

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

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**CRM-M-29897-2022
Date of decision: 27.07.2022**

JANAKRAJ SINGH

.....Petitioner

Versus

ANGREJ SINGH AND ORS

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present : Mr. Lupil Gupta, Advocate
for the petitioner.

SURESHWAR THAKUR, J. (ORAL)

1. In respect of an incident which occurred on 27.01.2016, an FIR bearing No. 22 of 27.01.2016, under Sections 388, 109, 120-B IPC and Sections 25 and 27 of Arms Act, became registered at Police Station City Faridkot.

2. However, qua the very same incident as carried in FIR (supra), the complainant instituted subsequent thereto, rather on 09.05.2016, a private complaint before the learned Judicial Magistrate, Faridkot. However, thereons, the learned trial Magistrate made a dis-affirmative order.

3. The aggrieved-complainant instituted thereagainst, a Criminal Revision bearing No. CRR/35/2018, before the learned Additional Sessions Judge, Faridkot, but thereons, the learned Additional Sessions Judge, Faridkot through a decision made on 14.12.2021, also made a dis-affirmative verdict hence against the

complainant.

4. The petitioner/complainant becomes aggrieved from the above concurrently made verdicts upon his complaint.

5. Apparently, as above stated, the crime incident occurred on 27.01.2016, and, it became reported to the Police Station concerned resulting in the registration of an FIR (supra). Further, as above stated, when investigations into the FIR (supra), were yet underway, the petitioner also chose to, inasmuch as on 09.05.2016, in respect of the very same incident, as carried in the FIR (supra), rather institute a private complaint before the learned Magistrate.

6. Though, the learned trial Magistrate after receiving preliminary evidence upon the private complaint did not deem it fit, and, appropriate to issue any summoning order, upon the accused concerned, order whereof, also became affirmed by the learned Revisional Court, but yet the learned counsel appearing for the petitioner submits, that there is a deep pervasive illegality, in the concurrently made orders against the complainant, hence by both the learned courts below.

7. The learned jurisdictionally empowered Magistrate, did not deem it fit, and, appropriate to enter upon the trial of the complaint. The above became founded, upon the reasons, as become encapsulated, in paragraph 7 of the order, as, made by the learned jurisdictionally empowered Magistrate concerned, paragraph whereof becomes extracted hereinafter.

“..... It is the case of the complainant that the accused has committed offences under sections 307, 388, 500, 506, 120-B, 108, 452 of IPC read with Section 34 of

IPC and Section 25, 27 of Arms Act, 1959. It is the case of the complainant that accused persons have tried to kill him and committed extortion. Nothing is mentioned in the complaint regarding any amount for which accused committed or tried to commit any alleged extortion. It is important to mention here that apart from the oral testimony of present witnesses there is nothing on record to support the case of complainant. It is the case of the complainant that accused Angrej Singh and Sukhraj Singh came at the wedding ceremony of his son and took out revolver and threatened the complainant. However, it is unbelievable that any person would come to place where so many persons are already present and threatened the complainant there. In case any such incident would happen then the complainant who was having so many relatives and friends there, would have caught hold of accused persons there and then. It is also important to mention here that before filing the present complaint, the complainant also moved an application Ex. C4 to SSP, Faridkot which is very basis of the present complaint. Perusal of above said application Ex. C4 reveals that he has no where mentioned that accused was having revolver with him. Rather, it is mentioned that he was having Asla with him. It is also important to mention here that it is no where mentioned in the complaint by the complainant that accused persons tried to kill him where as CW-4 during his examination has stated that accused-Angrej Singh tried to fire shot upon complainant and complainant caught hold the accused Angrej Singh but this fact is not mentioned in the complaint. Perusal of testimony of CW-3 reveals that he has also mentioned this fact in his testimony. Even, CW-Janakraj Singh also mentioned this fact but this fact is not mentioned in the complaint as well as in the application Ex. C4 which proves that the present complaint is piece of exaggeration. Perusal of testimony of CW-5, CW-6 reveals that both these witnesses are hearsay witnesses and they have merely mentioned that accused-Angrej Singh and Sukhraj Singh were only shouting and it is no where mentioned that they tried to kill the complainant.....”

8. A perusal of the above extracted portion of the order made by the learned jurisdictionally empowered Magistrate, reveals that upon, considering the preliminary evidence adduced by the complainant, he drew an objective conclusion, that the narrations carried therein, were not prima facie believable, given there being rife

contradictions prior thereto, through an FIR, especially qua wielding of weapon of offence qua description of the weapon of offence, carried at the crime site by the accused concerned, and, also, qua the factum of the accused concerned attempting to fire a shot at him. Therefore, it obviously became aptly construable to be an afterthought, hence making the preliminary evidence in respect of the private complaint to become constrained with a vice of falsity.

9. Be that as it may, it appears that the above conclusion was a sequel of the investigating officer concerned, also making, his appearance before the learned jurisdictionally empowered court, and, his then making a statement that there is a proposal for instituting a cancellation report qua the FIR.

