

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

CRM-M-51440-2022

Date of Decision: 18.11.2022

HEERA LAL @ HAPPY

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Lalit Singla, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARSH BUNGER, J.

This petition under Section 482 Cr.P.C., has been filed by the petitioner seeking quashing of FIR No.0125 dated 16.11.2018 under Sections 278/281 of the Indian Penal Code and Section 39 of Air (Prevention and Control of Pollution) Act, 1981, registered at Police Station Khanauri along with all consequential proceedings arising therefrom qua the petitioner.

The FIR in question, was registered against the petitioner and his co-accused on the basis of complaint dated 15.11.2018 submitted by the then Executive Officer, Nagar Panchayat, Khanauri, District Sangrur (respondent No.2) for taking legal action against the persons involved in polluting the environment by way of burning harmful mechanical waste/garbage/rubber etc. at the junk (scraps/kabad) market Khanauri. It is submitted that during the course of preliminary inquiry, the police party

headed by one ASI Jagjit Singh along with Hardeep Singh and Gurmail Singh, inspected the place of occurrence and after verifying the facts stated in the complaint dated 15.11.2018, registered the FIR in question. It is stated that during the course of investigation, the police inspected the place of occurrence; prepared the site plan; took into possession the copy of the notices and also various photographs taken on 16.11.2018; besides recording of statements of witnesses under Section 161 Cr.P.C. Admittedly, the petitioner and the other co-accused were joined in the investigation and upon completion of the investigation, the final police report under Section 173 Cr.P.C. was presented before the concerned Court at Moonak on 24.06.2020 and thereafter, even the charges have been framed vide order dated 23.12.2021. As per petitioner, presently the case is fixed for consideration on application for alteration of charges.

The petitioner has filed the present petition seeking quashing of the abovesaid FIR along with all consequential proceedings arising therefrom on the following grounds :-

- (a) That the petitioner has been charged for allegedly burning mechanical waste/garbage/rubber etc. and thereby causing environmental issue, however, it is the contention of the petitioner that there is no material or evidence on the case file to connect the petitioner with the present offences. It is further contended that there is no document on record to suggest that the petitioner is either the owner or a tenant of the place at which the mechanical waste/garbage/rubber etc. was allegedly burnt and neither there is any witness who might have seen the petitioner indulging in such activities.*
- (b) That the offence under Section 278 of the Indian Penal Code and Section 39 of the Air (Prevention and Control of Pollution) Act, 1981 is non-cognizable in nature for which, no*

FIR could have been registered and investigated by the police.

(c) That as per Section 468 Cr.P.C., the learned Illaqa Magistrate, Moonak cannot take cognizance beyond the period of limitation.

Per contra, learned State counsel, to whom an advance copy of the petition has been supplied, has opposed this petition by submitting that there is sufficient material on record to suggest complicity of the petitioner in the acts of burning mechanical waste/garbage/rubber etc. and thereby causing environmental pollution. It is submitted that the petitioner is also charged with offence under Section 281 Indian Penal Code, which is a cognizable Offence and there is no illegality in investigating “non-cognizable offences” with “cognizable offences” and the charges have already been framed against the petitioner and other accused, hence no interference is required in the instant proceedings. It is further submitted that the plea of taking cognizance beyond period of limitation based upon Section 468 Cr.P.C. is also misplaced as the relevant date is the date of institution of prosecution and not the date on which the Magistrate takes cognizance. Accordingly, dismissal of the petition has been prayed for.

I have heard learned counsel for the parties and with their able assistance, perused the paper book.

Admittedly, the FIR in question was registered under Sections 278/281 of the Indian Penal Code and Section 39 of Air (Prevention and Control of Pollution) Act, 1981 and after the completion of the evidence, the final police report under Section 173 Cr.P.C was presented before the concerned Court on 24.06.2020. Admittedly, the charges stand framed vide order dated 23.12.2021 (Annexure P-3). It is also admitted that the case is

presently pending consideration for alteration of charges.

Perusal of the petition would indicate that the petitioner has raised disputed questions of fact. Even the witness namely, Deepti Redhu wife of Balwan Singh, resident of Khanauri, as cited by the prosecution to prove the fact that she has rented out one plot to the petitioner, is being sought to be denied by the petitioner on the ground that the petitioner is not aware of any such person.

With regard to the submission of the counsel for the petitioner that the offence under section 278 Indian Penal Code and Section 39 of the Air (Prevention and Control of Pollution) Act 1981 is non-cognizable in nature for which no FIR could have been registered and investigated by police; suffice it to say that section 155 Cr.P.C. provides as under:

"155. Information as to non-cognizable cases and investigation of such cases. - (1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable."

Sub-section (4) of this Section clearly provides that where the case relates to two offences of which one is cognizable, the case shall be deemed to be a cognizable case notwithstanding that the other offence or offences are non-cognizable.

