

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

238

**CRM-M-8907 of 2018
Date of decision : 09.03.2022**

Vivek Chaudhary

.....Petitioner

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Akshay Bhan, Senior Advocate, with
Mr. Gurinder Singh, Advocate, for the petitioner.

Mr.Kanwar Sanjiv Kumar, AAG, Haryana.

VINOD S. BHARDWAJ, J. (Oral)

The case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

(1) The instant petition has been filed under Section 482 Cr.P.C., is for quashing of the order dated 23.10.2017 (Annexure P-6) passed by Judicial Magistrate 1st Class, Karnal, in criminal case titled as “State Vs. Mukesh and others” arising out of FIR No.736 dated 19.07.2016 registered under Sections 120-B, 406, 420 IPC at Police Station City Karnal, District Karnal.

(2) During the course of hearing, learned senior counsel appearing on behalf of the petitioner has however, restricted his prayer only to a limited extent and for seeking expunction of the disparaging remarks recorded by the Judicial Magistrate 1st Class, Karnal, in para No.9 (i) & (ii) which read as under:

“After hearing the rival contentions and perusing the entire case file alongwith the police file, this court deems it fit to dismiss the present application and order further investigation on the basis of reasons expounded here as under:

- i). *It is quite weird that after incarcerating the accused persons for nearly two months and pending investigation the present application has been moved by citing insufficiency of evidence against them. Perhaps the Investigating Officer handling the investigation is unaware about the constitutional right of personal liberty of a person. Be that as it may, the agreement dated 31.10.2014 has categorically incorporated the rights and liabilities of the parties to the instrument vis-a-vis surety/guarantor.*
- ii) *The accused persons are also related to the main accused who have not been apprehended hitherto. Moving of present application especially when other accused persons are evading arrest raises eyebrows as to what prompted the Investigating Officer to move the present application. Moving the present application even before filing of the challan and completing of the investigation is an aberration to the logic. This shows that Investigation is being conducted in a slipshod manner without application of any mind. Had an honest effort to investigate in the right direction been made the DSP would have deliberated about the disclosure statements of the accused persons (now sought to be discharged). (Emphasis Supplied)*

The learned Senior counsel has pointed out that his grievance is restricted and limited only to the extent of the observations recorded in para- 9 (i) & (ii) of the order which have been emphasized in the extract reproduced above and does not assail the rest of the order.

ARGUMENTS

- (3) Learned senior counsel appearing on behalf of petitioner has

argued that the petitioner was the Investigating Officer-cum-Station House

Officer of the case in question. Some of the suspects namely Ajay Kumar, Subhash Chand and one Raj Kumar were arrested in the above FIR. During the course of investigation, no sufficient evidence was made out on the case file for submission of a *challan* against the aforesaid persons, hence, an application under Section 169 Cr.P.C., was filed by the petitioner to seek release of the said persons. The relevant provisions under the Cr.P.C., is extracted as under:-

“169. Release of accused when evidence deficient. If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial.”

(4) It is argued that the aforesaid release application was duly approved by the senior officers of the petitioners. However, while moving the aforesaid application, instead of the word 'release', the petitioner mentioned the word 'discharge'. The use of the said word was on account of an error.

(5) It is also argued that as per the investigation, the aforesaid accused persons had stood as surety for the firm i.e. M/s Ram Dev International Private Limited and as such they could not have been held vicariously liable for the misappropriation committed by the aforesaid firm.

the Prevention of Corruption Act were not made out against the above referred three persons namely Raj Kumar, Subhash Chand and Ajay Kumar. The vicarious criminal liability cannot be attached to the abovesaid persons who only stood as surety and hence, could only be held responsible to indemnify for the loss that may have occasioned as a result of the misappropriation committed by the defaulting firm. The surety cannot be prosecuted for the criminal acts of the principal. Learned Senior counsel also submits that the petitioner is within his rights under the Code of Criminal Procedure, 1973 to submit an application to secure release of an accused when, it appears to the officer in-charge of the police station that there are no sufficient grounds or evidence to forward an accused to a Magistrate and to commit him for trial. The observation recorded by the Judicial Magistrate 1st Class fails to take into consideration the powers of the Station House Officers under Section 169 Cr.P.C. Further, the observation recorded in Para-9 (i) & (ii) of the order, reproduced above were wholly non-essential to the adjudication of the application in question and the same have been recorded against the petitioner without extending any opportunity to the petitioner to respond to the same. If at all any comment was to be recorded, wherein such comment was essential and integral for the adjudication of the application, an opportunity of hearing ought to have been extended to the petitioner to respond to the same.

