

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-14793-2021 (O & M)****Date of decision: 22.12.2022**

Krishan

.... Petitioner

V/s

State of Haryana and anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Vivek Singla, Advocate, for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for the quashing of FIR No.164 dated 26.05.2019 under Sections 66, 66b, 66d of the Information Technology (Amendment) Act, 2008, Section 120-B, 201, 420, 467, 468 and 471 IPC registered at Police Station Rewari City, District Rewari (Annexure P-1), the report under Section 173(8) Cr.P.C. dated 12.02.2020 (Annexure P-3), the impugned charge-sheet dated 02.12.2019 (Annexure P-12) and all other subsequent proceedings arising therefrom.

2. The brief facts of the case as emanating from the pleadings are that the impugned FIR came to be registered on 26.05.2019 on the basis of a written complaint of the complainant Inspector Anand Kumar in which he stated that he was performing his examination duty at Jain Girls Senior Secondary School, Rewari, where EASI Balwant Singh, Incharge, Cyber Cell, Rewari reached and told him that on 24.05.2019, an E-mail had been

received on the official E-mail id of Superintendent of Police, Rewari, whereby it had been stated that an attempt would be made by certain elements to leak out the answer-key of the examination for the post of Naib Tehsildar being organised by the Haryana Staff Selection Commission (hereinafter to be known as 'the HSSC') on 26.05.2019 and the answer-key shall be circulated to the aspirants.

On this basis, the impugned FIR came to be registered against eight persons, namely, Jaiveer son of Rajinder Singh, Kuldeep son of Roshan Lal, Dinesh son of Rajinder Singh, Manoj Kumar @ Monu son of Rajinder Singh, Pankaj son of Jai Bhagwan, Anil, Deepak son of Rajinder Singh and Neeraj son of Mahavir. A copy of the FIR is annexed as Annexure P-1 to the petition. It may be pertinent to mention here that the petitioner was neither named in the FIR nor was any role attributed to him.

3. During the course of surveillance of some mobile numbers, it was found that Dinesh Kumar son of Rajinder Singh was using mobile No.90508-07900 and was talking with Akhil son of Varinder. During the course of the telephonic conversation, Dinesh also spoke with Manoj @ Monu. As per the contents of that conversation, reference has been made to the name of the petitioner. The said conversation took place at about 11.40 a.m. on 25.05.2019. A copy of the transcript of the telephonic conversation dated 25.05.2019 is attached as Annexure P-2 to the petition.

It also transpired that the petitioner had spoken to the accused Akhil @ Kheela on 23.05.2019, 25.05.2019 and 26.05.2019 though there is no recording/transcript of the conversation between the two.

Pursuant to the arrest of the accused, the disclosure statement of Akhil was recorded, as per which, the petitioner was one of the accused who

had solved the paper. The copy of the disclosure statement is attached as Annexure R-1 to the State reply dated 03.12.2021.

Based on the aforementioned evidence, the petitioner was arrayed as an accused. Ultimately, a report under Section 173(2) Cr.P.C. was submitted against 12 accused, namely, Jaiveer son of Rajinder Singh, Dinesh son of Rajinder Singh, Deepak son of Rajinder, Kuldeep son of Roshan Lal, Ravish son of Rohtash, Krishan (petitioner) son of Kartar, Pankaj son of Jai Bhagwan, Akhil son of Varinder, Raj Kumar @ Raju son of Gaya Parshad, Jasbir son of Kehar Singh, Rajiv Bhutani son of Baldev Raj Bhutani, Satish Kumar Rathi son of Ramphal, and a report under Section 173(8) Cr.P.C. was submitted against accused Manoj Kumar @ Monu son of Rajinder Singh.

As per investigation, two candidates/accused, namely, Dinesh son of Rajinder Singh and Manoj Kumar @ Monu son of Rajinder Singh were taking the exam for the post of Naib Tehsildar. The facilitators for leaking of the paper and passing on the solved paper to the aforementioned two candidates were Deepak Son of Rajinder Singh, Kuldeep son of Roshan Lal, Neeraj son of Mahavir, Rajiv Bhutani (since died) son of Baldev Raj Bhutani, Jaiveer son of Rajinder Singh, Raj Kumar @ Raju son of Gaya Parshad and Satish Kumar Rathi son of Ramphal Rathi. Akhil son of Varinder, Pankaj son of Jai Bhagwan and Krishan (petitioner) son of Kartar are stated to have been the solvers of the paper for the said post. A copy of the report under Section 173(8) Cr.P.C. is annexure P-3.

However, post investigation, Kuldeep son of Roshan Lal was discharged on 29.06.2019 and four accused, namely, Vidhur JE son of Chand Ram, Neeraj son of Mahavir, Arvind Ghanghas son of Surinder Singh and Pardeep Gill were found to be innocent.