Sub-section (4) creates a legal fiction and provides that although a case may comprise of several offences of which some are cognizable and others are not, it would not be open to the police to investigate the cognizable offences only and omit the non-cognizable offences. Since the whole case (comprising of cognizable and non-cognizable offences) is to be treated a cognizable, the police had no option but to investigate the whole of the case and to submit a charge-sheet in respect of all the offences, cognizable or non-cognizable both, provided it is found by the police during investigation that the offences appear, *prima facie*, to have been committed.

The Hon'ble Apex Court in the case of “*State of Orissa v. Sharat Chandra Sahu*”, reported as *1997(1) R.C.R.(Criminal) 737*, held as under:

“12. Sub-section (4) of Section 155 is a new provision introduced for the first time in the Code in 1973. This was done to overcome the controversy about investigation of non-cognizable offences by the police without the leave of the Magistrate. The statutory provision is specific, precise and clear and there is no ambiguity in the language employed in sub-section

(4). It is apparent that if the facts reported to the police disclose both cognizable and non-cognizable offences, the police would be acting within the scope of its authority in investigating both the offences as the legal fiction enacted in Sub-section (4) provides that even non-cognizable case shall, in that situation, be treated as cognizable.

13. This Court in *Praveen Chandra Mody v. State of M.P.*, AIR 1965 Supreme Court 1185 has held that while investigating a cognizable offence and presenting a charge-sheet for it, the police are not debarred from investigating any non-cognizable offence arising out of the same facts and including them in the charge-sheet.

14. The High Court was thus clearly in error in quashing the charge under Section 494 Indian Penal Code on the ground that the Trial Court could not take cognizance of that offence unless a complaint was filed personally by the wife or any other near

relation contemplated by Clause (c) of the Proviso to Section 198(1).

15. The Judgment of the High Court being erroneous has to be set aside...”

In the instant case, the petitioner and other accused have been charged with offence under Section 281 of the Indian Penal Code, which is a cognizable offence, thus, there is no merit in this plea.

The plea of counsel for the petitioner that learned Illaqa Magistrate, Moonak cannot take cognizance beyond the period of limitation, is also without any merit in view of the authoritative pronouncement by the Hon'ble Apex Court in the case of “*Sarah Mathew v. Institute of Cardio Vascular Diseases by its Director*”, reported as *2014(1) R.C.R.(Criminal) 590*, wherein it has been held as under:

“40.....For all these, we are unable to endorse the view taken in Krishna Pillai.

41. In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 of the Cr.P.C. **the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance.** We further hold that Bharat Kale which is followed in Japani Sahoo lays down the correct law. Krishna Pillai will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 of the Cr.P.C...”

With regard to the contention of the counsel for the petitioner that there is no material on the case file to connect the petitioner with the alleged offences; suffice it to say that in the instant case, the charges have already been framed and the case is fixed for consideration on application for alteration of charges. It is now well settled that after the investigation in a case is complete and charge-sheet stands submitted and even charges have been framed then at that stage, the High Court is not to enter into the merits

of the case as if High Court is exercising appellate jurisdiction and/or conducting a trial. In this regard, I draw support from judgment rendered by Hon'ble the Apex Court in ***Kaptan Singh vs State of Uttar Pradesh 2021(3) RCR (Criminal) 840***, wherein, it has been held as under :-

“9. Heard learned counsel for the respective parties at length.

9.1 At the outset, it is required to be noted that in the present case, the High Court in exercise of powers under Section 482 Cr.P.C., 1973 has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 Cr.P.C., 1973 quashed the criminal proceedings, by the time the Investigating Officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition under Section 482 Cr.P.C., 1973 was at the stage of FIR in that case the allegations in the FIR/complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry, the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held

by this Court in catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in the case of **Dineshbhai Chandubhai Patel** (Supra) in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the Investigating Agency nor can exercise the powers like an Appellate Court. It is further observed and held that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the Investigating Authority at such stage to probe and then of the Court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

9.2 In the case of **Dhruvaram Murlidhar Sonar** (supra) after considering the decisions of this Court in **Bhajan Lal** (supra), it is held by this Court that exercise of powers under Section 482 Cr.P.C., 1973 to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 Cr.P.C., 1973 though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 Cr.P.C., 1973. Similar view has been expressed by this Court in the case of **Arvind Khanna** (supra), **Managipet** (supra) and in the case of **XYZ** (supra), referred to hereinabove.

9.3 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C., 1973...”

It is well settled law that the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The inherent power should not be exercised to stifle a legitimate prosecution.

It is also the settled position in law that the High Court being the highest Court of a State should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court.

In the peculiar facts and circumstances as indicated, no interference at this stage is called for by way of exercise of power under Section 482 Cr.P.C for quashing of FIR in question along with all consequential proceedings arising therefrom.

Accordingly, the present petition is dismissed.

However, the petitioner shall be at liberty to raise all such pleas before the trial Court.

November 18, 2022

P. Bhatt

**(HARSH BUNGER)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No