

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

**CRM-M No.39693 of 2021(O&M)
Date of Decision-11.10.2021**

Nitesh Bhardwaj ... Petitioner
Versus

State of Punjab and another ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. P.S. Ahluwalia, Advocate
for the petitioner.

Mr. Amar Ashok Pathak, Addl., A.G., Punjab.

Mr. R.S. Rai, Senior Advocate with
Mr. Rajat Khanna, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 14.09.2021 passed by Judicial Magistrate Ist Class, Batala in case bearing FIR No.354 dated 30.10.2020 under Sections 302 and 120-B IPC at Police Station Civil Lines, Batala, vide which the trial Court has rejected the cancellation report submitted by the Investigating Officer and remitted the matter for further investigation.

[2]. Learned counsel for the petitioner submitted that earlier respondent No.2 filed CRM-M No.26794 of 2020 in the High Court for registration of FIR against the petitioner in the context of murder of their mother. Petitioner and respondent No.2 are real brothers. This Court vide order dated 27.10.2020, accepted the said petition and directed for registration of case after following the ratio laid

down in **Lalita Kumari Vs. Govt. of U.P. and others, 2013(4) RCR (Criminal) 979**. It was observed that the police officer cannot embark upon any elaborate inquiry to ascertain genuineness or reasonableness of the information and cannot refuse registration of criminal case. It does not lie under the domain of police officer to substitute preliminary/detailed inquiry with the investigation of the case, as the investigation can only be done after registration of an FIR. Para Nos.34 and 35 of the order dated 27.10.2020 passed in CRM-M No.26794 of 2020 read as under:-

“[34]. In view of aforesaid legal position, refusal to register an FIR is not in accordance with law. It would be prerogative of the Police to file cancellation of the FIR after investigation in accordance with law. In such eventuality, the complainant would be having a right to file protest petition on receipt of notice from the Court. Thereafter the Court may accept the cancellation report or proceed with the case as a criminal case on receipt of preliminary evidence or may pass any other order in accordance with law including further investigation.

[35]. For the reasons recorded hereinabove, I accept this petition and direct registration of case. However, it is made clear that after registration of the case, if the Police files a cancellation report after lawful investigation, then the Court would proceed to accept or reject the same in accordance with law. Registration of FIR, in itself would not be construed to mean any final opinion about the case. Police would investigate the

offence in a lawful manner and thereafter would act in accordance with the Code.”

[3]. Against the said order, the petitioner remained unsuccessful in Special Leave to Appeal (Crl.) No.5421 of 2020, which was dismissed vide order dated 22.02.2021 by the Hon'ble Apex Court.

[4]. Learned counsel by referring to the impugned order submitted that the order has been passed primarily on the basis of dis-agreement shown by the complainant. Trial Court has observed that undoubtedly the investigating agency has opined that nothing incriminating could be collected against the accused which could justify the recommendation of trial. Complainant while appearing in the Court in pursuance of the notice, expressed his concern about the alleged evidence collected by investigating agency and stated that he does not agree with the cancellation report and demanded re-investigation. Judicial Magistrate Ist Class, Batala in the light of dis-agreement shown by the complainant passed the impugned order, remitting the case for further investigation by the police. Learned counsel by relying upon **Prithvi Raj Sehgal Vs. State of Punjab, 2007(3) RCR (Criminal) 438, Tarlochan Singh Sethi Vs. State of Punjab, 2015(8) RCR (Criminal) 594** and **Ravinder Kumar Vs. State of Punjab, 2020(4) RCR (Criminal) 137** contended that the Court was required to satisfy itself for ordering further investigation in the case. The case cannot be remitted back to the police for further investigation on the basis of dis-satisfaction

shown by the complainant party. Acceptance or rejection of cancellation report depends upon the satisfaction of the Court, for which the Court has to arrive at a definite conclusion for ordering so and not otherwise. Complainant being an interested person would not be satisfied with the cancellation report in any manner. The Court has to give elaborate reasons of dis-satisfaction against the cancellation report while ordering further investigation.

