

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-19565-2019

Date of Decision: December 21, 2022

BALWINDER SINGH

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- None for the petitioner.

Mr. Kamalpreet Bawa, AAG, Punjab.

AMAN CHAUDHARY, J.

This petition has been filed under Section 482 of the Code of Criminal Procedure for quashing FIR No.166, dated 15.07.2018, under Section 409 of Indian Penal Code, registered at Police Station Division No.6, Police Commissionerate Jalandhar.

Notice of motion was issued in this case wayback on 01.05.2019. Case called out twice since morning but none has appeared on behalf of the petitioner.

On the other hand, learned State counsel on instructions submits that the final report under Section 173 Cr.P.C. in the case was presented on 29.04.2021. It is his further submission that the petitioner was declared proclaimed offender vide order dated 04.01.2021, whereafter he has now surrendered on 22.11.2022. The investigation with regard to him has now commenced and thereafter supplementary challan shall be presented.

It appears that the petitioner has lost interest in the present case on account of the aforesaid facts.

Facts in brief as per FIR are that Balwinder Singh, the present petitioner, is posted as Sub Inspector No.13 in Punjab Roadway, Jalandhar Depot 2, Division 6. When he was posted in duty section in out showder on 25.06.2018, he told to 6 Conductors that today due to strike, the whole staff of Cash Branch is on route and he has been assigned duty for taking cash in Cash Branch, whereas actually his duty was not in Cash Branch. Thus, by telling this to these six Conductors, he had taken and embezzled an amount of Rs.1,32,171/-.

A perusal of the averments made in the petition reveal that quashing of the FIR has been sought on the ground that on 25.06.2018, an amount of Rs.1,32,171/- was handed over by the conductors to the petitioner, who is working as Sub Inspector, for depositing the same in the cash branch, stating that the strike would affect their journey home. However, he could not deposit the same due to sudden pain in his stomach, for the treatment of which he went to a private hospital, and deposited the same on 28.06.2018 after taking treatment. Further that the petitioner has also worked as a Cashier in the cash branch for a long period. The amount in question with remained with the petitioner due to ill health and not malafide intention. His service period is unblemished and served honestly and with dedication. Due to misunderstanding, the FIR has been got lodged by the department.

As is apparent from the aforesaid facts and the submissions made by the learned State counsel that in the FIR, lodged against the

petitioner way back on 15.07.2018, he did not join the proceedings, consequently, he was declared as a proclaimed offender, whereafter, he has recently surrendered on 22.11.2022. The investigation qua him has started, though otherwise, the challan had been presented on 29.04.2021 i.e. after the petitioner was declared proclaimed offender vide order dated 04.01.2021.

Heard the learned State counsel and perused the case file.

Hon'ble The Supreme Court in the case of **Vinod Raghuvanshi**

Vs. Ajay Arora, (2013) 10 SCC 581 has held thus :-

"30. It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not "kill a stillborn child", and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither can the court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein."

Hon'ble The Supreme Court of India in the case of **M/s**

Neeharika Infrastructure Pvt. Ltd. vs State of Maharashtra and others

Criminal Appeal No. 330 of 2021, decided on 13.04.2021, has held thus:

"23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal

proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, **our final conclusions are as under:**

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iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

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xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a

cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR. Xx xx”

In the case of **Ramveer Upadhyay and Another vs. State of U.P. and Another** 2022 SCC OnLine SC 484, Hon'ble The Supreme Court of India has held that, “In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under Section 482 of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Attrocities Act. Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. The Complaint Case No. 19/2018 is not such a case which should be quashed at the inception itself without further Trial. The High Court rightly dismissed the application under Section 482 of the Cr.P.C.”

Reverting to the facts of the present case, there are serious allegations levelled against the petitioner, working as Sub Inspector, of embezzlement of an amount of Rs.1,32,171/-, which as per the FIR, he

being posted by the department in the duty section, in out showder, had himself told the six conductors that due strike the whole staff of the cash branch is on the route and that he has been assigned the duty of taking the cash in cash branch, whereas in fact his duty was not in the cash branch. In addition to the aforesaid, the petitioner is stated to also have been declared a proclaimed offender, with regard to which, indubitably, any person, who is declared as an 'absconder' and remains out of reach of the investigating agency, thereby stands directly at conflict with law, ordinarily, would deserve no concession or indulgence.

The investigation has now commenced as has been stated by the learned State counsel, thus, applying the principles as enunciated by Hon'ble The Supreme Court of India in the afore-referred judgments, this Court is of the considered opinion that the present petition being bereft of merits is liable to be dismissed.

Accordingly, the present petition is hereby dismissed.

December 21, 2022
Rimpal/gsv

(AMAN CHAUDHARY)
JUDGE

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