

(209) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-48407-2018

Date of Decision:08.10.2021

Pardeep Singh

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present : Mr. Surinder Garg, Advocate
for the petitioner.

Mr. Saurav Khurana, D.A.G. Punjab.

Mr. Indresh Goel, Advocate
for respondent No.2.

VIKAS BAHL, J. (Oral)

This petition has been filed under Section 482 Cr.P.C for quashing of FIR No.135 dated 13.08.2011 (Annexure P-1) registered under Sections 420, 465, 468 & 471 IPC at Police Station Mansa City, District Mansa and all the subsequent proceedings arising therefrom.

Learned counsel for the petitioner has submitted that the FIR in question was registered in the year 2011 on the allegation that the petitioner, although had an old passport dated 12.08.1998, had obtained a second passport dated 16.12.1999 without disclosing about the previous passport. Thus, it is argued that this case, at best, would fall under Section 12 of the Passports Act, 1967, according to which, as per the offences and penalties stipulated therein, the petitioner could be made liable for the offences punishable with sentence which may extend to maximum of two years or with fine which may extend to Rs.5000/-, or with both. Learned counsel for

the petitioner has submitted that once the case falls within the ambit of the

Passports Act, 1967, which is a Special Act, then the registration of the FIR in question under Sections 420, 465, 468 & 471 IPC, as in the present case, is illegal and against the law. It is further submitted that in fact in the present case, the petitioner has already deposited the fine of Rs.5000/- as provided under the Passports Act as is apparent from the receipt in this regard, supplied by the State of Punjab. It is further submitted that in the present case the cancellation report was submitted on 12.09.2011 and thereafter, upon notice, Shri R.K. Mittal, Passport Granting Officer, had got recorded his statement on 09.01.2014 that he had no objection if the present FIR was cancelled. However, in spite of the same, vide the cryptic order dated 12.03.2014, re-investigation was ordered without giving any reason as to why the Chief Judicial Magistrate, Mansa, had not agreed with the cancellation report and on what aspect of the matter re-investigation was required to be done. It is also submitted that even as per the reply filed by the State of Punjab subsequently, again the matter was put for re-investigation and again a cancellation report was submitted on 10.02.2018. However, the Court below, again, while not agreeing with the cancellation report, ordered re-investigation in the matter and thereafter again a cancellation report had been prepared. It is submitted by the learned counsel for the petitioner that as per law, Chief Judicial Magistrate, Mansa, could not have ordered investigation for the 3rd time. It is also submitted that in the present case the FIR in question is of the year 2011 and almost 10 years have gone by since then, yet, despite the cancellation report having been submitted, the matter is still hanging fire. It is further submitted by the learned counsel for the petitioner that in fact the petitioner had given his papers to an agent who got the second passport prepared and in fact both the

passports had expired on 11.8.2008 and 16.12.2009, respectively and the petitioner has never used the said passports, much less misused the same.

Mr. Indresh Goel, learned counsel for respondent No.2 has reiterated the fact that he has no objection in case this petition is allowed and the FIR in question and subsequent proceedings arising therefrom are quashed. It is further submitted that Shri R.K. Mittal, Passport Officer had appeared before the Chief Judicial Magistrate, Mansa, on 09.01.2014 and had given a statement that the aforesaid FIR be cancelled and even respondent No.2 had no objection as to the cancellation of the said FIR. However, in spite of the same, Chief Judicial Magistrate, Mansa, had passed a perverse and cryptic order on 12.03.2014. It is further submitted that twice re-investigation has been ordered in this matter and on three occasions cancellation report had been submitted.

This Court has heard learned counsel for the parties.

It is not in dispute that the present case relates to the year 2011 and the first cancellation report was submitted on 12.09.2011 and Shri R.K. Mittal, Passport Officer, had made the following statement on 09.01.20214 *“Stated that if the above said FIR is cancelled, then we have no objection”*. A perusal of the said statement would show that respondent No.2 had stated that he had no objection in case the FIR in question was cancelled. The said statement has not been disputed by learned counsel for respondent No.2, rather the same has been re-affirmed by him. However, in spite of the same the following order was passed on 12.03.2014 by the Chief Judicial Magistrate, Mansa:

“Notice sent to Investigating Officer of this case not received back. However, in view of the statement of Sh. R.K. Mittal, Passport Granting Officer recorded on 09.01.2014, the present cancellation

report is ordered to be sent to the concerned Police Station for re-investigation of the matter. The Ahlmad is directed to separated the judicial papers and consigned the same to record room and send the police papers to the concerned Police Station for re-investigation.”

This Court is of the opinion that the aforementioned order is cryptic, non-speaking and is also perverse. The statement of Shri R.K. Mittal has been taken note of but has not been duly considered inasmuch as, as per the Passport Officer, he had no objection in case the FIR was cancelled and thus, the said statement could not be made the sole basis for ordering the re-investigation. Moreover, no reason has been given as to with respect to what aspect the cancellation report was not correct and on what aspect re-investigation was required to be done. Thus, on the said ground alone the impugned order dated 12.03.2014 deserves to be set aside.

