

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

**Criminal Misc. No.M-23637 of 2020(O&M)
Date of Decision: February 19, 2021**

Mehtab Singh		...Petitioner
	Versus	
State of Punjab and another		...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr.Parvesh K. Saini, Advocate for the petitioner.

Mr.M.S. Nagra, Assistant Advocate General, Punjab.

Mr.G.S.Sirphikhi, Advocate for respondent No.2.

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HARINDER SINGH SIDHU, J.

The petitioner has filed this petition under Section 482 Cr.P.C for quashing of FIR No.90 dated 15.07.2007 under Sections 447, 427, 506, 148, 149 IPC and Section 25, 27 of the Arms Act, Police Station Ghuman, Police District Batala, Punjab and all consequential proceedings arising therefrom.

The FIR was registered on the statement of one Satnam Singh – respondent No.2 against petitioner Mehtab Singh and others. It was alleged that one Sadhu Singh accompanied by many others (including the petitioner) had forcibly cultivated the paddy crops sown in the fields of the complainant – respondent No.2 and had caused loss to him to the tune of Rs.40,000/-.

The FIR was duly investigated by the Deputy Superintendent of Police (Hqrs) Batala who concluded that the FIR had been registered on false facts. Cancellation of the FIR was recommended. After approval from the Senior Superintendent of Police, Batala, cancellation report was submitted before Ld. Sub Divisional Judicial Magistrate, Batala, who vide

order dated 24.09.2010 returned the report and directed the prosecution to re-submit the same with proper indexing and documentation. The order reads as under:-

“Complainant did not agree with the cancellation report. The file is not properly indexed. The file is ordered to be returned in original to the concerned quarter with the direction to re-submit the same by properly indexing the same and mentioning the name of the witness examined in a proper table with the remarks if they are supporting the complainant's case or cancellation report. The tabular list of documents be also prepared mentioning that which documents supports the case of the complainant and which document support the cancellation report. It is further directed that witnesses and documents supporting the case of complainant be mentioned at one place together and the witnesses and documents supporting the cancellation report be placed together judicial paper be consigned for the time being.

Pronounced in open court

Dated: 24.09.2010

Sd/-

Hira Singh Gill, PCS

Sub-Divisional Judicial Magistrate, Batala”

It is the case of the petitioner that the said order of the Ld. Trial court was not complied with by the prosecution for more than ten years. After submission of cancellation report before the Ld. Trial Court, the petitioner was under impression that proceedings with regard to above FIR had come to an end especially in view of the fact that thereafter he never received any summons/notice either from any Court or from the police with regard to any proceeding in pursuance to the above said FIR.

It is stated in the petition that the petitioner is a well qualified person, having acquired the qualification of B.A, DP.Ed., MP.Ed. He has

also passed the Punjab State Teachers Eligibility Test. In the year 2007 he was selected for the post of Warden in Jail Department, Punjab. While in service in the Jail Department, he was selected for the post of Physical Education Master on 19.02.2020 in Education Department, Punjab. Upon which, the petitioner submitted his technical resignation to Jail Department and joined training for the post of Physical Education Master in the Education Department Punjab. However, after completion of his training, when he approached the Jail Department for approval of his resignation, he was surprised to know that his services were terminated from the Jail Department as Warden, vide order dated 23.06.2020 (Annexure P-3). The reason for the termination mentioned was *“as per the FIR No.90 dated 15.07.2007 for offence under Sections 447, 427, 506, 148, 149 IPC, 1860 and Section 25, 27, 54, 59 of Arms Act, 1959, has been registered against you/Warden Mehtab Singh at P.S.Ghuman, which has been cancelled on dated 14.08.2008 and cancellation report is pending for the approval of the court.”*

The petitioner further states that Chanchal Singh, an accused in this FIR approached this Hon'ble High Court by way of filing CRM-M No.11262 of 2019 titled as Chanchal Singh vs. State of Punjab, with the prayer to direct the respondents - State to conclude the investigation in above FIR in a time bound manner. This Hon'ble High Court vide order dated 12.03.2019 (Annexure P-3A), directed respondent No.1 to file status report on next date of hearing. Thereafter, the Deputy Superintendent of Police, Sub- Division Sri Hargobindpur, filed the status report dated 15.10.2019 (Annexure P-4) stating that after receiving the order dated 24.09.2010

passed by the Court of Ld. SDJM Batala, the Investigation Officer has properly indexed the cancellation report and after compliance of the above said order, the cancellation report was submitted in the Ld. Trial Court on 10.10.2019. However, vide order dated 17.01.2020 (Annexure P-5), the Ld. Trial court returned the cancellation report for further investigation. The Investigating Agency re-investigated the matter and found the allegations in the FIR false. The Station House Officer, Police Station Ghuman through application dated 05.06.2020 requested the Ld. Trial Court to approve the cancellation report. Thereafter, due to Covid pandemic, further proceedings in the Trial court could not take place.

Ld. counsel for the petitioner has argued that the petitioner was not named in the FIR. The matter has been investigated twice and cancellations reports have been filed. There was an inordinate delay of more than 10 years on the part of prosecution in re-submitting the cancellation report after complying with objections/ directions of the Trial Court contained in its order dated 24.09.2010. Due to the above said delay and pendency of FIR (Annexure P-1), the services of the petitioner have been terminated. Grave and irreparable damage has been caused to the petitioner. He argued that right to speedy trial is an inalienable part of Article 21. The continuance of the proceedings are patently illegal and deserve to be quashed. He further submitted that essentially the dispute is between the complainant and Sadhu Singh. In this regard civil litigation is also pending between them.