4. Thereafter, the charges were framed under Sections 66, 66b, 66d of the Information Technology (Amendment) Act, 2008, Section 120-B, 201, 420, 467, 468 and 471 PC vide order dated 02.12.2019. A copy of the said order is annexed as Annexure P-12 to the petition.

5. Pursuant thereto, the present petition was filed for quashing of FIR (Annexure P-1), the report under Section 173(8) Cr.P.C. (Annexure P-3), the order framing charges (Annexure P-12) and all subsequent proceedings arising therefrom.

The contention raised by the petitioner was that the phone-talk between Dinesh on the one hand and Akhil and Manoj @ Monu on the other, naming the petitioner or the CDR showing that the petitioner spoke with Akhil and the disclosure statement of Akhil were insufficient to affix liability upon the petitioner, and therefore, the proceedings qua the petitioner ought to be quashed.

6. On 06.04.2021, the following order was passed:-

“The case has been taken up for hearing through video conferencing.

The petitioner has filed present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") for quashing of FIR No.164 dated 26.05.2019 registered under Sections 66, 66B and 66D of the Information Technology (Amendment) Act, 2008 and Sections 120-B, 201, 420, 467, 468 and 471 of the Indian Penal Code, 1860 at Police Station Rewari City, District Rewari and all subsequent proceedings arising therefrom including final report under Section 173(8) of the Cr.P.C. and charges framed on 02.12.2019.

Learned Counsel for the petitioner has submitted that as per the prosecution version the petitioner had talks with co-accused Akhil. Merely having talks with co-accused Akhil, who is a childhood friend of the petitioner, does not implicate the

petitioner for commission of the alleged offences. The FIR and all subsequent proceedings arising therefrom are liable to be quashed.

Notice of motion.

Notice regarding stay as well.

Pursuant to supply of advance copy, Mr. Ranvir Singh Arya, Addl. A.G., Haryana has appeared and accepted notice on behalf of the respondents.

Learned State Counsel seeks time to file reply.

Adjourned to 21.05.2021”.

Thereafter, the proceedings were stayed qua the petitioner vide order dated 22.08.2022 passed by this Court. The said order is reproduced hereinbelow:-

“The Counsel for the petitioner has referred to the evidence against the petitioner which as per him is the alleged telephonic conversation between Monu and Khilan which contains a reference to him. He further contends that the confessional statement of his co-accused naming him is inadmissible in evidence.

The Counsel for the State seeks time to argue the matter.

List on 05.09.2022.

Further proceedings before the trial Court shall remain stayed qua the petitioner till the next date of hearing”.

7. Pursuant to the issuance of the notice, initially a reply dated 03.12.2021 was submitted by way of an affidavit of Mohd. Jamal, HPS, Deputy Superintendent of Police, Rewari, District Rewari, on behalf of the respondents. As per the said reply, pursuant to the registration of the FIR, during the course of investigation, the petitioner was arrested and suffered a disclosure statement admitting his involvement in the present case. While referring to the disclosure statement of Akhil, it was stated in the reply that, in fact, Akhil had travelled to Gurugram alongwith the present petitioner,

stayed at a guest-house in Sector 39, where they had met with Dinesh, Manoj, Neeraj, Ravish and Pankaj, who had apprised them that they were to solve the question paper of the Naib Tehsildar examination and the answer-key was to be provided to the aspirants and that he (petitioner) had been called upon to solve the question paper with the aid of Pankaj. As per the reply, since there were disputed questions of fact, which could not be summarily gone into by the Court in the present proceedings under Section 482 Cr.P.C. and detailed appreciation of evidence was required, the present petition ought to be dismissed.

A subsequent reply was submitted by way of affidavit of Mohd. Jamal, HPS, Deputy Superintendent of Police, Rewari, District Rewari on behalf of the respondents dated 09.12.2021. Once again, it was stated that the petitioner had played an active role in the conspiracy. He had travelled all the way to Gurugram in the company of the co-accused Akhil had solved the paper that had been leaked and thereafter the co-accused had transmitted the answer-key to the aspirants. There was, therefore, ample electronic evidence to show that all the accused were part of a pre-planned conspiracy, received the question paper, solved the same and the answer-key was to be circulated amongst the aspirants. It was, thus, reiterated that the present petition deserved to be dismissed as disputed question of facts could not be adjudicated upon in a petition under Section 482 Cr.P.C.

8. The matter has come up for final adjudication today.

9. The learned counsel for the petitioner while referring to the petition contends that there are three pieces of evidence against the petitioner. Firstly, there is a conversation between Dinesh and Akhil and Manoj @ Monu wherein the name of the petitioner figures. The said

with any liability in the absence of the petitioner being a part of that conversation.

