

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

CRM-M-3004-2023

Date of Decision: 15.02.2023

RAMESH CHANDRA SHIVHARE

...Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Naresh Jain, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, seeking quashing of FIR No.145 dated 21.09.2020, registered under Sections 420, 465, 467, 468 and 471 of the Indian Penal Code (Section 201 of the IPC, added later on) at Police Station Sadar, Hoshiarpur, District Hoshiarpur (Annexure P-1) along with all subsequent proceedings arising therefrom.

Brief facts of the case are that the above said case FIR was registered at the instance of one Sh. Gopal Gera, Excise Inspector-cum-Officer Incharge of Bottling plant, who moved a complaint on 21.09.2020 to the Station House Officer, Police Station Sadar, Hoshiarpur, regarding physical verification made by Excise Officer-Manjit Singh Bhatia along with others at the bottling plant of Jagmit Singh Bhatia on 12.09.2020, wherein, 59,400 seals without any mark, 7 boxes make 'Lion-13' for export overseas (Bhutan) and 197 boxes without any mark, were recovered. On an

enquiry made regarding the above said liquor, then one Jagmit Singh Bhatia produced three permits i.e. *GP2020626362-63-64/31.07.2020*. On the basis of suspicion, the Excise and Taxation Commissioner, Hoshiarpur, vide his letter No.76 dated 15.09.2020, sought verification of these permits, which were replied by the Royal Government of Bhutan, Department of Revenue and Custom, Regional Revenue and Custom Office, Jelphu, Bhutan and it was informed that the said three permits have not been issued by any of their department. Accordingly, the FIR was registered against said Jagmit Singh Bhatia.

The above-said FIR was investigated into and even a Special Investigating Team (S.I.T) was also constituted, who carried out further investigation. It appears that on the basis of material produced by Jagmit Singh Bhatia, it was found that permit Nos.GP202062-63-64/31.07.2020 were sent by Rishi Shivhare son of Ramesh Chand Shivhare and Ramesh Chand Shivhare son of late Hargobind Shivhare, residents of House No.165, Mistrikhana, Chana Kauthar Lashkar, Gwalior, Madhya Pradesh from *e-mail ID* of Rishi Shivhare i.e. r.shivhare@gmail.com on 31.07.2020 on the *email ID* of Jagmit Singh Bhatia's Company-M/s Lloyd Bottling and Blending i.e. lloyddisti659@gmail.com for exporting liquor to Bhutan. The *e-mail* IDs were got proved from the Cyber Cell, Hoshiarpur. It appears that during investigation, accused Rishi Shivhare made a disclosure statement that he and his father-Ramesh Shivhare had met Jagmit Singh Bhatia through a person named Anaya Gupta of Delhi and entered into a deal pertaining to import and export of the liquor.

A perusal of the challan/report under Section 173 of the Code of Criminal Procedure (Annexure P-6) would reveal that

Jagmit Singh Bhatia, was declared as innocent therein; however, challan was presented against Rishi Shivhare son of Ramesh Chand Shivhare and Ramesh Chand Shivhare (petitioner).

A perusal of the paper book would further show that the present petitioner was granted regular bail vide order dated 28.04.2021 passed by the Additional Sessions Judge, Hoshiarpur.

In the backdrop of aforementioned facts, the petitioner has filed the instant petition seeking quashing of the FIR in question, on the ground that he has been falsely implicated at the behest of one Jagmit Singh Bhatia, due to his political influence and he had got himself exonerated by concocting a false story, whereas it is Jagmit Singh Bhatia, who is the main accused and beneficiary.

Learned counsel for the petitioner has submitted that neither the petitioner has any role to play nor he is the beneficiary and it is only Jagmit Singh Bhatia, who is the main accused and is the beneficiary in the evasion of the excise duty. It is submitted that there is no cogent evidence to connect the petitioner with the aforesaid crime. It is next submitted that the petitioner has been wrongly nominated as an accused on the pretext that the forged permits produced by Jagmit Singh Bhatia have been sent to him through *e-mail* by the son of the petitioner. Learned counsel for the petitioner, while referring to copies of permit (Annexures P-2 to P-4) and one copy of extension letter (Annexure P-5) submits that in case, the permits, which are stated to be forged, were not issued by the Royal Government of Bhutan, then the said permits could not have been extended vide Annexure P-5. Accordingly, it is submitted that the above-said case FIR is a sheer abuse of the process of law and the same is liable to be quashed.

I have heard learned counsel for the petitioner and perused the paper book with his able assistance.

After considering the afore-said submissions made by learned counsel for the petitioner, I do not find any merit in the same. A perusal of Annexures P-2 to P-4 would show that the same are the alleged permits for import of IMFL/liquor and Annexure P-5 is a copy of an un-dated letter, which reflects that the permits have been extended till 15.09.2020 and the same pertains to three permits bearing Nos. **GP202062**, **GP202063** and **GP202064** of **31.07.2020**. In my considered opinion, the submissions made by learned counsel on behalf of the petitioner on the basis of Annexures P-2 to P-5 are at best the defence of the petitioner and the same would be required to be established/proved before the trial Court by way of legal evidence. The genuineness and authenticity of the aforesaid Annexures would be a subject matter of trial. It is well settled that Court should not act on Annexures to the petition under Section 482 of the Code of Criminal Procedure, which cannot be termed as evidence without being tested and proved. In this regard, I am supported by an authoritative pronouncement by the Hon'ble Apex Court in ***State of Madhya Pradesh v. Awadh Kishore Gupta 2004(1) RCR (Criminal) 233***, wherein, it has been held as under :-

“ While exercising jurisdiction under Section 482 of the Code, it is not permissible for the Court to act as if it was a trial Judge. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials

produced are sufficient or not for convicting the accused. In Chand Dhawan (Smt.) v. JawaharLal and Ors. (1992(3) SCC 317: 1992(3) RCR (Criminal) 534 (SC)), it was observed that when the materials relied upon by a party are required to be proved, no inference can be drawn on the basis of those materials to conclude the complaint to be unacceptable. The Court should not act on annexures to the petitions under Section 482 of the Code, which cannot be termed as evidence without being tested and proved. When the factual position of the case at hand is considered in the light of principles of law highlighted, the inevitable conclusion is that the High Court was not justified in quashing the investigation and proceedings in the connected case (Crime No.116/94) registered by the Special Police Establishment, Lokayukt, Gwalior. We set aside the impugned judgment. The State shall be at liberty to proceed in the mention further.”

The case in hand involves serious allegations and even the challan/report under Section 173 of the Code of Criminal Procedure, already stands filed before the Court and the petitioner has been admitted to regular bail.

At this stage, this Court is not required to appreciate evidence or draw conclusions from the contents of FIR or material relied upon. Moreover, the inherent jurisdiction under Section 482 of the Code of Criminal Procedure, is to be exercised sparingly and to quash the proceedings is an exception and not the rule. No exceptional circumstances have been brought forth in this petition.

Hon’ble Apex Court in *Kaptan Singh vs State of Uttar Pradesh 2021(3) RCR (Criminal) 840*, 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...”

In view of the above, the instant petition is bereft of any merit

and the same is accordingly dismissed.

However, nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial Court shall decide the case in accordance with law and on its own merits and on the basis of the evidence to be led and without being influenced by any of the observations made here-in-above.

Pending application/s, if any, shall also stand disposed of.

February 15, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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