Further, reply has been filed in the present case by the State. The relevant part of the reply filed by the State is reproduced hereinbelow:

“3. That during investigation of this case, Amarjit Singh father of the petitioner filed an application regarding innocence of petitioner and deposited fine of Rs.5000/- as provided under Section 12 of Passport Act. Therefore, cancellation report was preferred in this case on 12.09.2011.

x x x

5. That after re-investigation police did not found any improvement in its case and again presented cancellation report before the Ld. Court of Chief Judicial Magistrate, Mansa but the ld Lower court did not agree with the said cancellation report and again ordered for re-investigation vide order dated 10.02.2018.

6. That in compliance of the order dated 10.02.2018 re-investigation was again conducted but no new fact came in knowledge. Then cancellation report was again prepared which is pending for approval before the higher Police officials. Hence, the present petition is liable to be disposed of.”

A perusal of the aforesaid reply filed by the State would show

that the petitioner had deposited Rs.5000/- as provided under Section 12 of the Passports Act. It has been stated that even after re-investigation, in pursuance of the impugned order, nothing could be found against the petitioner and again a cancellation report was submitted vide order dated 10.02.2018. Thereafter, further re-investigation was ordered and again another cancellation report had been submitted. It is settled law that the trial Court could not have ordered investigation for the 3rd time.

Reference in this regard has been made to judgment of a Co-ordinate Bench of this Court passed in **Harinder Pal Singh** v. **State of Punjab**; reported as (2004) 2 RCR (Crl) 307. Relevant paragraphs of the said judgment are reproduced hereinbelow:

“4. When the said closure report (Annexure P-1) was submitted by the CBI, the Special Judge, CBI, Patiala did not agree with the same and directed the CBI to further investigate the matter vide order dated 19.11.2001 (Annexure P-4), while observing that the Jumper Slip, which was alleged to be issued on 1.6.2000, was not taken into possession by the CBI during investigation, therefore, he found that there is nothing on record to suggest that in fact, the petitioner had sent the jumper Slip to JTO Indoor/SD (Traffic) and the matter requires further investigation as until and unless it is established that the petitioner had in fact despatched the Jumper Slip, it cannot be said that he had no motive to demand money from the complainant. Secondly, it was observed that merely because the complainant and the shadow witness are the good friends, it is too early to discard their version at this stage. It was further observed that in the recovery memo pertaining to the tainted money, it was specifically mentioned that on seeing the raiding party, the petitioner-accused took out the bribe money from his pocket and threw it on the ground. According to the learned Judge, these facts were not properly considered by the investigating agency.

5. In compliance of the aforesaid order, CBI further investigated the matter of the second time

X X X

6. The learned Special Judge, CBI, Patiala, vide his order dated 29.01.2003 (Annexure P-6), again declined to accept the closure report submitted by the CBI, while observing that even though the Jumper Slip was issued on 1.6.2000, but there is nothing to suggest that the fact with regard to issuance of Jumper Slip by the petitioner was made known to the complainant or it was kept as a closely guarded secret by the petitioner to extract money from him.

..... x x x

9. After hearing the arguments of learned counsel for the parties and going through both the cancellation reports submitted by the CBI as well as the orders passed thereon and the judgments, cited by learned counsel for the petitioner, in my opinion, the petition deserves to be allowed.

10. In Chapter XIV of the Code of Criminal Procedure (hereinafter referred to as 'the Code'), the Police has been given ample powers for the purpose of registering the case involving a cognizable offence and its investigation. Section 173 of the Code provides for an investigation to be completed without unnecessary delay and also makes it obligatory on the officer in-charge of the Police Station to send a report to the Magistrate concerned in the manner indicated therein, containing the various details. If the Police submits a report under Section 173 of the Code to the effect that a case is made out for sending the accused for trial, the Magistrate is not bound to accept the opinion of the Police. It is open to the Magistrate, to take the view that the facts disclosed in the report do not make out an offence for taking cognizance or he may take the view that there is no sufficient evidence to justify and accused being put on trial. On the other hand, if the Magistrate agrees with the report, then he will take cognizance of the offence. In case, the Police submits a report stating therein that no case is made out against the accused for sending him for trial, the Magistrate, agreeing with the report, may accept the final report and close the proceedings, but the Magistrate may also take a view on consideration of the final report that the opinion framed by the Police is not based on full and complete investigation and in such a situation, the Magistrate can order for further investigation. It is always open for the Magistrate to decline to accept the closure report and direct the Police to further

investigate the matter but once the closure report is not accepted by the Magistrate and the matter has been ordered to be re-investigated, then for the second time the Magistrate cannot compel the Police to take a particular view in the matter and submit the challan in the case. If the Magistrate does not agree with the opinion formed by the Police and still suspects that an offence has been committed, he is entitled, notwithstanding the opinion of the Police, to take cognizance under Section 190 (1) (c) of the Code, but in any opinion, he cannot direct the Police to re-investigate the matter for the third time. The Hon'ble Supreme Court in Abhinandan Jha and others v. Dinesh Mishra (supra) has observed. As under:

