

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Decided on: 26.11.2020
Civil Writ Petition No.16659 of 2020

Dr. Mohit Dhawan

....Petitioner

Versus

U.T. Chandigarh & others

.....Respondents

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CORAM: HON'BLE MR. JUSTICE SANT PARKASH

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Present:- Mr. Randeep Singh Surjewala, Senior Advocate, with Mr. H.S. Lalli, Advocate, for the petitioner.

Mr. Charanjit Singh Bakhshi, Additional Public Prosecutor, for respondent Nos.1 to 3.

Ms. Ambika Bedi, Assistant Advocate General, Punjab, for respondent No.4.

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Sant Parkash, J

On 01.09.2020, the following order was passed by this Court, elaborating the facts as well as contentions of learned counsel for the parties:-

“The instant petition has been preferred under Article 226/227 of the Constitution of India, for issuance of a writ in the nature of certiorari, for transfer of investigation in case FIR No.0075 dated 21.09.2020 under Sections 419, 420 IPC, registered at Police Station, Sector 19, Chandigarh, outside the jurisdiction of Chandigarh Police or any other competent agency.

Learned counsel for the petitioner submits that petitioner is a Post Graduate Dentist (MDS) by profession in the field of Prosthodontics and Implantology from Pt. B.D. Sharma University of Health Sciences, Rohtak. The petitioner is practicing under the name and style of ‘Avance Dental Care’ in

Chandigarh and is a privileged member of International Team for Implantology (IT) with several awards and recognitions to his credit.

Learned counsel submits that the petitioner is a victim of malice, vendetta and extortion, unleashed by Rakesh Asthana, former Special Director, CBI, at the instance of his close associate Ms. Gertrude D'Souza.

Learned counsel further contends that on 30.06.2017, Ms. Gertrude D'Souza, resident of 195, Walnut Hill Road, Bethel, CT 06801, USA contracted the petitioner's clinic via E-mail showing interest in getting dental implants/treatment estimates. Pursuant to reply to the e-mail, Ms. Gertrude D'Souza arrived in Delhi on 09.08.2007 (SIC 09.08.2017) alongwith another patient Ms. Laura Glowacki and was operated on 12.08.2017 for dental implants. On 13.08.2017, the complainant evaded the payment for treatment by mentioning her strong alliance, association and close family relation with Rakesh Ashana, the then Special Director of CBI. However, she gave two cheques on 16.08.2017; one amounting to ₹ 7,13,437/- out of ₹ 8,28,437/-; another for amount of ₹ 6,13,423/- on behalf of Ms. Laura Glowacki, out of total amount of ₹ 6,58,273/-.

On 30.10.2017, petitioner was taken to the office of DSP € Satish Kumar at Police Station, Sector 26, Chandigarh and was asked to pay ₹ 50 lac to settle the dispute with complainant, without there being any deficiency of service of any kind on the part of petitioner. The petitioner was served summon/notices on 08.11.2017, 02.01.2018, 07.02.2018 and 12.03.2018 to join investigation without there being any FIR against him.

On 30.01.2018, Ms. Gertrude D'Souza sent an e-mail to CBI and police authorities of Chandigarh insisting upon getting a payment of at least ₹ 5 lac from the petitioner. On 19.02.2018, complainant filed another complaint by email, addressed to Inspector General of Police, Chandigarh at the official email address of the then IGP, Tajinder Luthra, ip-

chd@nic.in and Raksh Asthana, the then Director, CBI, at his official email, spl.dir@ci.gov.in.

Learned counsel contends that on 19.03.2018, a false and frivolous FIR (No.0076 under Sections 420, 467, 468, 471 IPC, Police Station, Sector 19, Chandigarh) was registered against the petitioner at the instance of Ms. Gertrude D'Zouza, based upon complaint dated 29.01.2018.

