

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

**CRM-M-6433-2017
Date of Decision: 12.12.2022**

Raj Kumar Batra

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Sunil Chadha, Senior Advocate assisted by
Mr. Saurav Kanojia, Advocate
for the petitioner.

Mr. Harjinder Singh, AAG, Punjab
for respondent No.1/State.

Mr. K.D.S. Sodhi, Advocate
for respondents No.2 and 3.

HARSH BUNGER J. (ORAL)

Present petition is filed under Section 482 Cr.P.C. for quashing of FIR No.59 dated 20.03.2016 (Annexure P-1), under Section 307 IPC and Sections 25 & 27 of the Arms Act, registered at Police Station Phagwara City, District Kapurthala and all the subsequent proceedings arising therefrom, including order dated 02.12.2016 (Annexure P-4), passed by the Sub Divisional Judicial Magistrate, Phagwara, *inter alia* stating that the same are nothing but sheer misuse of process of law.

Succinctly, the present FIR came to be registered against the petitioner in respect of the alleged occurrence that took place on 20.03.2016

and the petitioner was arrested in this case on the same date (20.03.2016).

Relevant extract of the FIR (Annexure P-1) reads as under:

“ - x - x

Stated that I am the resident of the aforesaid address and I do the work of car bazaar at Phagwara. Today, at about 6:00 PM, I along with Sumit Bhandari s/o Raghuwant Rai, resident of Street No.7, Mohalla Varinder Park, Phagwara, after closing his shop Lovely adjoining to the Food Place, were coming in a Zen Car. When we were crossing Railway Bridge, Chaheru, one Swift Car came from behind at a very fast speed and after hitting our car from the side, went ahead. I read the registration number of the car as PB 08 BK 8559. We were coming at its back. It being a red light at Hoshiarpur Chowk, Phagwara, aforesaid Car stopped ahead of us. After coming down from the car, I went near the said car and asked the car driver regarding his having hit our car. On this, aforesaid car driver started arguing with me and all of a sudden, after taking out his revolver, he fired at me with the intention to kill me. I sat down by moving towards the side and the fire shot went over my head. In the meantime, Sumit Bhandari came. He made a second fire on Sumit Bhandari, which hit him at his left thigh. Name of the aforesaid car driver came to be known as Raj Kumar Batra s/o Som Nath Batra, resident of H. No.112, Basti Nau, Police Station Division No.5, Jalandhar. Aforesaid Raj Kumar Batra fired at us with an intention to kill us. We got Sumit Bhandari admitted in Civil Hospital, Phagwara for treatment, where he is under treatment. Legal action be taken against the aforesaid Raj Kumar Batra. Statement has been got recorded, which has been heard and is correct. Sd/- Manjit Singh. Manjit Singh aforesaid. Verified Sd/- Nirmal Singh ASI, PS City Phagwara. Dated 20.03.2016.”

Vide report dated 11.04.2016, the Superintendent of Police, Phagwara recommended cancellation of the FIR (Annexure P-1), which was duly approved by the Senior Superintendent of Police, Kapurthala on 14.04.2016. On the basis of said recommendation dated 11.04.2016, an application for discharge of the petitioner in the present FIR was submitted before the Sub Divisional Judicial Magistrate, Phagwara. However, it was dismissed by the Court vide order dated 19.04.2016 (Annexure P-2). Thereafter, the Sessions Judge, Kapurthala granted the concession of bail to the petitioner vide order dated 30.04.2016 (Annexure P-3). In view of recommendation dated 11.04.2016, cancellation report dated 31.05.2016 was filed before the Illaqa Magistrate, Phagwara. Upon submission of cancellation report dated 31.05.2016 before the Sub Divisional Judicial Magistrate, Phagwara, the statements of respondent No.2/complainant and respondent No.3/injured were also recorded before the Court, which read as under:

“Statement of Manjit Singh s/o Jagjit Singh, r/o Mohalla Shaheed Bhagat Singh Nagar, Phagwara.

Stated that I agree with the cancellation report submitted by the police. I have no objection in case the same is accepted.

RO&AC

Sd/-

Manjit Singh

Statement of Sumit Bhandari s/o Raghuwant Rai, r/o Gali No. 7, Mohalla Varinder Park, Phagwara.

Stated that I agree with the cancellation report submitted by the police. I have no objection in case the same is accepted.

RO&AC

Sd/-

Sumit Bhandari

Sd/-

(Rupinder Singh)

SDJM/11-8-16

Sd/-

(Rupinder Singh)

SDJM/11-8-16”

However, the cancellation report dated 31.05.2016 was declined by the Sub Divisional Judicial Magistrate, Phagwara vide order dated 02.12.2016 (Annexure P-4) and the case was sent to the concerned officer for further proceedings. It appears that subsequently the parties concerned even compromised the matter in question, and consequently, the present petition came to be filed before this Court.

