition sheet of Sh. Harsh Vardhan, Assistant Director (Document), FSL, Haryana in the civil suit titled "Gian Singh Versus Phool Singh, in which it is admitted by the said witness that the specimen signatures of the accused Gian Singh, (complainant in the complaint) were not supplied to him by the police for comparing the same with the questioned documents. It

was also admitted by the witness that he had not given any concrete opinion in the FSL Report prepared by FSL, Madhuban, so there was no cogent evidence/reasons on behalf of the prosecution showing the non-requirement of sending the specimen signature sheet to the FSL, Madhuban. A bare perusal of specimen signature sheet Ex.PW1/B and the documents which were sent by the police to the FSL, Madhuban, goes to show that specimen signatures on the sheet Ex.PW1/B and the signature on other documents including the documents of Civil Suit No.88 of 1987 could be held to be by the same person. Therefore, it is beyond comprehension that why the police did not send Ex.PW1/B to FSL, Madhuban despite the fact that the same were taken by it from accused Gian Singh, who was complainant in the complaint case on 12.12.2005.

(v) The FSL had given its report without expressing the conclusive opinion which is sine qua non for every expert and the non-examination of other expert i.e. Ram Dhan Babbar by the police during the investigation is also prejudicial to the prosecution version.

(vi) As per law, the Calandra under Section 182 IPC can only be filed within a period of one year after the filing of the cancellation report as per the provision of Section 468 and 469 IPC. Whereas in the present case the cancellation report was filed on 24.2.2007, whereas the Calender was filed on 28.9.2009, which shows that calender is not tenable in the eyes of law as per Sections 468 and 469 IPC. The judgment of this Court *Gianni Versus State of Punjab, 2009(2)*

RCR(Criminal) had been quoted wherein it was held that filing of any calender under Section 182 Cr.P.C. after a gap of one year from the filing of cancellation report does not stand by the touchstone of legality. It also come to the notice that the police during investigation had collected some document alleged to have been signed by the accused Gian Singh from Sambhi Cooperative Credit and Service Society Ltd., Sambhi in which brother of accused namely Phool Singh had remained Inspector of the Circle, under which approximately 17-18 societies come.

While acquitting the accused for the offence under Section 182 IPC, it was observed that the cancellation report filed with respect to FIR No.504 dated 5.10.2005, under Sections 419, 420, 467, 468, 471 IPC, Police Station Civil Lines, Karnal would be dealt with separately in accordance with law.

I find that law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse. Merely because another view in the matter is possible, no inference with such judgment is to be done.

In view of the above, I find no illegality or infirmity in the judgment passed by the Court below, the same is upheld and CRR-3100-2013 is found to be without any merit and is dismissed accordingly.

Now coming to CRM-M-26579-2013 filed by the petitioners.

It needs to be mentioned here that Gian Singh had filed a

complaint under Sections 419, 420, 465, 467, 468 and 471 IPC against his real brothers Phool Singh and Dalel Singh, both residents of village Sambhi, Tehsil Nilokheri, District Karnal.

Learned counsel for the petitioners has contended that after the cancellation report had been accepted by the Court, there was no occasion for the Illaqa Magistrate to take cognizance of the matter and the order passed in that regard is wrong.

Whereas learned counsel appearing for the complainant has contended that the cancellation report has been filed in the Court, which was sent back for further investigation. The local police returned the report as such along with calender under Section 182 IPC, which was wrong on its part. That cancellation report was not accepted by the Court and rather after taking the cognizance asked the complainant to lead evidence in the matter. Since the Court has not yet summoned the accused, therefore petition so filed is not maintainable being pre mature and deserves to be dismissed.

After hearing the rival contentions, I find that as it comes out cancellation report dated 18.1.2006 had been filed in the Court but learned Magistrate did not agree with it and returned it to the investigating agency for further investigation. When it was filed again along with the calender under Section 182 IPC, the learned Magistrate had rightly commented upon the same adversely stating that the two reports should have filed separately and went on to pass two separate orders with regard to calender under Section 182 IPC and cancellation report. There is nothing on record to show that cancellation report had been accepted. Thus the argument

advanced by learned counsel for the petitioners is not supported by the record.