The petitioner filed a complaint bearing No.73 dated 17.10.2018 before the 'Police Complaints Authority, U.T. Chandigarh' headed by Justice M.S. Chauhan (Retd.), bringing out the illegitimate acts and undue pressure being put at the instance of Rakesh Asthana and CBI officials, for extorting money from the petitioner. The aforesaid Authority issued an order dated 18.12.2019 directing the police authorities to produce complaints dated 31.10.2017, 08.02.2018 and 19.02.2018 alongwith inquiry report and other documents but the police authorities refused to produce the same. Accordingly, the matter was referred to Administrator, UT, Chandigarh vide order dated 21.01.2020. Finally, Justice M.S. Chauhan (Retd.) resigned as Chairman of Police Complaints Authority, Union Territory, Chandigarh on 04.03.2020.

Learned counsel contends that petitioner filed another complaint dated 18.09.2019 to SSP Chandigarh for harassment, extortion, fabrication of documents, corruption and serious abuse of official position. The petitioner also filed a petition under Section 156 (3) Cr.P.C. in the court of Judicial Magistrate First Class, Chandigarh on 01.11.2019, against SSP, SHO, Police Station, Sector 19, Chandigarh, for lodging an FIR and investigate the allegations raised by the petitioner. The said court vide its order dated 25.11.2019 directed the police to file status report which was filed on 30.01.2020.

According to learned counsel for the petitioner, the complaint on the basis of which present case bearing FIR No.75 dated 21.09.2020 has been registered, was earlier ordered to be filed as per the order of the competent authority,

and registration of the instant FIR on that complaint is nothing but a gross abuse of the process of law.

Learned counsel has further urged that when the grievance of the petitioner was not redressed, and feeling frustrated and anguished, he moved complaints to various authorities bringing out unfair, unjust, arbitrary and unlawful acts of the respondents. The registration of the present FIR is a counterblast to his complaint(s) with a view to compel and pressurize the petitioner to withdraw those complaints.

Shri Charanjit Singh Bakhshi, Additional Public Prosecutor, on behalf of respondent Nos.1 to 3 has vehemently argued that the present petitioner while concealing the material facts and without waiting for the decision on his application for seeking the blanket interim bail, and further without waiting for the order on his application for transfer of the case from the court of Shri Rajesh Sharma, Additional District & Sessions Judge, Chandigarh to some other court, has approached this Court under Article 226/227 of the Constitution. It is nextly contended that since the petitioner has not come before this Court with clean hands, the petition deserves to be dismissed at the very outset.

It is further contended by him that all the allegations levelled in the present petition pertains to FIR No.78 of 2018 and the present FIR is the result of threadbare investigation. Taking serious note of the allegations levelled in the petition, it is submitted that the matter is being investigated in a fair and just manner, and there is no need for transfer of the same.”

Thereafter, the case was adjourned to 26.10.2020 with a direction to the respondents for not initiating any coercive steps in the present FIR No.75 dated 21.09.2020.

Pursuant to the order, written submissions dated 30.10.2020 have been filed on behalf of respondent Nos.1 to 3, in counter of which, replication has also been filed by the petitioner.

Heard learned counsel for the parties and record perused.

Respondents have denied that the petitioner is a victim of any malice, vendetta and extortion unleashed by any police official, earlier working in CBI or in the Chandigarh Police. It is revealed that Rakesh Ashtana, IPS, never remained posted at Chandigarh and Tajinder Luthra was transferred to Delhi as back as in June 2018, thus, there is no question of these high ranking officers to undue influence the Chandigarh Police. Moreover, the petitioner has not substantiated the allegation of giving threats and harming him in any manner by any police official or any one else.

