

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

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CRM-M-39450-2021(O&M)
Date of Decision : **June 02, 2022**

Sudagar Singh

.....Petitioner

VERSUS

State of Punjab and others

.....Respondents

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CRM-M-47259-2021

Sudagar Singh

.....Petitioner

VERSUS

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Puneet Sharma, Advocate
for the petitioner in both the cases.

Mr. Randhir Singh Thind, DAG, Punjab.

JASGURPREET SINGH PURI. J.

These are two petitions filed by one petitioner, namely, Sudagar Singh seeking similar kind of reliefs and, therefore, both the petitions are taken up together for final disposal.

The brief facts of the present case are that it was the case of the petitioner that he had purchased one property bearing No.1713 measuring 18 marlas i.e. 540 sq. yards vide sale-deed dated 21.1.2020 from Rishi Mehta and Rahul Mehta. The property had flour mill on the front side and the residence at the backside and the entire possession of the property was handed over to the petitioner at the time of the sale-deed i.e. 21.1.2020. It was further the case of the petitioner that while he was enjoying the peaceful possession of the aforesaid property after the

execution of the aforesaid sale-deed some persons, who were occupants of the adjoining property i.e. property no.1714 entered the residential portion from the backside and attacked the petitioner for having purchased the adjoining property and also claimed possession over the residence as the successors of the common ancestor (grand-father) of the persons from whom the petitioner had purchased the property. As per the petitioner, he was attacked by Bhagwan Dass Rishi and his sons Gagandeep @ Tony Rishi, Amandeep @ Mintu Rishi, Bhupinder @ Pappu Rishi and their family members and he received wound on the right side of the skull alongwith injuries with blunt weapon at his back and left leg. Thereafter he reported the matter to the police and consequently an FIR No. 21 dated 31.1.2020 under Sections 452, 307, 323, 148, 149 IPC was registered at Police Station City, Rupnagar. Thereafter the other party also got one DDR No. 51 dated 31.1.2020 registered through one of their employees, namely, Babita by alleging that the petitioner had entered the kitchen of the residential area of house No.1713 and started giving pushes and beatings to the aforesaid Babita and in the course of which one brick fell out of the wall and hit on the feet of the said Babita. Thereafter eventually the aforesaid DDR was converted into FIR No.23 dated 2.2.2020 under Sections 323, 341, 447, 506, 511 IPC. In this way, two FIRs have been registered by both the parties against each other and it was a case of cross version.

Thereafter, the investigation was conducted in both the FIRs and during investigation in the FIR which was lodged by the petitioner

i.e. No.21 dated 31.1.2020, the offence under Section 307 IPC was deleted and thereafter cancellation report was also prepared in this FIR. So far as the second FIR which was registered against the petitioner i.e. FIR No.23 dated 2.2.2020, the offence under Section 447 IPC was deleted and offences under Sections 448 and 452 IPC were added and in this FIR challan/report under Section 173 Cr.P.C. dated 28.6.2021 was presented before the Court and thereafter the matter was fixed for consideration of framing of charges.

The learned counsel for the petitioner has submitted that he firstly filed a petition vide CRM-M-39450-2021 under Section 482 Cr.P.C. seeking quashing of the inquiries and also challenging the action of the police in deleting Section 307 IPC in the FIR No.21 dated 31.1.2020 which was lodged by him and had also challenged the cross FIR No. 23 dated 2.2.2020 which was lodged against the petitioner. Apart from the same, the prayer was also made for transfer of investigation in both the FIRs to any Senior Officer outside the district or independent investigating agency. In the second petition i.e. CRM-M-47259-2021, the same petitioner has challenged the challan/report under Section 173 Cr.P.C. dated 28.6.2021 since in the FIR No.21 dated 31.1.2020, recommendation was made for cancellation of FIR and apart from the same, FIR No. 23 dated 2.2.2020 was also challenged with a further prayer for transferring of the investigation and also to produce the record of the two inquiries.

The learned counsel for the petitioner raised an argument

that the FIR No.21 dated 31.1.2020 which was lodged by him was investigated in an improper manner and was in violation of directions issued by this Court in **CRM-M-16013-2020 titled “Pankaj Kumar @ Pinki Vs. State of Punjab & Ors.”** On 18.3.2021 wherein detailed instructions have been issued to the effect that repeated inquiries should not be conducted by the police. He submitted that in the present case earlier when an investigation was conducted by the police pertaining to the FIR lodged by him, Section 307 IPC was deleted and thereafter second investigation was conducted in which it was concluded that the FIR lodged by the petitioner i.e. FIR No. 21 dated 31.1.2020 to be cancelled. He further submitted that neither the petitioner was given any documents pertaining to the first inquiry nor he was joined in the first inquiry and, therefore, the second inquiry which was conducted was in violation of the aforesaid directions issued by this Court. Another argument was raised by the learned counsel for the petitioner that the cross FIR No. 23 date 2.2.2020 was only a counter blast to the FIR which was got registered by the police and the petitioner was falsely implicated in this FIR in which challan was presented against the petitioner and which is now pending before the Court and since it was a case of counter blast and with the malafide intention, this FIR i.e. FIR No. 23 dated 2.2.2020 is liable to be quashed. Another argument was raised by the learned counsel for the petitioner that the entire investigation is liable to be handed over to some other senior officer outside the district or be got conducted through some independent investigating agency.

