

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

**CRM-M-40593-2016
Date of decision : 16.08.2022**

Amar Singh and another

..... Petitioners

versus

Balbir Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present :- Mr. Raj Kumar Gupta, Advocate
for the petitioners.

Mr. Prashant Bansal, Advocate
for the respondent.

PANKAJ JAIN, J. (ORAL)

By way of present petition under Section 482 Cr.P.C., petitioners pray for quashing of complaint case No.01RT/15 dated 15.06.2013 under Sections 447, 448, 511, 452, 356, 506, 148 and 149 IPC & Section 25 of Arms Act, Tehsil Rajpura, District Patiala filed by the respondent (Annexure P-1) and the summoning order dated 14.06.2016 (Annexure P-2), whereby the petitioners have been summoned to face complaint case.

2. Counsel for the petitioners submits that w.r.t. the same incident, an FIR was lodged at the behest of respondent against the petitioners. The same culminated in a cancellation report filed before the trial Court dated 18.07.2011 (Annexure P-3). The said cancellation report was accepted vide order dated 29.01.2014 (Annexure P-4). The operative part of which reads as under:-

“In such circumstances, the complainant can file a complaint, if so advised. The conduct of the accused persons having been investigated twice over, no further

investigation could have been ordered in the facts and circumstances of the case. Accordingly, the request of the prosecution of cancellation of a FIR is hereby accepted. The complainant would be at liberty to file a complaint, if so advised. Police file and copy of order be sent to the SSP, Patiala and judicial papers be consigned to the record room.”

3. Later in time on the basis of the same allegations, the present complaint was filed in which the petitioners have been summoned. They have laid challenge to the summoning order claiming that while passing the summoning order, the Court ought to have considered the cancellation report. By omitting to do so, the Court committed manifest error which resulted in passing of the order which is not sustainable in the eyes of law.

4. Per contra, Mr. Bansal, counsel for the respondent submits that once while accepting the cancellation report, the Court itself granted liberty to the complainant to pursue his remedy by filing complaint. The Court was not bound to consider the cancellation report.

5. I have heard counsel for the parties and with their able assistance have gone through the record of the case.

6. Facts are not in dispute. The question that will arise for the consideration of this Court in the present petition is as to whether, the trial Court ought to have considered cancellation report while passing summoning order or not.

7. Reliance by the petitioners has been placed in the case of '**Kuldip Raj Mahajan vs. Hukam Chand**', reported as **2008(1) RCR (Criminal) 370**, wherein this Court held that:-

“xx xx xx

10. In aforesaid context, learned counsel for the petitioner submitted that inspite of having called

report from Investigating Officer vide order dated 1.9.2000 (Annexure P-18), the learned Magistrate, while passing the impugned summoning order dated 19.9.2002, did not take into consideration the cancellation/investigation report of the police. Perusal of impugned summoning order (Annexure P-2) reveals that there no reference at all to the investigation report/cancellation report of the police in the summoning order. Without considering the investigation report/cancellation report of the police, the impugned summoning order could not been legally passed by learned Magistrate. The respondent, despite knowledge, concealed the cancellation report of the police from the learned Magistrate. This is another indicator of *mala fide* on the part the respondent.”

8. In the considered opinion of this Court, once it is not disputed that the primary genesis of the present complaint is based on the same facts on which the FIR was lodged, the trial Court while summoning the petitioners to face trial ought to have considered the cancellation report. Having not done so, the present summoning order is not sustainable in the eyes of law and the same is hereby quashed.

9. The trial Court is directed to consider the case afresh and to proceed in accordance with law after considering the cancellation report, which was filed on the FIR registered against the petitioners.

10. Petition stands disposed off.

(PANKAJ JAIN)
JUDGE

16.08.2022

Dinesh

Whether speaking/reasoned :

Yes

Whether Reportable :

No