

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

CRM-M-23407-2016 (O&M)

Date of Decision: 20.12.2022

Harinek Singh and Others

...Petitioners

Versus

Kulchain Singh and Another

...Respondents

Coram: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Vivek K. Thakur, Advocate
for the petitioners

Mr. Preetinder Singh Ahluwalia, Advocate
for the respondents

Mr. Digvijay Nagpal, AAG Punjab

JAGMOHAN BANSAL, J. (ORAL)

1. Petitions bearing No(s) CRM-M-23407-2016 and CRM-M-48651-2017 being between the same parties and inter-connected are disposed of by this common order. For the sake of convenience, facts are borrowed from CRM-M-23407-2016.

2. The petitioners through instant petition are seeking quashing of complaint No.04 dated 09.01.2015 (Annexure P-5) and summoning order dated 06.01.2016 (Annexure P-6) whereby JMIC, Kapurthala has summoned the petitioners for commission of offence punishable under Sections 324, 326, 341 read with 34 of IPC.

Brief Facts:

3. The brief facts which are necessary for the adjudication of the present case and emerging from the record are that father of petitioners lodged an FIR No.98 dated 21.06.2014 (Annexure P-1) under Sections 323/324/325/326 and 34 IPC at Police Station Dasuya, District Hoshiarpur.

The police after completing investigation filed its report under Section 173 Cr.P.C against Kulchain Singh and his son Gurpreet Singh.

4. Kulchain Singh-respondent No.1 lodged an FIR No.52 dated 24.06.2014 (Annexure P-3) under Sections 324, 341 and 34 IPC at Police Station Bholath, District Kapurthala, against Harinek Singh (petitioner No.1), Ravinder Singh (petitioner No.2) and unknown persons. The police conducted investigation and filed cancellation report before Magistrate who did not accept cancellation report and vide order dated 30.03.2015 sent the matter back to police station concerned for further investigation.

5. The respondents preferred complaint dated 09.01.2015 before Trial Court which came up for consideration before Magistrate, Kapurthala, who vide order dated 06.01.2016 has ordered to summon the petitioners for commission of offence punishable under Section 324/326/341 and 34 IPC.

Contention of the petitioners:

6. Learned counsel for the petitioners submits that as per Section 210 Cr.P.C., the Trial Court was precluded from summoning the petitioners because investigation on the date of passing impugned order was pending before police authorities. Thus, impugned order is liable to be set-aside.

Contention of the respondents:

7. Learned counsel for the respondents submits that there is no infirmity in the impugned order passed by Magistrate. There was no need to wait outcome of police investigation and keep the proceedings qua private complaint pending till the conclusion of police investigation. Section 210 Cr.P.C was not part of Criminal Procedure Code, 1898 and it was for the first time inserted in 1973 Code. The object of inserting Section 210 was to obviate

possibility of filing ambush complaint, with intent to nullify the police investigation.

Learned counsel in support of his contentions relied upon judgment of Hon'ble Supreme Court in **Sankaran Moitra Versus Sadhna Das, 2006 (2) R.C.R. Criminal 389**, where Hon'ble Supreme Court has adverted with intent and scope of Section 210 Cr.P.C.

Learned counsel further submitted that Trial Court is not supposed to wait for police report for indefinite period. Trial Court is free to proceed with complaint, if police fails to discharge its duty. The Magistrate is competent to ignore police report and take cognizance. In support of his contentions, learned counsel cited judgments of Hon'ble Supreme Court in ***R.K. Khanna Versus State and Others, (2003)11 SCC 758; Padmalochan Sahu Versus Lokanath Sethi and Others, 1981 CriLJ 189; Dr. Kumudini Padhi Versus Prasanta Kumar Mandal; 1989 CriLJ 1861; Messrs India Carat Pvt. Ltd. Versus State of Karnataka, 1989 (1) R.C.R. (Criminal) 395; Abhinandan Jha and Others Versus Dinesh Mishra, 1968 AIR (Supreme Court) 117; Jagannath Das and Others Versus State and Another.***

