

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-4498 of 2021

Date of Decision: August 21, 2023

Baljinder Kashyap and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Shantnu Bansal, Advocate for the petitioners.

Mr. Parneet Singh Pandher, AAG, Punjab.

DEEPAK GUPTA, J.

Petitioners are aggrieved by the order dated 16.11.2019 (Annexure P.6) passed by learned Judicial Magistrate Ist Class, Moga, whereby they have been summoned upon an application under Section 190 of the Code of Criminal Procedure, so as to face prosecution in case FIR No.156 dated 29.07.2017 registered at Police Station Dharamkot under Section 408 IPC (Sections 379, 511 IPC and Sections 61 of the Excise Act added later on).

2. As per prosecution allegations, on 29.07.2017, the police party received secret information to the effect that truck bearing No. PB10-FB-8076 driven by Bhupinder Singh alias Lovely; and truck bearing No. PB10-FB-4887 driven by Kulwinder Singh alias Kinder were carrying/loaded with alcohol from Piston Mega Company, Bathinda for supplying the same at Ludhiana. It was alleged that both these drivers used to stop their vehicles at Jimidara Dhaba and transfer the alcohol from their respective trucks to Scorpio Vehicle No. PB09-9415 by stealing the alcohol from the trucks and further used to sell the liquor prepared from alcohol, to people in different villages by playing fraud. It was alleged that petitioners – Baljinder Kashyap and Sunil Nagpal are the owners of the Scorpio vehicle.

3. On the basis of afore-said information, police party raided the disclosed place in the presence of Excise Inspector. The driver of the Scorpio vehicle succeeded in fleeing away along with his vehicle. Bhupinder Singh and Kulwinder Singh, the drivers of the two trucks/containers were found removing the alcohol from the trucks. They were apprehended. The trucks along with alcohol filled therein were taken into possession.

4. It was found during investigation that number plate PB09-9415 affixed on the Scorpio, in which liquor was alleged to have been taken after stealing, was actually registered on a Jeep and that registered owner of the said vehicle was Avneet Singh son of Punjab Singh. During investigation, no evidence came on file to connect the two petitioners with the crime nor they were found to be the owners of the Dhaba or have any connection with the afore-said vehicle and so, they were found to be innocent and placed in column No.2 of the challan. After necessary investigation, challan was presented only against Bhupinder Singh and Kulwinder Singh.

5. As it emerges that after presentation of the challan, learned trial Court adjourned the matter for consideration of charge against the accused, who had been challaned but prosecution moved an application under Section 190 Cr.P.C to summon the two petitioners by alleging that both of them had also fled away in the Scorpio vehicle from the spot and that this aspect had not been taken into consideration before declaring them innocent. Said contention of the prosecution was accepted by the learned trial Court, who by way of impugned order dated 16.11.2019, ordered the summoning of the two petitioners to face trial and thus, allowed the application under Section 190 Cr.P.C.

6. Challenging the afore-said order, it is contended by learned

counsel that impugned order is non-speaking and devoid of any reasoning. There was no material on file to disclose the basis on which petitioners had been summoned. In the entire investigation, no material was found against the petitioners and so, they were declared innocent. Further, no fresh material had been produced before the trial Court and so, the stage of considering any application under Section 319 Cr.P.C did not arise and that Section 190 Cr.P.C could not be invoked, after cognizance had already been taken because case was already fixed for considering the charge against the accused who had been challaned.

7. In the status report filed by the respondents, it has been conceded that the two petitioners were found innocent, as no evidence could be collected against them so as to connect them with the crime or with the ownership of the Dhaba or with the vehicle. However, the impugned order dated 16.11.2019 passed by the trial Court is stated to be the reasoned order and so the same is defended.

8. I have considered the submissions of both the parties and have appraised the record.

9. Perusal of the contents of the FIR as well as the inquiry report (Annexure P.2), which was submitted by the Deputy Superintendent of Police, Dharamkot to the Senior Superintendent of Police, Moga, as well as the final report under Section 173 Cr.P.C (Annexure P.3) nowhere shows the presence of the petitioners at the spot or that they had fled away with the Scorpio.

10. Learned State Counsel is unable to explain as to on what basis, it had been alleged in the application (Annexure P.5) moved by the APP before the trial Court that the two petitioners had fled away in the Scorpio vehicle.

11. It is, thus, clear that the learned trial Court has passed the impugned order without going through the material on record and just on the bare averment made by the APP, which was without any basis. Despite repetition, it may be stated that there is no allegation either in the FIR or in the report under Section 173 Cr.P.C that the petitioners were present at the spot or had fled away in the Scorpio vehicle. As per the investigation conducted by the Investigating Agency, petitioners have been found to have no concern with the crime or with the Scorpio vehicle or with the Dhaba.

12. In view of the afore-said discussion, the impugned order dated 16.11.2019 (Annexure P.6) cannot be sustained in the eyes of law. Rather, necessary action is required to be taken departmentally against the APP, who moved application (Annexure P.5) against the petitioners without any basis.

13. As such, present petition is hereby allowed. Impugned order dated 16.11.2019 (Annexure P.6) is hereby set aside. The respondent- State will be at liberty to take necessary action against the APP concerned for moving the application on wrong facts. Learned Judicial Magistrate Ist Class concerned be also advised to be careful while passing the orders having grave consequences.

14. Disposed of.

August 21, 2023

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(DEEPAK GUPTA)

JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No