So far as the call detail record of the petitioner and the co-accused/Akhil are concerned, they would show that the petitioner spoke to Akhil on 23.05.2019, 25.05.2019 and 26.05.2019. But it would also show that Akhil has spoken to the petitioner more than 200 time from 06.01.2019 till 15.12.2019 as is borne out from the CDR extract (Annexure P-9). The phone number of the petitioner as per the case of the prosecution was 79880-62096 and that of Akhil is 99911-18383. Even otherwise, the contents of the conversation which transpired between the two was not known. In fact, both he (petitioner) and Akhil belong to the same village and had studied together in the same school till 12th Standard. The certificates of Secondary Examination and Senior Secondary Examination of the petitioner are attached as Annexures P-4 and P-5 to the petition. Similarly, the certificates of Secondary Examination and Senior Secondary Examination of Akhil are attached as Annexures P-6 and P-7 to the petition. Further, the CDR (Annexure P-9 and documents (Annexures P-4 to P-7) cannot be denied.

He further contends that the disclosure statement of the co-accused Akhil does not, in any manner, further the case of the prosecution as the said disclosure statement purportedly referring to the role of the petitioner as being a paper solver is completely inadmissible in evidence having been made in police custody. He, thus, contends that taking the allegations to be absolutely correct, the FIR and the report under Section 173(8) Cr.P.C. do not disclose the commission of any offence qua the petitioner, and therefore, the proceedings against him ought to be quashed.

Reference is made to the judgment in 'State of Haryana and others versus

He also contends that, in fact, there was no leakage of the paper as the answer-key was yet to be delivered as is borne out from order dated 13.08.2019 (Annexure P-10) passed by this Court in the case of '*Neha Chandel versus Haryana Public Service Commission in CWP-17118-2019*', where three candidates had approached this Court with a prayer for cancelling the examination for the post of Naib Tehsildar.

10. The learned counsel for the State, on the other hand, while referring to the replies dated 03.12.2021 and 09.12.2021 contends that there is a clear reference to the petitioner in the conversation between Dinesh on the one hand and Akhil and Manoj @ Monu on the other. While referring to the contents of the transcript (Annexure P-2), he states that there is also a reference to the examination for the post of Naib Tehsildar, and therefore, the petitioner cannot be absolved of his prima facie liability at least at this stage. Similarly, there are CDRs showing that he (petitioner) spoke to Akhil, co-accused on 23.05.2019, 25.05.2019 and 26.05.2019 which would also show that he was in touch with one of the main accused a few days prior to the occurrence and then on the date of occurrence. Further, the tower location of the petitioner was at Gurugram on 26.05.2019 which shows that Akhil and some of the other paper solvers alongwith the petitioner were present at Gurugram where the petitioner alongwith Pankaj and Akhil were to solve the paper and send the answer-key to the facilitators who were to pass it on to the two candidates, namely, Dinesh and Manoj @ Monu. He, contends that the disclosure statement of Akhil is categoric to the effect that the petitioner was one of the paper solvers and had travelled from his village to Gurugram for the said purpose. He submits that while the mobile phone of the petitioner and Ravish did not reveal any incriminating data the phone

Naib Tehsildar examination. He, thus, contends that since the petition raises disputed question of facts, the same cannot be adjudicated upon in summary proceedings under Section 482 Cr.P.C., and therefore, the present petition deserves to be dismissed.

11. I have heard the learned counsel for the parties at length.

12. Before proceeding further, it would be pertinent to examine the relevant judgments of the Hon'ble Supreme Court on the issue of quashing of the proceedings under Section 482 Cr.P.C. as also the evidentiary value of a disclosure statement. The said judgments are reproduced hereinbelow:-

In 'State of Haryana and others versus Bhajan Lal and others, 1992 Supp. (1) 335', the Hon'ble Supreme Court has observed as under:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge”.

The Hon'ble Supreme Court in the case of 'Anand Kumar Mohatta and another versus State (Govt. of NCT of Delhi), Department of Home and Anr., 2019(5) RCR (Criminal) 168', held as under:-

“16. Even otherwise it must be remembered that the provision invoked by the accused before the High Court is [Section 482](#) Cr. P.C and that this Court is hearing an appeal from an order under [Section 482](#) of Cr.P.C. [Section 482](#) of [Cr.P.C](#) reads as follows: -

“482. Saving of inherent power of the High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

17. There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High court can exercise jurisdiction under [Section 482](#) of Cr.P.C even when the discharge application is pending with the trial court G. Sagar Suri and Anr. v. State of U.P. and Others, 2000(1) RCR (Criminal) 707: (2000) 2 SCC 636 (Para 7). Umesh Kumar v. State of Andhra Pradesh and Anr. (2013) 10 SCC 591 (Para 20). Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialized into a charge sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court”.