8. Learned State counsel pointing out paragraphs Nos.10, 14 & 15 of reply dated 06.09.2022 filed by way of affidavit of Deputy Superintendent of Police, Sub-Division Bholath, District Kapurthala, submitted that police has already investigated the matter thrice and nothing against the petitioners have been found. Paragraph Nos.10, 14 & 15 of the reply read as:

“10. That it is respectfully submitted that during the further investigation, the call details, Tower location of the mobile No. 84270-71928 of petitioner No. 1 Harnek Singh and mobile No. 98721-74055 of petitioner No.2 Ravinder Singh, for 23.06.2014, were procured whereby it has been found that petitioner No.1 and 2 were not present in Bholath on the day

of occurrence Similarly, the call detail and location of mobile No. 81464-82815 of complainant/Respondent No.1 Kulchain Singh for 23.06.2014 was procured from where the location of the aforesaid phone number, on 23.06.2014 from 11:00 am till 7:30 pm has been found to be at Sodhi Medicos, Bhogpur Road Bholath.

It has further been found that as per the opinion of doctor dated 10.09.2014, the possibility, that the injuries inflicted upon Respondent No.1 Kulchain Singh are caused with friendly hand, cannot be ruled out. That the medical officer vide his report dated 10.09.2014 has stated that '...opinion regarding injuries recorded in MLR TC/30/CHB/2014 dated 23.06.2014 all these injuries can be caused by assault. However, possibility of friendly hand cannot be ruled out. Circumstantial evidence should be taken into consideration...' Therefore, on the basis of the aforesaid facts the then Deputy Superintendent of Police, Sub-Division Bholath, vide his report dated 07.10.2014, has recommended to cancel the FIR No. 52 (supra), which was approved by the then Senior Superintendent of Police, Kapurthala.

Therefore, on the basis of the aforesaid report, Cancellation Report dated 30.11.2014, under Section 173 Cr.P.C. has been prepared in FIR No. 52 (supra) and presented before the Ld. Trial Court, whereby Respondent No. 1 Kulchain Singh did not agree with the cancellation report and prayed for further investigation. Thus the aforesaid Cancellation Report was returned to Police Station Bholath for further investigation vide order dated 30.03.2015 passed by the Ld. Trial Court.

14. That it is respectfully submitted that in compliance with the order dated 30.03.2015 passed by the Ld. Trial Court, the further investigation in the present FIR No. 52 (supra) was conducted. But since no new evidence surfaced during the further investigation thus it was recommended to cancel the FIR No. 52 (supra). Thus, cancellation report in FIR No. 52 (supra) has been presented before the Ld. Trial Court on 06.12.2018, on which the complainant/Respondent No.1 did not agree with the same and requested for further investigation. Thus, the Ld. Trial Court vide order dated

11.02.2019 returned the cancellation report and ordered to conduct further investigation.

15. That it is respectfully submitted that since the cancellation report was again returned vide order dated 11.02.2019, thus further investigation in the present FIR No. 52 (supra) has been conducted. That no new evidence surfaced during the further investigation, thus it was recommended to cancel the FIR No. 52 (supra). Thus, cancellation report in FIR No. 52 (supra) has been again presented before the Ld. Trial Court on 02.12.2019 and the complainant/Respondent No.1 has been summoned in regard to the same but he did not appear before the Ld. Trial Court. Thus vide order dated 05.02.2021, the Ld. Trial Court returned the file to the Police Station.”

9. Before advertizing with the issue involved, it would be appropriate to look at relevant findings recorded by trial Court which read as:

“12. In the present complaint report from police was also called who submitted their report that in the present dispute an FIR was also registered but during inquiry the allegations against accused were found false and the police presented cancellation report in the Court. The said cancellation report is on record and vide order dated 30.03.2015 the same was sent back to the concerned police station for further investigation and further investigation is in progress. In this regard Hon’ble Punjab & Haryana High Court has submitted in Rameshwar Daya Versus Col. Ram Singh, Crl. Rev. No.100 of 1997 decided on 21.05.1998 that Magistrate who accepted the cancellation report is competent to take cognizance in the matter of complaint case of the same occurrence. In Rattan Chand Vs. Lachhman Dass and Others Criminal Misc. No.M-2895 of 2013 it has been laid down by Hon’ble Punjab & Haryana High Court that if the cancellation report is not accepted and the trial Court decides to take cognizance in the case, then both the matters i.e., the private complaint and the case instituted on the police report, would be clubbed and decided together simultaneously by it. In the present case also the Court is competent to take cognizance in the case.

