

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

(103)

CWP No.17891 of 2022
Decided on 01.09.2022

Poonam Doon

.....Petitioner

VERSUS

State of Punjab and others

.....Respondents

CORAM : HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Sunil Chadha, Sr. Advocate with
Mr. Akshay Chadha, Advocate for the petitioner.

Mr. A.P.S.Tung, DAG, Punjab.

Mr.Randeep Rai, Senior Advocate with
Ms.Eknoor Kaur Sara, Advocate for the complainant.

JAISHREE THAKUR, J. (Oral)

This writ petition has been filed under Article 226/227 of the Constitution of India for issuance of an appropriate writ, order or direction especially in the nature of a *writ of certiorari* to quash the Cancellation Report dated 24.04.2022 (Annexure P-9) submitted under Section 173(8) Cr.P.C. in FIR No. 141 dated 08.11.2021 (Annexure P-6), registered at Police Station Naya Gaon, S.A.S. Nagar, under Sections 406, 420 and 120-B IPC with a further prayer that a Court Monitored SIT should investigate the said FIR.

As would be evident, the genesis of the dispute would arise from a matrimonial tie that has gone sour.

The petitioner herein is married to one Hardeep Singh Doon, who is currently posted as I.G.P. (HAP), Madhuban, District Karnal,

Haryana. The marriage was solemnized in the year 1993, however, went into troubled waters, which has resulted in litigation ensuing between the parties.

On account of a dispute that had arisen, a petition under Section 482 Cr.P.C. was filed in this Court which was numbered as '*CRM-M-26364 of 2021*', wherein the petitioner had sought the issuance of appropriate directions to the State police authorities to apprise about the status of the complaint that had been submitted by the petitioner Ms. Poonam Doon, who had alleged fraud and forgery against her husband and others. This very Court was seized of the matter for a short while and during the course of proceedings in CRM-M-26364 of 2021, this Court had taken note of the fact that an FIR No.141 dated 08.11.2021 had been registered under Sections 406, 420 and 120-B IPC, at Police Station Naya Gaon, S.A.S. Nagar against Amba Prasad, Rajiv Kalia, Sushila Devi (mother-in-law of the petitioner herein) and Hardeep Singh Doon. However, this Court had also taken note of the fact that said Hardeep Singh Doon had not been nominated as an accused in column no.7. Thereafter, on being asked as to how Mr. Doon had not been kept in column no.7, a short reply was filed that the matter was still being investigated against the said gentleman. Having taken note of the statement, this Court had directed the State police to complete the said investigation in a time bound manner and had asked for status report to be filed on or before 18.02.2022. Thereafter, a Coordinate Bench of this Court by its order dated 13.07.2022, noted the fact that an SIT had been constituted which had found that no offence was made out against the named persons and had prepared a cancellation report which had been

submitted before the Illaqa Magistrate on 02.06.2022. Learned counsel appearing on behalf of the petitioner herein had submitted before the Court that the petitioner had never been associated during the course of investigation which led to the filing of the cancellation report. He sought to withdraw the petition with liberty to either challenge the cancellation report or to avail other legal remedies in accordance with law. The Coordinate Bench disposed of the petition giving liberty to the petitioner to avail alternative remedy in accordance with law. It is now thereafter, that the petitioner has approached this Court by way of filing a Civil Writ Petition praying that the cancellation report should be quashed and a Court monitored SIT be constituted to go into the issues regarding fraud having been played upon the petitioner herein.

Mr. Sunil Chadha, learned Senior Advocate appearing on behalf of the petitioner would vehemently argue that a perusal of the cancellation report itself would reflect that the complainant-petitioner herein had never been associated during course of investigation and, therefore, any report that has been furnished without associating the petitioner herein, would not be sustainable in the eyes of law.

At this stage, Mr. Randeep Rai, Senior Advocate, assisted by Ms. Eknoor Sara, Advocate has put in appearance on behalf of Mr. Hardeep Singh Doon and has raised two fold objections, firstly regarding non-maintainability of the very writ petition seeking quashing of the cancellation report in a criminal offence and secondly submitting that any relief that is being sought in the writ petition qua him would not be sustainable since he has not been impleaded as a party in these proceedings to defend himself.

I have heard both learned senior counsels for the parties and find that the present writ petition would not be maintainable in the light of the fact that the petitioner herein has an equally efficacious remedy available by appearing before the trial Court and objecting to the cancellation of FIR raising all objections as taken up herein by filing a protest petition. This remedy is available under Chapter XV of the Code of Criminal Procedure. She would have every opportunity to raise any claim there itself regarding the constitution of the SIT etc. The validity of any opinion being formed by the SIT in the absence of the complainant and any other relief as has been sought for in these proceedings can be raised there.

Counsel for the petitioner would also rely upon the judgment rendered by the Hon'ble Apex Court in 'Kapil Aggarwal and others Vs. Sanjay Sharma and others' passed in *Criminal Appeal No. 142 of 2021*, on 01.03.2021 wherein it has been held that there is no bar for the Courts to exercise powers under Article 226 of the Constitution of India or under Section 482 Cr.P.C. to quash the proceedings which have been initiated only to harass the accused.

A reading of the judgment, relied upon would reflect that the inherent powers can be exercised either under Article 226 of the Constitution of India or under Section 482 Cr.P.C. and not both simultaneously. The petitioner herein had already invoked the jurisdiction of this High Court under Section 482 Cr.P.C. by way of filing a Criminal Miscellaneous petition seeking certain directions therein and once those proceedings culminated in the filing of a cancellation report in the FIR, it is for the petitioner now to take it to its logical end and avail of her

remedy as provided under the law in filing a protest petition. She cannot now be permitted to come forward to invoke jurisdiction of this Court under Article 226 of the Constitution of India seeking quashing of the cancellation report that already stands submitted.

With these observations, this writ petition stands disposed of.

It will be open to the petitioner to avail her remedy in accordance with law.

Needless to say that in case the petitioner puts in appearance before the Magistrate concerned and files any protest against the cancellation report, the same shall be dealt with expeditiously and in accordance with law.

(JAISHREE THAKUR)
JUDGE

01.09.2022
Anjal*

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