

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

CRM-M-6673-2021

DECIDED ON: 19th FEBRUARY, 2021

AJAY KUMAR SHARMA AND ANR

.....PETITIONERS

VERSUS

UNION TERRITORY, CHANDIGARH AND ANR

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Abhilaksh Grover, Advocate for the petitioners.

Mr. Abhinav Gupta, Addl. PP, UT Chandigarh.

Mr. Mohit Jaggi, Advocate for respondent No.2.

AVNEESH JHINGAN, J (ORAL)

The matter is taken up for hearing through video conference due to COVID-19 situation.

This petition is filed seeking quashing of FIR No. 135, dated 6th July, 2001, under Sections 177, 191, 192, 193, 199, 405, 406, 420, 421, 463, 465, 467, 468, 481, 120-B, 506 read with 34 IPC, registered at Police Station Sector 19, Chandigarh.

The relevant facts of the case are that the present case is result of litigation between two brothers with regard to Will made by their father. The FIR was at the behest of Anil Kumar Sharma. There are allegations that the Will was forged. The parties are in civil litigation whereby the order passed by the Estate Officer, UT Chandigarh was challenged.

In the FIR, on 6th December, 2001 an untraced report was

filed. The Judicial Magistrate vide order dated 11th January, 2003 ordered

for re-investigation. On 30th April, 2005 again an un-traced report was filed. The aggrieved complainant moved an application to the Senior Superintendent of Police, Chandigarh, the investigation was marked to crime branch. On 14th March, 2007 a cancellation report was filed. Filing of cancellation report was challenged and on 20th August, 2011, Judicial Magistrate ordered further investigation.

The order of re-investigation was challenged by the complainant as well as UT Chandigarh. The revision petitions were allowed. The relevant portion is quoted below:-

“ In the present case, the learned Trial Magistrate has sent the case for re-investigation for more than two times. Therefore, in view of above said proposition of law, both the revision petitions are accepted and the order dated 20.08.2011 is set aside and the case is remanded to the Court of first instance with the direction either to accept the cancellation report or take cognizance under Section 190(1)(c) of Code of Criminal Procedure, after going through the material available on record. Parties through counsel are directed to appear before the Court of Learned Trial Magistrate on 15.01.2014 at 10.00 a.m. Sharp.

Original judgment be kept in Crl. Revision No. 288 of 17.11.2011 titled 'State Vs. Anil Kumar', but a copy of this judgment be placed in the connected Crl. Revision No. 387 of 17.10.2012 titled as 'Anil Kumar Sharma Vs. State'. Copy of this Judgment along with trial Court record be sent to the Court concerned and the revision files be consigned to the Record Room.”

After remand the Judicial Magistrate vide order dated 19th May, 2016 accepted the un-traced report giving liberty to the complainant to rebut the cancellation report by way of his protest petition.

petition was allowed on 15th February, 2018, the order was set aside and the trial Court was directed to pass afresh order after hearing the submission of complainant.

In proceedings after remand, in the interim orders, it was wrongly mentioned that the accused was on bail. The mistake was rectified by order dated 29th February, 2020 and the attendance of the counsel for the petitioner was marked in the zimni order. However, on 11th January, 2021 the following order was passed:

“Present: Sh. Lovneesh, Ld. APP for the State.

None for accused.

*None has come present on behalf of accused
neither any exemption application has been moved on behalf
of him. Let, notice to accused be issued for 24.02.2021.”*

Pursuance to the passing of the order dated 11th January, 2021 summons were issued for 24th February, 2021. Hence the present petition.

Learned counsel for the petitioners submits that the impugned order is erroneous. The earlier error, which was rectified on 29th February, 2020 was repeated in the impugned order.

Learned counsel for UT Chandigarh though opposes the prayer but fairly submitted that pending proceedings were only result of remand order.

Learned counsel for the complainant/resondent No.2 also argues on the same lines and submits that there is a procedural lapse.

Learned counsel for the petitioners at this stage, restricts his prayer to the challenge of the impugned order and consequential summons issued.

The matter was remanded by the Additional Sessions Judge for giving an opportunity to the complainant with regard to the cancellation report. There was no occasion for the Magistrate to record that none is present on behalf of the accused and issuing notice resulting into issuance of impugned summons.

The order dated 11th January, 2021 as well as consequential impugned summons are set aside and the matter is remitted back.

The petition is allowed.

19th FEBRUARY, 2021
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(AVNEESH JHINGAN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>