(6) He has also referred to the reply filed by the respondents which reads thus:

“2. That after registration of the case, the investigation was carried out by Investigating Officer of Police Station City Karnal, who during the course of investigation had recorded the statement of prosecution witnesses and relevant record was

taken into possession in the presence of witnesses.

However, during the course of investigation, Raj Kumar, Subhash Chand, Ajay Kumar and Pawan Kumar were arrested. During interrogation Pawan Kumar confessed that he had got removed his surety bond, which he had given in respect of M/s Ram Dev International Pvt. Ltd., from the official file of DFSC by paying Rs.50,000/- to Mukesh, Clerk in the office of DFSC Karnal. Therefore, offence under Section 409 IPC and Section 7/13 of P. C. Act was added in the case. However, after fair and impartial investigation conducted by the petitioner he has reached at the conclusion that ingredients of Section 7/13 PC Act were not made out and on the basis of investigation, an application for discharge/release of Ajay Kumar, Subhash Chand and Raj Kumar was filed and the same was dismissed by learned JMIC Karnal vide order dated 23.10.2017.

3. *That the interest of justice, the investigation in case bearing FIR no.736 dt. 19.07.2016 under Section 420/406 and 120B IPC Police Station City Karnal was handed over to Sh. Rajeev Kumar, HPS, DSP Karnal for further investigation.*

However after completion of further investigation, above said DSP has reached at the conclusion that the petitioner has rightly moved discharge application before judicial Magistrate Ist Class, Karnal, because there is no evidence against Raj Kumar, Subhash Chand and Ajay Kumar as they never stood surety and not executed the surety Bond for M/s Ram Dev International Private Ltd., and as such they cannot held criminally liable for the misappropriation of paddy as done by the firm.

4. *That the Superintendent of Police, Karnal vide its office memo no.5606-08/reader dated 02.07.2018 has also constituted a special investigating team in case bearing FIR No.736 dated 19.07.2016 Under Section 409, 506, 420, 201, 120B IPC and 7/13 PC Act Police Station City Karnal headed by the deponent*

Insp. Mohan Lal SHO City, Karnal and ASI Anil Kumar I/C PP Sector-4 are the members of the said SIT. The matter is being deeply investigated by the deponent along with assistance of the members of SIT.”

Counsel for the State has however, argued that an order has been passed by the Judicial Magistrate and that the illegality thereof may be examined by the High Court .

ANALYSIS

(7) A perusal of the statutory provisions as enshrined under Section 169 Cr.P.C., shows that the Station House Officer is fully empowered to seek release of an accused against whom there is insufficient material during the course of investigation. If the Station House Officer is satisfied that no sufficient grounds or suspicion is made out pointing out towards the criminal liability of an accused in custody, he may submit an application in terms of Section 169 Cr.P.C. As per the law laid down by the Hon'ble Supreme court, upon submission of such a report by the Station House Officer, it is up to the Judicial Magistrate to accept such recommendation or not. He may grant an opportunity to the complainant to file a protest petition in an appropriate case and/or may take cognizance of the case under Section 190 Cr.P.C., or alternatively may direct further investigation. A mere use of nomenclature 'discharge' would not in any manner deny the authority vested in the Station House Officer to form his satisfaction. The mere selection of a wrong word would not make the application to be read in the context of the power invoked-unfettered by description used in the application. It is also well settled in law that satisfaction of the Station House Officer is his own and no other authority or person can substitute or supersede the satisfaction of the Station House Officer in so far as the investigation into a case is concerned.

He cannot be directed to be satisfied in any particular manner and in no other. It would be essential to refer to the present judgments of the Supreme Court in this regard which read thus:-

“In the case of **D.Venkatasubramaniam & Others Vs. M. K. Mohan Krishnamachari & Another** decided on 14.09.2009 passed in Criminal Appeal No.1766 of 2009, the relevant para is extracted as under:-

“2. It is well settled and this Court time and again, reiterated that the police authorities have the statutory right and duty to investigate into a cognizable offence under the scheme of Code of Criminal Procedure (for short 'the Code'). This Court, on more than one occasion, decried uncalled for interference by the Courts into domain of investigation of crimes by police in discharge of their statutory functions. The principle has been succinctly stated way back in Emperor V. Khwaja Nazir Ahmad, AIR 1945 Privy Council 18 and the same has been repeatedly quoted with respect and approval. The Privy Council observed that "just as it is essential that every one accused of a crime should have free access to a Court of justice so that he may be duly, acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry."

