

In virtual Court

CRM-M-41211-2021

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-41211-2021 (O&M)
Date of decision: 05.10.2021

Gagandeep Jindal

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. D.S. Malwai, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for quashing of the order dated 05.08.2021 passed by the Judicial Magistrate 1st Class, Ludhiana, vide which report under Section 173 Cr.P.C. submitted in FIR No.36 dated 31.05.2016 under Section 406 IPC, registered at Police Station Jodhan, District Ludhiana Rural, before the Illaqa Magistrate, was not returned.

Learned counsel for the petitioner submits that after registration of the FIR, the petitioner filed CRM-M-33859-2016, praying for quashing of aforesaid FIR and the same was disposed of vide order dated 23.09.2016, by passing the following order: -

“The petitioner has been booked in a criminal case on the

complaint of District Manager, Punjab State Warehousing Corporation (for short 'the Corporation') on the allegation that the petitioner had caused loss to the Corporation by not delivering the rice after custom milling for the crop year 2009-10.

The petitioner seeks quashing of the FIR and the criminal proceedings inter alia on the ground that the milled rice has been dealt with by the complainant Corporation as per the orders of the High Court in CWP 17437 of 2011 decided on 17.8.2012 and LPA No. 1366 of 2012 decided on 7.9.2012, respectively. Without taking into consideration the orders of the High Court and the steps taken on the basis of the orders of the High Court, the petitioner has been involved in the case despite the fact that the matter regarding recovery of money on account of custom milling has already been adjudicated upon by the Arbitrator and after the decision of the Arbitrator, the same is being again looked into by the court in exercise of powers u/s 34 of the Arbitration and Conciliation Act.

Counsel for the petitioner has submitted that the stock for the crop year 2009-10 was disposed of by the petitioner after a period of 3 years as there had been insufficiency of storage space. The meager shortage is the result of natural consequences on account of improper storage. The circumstances, the statements already recorded during the course of investigation and the documents having relevance to the fair investigation and the culpability of the petitioner, are required to be taken into consideration by the investigating agency. The petitioner appears to have submitted a detailed history of disbursal of the stocks to the DIG, Ludhiana, which was noticed in the proceedings recorded in the instant FIR No. 36 of 31.5.2016.

Notice of motion.

On the asking of the court, notice has been accepted by Ms. Simsi Dhir, DAG, Punjab. Copy given.

This petition is disposed of at this stage as not maintainable being pre-mature. However, a direction is issued that all the material facts, the relevant admissible documents and any statements voluntarily offered by the witnesses, will be taken into consideration, as per the mandate of Section 163(2) Cr.P.C. by the investigating agency before forming an opinion regarding culpability of the petitioner. In case of any controversy regarding the legal and factual position, it will always be open to the Commissioner of Police, Ludhiana to constitute a Special Investigating Team for the fair investigation of the case.”

Learned counsel for the petitioner further submits that since before submitting the report under Section 173 Cr.P.C., directions contained in the order dated 23.09.2016 were not complied with, as the investigating agency has not formed an opinion regarding culpability of the petitioner. It is also submitted that when the challan was presented and an application was moved by the petitioner with a request that challan be returned to the police for re-submitting the same, after compliance of the order dated 23.09.2016, as there is no specific mention that same is presented after compliance of the order dated 23.09.2016. The trial Court, vide impugned order dated 05.08.2021, dismissed the application. It is thus submitted that the trial Court has committed mistake in not returning the challan to comply with the aforesaid order.

Learned State counsel has, however, submitted that after presentation of the challan, charges have already been framed and the case is now fixed for recording the prosecution evidence.

After hearing learned counsel for the parties, I find no merit in the present petition.

The aforesaid petition praying for quashing of FIR was held to be non-maintainable vide order dated 23.09.2016, in which only a direction was issued to the investigating agency to form an opinion.

Mere fact that in the report under Section 173 Cr.P.C., it is not mentioned that aforesaid order has been complied with, is not ground to reject the investigation conducted by the police, while submitting the challan.

Even otherwise, the petitioner could not make out any case on merits as to how his right has been prejudiced, while submitting the report under Section 173 Cr.P.C.

Needless to say that the petitioner has an alternative and efficacious remedy regarding compliance of the aforesaid order as well as challenging the order framing of charge before the competent Court of law.

In view of the above, present petition is dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

05.10.2021
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No