

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

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CWP-19802-2022

Date of decision: 05.09.2022

GOPAL KRISHAN

.....Petitioner

VERSUS

STATE OF HARYANA AND ANR

.....Respondents

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

Present:- Mr. Pardeep Kumar Rapria, Advocate
for the petitioner.

VINOD S. BHARDWAJ, J. (Oral)

The present Civil Writ Petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of Mandamus seeking directions for grant of compensation of Rs. 5 lakhs to the petitioner for the purported violation of his fundamental right as envisaged by the nine Judge Bench of the Supreme Court in the matter of '*K.S. Puttaswamy versus Union of India*' (2019) 1 SCC 1. A further prayer is also made for directing the respondent No.1 to pass a speaking order on the legal notice dated 04.07.2022 in terms of Section 4(1)(d) of the Right to Information Act, 2005.

2. Learned counsel appearing on behalf of the petitioner contends that a Police team of 8-9 police officials raided and searched the residential and business premises of the petitioner on 13.09.2020 in the presence of his old aged parents, children, women and other family members on the pretext that they had received a secret information that the petitioner was running a business of prostitution at his business and

residential premises. However, no illegal activity was found to be undertaken despite search of the premises of the petitioner. He contends that as a result of the same, the reputation and goodwill of the petitioner in his immediate neighbourhood has suffered a severe jolt. He contends that right to privacy is an integral part of Article 21 of the Constitution of India, 1950 and that on account of breach thereof, he is entitled to claim compensation from the sovereign. It is further urged that a representation in this regard dated 04.09.2020 was sent to the Superintendent of Police, Sirsa to take action against persons who had provided false information to the Police. Subsequent reminders were also given, however, no such action has been taken. Resultantly, a legal notice dated 04.07.2020 was sent to the Superintendent of Police for initiating proceedings under Section 182 of the Indian Penal Code, 1860 against the alleged secret informer who had given false information to cause injury to the petitioner.

3. I have heard learned counsel appearing on behalf of the petitioner at length.

4. A perusal of the documents appended alongwith the petition shows that search of the premises was conducted by the Police on the basis of a secret information. The petitioner has not leveled any allegation of mischief or malice against the Investigating Agency or any member/Officer thereof. Thus, this Court has no reason to assume that the raid had been undertaken on a bona fide belief, accordingly, it is either a case of mistaken identity or a bona fide mistake on the part of the investigation agency and their informant.

5. The proceedings in criminal law are required to be initiated

against an informant under Section 182 IPC in a certain set of circumstances. Section 182 of the IPC reads thus:-

Section 182 in The Indian Penal Code:

182. False information, with intent to cause public servant to use his lawful power to the injury of another person.—Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Illustrations

(a) A informs a Magistrate that Z, a police-officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(b) A falsely informs a public servant that Z has contraband salt in a secret place knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(c) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assistants, but knows it to be likely that in consequence of this information the police will make

enquiries and institute searches in the village to the annoyance of the villages or some of them. A has committed an offence under this section.

6. The ingredients thus prescribed for commission of offence are:

- i) Information to be given to a public servant ;
- ii) Information is known to the informant to be false or he behaves it to be false;
- iii) Information is given with an intention that the public servant shall do or omit something which he ought not, if true facts representing such information are known or;
- iv) Information is given with an intention to cause such public servant to use lawful power to the annoyance of any person.

7. Hence, before Section 182 IPC is to be invoked, the necessary ingredient of knowledge with the informant about the information being false must exist. Hence, mens rea ought to be in active play. Merely because some information was not correct cannot be interpreted to mean that the informant knew it to be false or had reason to believe it to be false. No person can be asked to be prosecuted merely because an information furnished to the police is eventually found to be not correct.

8. Such a long rope, as is being suggested by the petitioner that every informant of the investigating agency ought to be prosecuted under Section 182 IPC, if the information is found to be incorrect would destroy the entire investigation mechanism of the investigating agencies. It must not be forgotten that the informant may not always be on the pay-rolls of the agency and is more often a watchful citizen.

Much awareness is created by the law enforcing agencies to apprise citizens that they must report all suspicious things or activities in their vicinity or neighbourhood. The informant is thus not required to give a definite information. He reports, what he finds suspicious and it is for the law enforcement agencies to take an appropriate action on the information so received. The informant may thus be reeling under a bona fide believe that the information given by him is correct and that he is discharging his duties as a responsible citizen.

9. Positive knowledge of the falsity of the information is of essence to constitute offence under Section 182 IPC. Hence, even in an informant is inimical, the same cannot be the basis to construe that information given by such person was known or believed to be false. Such stringent requirement has been prescribed by the legislature with an object to safeguard an informant against prosecution for informing what he believed as his duty to inform.

10. As per the allegations set out in the petition, the only conclusion that can be inferred is that the information furnished to the investigating agency was found to be incorrect. However, what is “incorrect” cannot be presumed as “known to be false or reason to believe it to be false”. Legislature has consciously chosen the use of word “false and not “incorrect”. The words may sound similar in meaning but are used in different contexts and may not always be a perfect substitute. That five distinctions has been kept in mind and object by the legislature .

11. The same now leads to the next question of the alleged breach of right to privacy and the claim for compensation for the alleged

restriction. The authority of State to restrict the Right to Life and limiting the right to privacy when is enshrined as part of Article 21 of the Constitution of India) derives from the second part of Article 21 of the Constitution of India. It states that the rights cannot be deprived “except according to the procedure established by law.”

12. The right to privacy has to be seen in the context of a legitimate State interest. The Hon’ble Supreme Court had held that three requirements are mandatory for protecting “legitimate state interest” viz.

- 1) There must be a law.
- 2) There must be a legitimate State aim. This legitimate aim can be anything, from anti terrorism to national security and it is not for the Courts to decide whether the aim is legitimate but only to scrutinize whether it is ultra vires
- 3) The means must justify the end.

13. There can thus be a thousand reasons for the State to curb the right to privacy if a citizen and each case has to be seen on its own individual facts. An abstract factual assertion or violation of privacy cannot law passage for holding an absolute breach of a right.

14. At this juncture, it would thus be premature for this Court to hold as to whether such right has been infringed or not. Prima facie the act of the investigating agency is in furtherance to the legitimate state aim and law and it cannot be held that there was no proportionately in the police action. There has been no extreme step of arrest or lockdown or premises. The search of premises is the only proportionate step that is to be resorted to, in an event of receipt of information regarding some unlawful activity.

15. The issue is not to be examined any further at this juncture as the dispute is factual.

16. Further, writ Court would also be constrained in quantification of damage as the same is a question of fact to be determined by a Competent Court after recording of evidence. There also would be an issue of limitation for lodging of claim that would be required to be ascertained. Limitation also is a mixed question of law & fact. Hence considering that multiple factual disputes are involved, writ may not be an effective remedy since there is an efficacious alternative remedy available to the petitioner for initiating appropriate proceedings before the Civil/Criminal Courts so that appropriate order is passed after recording of evidence by the concerned Court.

17. The Hon'ble Supreme Court has held in the matter of **Radha Krishan Industries versus State of Himachal Pradesh** reported as **(2021) 6 SCC 771** as under :

“27. The principles of law which emerge are that :

27.1 The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

27.2 The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

27.3 Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a

legislation is challenged;

27.4 An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

27.5 When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

27.6 In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

28. These principles have been consistently upheld by this Court in Chand Ratan v Pandit Durga Prasad (2003) 5 SCC 399, Babubhai Muljibhai Patel v Nandlal Khodidas Barot, (1974) 2 SCC 704 and Rajasthan SEB v. Union of India, (2008) 5 SCC 632 among other decisions .”

18. It would not lie with this Court at this juncture to go into the disputed questions of fact and as to whether the information furnished by the secret informer was false or incorrect and as to whether the proceedings in question were malicious and information was known to be false & such conduct in breach of procedure of law or that the claim is within limitation since there is no allegation of bias, malice or mischief leveled by the petitioner in the present petition

against the police official.

19. Hence, the petition is dismissed at this stage. Liberty is however granted to the petitioner to take recourse to the alternative remedy available to him in accordance with law.

Dismissed accordingly.

(VINOD S. BHARDWAJ)
JUDGE

SEPTEMBER 05, 2022

Vishal sharma

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