

102

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

CWP No. 13273 of 2019
Date of Decision: 07.07.2022

Anil Kumar

-Petitioner

Versus

State of Haryana and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sanjay Kumar Saini, Advocate, for
Mr. Manish Soni, Advocate,
for the petitioner.

Mr. Vivek Chauhan, Addl. A.G., Haryana.

RAJ MOHAN SINGH, J. (Oral)

Present petition has been filed for issuance of an appropriate writ, order or direction quashing the order dated 28.11.2019 passed by the Sub Divisional Judicial Magistrate, Hansi whereby the application for seeking permission for re-investigation was disposed of on the statement made by learned A.P.P. for the State.

On 17.03.2022, following order was passed:-

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

Learned counsel for the petitioner submits

that initially the complainant Madhukant Aggarwal filed a complaint against the petitioner in respect of alleged act of trespassing by the petitioner. The said complaint dated 27.11.2015 was thoroughly investigated/inquired into by the police and the same was found to be baseless. The matter was found to be of civil nature as the dispute was of ownership of land. The Superintendent of Police, Hisar also endorsed the same. Thereafter, the complaint was moved before the Deputy Commissioner. On the basis of that complaint, FIR No.606 dated 26.08.2016 under Section 447 IPC was registered in Police Station City Hansi. The petitioner being an accused made a representation before the Hon'ble Administrative Judge of Hisar at the time of inspection of Hisar Division. On the basis of recommendation made by the Hon'ble Administrative Judge, the Registrar General of the High Court forwarded the complaint of the petitioner dated 23.03.2018 to the District and Sessions Judge, Hisar for looking into the matter and get the same re-investigated in

accordance with law. Thereafter, the District and Sessions Judge, Hisar communicated to the Superintendent of Police, Hisar in the aforesaid context and ultimately, an application was filed by SHO, Police Station City Hansi before the Sub Divisional Judicial Magistrate for permission to re-investigate the offence in question. When the matter was pending before the court of Sub Divisional Judicial Magistrate for pronouncement of order, a statement was made by learned A.P.P. for withdrawal of the application. The application for re-investigation was disposed of vide order dated 28.11.2018.

On 10.02.2020, this Court adjourned the case at the instance of learned State counsel to seek instructions in respect of the reasons for withdrawal of the said application on 28.11.2018.

Learned State counsel submits that necessary information is still awaited.

He prays for more time.

Adjourned to 07.07.2022.”

Today, Mr. Karambir Rathi, A.P.P., for State of Haryana is present in Court. He submits that the impugned order was passed on the basis of his statement as in his wisdom, re-investigation at the relevant stage of the case was not permissible in law. At the most, the Court could have allowed further investigation in terms of Section 173(8) Cr.P.C. In any case, the statement made by him before the Sub Divisional Judicial Magistrate, Hansi was on the basis of his point of view.

Record of the case would show that the complaint dated 27.11.2015 filed by the complainant Madhukant Aggarwal was thoroughly inquired into by the police and the same was found to be baseless. The dispute was in respect of ownership of the land and such dispute gives rise to civil consequences. Thereafter, a complaint was moved before the Deputy Commissioner and on the basis of said complaint, FIR No.606 dated 26.08.2016 under Section 447 IPC came to be registered in Police Station City Hansi. Accused-petitioner feeling aggrieved against the action of the police made a representation before the Hon'ble Administrative Judge of Hisar at the time of inspection of Sessions Division. On the basis of recommendation made by the Hon'ble Administrative Judge, the Registrar General of the High Court forwarded the complaint to

the learned District and Sessions Judge who in turn came to be considered by the office of Superintendent of Police, Hisar and ultimately, an application was filed by the SHO, Police Station City Hisar before the Sub Divisional Judicial Magistrate, Hansi for permission to re-investigate the offence in question.

It is true that re-investigation of the case is not permissible in ordinary circumstances, except with leave of the Court.

I am of the considered opinion that the withdrawal of the application on the statement of learned A.P.P. is not justified. The view point of learned A.P.P. is not relevant in view of indulgence granted by the Hon'ble Administrative Judge for forwarding the complaint to the concerned quarter.

At this stage, without meaning anything on the merits of the case as the trial is in progress and the case is fixed for prosecution evidence, I deem it appropriate to set aside the order dated 28.11.2018 passed by Sub Divisional Judicial Magistrate, Hansi and restore the application. The Court has been informed that at the time of filing original application, the case was also fixed for prosecution evidence. No substantial progress has been made in the case as the case is still fixed for prosecution evidence. The Court shall proceed to consider the application strictly in accordance with law without being

influenced by any statement of facts made hereinabove.

With these observations, this writ petition is disposed
of.

07.07.2022

Jyoti Sharma

(RAJ MOHAN SINGH)
JUDGE

- 1. Whether speaking/reasoned : Yes/No
- 2. Whether reportable : Yes/No