

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

**CRM-M-25990-2020 (O&M)**  
**Date of decision: 03.09.2020**

Navneet Kumar

...Petitioner

Versus

State of Haryana and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present:- Mr. Ravinder Malik, Advocate for the petitioner.

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**HARNARESH SINGH GILL, J. (ORAL)**

Case is taken up for hearing through video conferencing.

Prayer in the present petition filed under Section 482 Cr.P.C. is for quashing the FIR No. 103 dated 09.03.2020 registered under Sections 406 and 420 IPC at Police Station Ladwa, District Kurukshetra, along with all consequential proceedings arising therefrom.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. He further submits that respondent No. 2-complainant had borrowed a sum of Rs. 15 lacs from the petitioner and in order to discharge his above liability, he had issued a cheque bearing No. 632915 dated 09.01.2020 in favour of the petitioner. On presentation of the cheque, the same was dishonored with the remarks "funds insufficient". Thereafter, despite issuance of a legal notice to respondent No. 2-complainant, neither the amount was returned nor any reply to the legal

notice was given. This led to the filing of a complaint by the petitioner under Section 138/142 of Negotiable Instruments Act against the respondent No. 2-complainant on 10.02.2020, wherein the complainant has already been summoned by the learned trial Magistrate, vide order dated 11.02.2020.

It is further submitted that as a counter-blast the complainant got the FIR registered on 09.03.2020. This fact clearly shows that the FIR registered by the complainant is totally false and has been got registered with a view to avoiding his liability of returning the due amount towards the petitioner.

Notice of motion.

On the asking of this Court, Mr. Ramesh Kumar Ambavta, AAG Haryana, accepts notice on behalf of the respondent-State.

At this stage, Mr. Narender Pal Bhardwaj, Advocate, appears and files vakalatnama on behalf of respondent No. 2-complainant through email. The same is taken on record. While refuting the aforesaid allegations, he submits that cheque regarding which proceedings under the Negotiable Instruments Act have been initiated by the petitioner, had been misplaced by the complainant and an intimation in this regard was given to the concerned Bank. He thus, submits that there is no legal liability in discharge of which the alleged cheque could have been issued by the complainant. Moreover, the amount of Rs. 15 lacs is a huge amount and no person of an ordinary prudence would lend such a huge amount without there being any justified cause and any witness to such transaction, especially when the petitioner is a commission agent.

I have heard the learned counsel for the parties.

The prayer made by the petitioner is for quashing of the FIR and all consequential proceedings arising therefrom.

Very recently, in Vinubhai Haribhai Malaviya and Ors. Vs. The State of Gujarat and Anr., 2019 AIR (SC) 5233, the Hon'ble Supreme Court, while delineating in details the power of the Magistrate under Section 156(3) Cr.P.C., has held that such power of the Magistrate also includes the power to order a fair and proper investigation at the pre-cognizance stage and even after a charge sheet or a closure report is submitted. It was held as under:-

*“23. It is thus clear that the Magistrate’s power under Section 156(3) of the Cr.P.C. is very wide, for it is this judicial authority that must be satisfied that a proper investigation by the police takes place. To ensure that a “proper investigation” takes place in the sense of a fair and just investigation by the police - which such Magistrate is to supervise -*

*Article 21 of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him under Section 173(2); and which power would continue to enure in such Magistrate at all stages of the criminal proceedings until the trial itself commences. Indeed, even textually, the “investigation” referred to in Section 156(1) of the Cr.P.C. would, as per the definition of “investigation” under Section 2(h), include all proceedings for collection of evidence conducted by a police officer; which would undoubtedly include proceedings by way of further investigation under Section 173(8) of the Cr.P.C.”*

Still further, it has been held that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of

course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed and such power of the Magistrate would be available at all stages of the progress of a criminal case before the trial actually commences. It has further been held that in appropriate cases this power can be exercised suo-motu by the Magistrate himself, depending on the facts of each case and whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law.

The relevant extracts from the judgment would read as under:-

*“38. There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri (supra), Samaj Parivartan Samudaya (supra), Vinay Tyagi (supra), and Hardeep Singh (supra); Hardeep Singh (supra) having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further*

*investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h), and Section 173(8) of the Cr.P.C., as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo-motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in Hasanbhai Valibhai Qureshi (supra). Therefore, to the extent that the judgments in Amrutbhai Shambubhai Patel (supra), Athul Rao (supra) and Bikash Ranjan Rout (supra) have held to the contrary, they stand overruled. Needless to add, Randhir Singh Rana v. State (Delhi Administration), (1997) 1 SCC 361 and Reeta Nag v. State of West Bengal and Ors., (2009) 9 SCC 129, also stand overruled.”*

In view of the aforesaid judgment of the Hon'ble Apex Court, this Court is not inclined to grant the prayer of the petitioner made in the the present petition.

Faced with such a situation, learned counsel for the petitioner submits that he would be satisfied if the petitioner is granted liberty to

approach the Magistrate concerned and move an appropriate application by raising all the pleas, as raised in the present petition.

Keeping in view the above, this petition is disposed of with a liberty to the petitioner to approach the Magistrate concerned and move an application by raising all the pleas, as raised in the present petition. On his doing so, the Magistrate concerned will decide such application after taking into consideration the pleas raised therein by the petitioner, in accordance with law, within a stipulated period.

(HARNARESH SINGH GILL)  
JUDGE

03.09.2020  
*Mangal Singh*

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| Whether reasoned/speaking? | Yes/No |
| Whether reportable?        | Yes/No |