Another contention put forward has been that the civil litigation with regard to this very controversy has ended in favour of the petitioners side. May it be so, but that by itself does not help the petitioners side much. Admittedly the Magistrate has not summoned the accused to face trial. He has simply taken the cognizance asking the complainant to produce his evidence. He could very well do so in accordance with law and no fault can be found with his such approach. After the complainant produces the evidence available with him, learned Magistrate may or may not summon the accused at all. If the accused are summoned, they have got remedy of challenging that order by way of filing a revision petition before the Court of Sessions or/and filing appropriate application (s) in the trial Court itself.

As regards the authorities i.e. Niranjan Singh Versus State of Punjab, 2003(2)RCR(Criminal)843, Harvail Singh Saini Versus State of Punjab and another, 2015(3) RCR(Criminal)198, Minu Kumari and another Versus State of Bihar and Ors., 2006(3) RCR(Criminal)271 and Dharmatma Singh Versus Harminster Singh and others, 2011 AIR(SC) 2094 referred to by learned counsel for the petitioners, those do not find application to the present case due to different facts and circumstances and the context in which such observations have been made.

In Niranjan Singh Versus State of Punjab (supra), the cancellation report filed by the police had not been accepted simply for

the reason that complainant did not want it and the summoning order by Magistrate was quashed and Magistrate was directed to pass speaking order.

In this case, the Magistrate has simply taken cognizance of the offence directing the complainant to appear and produce evidence. The accused have not been summoned so far. The order passed by the Magistrate is quite detailed and speaking.

As regards the next authority i.e. **Harvail Singh Saini Versus State of Punjab and another**(supra), the cancellation report in that case had been rejected simply on the ground that the complainant was not agreeing with it. Here the situation is not so.

In the next authority i.e. **Minu Kumari and anr. Versus State of Bihar and ors.**(supra), it was observed that when report forwarded by the police to Magistrate that no case made out against the accused, the Magistrate can ignore the conclusion arrived at by IO and can independently apply his mind to the facts and take cognizance by exercising powers under Section 190(1)(b) Cr.P.C. and that Magistrate is not bound to follow the procedure under Sections 200 and 202 Cr.P.C. for taking cognizance under Section 190 (1)(a) Cr.P.C. This judgment also does not help the case of the petitioners in any manner. Though the observations support the case of respondent.

For the similar reason, judgment **Dharmatma Singh Versus Harminder Singh and others** (supra) also does not come to rescue the case of the petitioners.

On the other hand, learned counsel for respondent No.2 has

relied upon judgment **Abhinandan Jha and others Versus Dinesh Mishra, 1968 AIR (SC) 117**, wherein in para No.15 it has been observed as under:

15. Then the question is, what is the position, when the Magistrate is dealing with a report submitted by the police, under Section 173, that no case is made out for sending up an accused for trial, which report, as we have already indicated, is called, in the area in question, as a 'final report'? Even in those cases, if the Magistrate agrees with the said report, he may accept the final report and close the proceedings. But there may be instances when the Magistrate may take the view, on a consideration of the final report, that the opinion formed by the police is not based on a full and complete investigation, in which case in our opinion the Magistrate will have ample jurisdiction to give directions to the police, under Section 156(3), to make a further investigation. That is, the Magistrate feels, after considering the final report, that the investigation is unsatisfactory, or incomplete, or that there is scope for further investigation, it will be open to the Magistrate to decline to accept the final report and direct the police to make further investigation, under Section 156(3). The police, after such further investigation, may submit a charge-sheet, or, again submit a final report, depending upon the further investigation made by them. If, ultimately, the Magistrate forms the opinion that the facts, set out in the final report, constitute an offence, he can take cognizance of the offence under Section 190(1) (b), notwithstanding the contrary

opinion of the police, expressed in the final report.

Section 482 Cr.P.C. deals with inherent powers of the High Court providing that nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

Thus, finding no merit in CRM-M-26579-2013, the same also stands dismissed.

Since the main CRR-3100-2013 and CRM-M-26579-2013 have been dismissed, the miscellaneous application, if any, stands disposed of accordingly.

13.2.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No