On the other hand the learned Deputy Advocate General, Punjab has submitted that firstly, the second petition which was filed by the petitioner was not maintainable since the prayers made in the second petition by the same petitioner were identical and same except for one additional prayer where quashing of the report under Section 173 Cr.P.C. dated 28.6.2021 was sought. He submitted that even that prayer was not maintainable since the aforesaid report was much prior to the filing of the first petition and, therefore, filing of the second petition by making same prayer and on the same cause of action was not maintainable and was an abuse of the process of law. Secondly, he submitted that so far as the basic prayer of the petitioner in both the cases was that the police had conducted two inquiries and successive inquiries are not admissible in view of the guidelines issued by this Court is also misconceived. He further submitted that a reply has been filed in the first petition i.e. CRM-M-39450-2021 by DSP(R), Rupnagar and while referring to the aforesaid reply, he submitted that so far as the FIR No.23 dated 2.2.2020 is concerned, challan has already been presented under Sections 323, 341, 506, 511, 448 and 452 IPC in the Court of learned Chief Judicial Magistrate, Rupnagar on 23.9.2021 and as per the report, the same was pending for framing of charges against the present petitioner. In the affidavit it has also been specifically stated that so far as the grievance raised by the petitioner that two inquiries have been conducted was also misconceived. While referring to the affidavit, he submitted that four complaints dated 28.2.2020, 17.3.2020, 26.6.2020 and 17.9.2020 were

moved by Sh. Amandeep Rishi son of Bhagwan Dass and two complaints dated 19.2.2020 and 18.8.2020 were moved by Rishi Mehta and Rahul Mehta both sons of Harish Mehta. All the aforesaid complaints were taken up together for investigation and after conducting the investigation, all the aforesaid complaints were decided together vide inquiry report dated 17.3.2021 and as such the question of any repeated inquiries does not arise. He submitted that the aforesaid inquiry which was the only one inquiry was conducted by the SP and this inquiry report has been attached by the petitioner as Annexure P-12 in the second petition filed by the petitioner. He further submitted that a bare perusal of the same would show that when the matter was being investigated on inquiry being conducted by the SP(Investigation), Rupnagar, the provisions of Section 307 IPC were dropped during investigation and the said investigation was marked to the SP(D) who had given this inquiry report dated 17.3.2021 (Annexure P-12) in which he opined that FIR No. 21 dated 31.1.2020 under Sections 452, 307, 323, 148, 149 and 307 IPC was found to be registered on wrong facts and, therefore, it was required to be cancelled and, therefore, there was no second inquiry conducted by any Officer and so far as the inquiry report by the SP(D) is concerned it was only reiteration since it was marked to him. In this inquiry report, he has also recommended that so far as the second FIR i.e. FIR No.23 dated 2.2.2020 lodged against the petitioner was concerned, in the said FIR, Section 447 IPC was required to be withdrawn and Sections 448 and 452 IPC were required to be added. Thereafter vide Annexure P-11, which has been

attached with the second petition filed by the petitioner, challan was presented in the competent Court against the petitioner in FIR No. 23 dated 2.2.2020.

The learned State counsel further submitted that so far as the challenge to the challan/report under Section 173 Cr.P.C. dated 28.6.2021 is concerned, the same was not sustainable due to two reasons. Firstly, so far as the challan presented against the petitioner in FIR No. 23 dated 2.2.2020 is concerned, the same is sub judice before the learned trial Court and there is no ground available with the petitioner for quashing of the said FIR on merits as none of the parameters contained in the judgment of the Hon'ble Supreme Court in **State of Haryana Vs. Bhajan Lal, 1992 (Sup1) SCC 335** are fulfilled. Secondly, so far as the recommendation in FIR No. 21 dated 31.1.2020 which was lodged by the petitioner wherein recommendation was made for cancellation is concerned, the same was done on the basis of merits by the Investigating Officer on the basis of the inquiry made by the SP and the remedy for the petitioner was before the learned Illaqa Magistrate/trial Court for lodging of a protest petition, if any, and if so desired and required by the petitioner. The learned State counsel further submitted that there is no ground available with the petitioner for seeking the reinvestigation of the case through an independent agency and, therefore, has prayed for the dismissal of both the petitions.

I have heard the learned counsels for the parties.