(5) In State of Bihar & Anr. V. J.A.C. Saldanha & Ors., (1980)2 SCR 16, a three Judge Bench, speaking through Desai, J., after referring the precedents including Khwaza Nazir Ahmad, held:

"There is a clear cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field

exclusively reserved for the executive through the police department, the superintendence over which vests in the State Government. The executive, which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take cognizance of the offence under Section 190 of the Code its duty comes to an end. On a cognizance of the offence being taken by the Court the police function of investigation comes to an end subject to the provision contained in Section 173(8), there commences the adjudicatory function of the judiciary to (1980) 2 SCR 16 determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the Court, and to award adequate punishment according to law for the offence proved to the satisfaction of the Court. There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate. This has been recognised way back in King Emperor v. Khwaja Nazir Ahmad [1944] L.R. 71 IA 203.

... ..

This view of the Judicial Committee clearly demarcates the functions of the executive and the judiciary in the field of detection of crime and its subsequent trial and it would appear that the power of the police to investigate into a cognizable offence is ordinarily not to be

interfered with by the judiciary."

Further in the case of **Abhinandan Jha and others Vs. Dinesh Mishra** decided on 17.04.1967 passed in Criminal Appeal No.218 of 1966, the relevant parts are extracted as under:-

17..... *"a very wide power is conferred on the Magistrate to take cognizance of an offence. not only when he receives information about the commission of an offence from a third person, but also where he has knowledge or even suspicion that the offence has been committed. It is open to the Magistrate to take cognizance of the offence, under s. 190(1)(c), on the ground that, after having due regard to the final report and the police records placed before him, he has reason to suspect that an offence has been committed. Therefore, these circumstances will also clearly negative the power of a Magistrate to call for a charge-sheet from the police, when they have submitted a final report. The entire scheme of Chapter XIV clearly indicates that the formation of the opinion, as to whether or not there is a case to, place the accused for trial, is that of the officer in-charge of the police station and that opinion determines whether the report is to be under s. 170, being a 'charge- sheet', or under S.169, 'a final report'. It is no doubt open to the Magistrate, as we have already pointed out, to accept or disagree with the opinion of the police and, if he disagrees, he is entitled to adopt any one of the courses indicated by us. But he cannot direct the police to submit a charge-sheet, because, the submission of the report depends upon the opinion formed by the police, and not on the opinion of the Magistrate. The Magistrate cannot compel the police to form a particular opinion, on the investigation, and to submit a report, according to such opinion. That will be*

really encroaching on the sphere of the police and compelling the police to form an opinion so as to accord with the decision of the Magistrate and send a report, either under s. 169, or under s. 170, depending upon the nature of the decision. Such a function has been left to the police, under the Code.

18. We have already pointed out that the investigation, under the Code, takes in several aspects, and stages, ending ultimately with the formation of an opinion by the police as to whether, on the material covered and collected, a case is made out to place the accused before the Magistrate for trial, and the submission of either a charge-sheet, or a final report is dependent on the nature of the opinion, so formed. The formation of, the said opinion, by the police, as pointed out earlier, is the final step in the investigation, and that final step is to be taken only by the police and by no other authority.

19. The question can also be consider from another point of view. Supposing the police send a report, viz., a charge- sheet, under s. 170 of the Code. As we have already pointed out, the Magistrate is not bound to accept that report, when he considers the matter judicially. But, can he differ from the police. and call upon them to submit a final report, under s.169 ? In our opinion, the Magistrate has no such power. If he has no such power, in law, it also follows that the Magistrate has no power to direct the police to submit a charge-sheet when the police have submitted a final report that no case is made out for sending the accused for trial. The functions of the Magistracy and the police, are entirely different, and though, in the circumstances mentioned earlier the Magistrate may or may not accept the report, and take suitable action, according to law, he cannot certainly infringe upon the jurisdiction of the

police, by compelling them to change their opinion, so as to accord with his view.”

