

Sunil Likhi and others

.....Petitioners

Vs.

State of Punjab and another

....Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr. Atul Goyal, Advocate
for the petitioners.

Mr. Rana Harjasdeep Singh, DAG, Punjab.

Mr. Parunjeet Singh, Advocate,
for the complainant.

AMOL RATTAN SINGH, J. (Oral)

Case heard *via* video conferencing.

By this petition, the petitioners seek the setting aside of the impugned order dated 17.02.2021 (copy Annexure P-4), passed by the learned JMIC, Ludhiana, vide which a cancellation report has been treated to be a *challan* and the concerned SHO has been asked to supply a list of witnesses in the context of FIR No.38, dated 11.07.2012, registered at Police Station P.A.U., District Ludhiana, alleging therein the commission of offences punishable under Sections 420/120-B of the IPC and section 76 of the Chit Funds Act, 1982.

On 07.09.2021, the following order was passed by this court:-

“Case heard *via* video conferencing.

CRM-27888-2021

Vide this application, counsel for the petitioners seeks to place on record a judgment of the Supreme Court in **Abhinandan Jha and others vs. Dinesh Mishra**, AIR 1968 SC 117.

No notice having been issued in the accompanying petition, none is required to be issued in this application, which in any case has to be allowed, it simply being a copy of a judgment that he seeks to place on record.

Consequently, the application is allowed and the copy of the said judgment is taken on record as Annexure P-5 with the accompanying petition.

CRM-M-13903-2021

Learned counsel for the petitioners submits that the following part of the impugned order passed by the learned trial court is unsustainable in law on the touchstone of the ratio of the judgment in **Abhinandan Jhas'** case (supra):-

“12. As a consequence of the aforesaid discussion, I am of the considered view that at this stage, *prima facie* there are sufficient grounds for proceeding against the accused under Sections 420, 120-B, 506 IPC and 76 of the Chit Funds Act. As such, the present cancellation report is rejected and the protest petition is accepted. The present cancellation report be registered as a *challan*. Notice to all accused be issued to face trial under aforesaid Sections for 10.05.2021. Notice to SHO, PS PAU, Ludhiana, be also issued to supply a list of witnesses in the present cases on or before the next date of hearing”

In that context he points to paragraphs 19 to 21 of the said judgment, of which paragraph 21 reads as follows:-

“21. In these two appeals, one other fact will have to be taken note of. It is not very clear as to whether the Magistrate, in each of those cases, has chosen to treat the protest petitions, filed by the respective respondents, as complaints, because, we do not find that the Magistrate has adopted the suitable procedure indicated in [the Code](#), when he takes cognizance of an offence, on a complaint made to him. Therefore, while holding that the orders of the Magistrate, in each of those cases, directing the police to file charge-sheets, is without jurisdiction, we make it clear that it is open to the Magistrate to treat the respective protest petitions, as complaints and take further proceedings, according to law, and in the light of the views expressed by us, in this judgment.”

Thus, the contention is that though the learned Magistrate could obviously have treated the protest petition to be a complaint and proceeded with the matter accordingly, he had no jurisdiction whatsoever to treat the cancellation report as a '*challan*'.

It is to be noticed by this court that Section 173(2)(i)(d) of the Cr.P.C. reads to say that when a police report is completed (in respect of any FIR registered), it shall be forwarded to the Jurisdictional Magistrate, in the prescribed form, stating therein whether any offence appears to have been committed and if so, by whom.

Thus, any police report submitted under the provisions of Section 173 of the Cr.P.C., would loosely be termed to be a *challan* (in colloquial language); yet it would appear that learned counsel for the petitioners may be right in submitting that if the learned Magistrate was proceeding ahead with the case treating the protest petition to be a complaint, there would be no occasion to treat the cancellation report as a *challan* and to tell the SHO to file a list of witnesses.

Notice of motion.

Mr. Rana Harjasdeep Singh, DAG, Punjab, accepts notice at the asking of the court on behalf of the respondent State.

A copy of the petition be supplied to him by counsel for the petitioners today itself.

Adjourned to 27.10.2021.

To be shown in the urgent motion list.

In the meanwhile, till the next date of hearing only, the trial court is directed to adjourn the matter to a date beyond that given by this court.

A gazetted officer shall file a reply to the petition, obviously after taking due legal advice.”

Pursuant to notice issued, Mr. Parunjeet Singh, Advocate, appears

for respondent no.2 and fairly submits that even in terms of the judgment in Abhinandan Jhas' case (*supra*) the only part of the impugned order that would be unsustainable, would be the second part thereof, whereby the Magistrate has treated the cancellation report as a *challan* (report under Section 173(2) Cr.P.C.); as also the direction issued to the SHO to supply a list of witnesses.

Learned State counsel also could not distinguish the ratio of the said judgment.

That being so, with the second part of the order alone not 'capable' of being set aside, the petition is allowed with the impugned order passed by the learned trial court on 17.02.2021 (copy Annexure P-4), set aside and the matter remitted to that court to pass a fresh order on the protest petition filed, on the touchstone of the judgment in Abhinandan Jhas' case (supra), and to proceed with the matter accordingly thereafter.

Naturally, with the impugned order itself having been set aside, if any proceedings thereafter have taken place pursuant to that order, such proceedings would be treated to be *non est*.

October 27, 2021

dharamvir/

**(AMOL RATTAN SINGH)
JUDGE**

Whether speaking/reasoned : YES
Whether Reportable : NO