The petitioner has filed two petitions. Prayers made in the

first petition were (i) quashing of reports of inquiries with consequential addition and deletion of offences during the course of investigation of FIR No.21 dated 31.1.2020 wherein Section 307 IPC was deleted, (ii) quashing of the cross FIR No.23 dated 2.2.2020, (iii) transfer of investigation of both the FIRs to some senior officer outside the district/independent investigating agency.

Prayers made in the second petition were (i) quashing of challan/report under Section 173 Cr.P.C. dated 28.6.2021 (Annexure P-11) alongwith the report dated 17.3.2021 and consequential addition and deletion of offences under Sections 307 and 452 IPC, (ii) quashing of FIR No. 23 dated 2.2.2020 (iii) transfer of the investigation of both the FIRs to any independent agency or outside the district.

A perusal of the aforesaid prayers made by the petitioner would show that the prayers made in both the petitions are identical except for the one additional prayer which was made in the second petition i.e. quashing of challan dated 28.6.2021. In this way, since the prayers made in both the petitions were same, the second petition in that context was not maintainable. So far as the additional prayer in the second petition with regard to quashing of challan dated 28.6.2021 is concerned, a perusal of the first petition would show that the same was filed on 20.9.2021 and at that time the challan dated 28.6.2021 which has been challenged in the second petition was already in existence and the petitioner did not chose to challenge the same.

Since both the petitions are taken up together for final

disposal, this Court would, therefore, proceed in considering the prayers made by the petitioners as aforesaid. So far as the first argument raised by the learned counsel for the petitioner is concerned, he raised a grievance that the FIR No. 23 dated 2.2.2020 was a counter blast of the FIR which he lodged against the opposite party. The investigation was done by the police which found that the FIR which was lodged by the petitioner was based upon wrong facts and the FIR which was lodged against the petitioner was required to be presented before the Court after addition and deletion of some of the provisions and the same was done and thereafter FIR No. 23 dated 2.2.2020 is pending before the competent Court. The prayer of the petitioner for seeking quashing of the aforesaid FIR No. 23 dated 2.2.2020 cannot sustain since no ground is made out by the petitioner as to why the FIR should be quashed at the threshold. The law with regard to the quashing of the FIR has been well settled by the Hon'ble Supreme Court in Bhajan Lal's case (Supra). The facts and circumstances of the present case suggests that the prayer of the petitioner for quashing of FIR No. 23 dated 2.2.2020 does not fulfill any of the parameters/guidelines laid down by the Hon'ble Supreme Court in the aforesaid judgment.

So far as the second prayer and argument raised by the learned counsel for the petitioner with regard to the action of the police in recommending the cancellation of the FIR No. 21 dated 31.1.2020 lodged by the petitioner is concerned, the same would also be not sustainable in view of the fact that detailed inquiry has been conducted by the police

wherein it came to the conclusion that aforesaid FIR No. 21 dated 31.1.2020 was based upon wrong facts and, therefore, recommendation for cancellation was made. The remedy, if any, available to the petitioner was not by filing the present petition under Section 482 Cr.P.C. but in case the cancellation report is submitted to the Court then he may exercise his right for filing protest petition or may also invoke any other provision by making an appropriate application before the learned trial Court in this regard in accordance with law. Therefore, the second prayer made by the petitioner was also not sustainable. A third argument was raised by the learned counsel for the petitioner that the police had conducted two investigations and, therefore, it violated the directions issued by this Court in Pankaj Kumar @ Panki's case (Supra). However, a perusal of the affidavit filed by the State as well as the inquiry conducted by the SP vide Annexure P-12 would show that Section 307 IPC was dropped at the time of investigation and the matter was marked to the SP(D) who only reiterated and recommended the cancellation of FIR No. 21 dated 31.1.2020 since it was based upon wrong facts. It was a categorical stand made by the State through its affidavit and the argument raised by the learned State counsel that repeated inquiries were not conducted. Even otherwise also the petitioner had a remedy available to him in accordance with law for making an appropriate application before the learned trial Court especially when the FIR in the cross version case is sub judice before the learned trial Court and, therefore, the grievance of the petitioner is misconceived and not sustainable.

So far as the fourth argument raised by the learned counsel for the petitioner that the matter be transferred to some other investigating agency outside the district or independent agency is concerned, the same would also be not sustainable since in the FIR No. 23 dated 2.2.2020, challan has already been presented and it is pending before the learned trial Court and so far as the FIR No.21 dated 31.1.2020 is concerned, cancellation report has already been recommended. Apart from the same, it is not the case that any personal malafide has been alleged against any police officer nor any police officer has been impleaded as a party in the present case. Therefore, this argument raised by the learned counsel for the petitioner was also not sustainable.

Therefore, considering the aforesaid facts and circumstances of the present case, this Court is of the considered opinion that both the petitions deserve to be dismissed.

In view of the above, both the petitions are, hereby, dismissed.

However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petitions only.

Since main petitions have been decided, all pending applications are disposed off.

June 02, 2022

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(JASGURPREET SINGH PURI)

JUDGE

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No