

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-4255-2022 (O & M)

Date of decision: 14.02.2022

Nirbhai Singh and ors.

..... Petitioners

V/s

State of Punjab and ors.

...Respondents

(Through Video Conferencing)

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Lal Singh Sandhu, Advocate, for the petitioners.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition is for quashing of FIR No.241 dated 30.10.2009 under Sections 447, 511, 427, 506 and 34 IPC with Police Station Patran, District Patiala (Annexure P-1).

The learned counsel for the petitioners states that a civil dispute was pending between the parties which has culminated in favour of the petitioners upto the High Court. During this period, Balwant Singh, the complainant got registered the aforementioned FIR, which on investigation, was found to be false, and therefore, a cancellation report was submitted to the Court below. The categoric finding of the investigating agency was that Nirbhai Singh was the owner of the land and he had cultivated the same.

Notice was issued to Balwant Singh and on his opposing the same, the matter went back for further investigation vide order dated 06.03.2010. During the pendency of the further investigation, the said Balwant Singh passed away and now the cancellation report has been

submitted once again on 13.10.2018 after this, the Court had directed that the same should be submitted to the Court within a month of the order dated 21.10.2013 (Annexure P-7). The legal heirs of the said Balwant Singh are not appearing before the Court below despite warrants being issued to them. The learned counsel for the petitioners submits that no notice was required to be given to the legal heirs since they are not the first informants. He relies upon Paras 4 and 5 of the judgment passed by the Hon'ble the Supreme Court in the case of '***Bhagwant Singh versus Commissioner of Police, 1985(2) RCR (Criminal) 259***' to support his argument. Paras 4 and 5 of the said judgment are reproduced as under:-

“4. Now, when the report forwarded by the officer-in charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant

is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting

service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2) (i) of Section 173 if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate.

5. The position may however, be a little different when we consider the question whether the injured person or a relative of the deceased, who is not the informant, is entitled to notice when the report comes up for consideration by the Magistrate. We cannot spell out either from the provisions [of the Code](#) of Criminal procedure, 1973 or from the principles of natural justice, any obligation on the Magistrate to issue notice to the injured person or to a relative of the deceased for providing such person an opportunity to be heard at the time of consideration of the report, unless such person is the informant who has lodged the First Information Report. But even if such person is not entitled to notice from the Magistrate, he can appear before the Magistrate and make his submissions when the report is considered by the Magistrate for the purpose of deciding what action he should take on the report. The injured person or any relative of the deceased, though not entitled to notice from the Magistrate, has locus to appear before the Magistrate at that time of consideration of the report, if he otherwise comes to know that the report is going to be considered by the Magistrate and if he wants to make his submissions in regard to the report, the Magistrate is bound to hear him. We may also observe that even though the Magistrate is not bound to give notice of the hearing fixed for consideration of the report to the injured person or to any relative of the deceased, he may, in the exercise of his

discretion, if he so thinks fit, give such notice to the injured person or to any particular relative of or relatives the deceased, but not giving of such notice will not have any invalidating effect on the order which may be made by the Magistrate on a consideration of the report”.

I have heard the learned counsel for the petitioners in ***Bhagwant Singh's case (Supra)***, the Hon'ble Supreme Court has only made it mandatory for notice to be issued to the first informant though the Magistrate could if he chose to issue notice to any particular relative as well. In the instant case, the respondents are neither the first informants nor the injured witnesses, therefore, despite notice, if they chose to stay away from the proceedings, despite they being called upon to oppose the cancellation report, then it's apparent that they want to delay the adjudication upon the cancellation report pertaining to an FIR of 2009.

It may be reiterated here that the FIR got registered by Balwant Singh pertains to Sections 447, 511, 506, 427 and 34 IPC. It was found that the land, in question, was in the ownership of the petitioners' side. The legal heirs of Balwant Singh, therefore, have a limited role in opposing the cancellation report. More so, when they choose not to appear despite notice.

In view of the above discussion, the present petition is disposed of with directions to the Illaqa Magistrate, Patiala, to adjudicate upon the cancellation report within a period of six weeks from the date of receipt of copy of this order after giving the legal representatives of the deceased-complainant one final opportunity to appear and oppose the cancellation report if they so desire.

It is, however, made clear that this Court has not expressed any opinion on the merits of the case.

(JASJIT SINGH BEDI)
JUDGE

February 14, 2022
sukhpreet

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