13. After weighing the entire evidence on record, at this stage, there appear sufficient grounds to proceed against the

accused for the offences punishable under Sections 326/324/341/34 of Indian Penal Code. Let, accused Ravinder Singh, Harnek Singh and Savinder Singh be summoned for 18.02.2016 for the abovesaid offences by ordinary process on filing of copies of complaint and PF within seven days.”

10. The conceded position emerging from record and arguments of both sides is:

- i. Father of the petitioners lodged FIR No.98 dated 21.06.2014 under Sections 323/324/325/326 and 34 IPC.
- ii. The police after completing investigation filed its report against respondents herein.
- iii. The respondents lodged FIR No.50 dated 24.03.2014 under Sections 324, 341 and 34 IPC against petitioners.
- iv. The police did not find merit in the allegations of the respondents and filed cancellation report.
- v. The Magistrate returned the matter back to the Investigating Officer.
- vi. The respondents filed private complaint against the petitioners.
- vii. The Magistrate, after noticing pendency of investigation before police, passed impugned summoning order.
- viii. The police re-investigated the matter and filed cancellation report.
- ix. The Magistrate returned the report for re-investigation.

- x. The police again investigated the matter and found petitioners innocent.
 - xi. The Magistrate third time returned the file and asked for further investigation.
 - xii. The petitioners are assailing summoning order on the ground of mandate of Section 210 Cr.P.C.
11. The controversy involved revolves around the Section 210 Cr.P.C, thus, it is inevitable to look at Section 210 Cr.P.C. which is reproduced as below:

“210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.—(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under Section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.”

From the conspectus of above quoted Section, it can be gleaned that if during the course of trial or inquiry of a case instituted otherwise than on a police report, Magistrate comes to know that an investigation by the police is in progress in relation to the same offence, the Magistrate shall stay the proceedings of such inquiry or trial. In case, police files report under Section 173 Cr.P.C. and cognizance is taken on said report, the Magistrate shall try together complaint case and case arising out of police report. If police report does not relate to any accused in the complaint case or Magistrate does not take cognizance of any offence on the police report, the Magistrate shall proceed with inquiry or trial which was stayed by him.

Sub-section (2) of Section 210 Cr.P.C. is applicable where police files a report under Section 173 Cr.P.C. and Magistrate decides to take cognizance of the offence arising out of police report. The Magistrate is bound to try together the offence arising out of police report as well as complaint.

Sub-section (3) of Section 210 Cr.P.C. is dependent upon Sub-Section (1) because if no stay is granted under Sub-Section (1), Sub-Section (3) is not applicable. Sub-Section (3) comes into play as soon as Magistrate finds that police report does not relate to any accused in the complaint case or Magistrate decides not to take cognizance of offence arising out of police report.

12. In **Sankaran Moitra (supra)**, a three Judge Bench of Hon'ble Supreme Court was dealing with the question of taking cognizance without compliance of Section 197 Cr.P.C. when offence has been committed by a government servant. Majority was of the opinion that cognizance has been taken without compliance of Section 197 Cr.P.C. and offence was committed

in discharge of official duty. Justice C.K. Thakker was of the different opinion

and in his dissenting judgment adverted with Section 210 Cr.P.C. Hon'ble Judge had enumerated intent and purport of Section 210 Cr.P.C. The relevant paragraphs read as:

55. In my view, even Section 210 of the Code has no application to the facts of the case on hand. Section 210 requires procedure to be followed when there is a complaint case and police investigation in respect of the same offence and reads thus:

“210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.—(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under Section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.”

56. A bare reading of the above provision makes it clear that during an inquiry or trial relating to a complaint case, if it is brought to the notice of the Magistrate that an investigation by the police is in progress in respect of the same offence, he

shall stay the proceedings of the complaint case and call for the record of the police officer conducting the investigation.

