

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

126

**CRM-M-15618-2021
Date of decision: 22.04.2021**

Harinder Singh Maan

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Akshay Bhan, Senior Advocate with
Mr. Harparteek S. Sandhu, Advocate
for the petitioner.

Mr. Rana Harjasdeep Singh, DAG, Punjab
for the respondent-State.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for quashing of order dated 26.02.2021 passed by learned Judicial Magistrate First Class, Bathinda in case *CIS No. UCR/25/2018 titled as 'State of Punjab Vs. Harinder Singh Mann etc.'* whereby the complainant was directed to file a protest petition.

Briefly stated, the facts relevant for disposal of the present petition are that Kuwinder Kaur submitted written complaint to the Senior Superintendent of Police, Bathinda alleging that due to harassment by her in-laws she had lodged FIR No.8 dated 08.03.2017 against them. Harinder Singh Mann, the then DSP, Bathinda met her in the office of SSP, Bathinda and asked her to come present in his office

by saying that her husband is one of his relatives and he would get the matter compromised. On 04.05.2017 at about 11 a.m. she went to his office where the petitioner was alone at that time and asked her to make friendship with him. Thereafter, he stood up and put his both hands on her cheeks. She became scared and stood up from the chair and told him that she will complain about the same on which the petitioner replied that she could not do anything against him. In view of the complaint FIR No.20 dated 04.05.2017 was registered under Sections 354 and 354-A of the Indian Penal Code, 1860 (for short 'the IPC') in Police Station Women, District Bathinda against the petitioner. The police investigated the case and submitted cancellation report dated 23.07.2017 which was rejected by learned Judicial Magistrate First Class, Bathinda vide order dated 24.10.2017 whereby further investigation was ordered. The police further investigated the case and submitted cancellation report dated 26.02.2018. In the course of hearing learned Judicial Magistrate First Class, Bathinda, vide impugned order dated 26.02.2021, directed the complainant to file protest petition.

Feeling aggrieved, the petitioner has filed the present petition for quashing of the impugned order dated 26.02.2021.

I have heard learned Senior Counsel for the petitioner and learned State Counsel and have gone through the relevant record.

Learned Senior Counsel for the petitioner has submitted that learned Judicial Magistrate First Class, Bathinda, vide order dated 20.10.2017, wrongly rejected the first cancellation report merely on the basis of statement of the complainant to the effect that she was not satisfied with the investigation conducted by the Special Investigation

Team. Even after filing of the second cancellation report on 26.02.2018 learned Judicial Magistrate First Class, Bathinda has, instead of expeditiously deciding the matter, unduly prolonged the same by granting about 32 adjournments to the complainant for opposing the same/filing protest petition and vide impugned order dated 26.02.2021 wrongly directed the complainant to file protest petition which order suffers from material illegality and is liable to be quashed. In support of his arguments learned Senior Counsel for the petitioner has placed reliance on the observations made by Coordinate Bench of this Court in ***Harinder Pal Singh Vs. State of Punjab : 2004(2) RCR (Criminal) 307*** and ***Prithvi Raj Sehgal Vs. State of Punjab and others : 2007(3) RCR (Criminal) 438***.

On the other hand, learned State Counsel has submitted that learned Judicial Magistrate First Class, Bathinda vide impugned order dated 26.02.2021 has merely given opportunity to the complainant to file protest petition. The impugned order does not suffer from any illegality. Therefore, the present petition may be dismissed.

In ***Abhinandan Jha and others Vs. Dinesh Mishra : 1968 AIR (SC) 117*** Hon'ble Supreme Court considered the question of powers of Magistrate in dealing with a final (cancellation) report submitted by the police under Section 173 of the Cr.P.C. that no case is made out for sending up an accused for trial and observed in para No.15 of its judgment as under:-

“.....if the Magistrate agrees with the said report, he may accept the final report and close the proceedings. But there may be instances when the Magistrate may take the view, on a consideration of the final report, that the opinion formed by the police is not based on a full and

complete investigation, in which case, in our opinion, the Magistrate will have ample jurisdiction to give directions to the police, under Section 156 (3), to make a further investigation. That is, the Magistrate feels, after considering the final report, that the investigation is unsatisfactory, or incomplete, or that there is scope for further investigation, it will be open to the Magistrate to decline to accept the final report and direct the police to make further investigation, under Section 156 (3). The police, after such further investigation, may submit a charge-sheet, or, again submit a final report, depending upon the further investigation made by them. If ultimately, the Magistrate forms the opinion that the facts, set out in the final report, constitute an offence, he can take cognizance of the offence, under Section 190 (1) (b), notwithstanding the contrary opinion of the police, expressed in the final report.”

In that case Hon'ble Supreme Court also held that there is no power expressly or impliedly conferred under the Cr.P.C. on a Magistrate to call upon the police to submit a charge-sheet when they have sent a report under Section 169 of the Cr.P.C. that there is no case made out for sending up an accused for trial.

While dealing with a report submitted by the police under Section 173 of the Cr.P.C. that no case is made out for sending up an accused for trial, the Magistrate is required to give an opportunity to the complainant to file protest petition. In case of filing of protest petition it is open to the Magistrate to treat the protest petition as complaint and take further proceedings on the same in accordance with law, examine the complainant and witnesses present under Section 200 of the Cr.P.C. and on consideration of preliminary evidence issue process under Section 204 of the Cr.P.C. or postpone issuance of process and either inquire into the case himself or direct investigation to be made by the police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding and

thereupon issue process under Section 204 of the Cr.P.C. or dismiss the complaint under Section 203 of the Cr.P.C., if there is no sufficient ground for proceeding against the accused. However, in view of the observations made by Hon'ble Supreme Court in ***Abhinandan Jha's Case (Supra)*** and on an analogy it follows that the Magistrate has no power to direct even the complainant to file a protest petition.

In the present case learned Judicial Magistrate First Class, Bathinda was merely required to give an opportunity to the complainant to file protest petition against the cancellation report but could not direct the complainant to file a protest petition and the impugned order suffers from material illegality in this regard and is liable to be set aside to that extent.

However, in case any protest petition is filed by the complainant, it will be open to learned Judicial Magistrate First Class, Bathinda to treat the same as complaint, take cognizance and proceed further on the basis thereof in accordance with law. In case no such protest petition is filed even then it will be open to learned Judicial Magistrate First Class, Bathinda to consider the cancellation report along with the relevant record and to agree or disagree with the same. If ultimately, the Magistrate forms the opinion that the facts set out in the cancellation report and documents sent therewith constitute any offence and there is sufficient ground for proceeding against the petitioner, he can take cognizance of the offence, under Section 190 (1) (b) of the Cr.P.C. notwithstanding the contrary opinion of the police expressed in the cancellation report. It may be observed here for the sake of abundant caution that it will not be open to learned Judicial Magistrate

First Class, Bathinda to direct further investigation again to compel the investigating agency to submit the charge-sheet against the accused.

In view of above, the petition is allowed and the impugned order dated 26.02.2021 is set aside qua direction to the complainant to file protest petition.

However, in view of the facts and circumstances of the case, learned Judicial Magistrate First Class, Bathinda is directed to dispose of the matter within the period of one month from the date of receipt of a copy of this order subject to restrictions imposed to prevent spread of infection of Covid-19.

A copy of this order be sent to learned Judicial Magistrate First Class, Bathinda through learned District and Sessions Judge, Bathinda for requisite compliance.

22.04.2021

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(ARUN KUMAR TYAGI)
JUDGE

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