A perusal of reply/written submissions on behalf of the respondents reveals that the petitioner has attached only one complaint (Annexure P-15) in which he has, for the first time, named the police officials which is dated 18.09.2019. It is noteworthy that this complaint pertains to a subject matter which is related with FIR No.76 dated 19.03.2018 under Sections 420, 467, 468, 471 IPC, registered at Police Station, Sector-19, Chandigarh (Annexure P-7). The complaint, Annexure P-15, was investigated under the cover of FIR No.76 dated 19.03.2018 and the allegations levelled in Annexure P-15 were found to be false. This fact has specifically been mentioned in the challan filed by the Chandigarh police before the trial court in FIR No.76 dated 19.03.2018. A copy of the said report under Section 173 (2) Cr.P.C. is attached herewith as Annexure R-5.

It would be essential to mention here that the first complaint received by the Chandigarh police by the complainant in FIR No.76 dated 19.03.2018 under Sections 420, 467, 468, 471 IPC at Police Station Sector 19, Chandigarh, was on 31.10.2017 at Complaint Tracking System. As a

counterblast, the petitioner made a complaint against the complainant in the said FIR which is dated 07.02.2018 bearing Reference No.PW201801989 attached herewith as Annexure R-6. A perusal of this complaint reveals that the petitioner has levelled allegations that the complainant in FIR No.76 dated 19.03.2018 and her husband have personal relations with DIG as well as some DSPs of Chandigarh Police and CBI personnels. The petitioner has also stated that on 06.02.2018, the complainant in FIR No.76 dated 19.03.2018 had telephonically threatened him that in case the treatment amount given by her is not refunded, then, she would harass the petitioner. This complaint was investigated but the petitioner failed to provide any telephone number from which the threat was issued to him and this fact is also recorded in the Challan filed in FIR No.76 dated 19.03.2018 under Section 420, 467, 468, 471 IPC, at Police Station Sector 19, Chandigarh. The relevant extract from the said challan is reproduced hereunder:

“25. The accused Dr. Mohit Dhawan had also filed complaints bearing reference number PW201918352, PW201801989, PW201916182, PW201817362, etc. In these complaints, the accused Dr. Mohit Dhawan had levelled allegations against the present complainant, her husband, Abdul Mannan, Sh. Sushil Kumar, some police officials and others. These complaints have been thoroughly investigated/enquired and no truth has been found therein. Accordingly, these complaints have been filed since they are dehors any truth.”

The petitioner has not supplied any email or communication prior to the complaint filed by the complainant in FIR No.76 dated 19.03.2018 to the effect that any demand was ever made by the petitioner for seeking payment of any balance amount. The petitioner has deliberately

concealed the other complaints filed by him against the complainant in FIR No.76 dated 19.03.2018. He made as many as four complaints. While Complaint bearing No.PW201918352 is on record as Annexure P-15, copies of the remaining complaints bearing reference numbers PW201817362 and PW201916182 are attached as Annexure R-7 and Annexure R-8. A perusal of both these complaints would reveal that he had nowhere named any senior police official or his/their role in allegedly threatening him or manuevring the investigation of FIR No.76 dated 19.03.2018. Both these complaints had been investigated and were found to be false and this fact has also been specifically recorded in the challan filed in FIR No.76 dated 19.03.2018 (Annexure R-5).

As regards the association, alliance and close family relations of the complainant in FIR No.76 dated 1903.2018 with a senior police officer who was the then Special Director of CBI, it appears to the Court that all the allegations are mere assumption and not substantiated by any material on record. The petitioner has drawn attention of the Court towards two e-mails addressed to Ram Gopal Garg, the then ACB, CBI, Chandigarh (rggarg@yahoo.com) and the copy of the same was addressed to head of CBI at Chandigarh on official email address – hobacchg@cbi.gov.in as well as to Tajinder Ludhra, the then IGP and Rakesh Asthana on email address spl.dir@gov.in. These documents by any stretch of imagination, cannot be said to be any connecting evidence substantiating the close family relations or influence of the Special Director, CBI in the investigation conducted by the police. The petitioner has also failed to mention the role of any police official in hampering with the fair investigation conducted in the aforesaid FIR or any role of any police official in lodging FIR No.75 dated

21.09.2020 under Sections 419, 420 IPC at Police Station, Sector 19, Chandigarh.

