

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

CRM-M-41504-2019

Date of decision: February 06, 2020

Gurbaj Singh

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Shreenath A. Khemka, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for issuance of direction to the trial Court to expeditiously decide the cancellation report as per the order dated 17.7.2019 passed by this Court in CRM-M-17241-2017.

On 17.7.2019, this Court has passed the following order :-

“At the very outset, learned counsel for the petitioner submits that the police has already submitted a cancellation report on 19.3.2018 and since respondent No.3/complainant has raised an objection to the same on 12.3.2019 that he is not agreeing to the cancellation report, submitted by the police and intends to file a protest petition, the case was adjourned.

Learned counsel for the petitioner further submits that this petition may be disposed of with a direction to the trial Court to decide the protest petition expeditiously.

In view of the limited prayer of the petitioner, this petition is disposed of with a direction to the trial Court/Illaqu Magistrate that in case a protest petition is filed by respondent No.3/complainant (if it is not filed till date) within a period of one month from today, the same shall be decided expeditiously.”

Brief facts of the case are that FIR No.28 dated 14.1.2017 under Sections 307, 341 IPC (Section 285 IPC added later on) and Sections 27/54/59 of the Arms Act was registered at Police Station Assandh, District Karnala against the petitioner on a complaint given by respondent No.3-Sukbir Singh that the petitioner has fired upon his mother in her abdomen, on account of sudden provocation, which happened due to parking of vehicle on the village street.

Counsel for the petitioner submits that there are successive medical opinions to suggest that no fire arm injury was inflicted on the victim-mother of the complainant. Counsel for the petitioner further submits that the petitioner on an earlier occasion filed CRM-M-17241-2019 with a prayer to quash the FIR as well as the report under Section 173 Cr.P.C. filed on 5.3.2017 as during the investigation, the police has deleted Section 307 IPC and added Section 285 IPC.

As noticed above, the petitioner withdrew the said petition as it was stated by the petitioner that subsequently a cancellation report was submitted on 19.3.2018 and the complainant

has filed a protest petition before the Illaqua Magistrate. The prayer in this petition is to issue a direction to the trial Court expeditiously decide the said protest petition.

Counsel for the petitioner has relied upon the application dated 28.3.2018 filed by the Station House Officer, Police Station Assandh for discharge of petitioner-Gurbaj Singh in view of the subsequent investigation conducted by the police authorities after the report under Section 173(2) Cr.P.C. was filed.

A perusal of this application show that it is stated by the police that after the challan was presented before the trial Court on 5.3.2017 against the petitioner under Sections 285 and 341 IPC, further investigation was done on a complaint given by the petitioner to the Superintendent of Police, Kaithal and Deputy Superintendent of Police, AEC, Kaithal and after joining the parties in the investigation, it was found that the FIR is baseless and a report was prepared and sent to the senior officer on 20.9.2017 to cancel the FIR and, accordingly, it was prayed that the petitioner be discharged from the case. Counsel for the petitioner has also submitted that subsequently a report under Section 173(8) Cr.P.C. was also submitted on 19.9.2018 on the basis of the subsequent investigation. Respondent No.3-Sukhbir Singh-complainant had filed a protest petition before the Illaqua Magistrate against the same and has prayed that the petitioner be tried under Sections 307, 341, 506 IPC and the Arms Act 27/54/59.

It is relevant to mention here that the trial Court has passed the following order on 19.8.2019, which reads as under :-

“Complainant Sukhbir Singh has released a statement that he does not press the application for rejecting the request of police to discharge of the accused at this stage. Heard. Similarly, Sh. S.L.

Singhal, Adv. for accused has also made a statement that he does not press the application for return of the arm licence at this stage since the accused has already taken the arm licence on *superdari*. Accused is directed to submit the arm licence on the Court file immediately after its renewal. Arguments on the application for rejecting the request of the police to discharge the accused and proceed further with the present case under Section 307 of IPC and commit the present case to the Court of Sessions on the ground mentioned in the body of the application partly heard. Now, the case is adjourned to 20.8.2019 for remaining arguments on this application.”

The trial Court has also passed the order dated 20.8.2019, which reads as under :-

“Today the case was fixed for remaining arguments on the application for rejecting the request of the police to discharge the accused and proceed further with the present case under Section 307 of IPC and commit the present case to the Court of Sessions on the ground mentioned in the body of the application. After hearing the arguments advanced by both the learned counsel I am of the view that since the police has filed cancellation report in this case after the trial had already begun and the case is at the stage of prosecution evidence. The complainant is agitated the rejecting of the request of the police to discharge the accused and rather proceed further in the present case under Section 307 of the IPC whereas the police has come forward with the

cancellation report. Therefore, it will be appropriate if the testimony of all the witnesses is allowed to come on the Court file because the charge in the present case has already been framed under Sections 27-54-59 of Arms Act and 285/341 of IPC on dated 12.5.2017 and it is after the perusal of the entire evidence that the question regarding alteration of charge under Section 307 IPC can also be adjudicated once the witnesses are duly cross-examined by the accused side. Let, all the remaining prosecution witnesses be summoned for 30.9.2019.”

Therefore, the prayer in this petition is to direct the trial Court to decide the application for discharge expeditiously.

Reply by way of affidavit dated 5.2.2020 of the Deputy Superintendent of Police, Assandh, Karnal was filed in the Court and as per the reply, it is stated that while submitting the report under Section 173 (2) Cr.P.C., Section 307 IPC was deleted and the report was presented under Sections 285/341 IPC and Sections 27/54/59 of the Arms Act. It is also stated that, later on, when a complaint was given by the petitioner to the Senior Officer, an enquiry was conducted by the Deputy Superintendent of Police, who after joining both the parties found that the allegations are baseless and the Station House Officer, Assandh prepared a cancellation report on 20.12.2017 and also moved an application on 28.3.2018 for discharging the petitioner. It is also stated that out of the 09 prosecution witnesses, 06 have already been examined and the trial Court vide order dated 16.1.2020 has closed the evidence of the prosecution and one application under Section 311 Cr.P.C. for summoning the record of the Forensic Science Laboratory, Madhuban along with the witnesses pending.

Learned State counsel, assisted by the counsel for the complainant, has, thus, argued that this petition is pre-mature as the trial Court is already seized of the matter and till date, no order has been passed and the petitioner has withdrawn the petition for quashing of the FIR. The complainant has already made a statement before the trial Court that he do not press the application for rejection of the request of the police to discharge of the accused.

After hearing counsel for the parties and considering the stage of the trial Court and the orders passed by the trial Court and also in view of the fact that it is stated in the affidavit of the Deputy Superintendent of Police, Assandh that the prosecution evidence was closed by the Court order and some application is pending, at this stage, no such direction can be issued to the trial Court to expeditiously decide the cancellation report as the trial Court is already seized of the entire matter and it is within the domain of the trial Court to proceed, in accordance with law.

The present petition is, therefore, dismissed.

February 06, 2020
satish

(ARVIND SINGH SANGWAN)
JUDGE

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