57. The object of enacting Section 210 of the Code is threefold:

- (i) it is intended to ensure that private complaints do not interfere with the course of justice;
- (ii) it prevents harassment to the accused twice; and
- (iii) it obviates anomalies which might arise from taking cognizance of the same offence more than once.

The Joint Committee of Parliament observed:

“It has been brought to the notice of the Committee that sometimes when a serious case is under investigation by the police, some of the persons file complaint and quickly get an order of acquittal either by cancellation or otherwise. Thereupon the investigation of the case becomes infructuous leading to miscarriage of justice in some cases. To avoid this, the Committee has provided that where a complaint is filed and the Magistrate has information that the police is also investigating the same offence, the Magistrate shall stay the complaint case. If the police report (under Section 173) is received in the case, the Magistrate should try together the complaint case and the case arising out of the police report. But if no such case is received the Magistrate would be free to dispose of the complaint case. This new provision is intended to secure that private complainants do not interfere with the course of justice.”

(emphasis supplied)

13. In **Laxmi Dyechem (supra)** and **Reema Aggarwal (supra)**, Hon’ble Supreme Court has dealt with doctrine of Mischief & Heydon. In **Padmalochan Sahu (supra)**, a Single Judge of Orissa High Court has adverted with Section 210 Cr.P.C. The findings relied upon and pointed out by learned counsel for the respondents read as:

“3. The provision for staying the proceedings in the complaint case under section 210, Criminal Procedure Code, as it appears to me, is not to stay the complaint case indefinitely till investigation in the police case is over or till the filing of the Final Report in the case, more so when the concerned police officer does not act expeditiously in the matter and/or does not submit report under section 210, Criminal Procedure Code to the Court at an early date. Provision for stay of the proceedings of the complaint case is made under section 210, Criminal Procedure Code only for the purpose of calling for a report in the matter from the police officer conducting the investigation to examine whether or not to proceed with the complaint case in the facts and circumstances of the case and in view of the provisions in sub-sections (2) and (3) of section 210. If the said report is not submitted within a reasonable time it is not expected of the Court to keep the complaint case shelved for an indefinite period helplessly waiting all the time for the investigating agency to file its report as and when it chooses to do so as in this case. In this case the Court should have directed the investigating officer to submit his report contemplated under section 210(1), Criminal Procedure Code within a particular time. On the failure of the investigating officer to file that report within a reasonable time the Court could have proceeded with the complaint case in accordance with law.”

14. In **Abhinandan Jha and Others (supra)**, Hon’ble Supreme Court has adverted with a situation where police filed cancellation report under Section 173 Cr.P.C. but Magistrate did not agree with the same. The findings relied upon by learned counsel read as:

“15. Then the question is, what is the position, when the Magistrate is dealing with a report submitted by the police, under Section 173, that no case is made out for sending up an accused for trial, which report, as we have already indicated, is called, in the area in question, as a ‘final report’? Even in those cases, if the Magistrate

agrees with the said report, he may accept the final report and close the proceedings. But there may be instances when the Magistrate may take the view, on a consideration of the final report, that the opinion formed by the police is not based on a full and complete investigation, in which case, in our opinion, the Magistrate will have ample jurisdiction to give directions to the police, under Section 156(3), to make a further investigation. That is, if the Magistrate feels, after considering the final report, that the investigation is unsatisfactory, or incomplete, or that there is scope for further investigation, it will be open to the Magistrate to decline to accept the final report and direct the police to make further investigation, under Section 156(3). The police, after such further investigation, may submit a charge-sheet, or, again submit a final report, depending upon the further investigation made by them. If, ultimately, the Magistrate forms the opinion that the facts, set out in the final report, constitute an offence, he can take cognizance of the offence, under Section 190(1)(b), notwithstanding the contrary opinion of the police, expressed in the final report.”

