

In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 32479 of 2022

Date of Decision: 28.7.2022

Sanita

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Rao Ajender Singh, Advocate
for the petitioner.

Mr. Pardeep Prakash Chahar, DAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner herein is the complainant in FIR bearing No. 427 of 24.11.2020, registered at Police Station Kanina, District Mahendergarh, wherein offences constituted under Sections 420, 467, 468, 471, 506, 120-B of the IPC, are embodied.

2. Though, after completion of investigations into the petition offences, the investigating officer concerned, as submitted by the learned State counsel, has instituted a cancellation report, before the learned jurisdictionally empowered Court, and, also he further submits, that the protest against its acceptance, has been reared by the complainant-petitioner herein.

3. Moreover, it is also stated, at the bar, by the learned State counsel, that yet the learned jurisdictionally empowered Magistrate, is to draw a conclusion, whether the cancellation report is to be accepted or whether the protest thereagainst, is to be accepted, and, is also yet to draw a decision whether there is any further necessity of any further investigations, being ordered, in respect of the petition offences.

4. Be that as it may, since both the cancellation report, and, also the protest, raised against its acceptance, are not yet conclusively concluded, through a decision, being made thereons, by the jurisdictionally empowered Magistrate. However, yet the complainant-petitioner is aggrieved from the investigating officer concerned, in his closure report, making a recommendation, for the drawing of proceedings, under Section 182 of the IPC, against her.

5. The learned counsel for the petitioner submits, that a complaint in respect thereof, has also been instituted, before the learned jurisdictionally empowered Magistrate. As above stated, since the cancellation report, and, the protest reared against its acceptance, is yet not adjudicated, upon, by the learned jurisdictionally empowered Magistrate. Therefore, the investigating officer concerned, may not have, in his closure report, made any recommendation, for the drawing of inculpations against the petitioner herein, under Section 182, of the IPC. The above reason becomes anchored, upon the factum that until a conclusive, and, final verdict, is drawn, upon the closure report, as instituted by the police officer, before the jurisdictionally empowered Magistrate, and, wherethrough it becomes accepted, thereupon, alone the accused named in the petition FIR, may have a valid grouse, that they have been maliciously prosecuted, and, even in respect thereof, a suit for malicious prosecution would become maintainable, before the Civil Court. However, though even prosecution against the complainant, as, arising from his filing a false FIR, may also be maintainable, but its maintainability would arise at the phase, only when a binding, and, conclusive verdict of acquittal is made by the competent Courts of law, and, not earlier.

6. In sequel, it was grossly inappropriate for the investigating officer concerned, to, in his closure report, make any recommendation for

inculpations, being drawn against the complainant-petitioner herein, for an offence under Section 182 of the IPC, as he had no jurisdiction to *suo motu* determine, that the allegations raised against the accused, by the petitioner in the petition FIR, were completely false, as the jurisdiction in respect thereof, is always with the competent Courts of law, and, never with the police officer.

7. Consequently, the instant petition is allowed. Calendra filed under Section 182 of the IPC, against the petitioner in FIR (supra), is quashed, and, set aside. However, liberty is reserved to the accused, to, upon a verdict of acquittal, being made, or in case of a final and conclusive order, being made on the cancellation report, by the competent Court of law, to institute a suit for malicious prosecution, before the civil Court concerned.

(SURESHWAR THAKUR)
JUDGE

July 28, 2022
Gurpreet

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