In the instant petition, following order was passed by a co-ordinate Bench of this Court on 28.02.2017:

“Learned Senior counsel for the petitioner contends that cancellation of FIR was recommended by the Police which was subsequently approved by the SSP, Kapurthala. The cancellation report was submitted which has not been accepted by the Sub-Divisional Judicial Magistrate, Phagwara. Learned Senior counsel further contends that after registration of the case, parties amicably settled their grievances and even the statements of the parties have also been recorded. Challan was not presented in the Court. The case is at initial stage and in view of dictum laid down in Narinder Singh and others vs. State of Punjab and another, 2014(6) SCC 466 the offence under Section 307 IPC can be allowed to be compounded on the basis of compromise.

Notice of motion for 03.04.2017.”

Learned counsel for the petitioner submits that after completion of investigation, cancellation report dated 31.05.2016 was prepared and submitted before the Illaqa Magistrate, Phagwara. Apart from this, even the statements of respondent No.2/complainant and respondent No.3/injured were also recorded before the Sub Divisional Judicial Magistrate, Phagwara, wherein they had raised no objection to the said cancellation report submitted by the police. It is submitted that despite the submission of cancellation report by the police in the instant case, the proceedings are still

pending against the petitioner for the last more than five years. It is submitted that once the complainant and injured have submitted their 'no objection' to the cancellation report, no fruitful purpose would be served by keeping the proceedings pending against the petitioner in this case. Learned counsel for the petitioner places reliance upon judgment dated 31.07.2018, passed by a co-ordinate Bench of this Court in **CRM-M-24701-2015**, titled as ***“Pritam Singh and another Vs. State of Punjab and others”***, to contend that FIR and all the consequential proceedings arising therefrom were also quashed in somewhat similar circumstances in the aforesaid case.

In the instant case, the FIR was registered in March 2016. Superintendent of Police, Phagwara recommended cancellation of FIR vide report dated 11.04.2016, which was approved by SSP Kapurthala on 14.04.2016, thereafter cancellation report was submitted in Court on dated 31.05.2016. On 11.08.2016 the statement of complainant and injured were recorded before the trial Court, wherein they stated that they have no objection if 'cancellation report' is accepted. However, the cancellation report was not accepted by Court by observing as under:-

“Present cancellation report has filed on the ground that complainant Manjit Singh and injured Sumit Bhandari gave statement during enquiry that shot fired suddenly, but in the first statement of complainant recorded by ASI Nirmal Kumar, he had levelled specific allegations of firing of shot with revolver by accused Raj Kumar Batra with intention to kill them. It seems to this Court that now complainant and injured have given a separate statement due to the compromise effected between them, but the present cancellation on report cannot be accepted on this ground, because parties have remedy to get quash the FIR on the basis of compromise and not to file the cancellation report. Hence, the present cancellation report is

hereby declined.”

A perusal of the above extracted order declining cancellation report would show that the trial Court has not mentioned about any independent evidence coming forth in the report presented by police, which may be supportive of the first version of complainant.

Thereafter, present petition was filed in the year 2017. In the aforesaid intervening period of more than five years, the complainant has not even shown any inclination to prosecute the petitioner herein or challenge the aforesaid cancellation report in any manner.

Even the State counsel has not brought forth any evidence/material before this Court during the course of these proceedings, so as to justify continuation of criminal proceedings against the petitioner, any further. Rather learned State counsel concedes the facts that after completion of investigation, the police prepared a cancellation report in the instant case, which was also submitted before the Illaqa Magistrate, Phagwara, however the Sub Divisional Judicial Magistrate, Phagwara did not accept the same. Learned State counsel further submits that he has no objection in case the FIR (Annexure P-1) in the instant case is quashed.

It is well settled that the right to speedy trial in all criminal persecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in Court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases.

In view of the aforementioned facts and circumstances of this case, I am of the considered view that pendency of the proceedings in FIR

No.59 dated 20.03.2016 (Annexure P-1) against the petitioner, despite submission of cancellation report by the police, which was also not objected by respondent No.2/complainant as well as respondent No.3/injured, would be nothing but sheer abuse and misuse of the process of law. Non-acceptance of the prayer of petitioner and continuing the criminal proceedings would be a futile exercise and wastage of judicial time as complainants are not likely to support the case of prosecution. Accordingly, the present petition is allowed. FIR No.59 dated 20.03.2016 (Annexure P-1), under Section 307 IPC and Sections 25 & 27 of the Arms Act, registered at Police Station Phagwara City, District Kapurthala is quashed qua the petitioner and order dated 02.12.2016 (Annexure P-4), passed by the Sub Divisional Judicial Magistrate, Phagwara, is set aside.

All pending application(s), if any, shall stand disposed of.

12.12.2022*Apurva***(HARSH BUNGER)
JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No