On behalf of the State a reply affidavit of Lakhbir Singh, PPS, Deputy Superintendent of Police, Sub Division Sri Hargobindpur, District

Gurdaspur has been filed. Therein it has been stated that FIR No. 90 dated 15.07.2007 under Sections 447, 427, 506, 148, 149 IPC and Section 25, 27 of the Arms Act, Police Station Ghuman, Police District Batala, was registered against Sadhu Singh son of Puran Singh, Bhupinder Singh son of Sadhu Singh, Mangal Singh son of Puran Singh, Chanchal Singh son of Karam Singh, Sulakhan Singh son of Karam Singh, Sukhraj Singh son of Chanchal Singh, Mehtab Singh son of Chanchal Singh (petitioner), Kashmira Singh son of Hazara Singh, Anup Singh son of Gura Singh and some unknown persons on the statement of Satnam Singh (Complainant). The allegation was that Chanchal Singh along with co-accused had forcibly cultivated the paddy crop sown in the field of the complainant causing a loss to him of about Rs. 40,000/-. The enquiry regarding the same was entrusted to the then DSP/ Hqrs. Batala. The enquiry report revealed that land bearing Khasra No.15R/16, 17, 24, 25, 33R/8-9 total area 44 kanals is in the cultivating possession of Sadhu Singh. A land dispute is pending between the parties in different Courts. A tubewell connection is also running in the name of Sadhu Singh. On 19.05.2008 the Sub-Divisional Magistrate had decided proceedings u/s 145 Cr.P.C in favour of Sadhu Singh. Thus it was concluded that the FIR had been registered on false facts. Cancellation report was filed in the Court in 2009. The Court vide order dated 24.09.2010 directed to re-submit the same. In compliance with the orders dated 24.09.2010 of the Ld. SDJM, Batala cancellation report was again prepared and presented before the Ld.Ilaqa Magistrate on 18.09.2019. The Ld. Court did not agree with the same and vide order dated 17.01.2020 sent the file for re-investigation. The case is pending for investigation.

The complainant – respondent No.2 has filed reply stating that the cancellation report has been prepared with an attempt to give undue and unfair advantage to the accused in the FIR. The father of the complainant along with Lakhwinder Singh and Swinder Singh had filed a Civil Suit for Permanent Injunction regarding the subject land against Sadhu Singh in the year 2004. The Ld. Additional Civil Judge (Senior Division) Batala, vide judgment dated 25.10.2012 decreed the suit holding that the plaintiffs were in exclusive possession of the suit land. Appeal filed by Sadhu Singh was dismissed by the Ld. Additional District Judge, Gurdaspur vide judgment and decree dated April 25, 2016. Sadhu Singh has filed RSA No. 4382 of 2016 which is pending. In view thereof the Ld. Court has rightly not accepted the cancellation reports and directed re-investigation.

I have heard Ld. counsel for the parties and have gone through the records.

Hon'ble the Supreme Court has repeatedly emphasized that right to speedy trial in all criminal prosecutions is an inalienable right under Article 21 of the Constitution. It has been held that while mere delay in completion of proceedings may not by itself be a ground to quash proceedings where offences are serious, but the court having regard to the conduct of the parties, nature of offence and the extent of delay in the facts and circumstances of a given case may quash the proceedings in exercise of jurisdiction under Section 482 CrPC in the interest of justice and to prevent abuse of process of the court.

In **Vakil Prasad Singh v. State of Bihar, (2009) 3 SCC 355** it

was held as under:

“24. It is, therefore, well settled that the right to speedy trial in all criminal persecutions (sic prosecutions) is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case.

25. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time-frame for conclusion of trial.

26. Tested on the touchstone of the broad principles enumerated above, we are convinced that in the present case the appellant’s constitutional right recognised under Article 21 of the Constitution stands violated.”

Similarly, in **Pankaj Kumar v. State of Maharashtra, (2008)**

16 SCC 117 Hon'ble Supreme Court quashed the proceedings by observing as under:

“22. It is, therefore, well settled that the right to speedy trial in all criminal prosecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only

to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The 127 right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases.

23. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time for the conclusion of trial.”

The facts in the present case are that the FIR was registered on 15.07.2007. After investigation by the DSP, a cancellation report was filed. The same was returned by the Ld. Ilqa Magistrate vide order dated 29.09.2010 with certain directions. Thereafter, nothing happened for about ten years. The cancellation report was re-submitted to the Ld. Ilqa Magistrate on 18.09.2019. The Ld. Court did not agree with the same and vide order dated 17.01.2020 sent the file for re-investigation. The Investigating Agency re-investigated the matter and found the allegations in the FIR false. Through application dated 05.06.2020 the Ld. Trial Court has been requested to approve the cancellation report.

In the year 2007, the petitioner was selected for the post of Warden in Jail Department, Punjab. While in service in the Jail Department,

he was selected for the post of Physical Education Master on 19.02.2020 in Education Department, Punjab. Upon which, the petitioner submitted his technical resignation to Jail Department and joined training for the post of Physical Education Master in the Education Department Punjab. However, after completion of his training, when he approached the Jail Department for approval of his resignation he learnt that his services were terminated by the Jail Department vide order dated 23.06.2020 on account of the pendency of the case.

By now more than thirteen years have passed. The offences are only under Sections 427, 447, 506, 148, 149 IPC and Section 25, 27 of the Arms Act.

On the touchstone of the law as enunciated by Hon'ble Supreme Court the present is a fit case where the FIR and consequential proceedings are liable to be quashed.

Accordingly, this petition is allowed. FIR No.90 dated 15.07.2007 under Sections 447, 427, 506, 148, 149 IPC and Section 25, 27 of the Arms Act, Police Station Ghuman, Police District Batala, Punjab and all consequential proceedings arising therefrom are quashed qua the petitioner.

February 19, 2021

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No