

CRM-M-45014-2019

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

Sr. No.232

CRM-M-45014-2019 (O&M)

Date of decision : 14.12.2022

Mohinder Singh and others

.....Petitioner(s)

VERSUS

State of Punjab

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.KS Brar, Advocate for the petitioner

Mr.Kamapreet Singh Bawa, AAG, Punjab

AMAN CHAUDHARY, J.

The present petition has been filed for quashing of FIR No. 7 dated 08.01.2014, registered under Sections 326, 324, 452, 148, 149 IPC at Police Station Guruharsahai, District Ferozepur as well as consequential order dated 13.5.2019 passed by learned Sub Divisional Judicial Magistrate, Guruharsahai, vide which by taking cognizance notices have been issued to them.

Learned counsel for the petitioners submits that the learned trial Court has committed a grave error by taking cognizance of offence on the basis of the statement of the complainant and issued notice to them, without application of mind, as the matter was investigated twice and cancellation was presented as nothing was found against the petitioners.

The learned State counsel submits that the order impugned is revisable and as such, the present petition is not maintainable. He further submits that the impugned order is both legal and valid.

Heard.

It is apposite to refer to the cancellation report dated 01.02.2019, Annexure P-2, reads thus:-

“There had been foul mouth conversation and a quarrel between the parties, which was settled with the

intervention of the respectable of the village and both the parties went to their houses. On the spot, there were no sticks, bat or sharp edge weapon nor nobody get injured on the spot. Later on, both the parties tried to register a false case against each other just to implicate them in false cases. That the statements given by both the parties that they got injuries by the other party forcefully entering in their house are totally erroneous nor the accusations leveled by the complainant have been proved on spot. It has come out by the verified investigation done by Inspector, Station House Officer in secret manner or in open investigation that the injuries are totally vague and both the parties produced themselves before the hospital just to implicate the other party in a false case. There is no truth in the accusation leveled by both the parties against each other. The accusation level in the case FIR are totally false and baseless.”

On a bare reading of the aforesaid cancellation report, it indeed is apparent that the same has been prepared in a causal and cavalier manner.

Reliance can be placed on the judgment of Hon'ble The Supreme Court of India in the case of **Tula Ram and others vs. Kishore Singh**, 1977 Air 2401, wherein it has been observed that “the Magistrate can pursue the complaint, if he is not satisfied that there are sufficient grounds for proceeding, he can straightway issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witness.”

Furthermore in the case of **India Carat Pvt. Ltd. vs. State of Karnataka and another** 1989 AIR 885, Hon'ble The Supreme Court of India has held that the position is, therefore, now well settled that upon

receipt of a police report under Section 173(2) Cr.P.C. a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) of the Code does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under Section 190(1)(b) of the Code and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(b) of the Code though it is open to him to act under Sections 200 and 202 of the Code also. In the present case also, the statement of the complainant has been recorded and he did not agree with the cancellation report.

Adverting to the facts of the instance case, the learned trial Court has rightly taken the cognizance while disagreeing with the evasive cancellation report and finding that there are sufficient grounds to proceed against the accused. The learned trial Court while arriving at the aforesaid conclusion has taken into consideration the statement of the complainant, who expressed his objection to the cancellation report, the MLR of Gurdial

Singh produced by the prosecution itself, in which 3 injuries have been found inflicted on his person, of which injury No.1 was shown to have been inflicted by sharp weapon and as per receipt of X-Ray report, it was declared as grievous in nature, whereas injuries no.2 and 3 were with blunt weapon.

In view of the facts and circumstances of the case and the afore referred judgments, this Court finds no illegality or perversity in the order passed by the trial Court, whereby the cognizance has been taken, thus, no interference is warranted therein. Resultantly, the present petition is dismissed being devoid of merit.

14.12.2022

gsV

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned

:

Yes / No

Whether reportable

:

Yes / No