(8) Further, it has been repeatedly held by the Hon'ble Supreme Court of India that the judicial officers should exercise the restraint while recording disparaging remarks against the subordinates/the Investigating Agency unless such a comment is essential and integral to the adjudication of the matter. In any case, if it becomes imperative for the officer concerned to record such comment, he must not do so unless he has extended an opportunity of hearing to the officers/person who is affected by the said comments. Invariably no such opportunity had been extended to the petitioner by the Judicial Magistrate 1st Class, Karnal. The guidelines and principles so led down by the Honble Supreme Court in the judgment are extracted also hereinafter below.

In the case of **State of U.P Vs. Mohammad Naim, AIR 1964 SC 703**, the relevant extract is as under:

“(11) If there is one principle of cardinal importance in the administration of justice, it is this : the proper freedom and independence of judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by any body, even by this court. At the same time it is equally necessary that in expressing their opinions judges and Magistrates must be guided by considerations of justice, fair-play and restraint. It is not infrequent that sweeping generalisations defeat the very purpose for which they are made. It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is

relevant to consider (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself ; (b) whether there is evidence on record bearing on that conduct justifying the remarks ; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve.

In the case of **State of M.P Vs. Narmada Bachao Andolan and another, AIR (2011) 12 Supreme Court Cases 689**, the relevant extract is as under:

(13) The cardinal principle of the administration of justice requires for proper freedom and independence of Judges and such independence must be maintained and Judges must be allowed to perform their functions freely and fairly and without undue interference by anybody, even by this Court. However, it is also equally important that in expressing their opinions the Judges must be guided by consideration of justice, fair play and restraint.

It should not be frequent that sweeping generalisations defeat the very purpose for which they are made. Thus, it is relevant to consider:

(a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;

(b) whether there is evidence on record bearing on that conduct justifying the remarks; and

(c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.

(14) *This view has been persistently approved and followed by this Court as is evident from the judgments in Jage Ram, Inspector of Police & Anr. v. Hans Raj Midha, AIR 1972 SC 1140; R.K. Lakshmanan v. A.K. Srinivasan & Anr., AIR 1975 SC 1741; Niranjan Patnaik v. Sashibhusan Kar & Anr., AIR 1986 SC 819; Major General I.P.S. Dewan v. Union of India & Ors., (1995) 3 SCC 383; Dr. Dilip Kumar Deka & Anr. v. State of Assam & Anr., (1996) 6 SCC 234; and State of Maharashtra v. Public Concern for Governance Trust & Ors., AIR 2007 SC 777.*

(15) *Thus, the law on the issue emerges to the effect that the court may not be justified in making adverse remarks/passing strictures against a person unless it is necessary for the disposal of the case to animadvert to those aspects in regard to the remarks that have been made. The adverse remarks should not be made lightly as it may seriously affect the character, competence and integrity of an individual in purported desire to render justice to the other party.”*

(9) A perusal of the afroesaid judgments culls out the underlying principles for recording any comments/remarks :

- (i) While expressing their opinions, the Judges must be guided by consideration of justice, fair play and restraint.
- (ii) The Judges should proceed on sweeping generalization.
- (iii) Judges must consider whether the party whose conduct is in question is before the Court or has an opportunity of explaining or defending himself.
- (iv) There is any evidence on record bearing on that conduct justifying their remarks.
- (v) Whether such remarks are necessary for decision of the case, as an integral part thereof, to animadvert on that conduct.

- (vi) The adverse remarks should not be made lightly as it may seriously affect the character, competence and integrity of an individual in purported desire to render justice to the other party.

DECISION

(10) It is also evident and apparent from the consideration of the comment/remarks so recorded that the same were against the functioning and conduct of the petitioner in person and further recording of such remark was not integral to adjudication of the application under Section 169 Cr.P.C., seeking release of the accused for want of sufficient evidence.

(11) The authority/Station House Officer should not be condemned for formation of an opinion based on his investigation more so when there is nothing on record to suggest that such an opinion was wholly unreasonable or was based upon gross misappropriation or disregard of the evidence on the file or suffered from the vice of deliberate misreading or was perpetuated by mischief, malicious consideration or for vested interests/motives. In the absence of existence of any of the circumstance noticed above, the Illaqa Magistrate ought not to have recorded the remarks that were wholly uncalled for. The present petition is therefore, allowed and the observations recorded in the para No.9 (i) & (ii) of the order, as highlighted in the foregoing paragraphs, are ordered to be expunged.

(VINOD S. BHARDWAJ)
JUDGE

09.03.2022
anil

<i>Whether speaking/reasoned :</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>