15. The judgments cited by learned counsel for the respondents deal with doctrine of Mischief & Heydon, object of enacting Section 210 Cr.P.C and duty of Magistrate where there is delay on the part of police in filing its report or where Magistrate finds it appropriate to proceed though police has filed cancellation report and no complaint is filed by victim. There is no judgment which deals with facts and circumstances arising out of controversy in hand. In the present case, the police investigated FIR No.52 dated 24.06.2014 and thereafter filed cancellation report. The Magistrate did not agree with cancellation report and asked the Investigating Officer to conduct re-investigation. The Magistrate during the pendency of re-investigation took cognizance of offence on the complaint of the respondents herein. The

order dated 30.03.2015 was sent back to the concerned police station for further investigation which is in progress. It means Magistrate while passing impugned order dated 06.01.2016 was very much aware of the fact that police investigation is in progress. It is not a case where Magistrate stayed the inquiry or trial arising out of complaint and thereafter, cancellation was filed.

Learned counsel for the respondents strenuously contended that sub-section (3) of Section 210 Cr.P.C. is applicable to the case in hand whereas this Court finds that sub-section (3) is applicable where police report is filed, however, Magistrate does not take cognizance of any offence on the police report.

Learned counsel has further submitted that the object of inserting Section 210 Cr.P.C. was to deal with a situation where inspite of pendency of investigation by police, an unscrupulous person files a complaint against accused and would get the complaint dismissed which may result into nullifying investigation by police. Hon'ble Supreme Court in *Sankaran Moitra (supra)* in its minority opinion in Paragraph No.57 has discussed about Section 210 Cr.P.C. and opined that object of Section 210 Cr.P.C is: i) to ensure private complainants do not interfere with the course of justice; ii) to prevent harassment to the accused twice and iii) to obviate anomalies which may arise from taking cognizance of the same offence more than once.

The object of inserting Section 210 Cr.P.C. supports case of the petitioners because at the time of taking cognizance on complaint, police investigation was pending, thus, it was contrary to mandate of Section 210(1) Cr.P.C. to summon the petitioners. It is apt to mention here that police in its multiple investigations have found petitioners innocent and respondents had

lodged FIR on 24.06.2014 in retaliation of FIR dated 21.06.2014, lodged by

father of the present petitioners against the respondents herein. There is no allegation of misuse of powers or partisan on the part of investigating agency. Thus, Magistrate, in all fairness especially when further police investigation was in progress, was not supposed to take cognizance of offence on the basis of complaint and summon the petitioners to face trial.

16. As held by Hon'ble Supreme Court and different High Courts, the Magistrate is not supposed to wait where there is undesired and unwanted delay on the part of investigating agency. The Magistrate is also competent to take cognizance on the basis of evidence available in police file or led by victim where cancellation report is submitted by police. The ultimate intent and purport investigation and trial is to punish the guilty and uphold the rule of law and majesty of justice.

In the case in hand, the police had filed its report against respondents and cancellation report against petitioners. The Magistrate had every right to return the cancellation report and ask for further investigation. The Magistrate was also competent to take cognizance of offence though cancellation was filed, however, as soon as Magistrate opted to return the cancellation report and ask for further investigation, it was in the teeth of Section 210 (1) Cr.P.C. to stay the proceedings arising out of complaint and wait for the outcome of further proceedings conducted by police.

17. In view of above findings, this Court is of the considered opinion that impugned order dated 06.01.2016 (**Annexure P-6**) has been passed contrary to the mandate of Section 210 Cr.P.C., thus, present petition deserves to be allowed. Accordingly, present petition is allowed and order dated 06.01.2016 (**Annexure P-6**), impugned in CRM-M-23407-2016, passed by

IMIC, Kapurthala is hereby set aside.

Order dated 16.11.2017 (**Annexure P-9**), impugned in CRM-M-48651-2017, passed by JMIC, Kapurthala is also hereby set aside.

18. The parties at the first instance are directed to appear before trial Court on 16.01.2023 and thereafter as directed by trial Court. The matter is pending for quite long time, thus, trial Court is requested, without being influenced by findings of this Court, to pass fresh order, in view of further development as well in accordance with law, expeditiously and preferably within two months from 16.01.2023.

19. Disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

20.12.2022
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>