As regards, the alleged proximity of a senior police official and his wife with the complainant in FIR No.76 dated 19.03.2018, the same have not been substantiated by way of any cogent proof. Even otherwise, if a person appears in the friend list of a Facebook page of any public servant, it cannot be assumed that an official shall favour such a person in an illegal manner and maneuver investigation of a crime. It is indeed intriguing as to how the petitioner gained access to the Facebook account of this police official. Facebook accounts are privy to the account holder and the petitioner must be put to strict proof as to how has he been able to access the facebook account of a police official and where from he obtained the facebook conversations Annexures P-1 and P-2.

The high ranking police officer who has never remained posted in Chandigarh and having graduated with the husband of complainant from same university/college in the year 1982 would not necessarily lead to any inference that he was instrumental in getting the investigation conducted in a biased manner. It appears to the Court that name of this officer has been unnecessarily dragged into the litigation for ulterior motive with a view to put pressure upon the Chandigarh police to act according to petitioner's whims.

From the sequence of events, it is evident on the face of it that the petitioner wanted to return a finding in his favour since he had preferred two petitions under Section 156(3) Cr.P.C. against certain police officers and others at Chandigarh which are pending adjudication in the Court of

JMIC, Chandigarh.

On a query put by the Court, learned counsel for the petitioner has tried to establish a link between the complainants of the two FIRs. The petitioner has placed on record the transcripts of telephonic conversations and an affidavit of Alfredo Ralph Raihone (Annexure P-39) to show that the second complaint has been manipulated by complainant of previous FIR being FIR No.76 dated 19.03.2018 and thus, whole of the investigation is tainted from its inception. Even this submission is totally mis-placed and misconceived. Concededly, the telephonic conversation has been placed on record and the affidavit of Alfredo Ralph Raihone is also on the file but it cannot be assumed that the complainant of previous FIR ever influenced the complainant of present case in getting the FIR registered against the present petitioner. From the transcripts, it can be gathered that the complainant in FIR No.76 dated 19.03.2018 was narrating her tale of woes to the other co-patient who had also got dental implant done from the hospital/clinic of the petitioner. Both of them were aggrieved by the services rendered by the petitioner and feeling themselves cheated at the hands of the petitioner, they approached the police authorities in getting the matter investigated. If glanced through the entire transcription and affidavit of Alfredo Ralph Raihone, there is no connection of Mr. Asthana or any other Chandigarh police officer by name which could fortify the claim of the petitioner that the investigation was being influenced or was being conducted in a biased manner. The so-called officer, Mr. Asthana, never remained posted in Chandigarh and the other high rank officer Tajinder Luthra was transferred way back in 2018 from Chandigarh police and particularly in case of Mr. Asthana, it can be said beyond doubt that he is not even remotely connected with the affairs of Chandigarh Police.

The power of transferring an investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having a fair, honest and complete investigation, and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. Under no circumstances, should the court make any expression of its opinion on merit relating to any accusation against any individual. The aforesaid view has been taken from judgment dated 21.08, 2013 rendered by the Apex Court in **Criminal Appeal No.1167 of 2013** titled '**Prof. K.V. Rajendran vs. Superintendent of Police, CBCID South Zone, Chennai & others**'.

It is settled law that an accused does not have the right to determine the prosecuting agency of its own choice. The Hon'ble Supreme Court in the case of ***Romila Thapar v. Union of India*, (2018) 10 SCC 753**, held that the accused "*does not have a say in the matter of appointment of investigating agency*". The Hon'ble Supreme Court further held that "*the consistent view of this Court is that the accused cannot ask for changing the investigating agency or to do investigation in a particular manner including for court-monitored investigation.*"

The Hon'ble Supreme Court in the latest pronouncement, in the case of ***Arnab Goswami v. Union of India and Ors.***, Writ Petition (Crl.) No.130 of 2020, decided on May 19, 2020 (reported as **2020 AIR SC 2386**) has held that:

"38. The principle of law that emerges from the precedents of this Court is that the power to transfer an investigation must

be used “sparingly” and only “in exceptional circumstances”...