“... The entire scheme of Chapter XIV clearly indicates that the formation of the opinion, as to whether or not there is a case to place the accused for trial, is that of the Officer-in-charge of the police station and that opinion determines whether the report is to be under Section 170, being a 'charge sheet', or under section 169, 'a final report'. It is no doubt open to the Magistrate, as we have already pointed out, to accept or disagree with the opinion of the police, if he disagrees, he is entitled to adopt any one of the courses indicated by us. But he cannot direct the police to submit a charge sheet, because the submission of the report depends upon the opinion formed by the police, and not on the opinion of the Magistrate. The Magistrate cannot compel the police to form a particular opinion, on the investigation, and to submit a report, according to such opinion. That will be really encroaching on the sphere of the police and compelling the police to form an opinion so as to accord with the decision of the Magistrate and send a report either under Section 169 or under Section 170 depending upon the nature of the decision. Such a question has been left to the police under the Code.

We have already pointed out that the investigation, under the Code takes in several aspects, and stages, ending ultimately with the formation of an opinion by the police, as to whether on the material covered and collected a case is made out to place the accused before the Magistrate for trial, and the submission of either a charge sheet, or a final report is dependent on the nature of the opinion, so formed. The formation of the said opinion, by the police, as pointed out earlier, is the final step in the investigation, and that final step is

to be taken only by the police and by no other authority.

The question can also be considered from another point of view. Supposing the police send a report, viz., a charge-sheet under Section 170 of the Code. As we have already pointed out the Magistrate is not bound to accept that report, when he considers the matter judicially. But can he differ from the police and call upon them to submit a final report, under section 169? In our opinion, the Magistrate has no such power. He was no such power, in law, it also follows that the Magistrate has no power to direct the police to submit a charge-sheet, when the police have submitted a final report that no case is made out for sending the accused for trial. The functions of the Magistracy and the police, are entirely different, and though, in the circumstances mentioned earlier, the Magistrate may or may not accept the report, and take a suitable action, according to law, he cannot certainly infringe (sic. Impinge?) upon the jurisdiction of the police, by compelling them to change their opinion, so as to accord with his view.”

x x x

14.
..... *The Special Judge could not reject the cancellation report submitted for the second time on the same ground and again order for further investigation. If at all he was not satisfied with the closure report submitted by the CBI for the second time and was of the opinion that report was not based on full and complete investigation, he could have taken cognizance of the offence under Section 190 (1) (c) of the Code, but could not order for re-investigation of the matter for the third time. Further, in amy opinion, the Special Judge has not fully applied his mind in the case, especially when he was not taken into consideration the statement made by the complainant made before him to the effect that he did not object to cancellation of the case against the petitioner. In view of this, the fate of the prosecution case was imminent and it would be futile exercise to get the matter re-investigated.*
15. *In view of the aforesaid discussion, this petition is allowed and order dated 29.1.2003 (Annexue P-6) is set aside.”*

Thus, on this count also, the proceedings deserve to be quashed.

Before parting, it would also be relevant to refer to Section 12 of Passports Act which reads as under:

“12. Offences and penalties.—

(1) Whoever—

(a) contravenes the provisions of section 3; or

(b) knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under this Act or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document; or

(c) fails to produce for inspection his passport or travel document (whether issued under this Act or not) when called upon to do so by the prescribed authority; or

(d) knowingly uses a passport or travel document issued to another person; or

(e) knowingly allows another person to use a passport or travel document issued to him;

shall be punishable with imprisonment for a term which may extend to [two years or with fine which may extend to five thousand rupees] or with both.”

A perusal of the same would show that the offences and penalties stipulated therein are punishable with imprisonment which may extend to two years or with fine which may extend to five thousand rupees, or with both.

The argument of the learned counsel for the petitioner to the effect that the Passport Acts, 1967 is a Special Act, thus, registration of the FIR under Sections 420, 465, 468 & 471 IPC is illegal, is also weighty.

Moreover, learned counsel for respondent No.2 has submitted that since fine of Rs.5000/- has already been paid, thus, they have no objection in case the FIR in question and all subsequent proceedings arising therefrom, are quashed.

It has also been stated by the learned counsel for the petitioner

that the FIR in question is of the year 2011 and almost 10 years have gone by since its registration, whereas both the passports have expired on 11.8.2008 and 16.12.2009 respectively, thus, no useful purpose would be served if the matter is left hanging fire.

Keeping in view the abovesaid facts and circumstances as well as the law in its regard, this petition is allowed and FIR No.135 dated 13.08.2011 (Annexure P-1) registered under Sections 420, 465, 468 & 471 IPC at Police Station Mansa City, District Mansa and all subsequent proceedings arising therefrom are hereby quashed.

(VIKAS BAHL)
JUDGE

08.10.2021
rajeev

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No