10. Given the above, and, especially the factum qua in respect of a similar crime incident, an FIR becoming registered, and, also that much subsequently therefrom, a private complaint becoming instituted before the jurisdictionally empowered Magistrate, thereupon, the procedure in respect of an enquiry, or, trial being made, and or, with respect to valid assumption of cognizance(s) or jurisdiction(s), rather, being thereons, made by jurisdictionally empowered Magistrate, especially, qua a similar crime incident, in hence both FIR, and, in private complaint, hence becomes enjoined to be determined. For making the above determination, a studied analyses, of the mandate carried in Section 210 Cr.P.C., becomes imperative. Consequently, the provisions of Section 210 Cr.P.C., become extracted hereinafter.

“210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.”

11. Sub Section (1) of Section 210 Cr.P.C., carries an explicit mandate, that when the learned jurisdictionally empowered Magistrate, is seized of a private complaint, and, when it is brought to his notice that during the course of his making an enquiry, or, trial upon a private complaint, that an investigation by the police is in progress, in respect of the very same incident, in respect whereof, a private complaint has been instituted by the aggrieved. Consequently, it becomes enjoined, upon him, to order for the staying of the proceedings, of such enquiry, or, trial as he may have entered into, upon a private complaint, but a further statutory authorization is bestowed, upon him, to yet call for a report in respect of the crime incident, from the police officer conducting the investigations.

12. Therefore, the factum of an FIR with respect to the crime

incident which also becomes the foundation of the private complaint, rather becomes the fulcrum, hence for determining, whether, in the learned trial Magistrate concerned, in taking assistance from the investigating officer concerned, in respect of the investigations, he made qua the FIR, rather was or, not a valid recouring. Necessarily given the above mandate, cast in Sub Section (1) of Section 210 Cr.P.C., the jurisdictionally empowered Magistrate, was completely authorized, to not only stay the further proceedings in the private complaint, but also became completely authorized, to ask for assistance, and, call for the report, in respect of an apposite similar crime incident, from the police officer, who was conducting the investigations into the FIR.

13. In consequence, if the investigating officer concerned, had made a statement before the learned Magistrate, that there is a proposal to institute a cancellation report, in respect of the complaint, before the jurisdictionally empowered court, thereupon, the concurrently made verdicts against the complainant, by both the learned courts below rather dismissing the complaint cannot be faulted at all.

14. It was only in the event of an affirmative report, being instituted by the investigating officer concerned, qua the FIR, and, when, in the FIR, and, in the private complaint, the crime incident is identical, besides, when also the accused in both, are common, thereupon, he becomes empowered to try both the police case, and, the private complaint, otherwise not. Consequently, here though yet the crime incident in both the private complaint, and, the FIR is similar, and, or is common, and, also in both, the accused are the same. Though,

as expressed in Sub Section (3) of Section 210 Cr.P.C., rather in the above event, the jurisdictionally empowered Court, was completely authorized to make a co-joint trial of both. However, in the instant case, when the investigating officer concerned, has rather instituted a cancellation report before the jurisdictionally empowered Magistrate, qua the instant FIR. Therefore, the learned jurisdictionally empowered Magistrate cannot assume jurisdiction(s), or, take cognizance upon a private complaint, and, nor, can proceed to put both to a common trial.

15. Reiteratedly, since ultimately after conclusion of investigations into the petition FIR, though as unfolded by Annexure P-12, a closure report became filed, but, thereons, rather an order, for further investigations being made, into the petition FIR, by the investigating agency concerned, hence being made by the learned Chief Judicial Magistrate, Faridkot and, that too, after rejection of the cancellation report, as preferred before him, by the investigating officer concerned, and, obviously after acceptance of the apposite protest raised by the complainant. Therefore, upto the completion of further investigations into the petition FIR, rather the learned jurisdictionally empowered Magistrate, became enjoined to lawfully restrain himself, to not assume cognizance, or, jurisdiction upon the private complaint. Moreover, till completion of further investigations, as ordered by the learned Chief Judicial Magistrate, Faridkot, into the petition FIR, the present aggrieved petitioner complainant, does not have any surviving cause of action to make any lawful agitation against the concurrently made dis-affirmative verdicts, as made upon his private complaint.

Conspicuously, also when further in case, the investigating officer

concerned, upon his making further investigations, upon the petition FIR, institutes a closure report, yet then it may not be accepted by the learned trial Judge, unless, prior thereto, a notice is served upon the aggrieved complainant. Moreover, in case an affirmative report is made by the investigating officer concerned, after his making further investigations into the petition FIR, thereupon, also since though, the petition complaint carries a similar crime incident, and also carries the names of the accused, rather similar to the ones in the petition FIR, and, though yet both are required to be tried alongwith the police case, and, though that would have happened, only upon, the learned jurisdictionally empowered Magistrate ordering for staying the makings of further proceedings, in the petition complaint, however he has not done so. Therefore, yet the observations made in the concurrently made dis-affirmative orders, on the private complaint, are directed to not influence the learned trial Judge concerned, in case he proceeds to enter upon trial qua the petition FIR, after conclusion of further investigations into the petition FIR, rather upon an affirmative report being instituted before him.

16. In view of the above, this Court does not find any merit in the petition, and, rather, becomes constrained to dismiss it.

17. Dismissed accordingly.

27.07.2022
kavneet singh

(SURESHWAR THAKUR)
JUDGE

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