

In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 28032 of 2016 (O&M)
Date of Decision: 10.2.2022

Upinder Singh @ Opinder Singh @ KakuPetitioner

Versus

Hardeep SinghRespondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Namit Gautam, Advocate
for the petitioner.

Mr. Amandeep Singh, Advocate
for the respondent.

SURESHWAR THAKUR, J. (ORAL)

(Through video conferencing)

1. With respect to an incident, which occurred on 07.4.2010, the aggrieved complainant instituted an FIR bearing No. 117 of 08.4.2010, at Police Station Focal Point, Ludhiana, therein offences under Sections 326, 324, 506 read with with Section 34 IPC, become embodied.

2. Also in respect of the above incident, and, against the very same accused, as mentioned in the FIR (supra), the aggrieved complainant proceeded to institute a private complaint bearing No. 192/3/7/10 dated 15.6.2010, titled as Hardeep Singh versus Opinder Singh @ Kaku and others, hence before the learned Magistrate concerned.

3. Since during the pendency of the private complaint (supra), before the learned Magistrate concerned, the investigations into the FIR (supra), were underway, thereupon, the latter, in compliance with the

mandate of Sub Section (1) of Section 210 Cr.P.C., provisions whereof stand extracted hereinafter, proceeded to, during the pendency of the underway investigations into the FIR (supra), relent from embarking upon any enquiry or trial upon the private complaint (supra).

“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

(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.

4. The investigating officer concerned proceeded initially to, qua FIR (supra), as unfolded in Annexure P-4, institute a cancellation report, before the learned Magistrate concerned. Against the acceptance of the cancellation report, the aggrieved complainant made a protest. Consequently, the learned Magistrate concerned, through an order made on 28.10.2012 (Annexure P-5), after rejecting the cancellation report, proceeded to order for further reinvestigation into the offences (supra), by

an officer, not below the rank of Assistant Commissioner of Police.

5. Subsequently also, the investigating officer concerned, proceeded to endorse the earlier proposed cancellation report, as became instituted by the investigating officer concerned, before the learned Magistrate concerned. However, the learned Magistrate concerned, through an order made on 19.1.2016, and, as becomes appended, as Annexure P-9, proceeded to accept the cancellation report, yet he also ordered that the closure report be clubbed along with the private complaint (supra). The reason which has been embodied in the above order, is that the private complaint is to be tried as a State case, and, also is grooved in the factum, that since all the accused have put in appearance, before him, in private complaint (supra), thereupon, they are required to be tried in the private complaint (supra), and/or the Magistrate concluded, that he has the jurisdiction to yet proceed to enquire into, and, try the private complaint (supra).

6. The above made order was challenged by the aggrieved accused, before the learned Additional Sessions Judge, Ludhiana. The latter through an order, as becomes appended as Annexure P-11, declined relief to the aggrieved accused. The reason as made in the order, embodied in Annexure P-11, is similar to the one, as is carried in the order initially made by the learned Magistrate concerned, and, as becomes embodied in Annexure P-9.

7. Consequently, the aggrieved accused, through the instant petition, constituted under Section 482 Cr.P.C., has strived to set aside, and, quash the above referred concurrent orders.

8. Though, there was jurisdiction vested in the learned Magistrate

concerned, to during the pendency of the investigations, as they were underway in the FIR (supra), to not proceed to enquire into, and, try the subjudice before him, private complaint (supra). Moreover, the learned Magistrate concerned could also, in case after completion, and, conclusion of investigations into the offences (supra), embodied in FIR (supra) by the investigating officer concerned, and, upon the latter instituting an affirmative report under Section 173 Cr.P.C., validly proceed to hold a conjoint trial, both upon the private complaint (supra), and, upon the police case concerned.

9. The above valid jurisdiction, is, vested in the learned Magistrate concerned, to hold a conjoint trial, after his assuming jurisdiction, and, cognizance upon the instituted before him, under Section 173 Cr.P.C. hence an affirmative police report, and, rather supported by credible incriminatory evidence, rather both upon the police case, as also upon the private complaint, inquiry whereinto became validly stayed, during the pendency of investigations into FIR (supra). The afore jurisdiction, in the above factual scenario(s) hence, to hold a valid conjoint trial, upon the police case arising from the apposite affirmative report filed under Section 173 Cr.P.C., and, into the complaint (supra) rather would not remain alive nor intact, nor he could assume any valid cognizance or jurisdiction, upon, the police case despite his accepting the cancellation report, nor he could proceed to consolidate for conjoint trial, both the police case as well as the private complaint.

10. Be that as it may, an exception to the afore, is contemplated in Sub Section (3) of Section 210 Cr.P.C., inasmuch as upon the accused, or the offences concerned, in the FIR, being distinct, and, separate, from the

offences qua the accused embodied in the complaint. In other words, if the private complaint concerned, and, the FIR imminently disclose distinctivity *inter se* the offenders concerned or qua the offences concerned, thereupon, irrespective of the fact, that in an FIR, a closure report becomes instituted, and, also becomes accepted by the learned Magistrate concerned, the latter would yet hold a valid jurisdiction to assume cognizance upon the private complaint, and, also would become vested with a valid jurisdiction to proceed to try the private complaint concerned.

11. Necessarily, it is to be culled out from the facts, as stated above, whether the afore exception is applicable to the facts in hand. However, since it is fairly stated at the bar, that in both the FIR, and, the private complaint, the offences are similar, and, also the offenders are the same. Therefore, the above exception existing in Sub Section (3) of Section 210 Cr.P.C., completely barred the learned Magistrate concerned, to after accepting the apposite closure report, from yet assuming cognizance or valid jurisdiction, upon both, and/or to either consolidate the closure report, with private complaint (*supra*). Moreover, he became concomitantly barred, from assuming any valid jurisdiction(s), or to embark upon any conjoint inquiry or make trial both upon the private complaint concerned, and, the police case. Therefore, the exception (*supra*) is, evidently, not workable *viz-a-viz* the aggrieved complainant. Moreso, when the order accepting the cancellation report, as made by the learned Magistrate concerned, hence remained unchallenged, through an appropriate motion, being caused thereagainst by the complainant concerned. Consequently, the above order acquired the completest conclusivity, and, finality. The further legal effect thereof, is that, the consolidation, and, clubbing for the purpose of conjoint

trial of FIR in respect, whereof a closure report became filed, and, also became conclusively accepted, rather along with the private complaint (supra), importantly, when in both there are common offenders, and, also when similar offences, are carried therein, is completely outside the domain of Section 210 Cr.P.C.

12. Therefore, the petition is accepted, and, the concurrently made impugned orders by the learned Courts below, are quashed, and, set aside.

(SURESHWAR THAKUR)
JUDGE

February 10, 2021
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes