

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

CRM-M-41842-2022 (O&M)
Reserved On: 13.09.2022
Date of Decision: 15.09.2022

Sucha Singh and another

....Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Ankur Bansal, Advocate, for the petitioners.

HARNARESH SINGH GILL, J.

The petitioners, by way of the present petition, seek quashing of the order dated 06.05.2022 (Annexure P.1) passed by the Judicial Magistrate, Ist Class, Phillaur, whereby an untraced cancellation report filed in FIR No. 14 dated 07.02.2012 under Sections 425, 323, 148, 149, 120-B IPC, registered at Police Station Bigla, District Jalandhar, was rejected and rather it was ordered to be treated as a challan/complainant and the petitioners summoned.

Learned counsel for the petitioners would vehemently argue that the FIR in question was a result of personal vendetta and old rivalry between the petitioners and respondent No.2; that in the earlier FIR got registered by respondent No.2, the

petitioners were acquitted; that the police has investigated the matter and finding no concrete evidence against the petitioners, the police had presented an untraced cancellation report; that the learned trial Court, instead of accepting the same, proceeded ahead in rejecting the same and rather treating the same as a challan and taking cognizance of the same and summoning the petitioners, to stand the trial.

Learned counsel further argues that it is settled law that the Magistrate while rejecting and/or differing with the report submitted by the police, has to record the reasons, but the impugned order shows that no such reasons, have been recorded by the Magistrate. Reliance is placed upon the judgments of the Hon'ble Supreme Court in Nupur Talwar Vs. Central Bureau of Investigation and another, (2012) 11 SCC 465 and Luckose Zachariah @ Zak Nedumchira Luke and others Vs. Joseph Joseph and others, 2022(2) RCR (Criminal) 260 and a Single Bench judgment of this Court in Prithvi Raj Sehgal Vs. State of Punjab and others, 2007(3) RCR (Criminal) 438.

However, I do not find any merit in the arguments raised by the counsel for the petitioners.

A perusal of the impugned order would show that the complainant had suffered a statement that he did not agree with the police investigation. Still further, it has been noticed in the order that the attacks on the complainant and his father, caused by some unknown persons, had been engineered by the petitioners and that it was for the said reasons, the cancellation report was rejected and the case was ordered to be registered as

CHI under Sections 452, 323, 148, 149, 120-B IPC against the petitioners.

The plea of the petitioner that while passing the impugned order, the trial Magistrate, was required to record the reasons is not tenable. It is a settled law that at the stage of the issue of the process, the Magistrate is not required to record any reason.

In Nupur Talwar's case (supra), the Hon'ble Apex Court has held that the Magistrate, while issuing process against the accused, was not obliged to record any reason. Pointed reference to para No. 11 of the said judgment, by the counsel for the petitioner, is of no help as the ratio laid down has to be seen as a whole and not in part.

In Joseph Joseph's case (supra), it was held that while examining the protest petition, it was necessary for the Magistrate to have due regard to both, the initial report under Section 173(2) and the supplementary report under Section 173(8) Cr.P.C.

In Prithvi Raj Sehgal's case (supra), it was held that the Magistrate can take cognizance under Section 190(1) Cr.P.C., but he cannot direct the investigating agency to take a particular view in the matter.

As the impugned order indicates the registration of the case as a complaint case and summoning of the petitioners, it cannot be said that any prejudice has been caused to the rights of the petitioners. The petitioners will have the opportunity to establish their non-involvement or innocence

before the Court concerned. Mere issuance of summons does not amount to holding the petitioners as guilty.

In view of the above, the present petition is dismissed.

15.09.2022
ds

(HARNARESH SINGH GILL)
JUDGE

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