[5]. *Per contra*, learned Senior Counsel for respondent No.2 opposed the petition on the ground that the police was hell-bent in filing the cancellation report within a period of 26 days. The Court was very much in the knowledge of the import of order dated 27.10.2020 passed by this Court in CRM-M No.26794 of 2020. Learned Senior Counsel referred to some salient features of the case that the mother of the complainant was murdered in Batala on 08.03.2020. Complainant filed detailed complaint in respect of murder of his mother at City Police Station Batala on 22.03.2020. No FIR was lodged. Thereafter, the complainant filed CRM-M No.16384 of 2020 against in-action of Batala police. The said petition was disposed of on 25.06.2020 by directing respondent No.3 to consider and decide the complaint dated 22.03.2020 in accordance with law. Thereafter, one sided inquiry was submitted by DSP, Batala to SSP Batala on 30.07.2020. Complainant was not satisfied by the progress made by Batala police as the same was intended to help the accused. Complainant was constraint to file CRM-M No.26794 of 2020 in the manner as observed in para

Nos.34 and 35 as reproduced in preceding para of this order. FIR No.354 was accordingly registered on 30.10.2020 in Police Station Civil Lines, Batala. Order dated 27.10.2020 passed by this Court in CRM-M No.26794 of 2020 was upheld by the Hon'ble Apex Court vide order dated 22.02.2021 passed in SLP (Crl.) No.5421 of 2020.

[6]. Learned Senior Counsel further submitted that counter affidavit dated 17.12.2020 was filed by DSP, City Batala before the Hon'ble Apex Court in SLP (Crl.) No.5421 of 2020, vide which it was admitted that the order dated 27.10.2020 was rightly passed. On the basis of undated application filed by one Naresh Kumar for cancellation of FIR, the said application was marked by SSP Batala, to SHO Civil Lines for investigation on 01.03.2021. On 13.03.2021, SSP on the basis of undated inquiry report filed by SHO, Civil Lines, issued direction that the same may be filed before the Court. Learned Senior Counsel further submitted that on the utter shock of the complainant, the cancellation report was prepared within 26 days by the SHO, Civil Lines and the same was presented.

[7]. Both the learned counsel for the parties tried to address arguments on the intricacy of the case. After hearing them, I refrain from observing anything on the integral part of the merits of the case, *lest* it may prejudice the case of either of the parties.

[8]. Perusal of the impugned order would show that only consideration that has been made by the trial Court is the dis-

satisfaction of the complainant party. Dis-satisfaction of the complainant party qua the cancellation report is a normal instinct and that criteria alone cannot be formed basis for ordering further investigation.

[9]. It is a settled principle of law that the Court dealing with the cancellation report has to record its own satisfaction while accepting or rejecting the cancellation report. Cancellation report can be rejected by the Court by giving reasons and by doing so, the Court can refer the matter for further investigation also. The Court can take cognizance of its own as well, but the Court cannot reject the cancellation report merely on the ground that the complainant is not satisfied with the investigation.

[10]. It is true that the Magistrate while accepting or rejecting the cancellation report cannot compel investigating agency to change its opinion or to form a particular opinion or to submit challan, but certainly Court can give reasons for directing the police to undertake further investigation. While rejecting the cancellation report, the Magistrate is duty bound to record its own satisfaction instead of accepting mere dis-agreement of the complainant. It is not the satisfaction of the complainant which would ultimately matter, but it is the satisfaction of the Court which would be relevant factor for acceptance or rejection of the cancellation report. Ratio laid down in **Prithvi Raj Sehgal's case (supra), Tarlochan Singh**

Sethi's case (supra) and **Ravinder Kumar's case (supra)** can be relied in the aforesaid context.

[11]. On consideration of aforesaid legal position, it would be just and appropriate to direct Judicial Magistrate Ist Class, Batala to re-visit the issue and pass appropriate order in accordance with law. Impugned order dated 14.09.2021 is set aside on this sole ground of not recording satisfaction by the trial Court while passing the impugned order. This petition is accordingly allowed. This Court refrains from observing anything on merits of the case. Trial Court is directed to pass a fresh order in accordance with law by recording its own satisfaction as per legal parameters as discussed above.

[12]. Nothing expressed hereinabove, would be construed to be an opinion on merits of the case.

(RAJ MOHAN SINGH)
JUDGE

11.10.2021

Prince

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No