The Hon'ble Supreme Court in the case of '**Aloke Nath Dutta & Orss. Versus State of West Bengal, 2007(1) RCR (Criminal)**', has held as under:-

"52. It is, however, disturbing to note that a confession has not been brought on records in a manner contemplated by law. Law does not envisage taking on record the entire confession by marking it an exhibit incorporating both the admissible and inadmissible part thereof together. We intend to point out that only that part of confession which is admissible would be leading to the recovery of dead body and/or recovery of articles of Biswanath, the purported confession proceeded to state even the mode and manner in which Biswanath was allegedly killed. It should not have been done. It may influence the mind of the court.

[See State of Maharashtra v. Damu S/o Gopinath Shinde & Others (2000) 6 SCC 269 at p. 282 para 35]

53. *In Anter Singh v. State of Rajasthan* [(2004) 10 SCC 657], it was stated :

"11. The scope and ambit of *Section 27* of the Evidence Act were illuminatingly stated in *Pulukuri Kottaya v. Emperor* in the following words, which have become locus classicus: (AIR p. 70, para 10).

"It is fallacious to treat the fact discovered within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that I will produce a knife concealed in the roof of my house does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the

house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added with which I stabbed A these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

[But see [Dhananjoy Chatterjee @ Dhana v. State of West Bengal](#) [(1994) 2 SCC 220 at p.234-235].

54. Therefore, we would take note of only that portion of the confession which is admissible in evidence".

13. Coming back to the facts of the present case, as is apparent, the conversation between Dinesh on the one hand and Akhil and Manoj @ Monu on the other, only shows that they were talking about the petitioner in the context of the Naib Tehsildar examination. By no stretch of imagination, can such conversation inculcate the petitioner who is not a party to the said conversation. If this piece of evidence is to be taken to be admissible qua the petitioner, it would have very serious repercussions. A situation may arise where two persons, in order to implicate a third may have a damaging conversation with each other about the third person who is not a party to the said conversation.

Similarly, so far as the conversation between the petitioner and Akhil is concerned as is borne out from CDR on record (Annexure P-9), it would only show that the petitioner had spoken to Akhil on 23.05.2019, 25.05.2019 and 26.05.2019. Apparently, the contents of the conversation are not a part of the report under Section 173 Cr.P.C. The CDR would show that the petitioner and his co-accused have spoken on number of occasions much prior to the date of occurrence/FIR i.e. 26.05.2019. On the other hand, the petitioner has established that he was well known to Akhil as they were

classmates as is borne out from the Certificates (Annexures P-4, P-5, P-6 and P-7). Therefore, merely being in contact with the co-accused would not inculcate the petitioner in the absence of any substantive evidence against him. Lastly, the disclosure statement of his co-accused is completely inadmissible. In fact, the Hon'ble Supreme Court in 'Aloke Nath Dutta and others (supra)', has deprecated this practice of placing on record the entire disclosure statement of an accused and has gone on to say that only the part which only leads to the recovery must be made a part of the record as the placing on record of the entire statement including the inadmissible part prejudices the mind of the Court.

In the present case, similar is the situation. The entire statement is inadmissible except to the extent of the recovery of a mobile phone from Akhil.

14. A perusal of the judgements in 'Bhajan Lal's case (supra) and 'Anand Kumar Mohatta and another's case (supra)', would show that where the report under Section 173 Cr.P.C. alongwith the accompanying documents do not show the commission of any offence whatsoever, it would certainly amount to abuse of the process of the Court if the proceedings qua the accused were allowed to continue even though the charge-sheet had been filed. In the present case, as has already been discussed hereinabove, taking the entire evidence against the petitioner to be correct, absolutely no offence whatsoever is established by the evidence on record qua the petitioner. Therefore, the continuation of the proceedings qua the petitioner would be nothing but an abuse of the process of the Court.

15. In view of the above discussion, I find merit in the present petition and the FIR No.164 dated 26.05.2019 under Sections 66, 66b, 66d

of the Information Technology (Amendment) Act, 2008, Section 120-B, 201, 420, 467, 468 and 471 IPC registered at Police Station Rewari City, District Rewari (Annexure P-1), the report under Section 173(8) Cr.P.C. dated 12.02.2020 (Annexure P-3), the impugned charge-sheet dated 02.12.2019 (Annexure P-12) and all other subsequent proceedings arising therefrom are hereby quashed qua the petitioner (Krishan) alone.

16. It is made clear that qua the other accused, the proceedings shall continue in accordance with law.

(JASJIT SINGH BEDI)
JUDGE

December 22, 2022
Sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No