The law laid down on the subject of transfer of investigation by the Hon’ble Supreme Court is amply clear and the Court while exercising its power under Article 226 must be circumspect and exercise its power under exceptional circumstances.

Now coming to the present case as to whether exceptional circumstances exist for transferring of the investigation.

In short, the sum and substance of the allegations which have been levelled by the petitioner is that Rakesh Asthana, the then Special Director, CBI and his friend/ associate, Tajinder Luthra, the then IGP, Chandigarh have influenced the administrative authorities of U.T. Chandigarh and have got registered a false FIR i.e. FIR No.76 dated 19.03.2018 against the Petitioner at the behest of Ms. Gertrude D’ Souza, with an intention to extort money from the Petitioner.

Given the above allegations regarding registration of a false FIR No. 76 dated 19.03.2018, the petitioner has stated that another false FIR i.e. FIR No.75 dated 21.09.2020 has been registered against him and the same has also been done in connivance with Ms. Gertrude D’ Souza, Mr. Rakesh Asthana and Mr. Tajinder Luthra. In support of the said allegation, the petitioner in its replication, placed on record transcripts of Ms. Gertrude D’ Souza with other patients, to illustrate how Ms. Gertrude D’ Souza has been trying to instigate other patients to register cases against the Petitioner.

No allegation has been made against Ms. Enid Nayabundi (complainant of FIR No.75 dated 21.09.2020) and as to how this person is in any manner

connected with the either Rakesh Asthana, Tajinder Luthra or the Chandigarh Police and/or is in any manner trying to influence the investigation. The transcripts placed on record by the petitioner do not make out a case with respect to any outside influence which is being made on the police authorities or for that matter, any *mala fide* exercise of power by the police authorities. There is nothing on record to suggest that there has been any undue influence being made upon the police officials or that the police officials have been acting in excess of their powers or with any *mala fide* intention. No material has been put on record to show that there has been any bias or prejudice caused to the Petitioner.

Moreover, the petitioner, in the instant case, has sought transfer of investigation of FIR No.75 dated 21.09.2020, which has been registered after more than 2 years of registration of the FIR No.76 dated 19.03.2018. No relief has been sought regarding FIR no. 76 dated 19.03.2018 for which challan/police report under Section 173 Cr.P.C. has been filed.

While this Court has not been called upon to determine on transfer of investigation of FIR No.76 dated 19.03.2018, but due to the emphasis laid down by the petitioner about the circumstances leading to filing of the said FIR, it would be pertinent to add that the allegations which have been levelled by the petitioner against the exercise of influence by Rakesh Asthana and Tajinder Luthra for registration of FIR No.76 dated 19.03.2018, do not find favour with this Court. Sending of complaints by way of emails to the officials on their personal email IDs or having them as friends on social media do not give rise to any presumption of *mala fide*.

In light of the clear law laid down by the Hon'ble Supreme

Court and the factual circumstances, this Court does not find the present case to be a fit case for exercise of its power under Article 226.

It would not be out of place to mention that the petitioner also seeks an all-encompassing relief against registration of any FIR(s), inasmuch as it has prayed that “*directions be issued to the respondents to issue an advance notice of one week to the petitioner in case any such or similar FIR is registered against the petitioner by Chandigarh Police before arresting him.*”. The said prayer of the petitioner also deserves to be declined as he cannot be permitted to seek a blanket protection from this Court. There are alternative remedies which are available to an accused person under law and it is always open for the petitioner to avail those remedies, instead of knocking the doors of this Court under Article 226.

It is however pertinent to add that this Court is not expressing any opinion on the merits of the case.

Dismissed.

(Sant Parkash)
Judge

26.11.2020
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Whether Speaking :	Yes/No
To be reported or not :	Yes/No