

CRM-M-41684-2016
CRM-M-3107-2019

1

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

202

CRM-M-41684-2016 (O&M)
Date of decision: 22.03.2023

NAVDEEP SHARMA

....Petitioner

Versus

M/S SIDHI VINAYAK ENTERPRISES AND ANR

...Respondents

CRM-M-3107-2019 (O&M)

SARDAR RUPENDER SINGH AND ANR

....Petitioners

Versus

M/S SIDHI VINAYAK ENTERPRISES AND ANR

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Animesh Sharma, Advocate for the petitioners

Mr. Munish Gupta, Advocate for the respondents

AMAN CHAUDHARY. J.

This common order shall dispose of the above-mentioned two criminal miscellaneous petitions.

Prayer in CRM-M-41684-2016 is for quashing of Criminal Complaint No.20/2014 dated 22.03.2013 as well as the summoning order dated 20.08.2016 passed by learned Chief Judicial Magistrate, Narnaul, for offences punishable under Sections 406, 120-B and 506 IPC and in CRM-M-3107-2019, is for quashing of the order dated 04.09.2017, whereby the

criminal revision was dismissed for want of prosecution and order dated 14.12.2018, dismissing the application for its restoration.

Learned counsel for the petitioners would contend that the complainant had initially got lodged FIR, wherein after conducting investigation, cancellation report was submitted, finding the allegations to be of civil nature. The learned Magistrate before issuing the process has not taken into consideration the cancellation report submitted in the case, as required by the provision of Section 210 CrPC. Another error pointed out was since the petitioners are residing beyond the territorial jurisdiction of the Court concerned, an inquiry as contemplated under Section 202 CrPC ought to have been resorted to. To buttress his submissions, he places reliance on the judgments of this Court in the case of **Kuldip Raj Mahajan Vs. Hukam Chand**, (2008) 1 RCR (Cri) 370; **Savera Sidhu Vs. Harleen Sidhu and another**, (2011) 2 RCR (Cri) 442; **Om Parkash Sood Vs. Subhash Chander**, 2012 SCC OnLine P&H 15432 and **Jasbir Kaur and another Vs. Tirath Kaur**, 2014 SCC OnLine P&H 7713. As regards CRM-M-3107-2019, learned counsel would contend that the learned Magistrate should not have dismissed the revision in default and instead decided on merits.

Learned counsel appearing for the respondent would submit that the cancellation report was duly taken note of, as is reflected from the impugned order and the learned Magistrate has rightly summoned the petitioners after finding there to be relevant and sufficient material available

on record. With regard to Section 202 CrPC, in the revision filed by petitioner No.2-Gajraj Singh, he has shown himself to be a resident of Narnaul. Thus, he prays for dismissal of the petitions.

Heard learned counsel for the parties.

It would be apposite to make a reference to Section 210 CrPC, which reads thus:

“(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under Section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is accused in the complaint case, the Magistrate shall inquire together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him in accordance with the provision of this code.”

The Magistrate, in the case of **Kuldip Raj Mahajan** (supra) passed the summoning order without taking into consideration the cancellation report, which was quashed by this Court by holding thus :-

“10. In the aforesaid context, learned counsel for the petitioner submitted that in spite of having called report from the Investigating Officer vide order dated 1.9.2000 (Annexure P-18), the learned Magistrate, while passing the impugned summoning order dated 19.9.2002, did not

take into consideration the cancellation/investigation report of the police. Perusal of impugned summoning order (Annexure P-2) reveals that there is no reference at all to the investigation report/cancellation report of the police in the summoning order. Without considering the investigation report/cancellation report of the police, the impugned summoning order could not have been legally passed by the learned Magistrate. The respondent, despite knowledge, concealed the cancellation report of the police from the learned Magistrate. This is another indicator of mala fide on the part of the respondent.

13. Learned counsel for the respondent emphasized that disputed questions of fact cannot be adjudicated upon in the instant petition under Section 482 of the Code. Reliance in support of this contention has been placed on judgment in the case of T.Banamber Patra and others v. Vinod Kumar Sethi and another, reported as 2007 (1) Law Herald (P&H) 54 and also on an unreported order dated 12.1.2006 of this Court in Crl. Misc. No. 2052-M of 2006 titled as Ranjit Singh and others v. Sharda Devi. There cannot be any quarrel with this legal proposition. Disputed questions of fact cannot be gone into in a petition under Section 482 of the Code. However, this Court cannot be a helpless spectator when it is made out that the criminal prosecution is mala fide and an abuse of the process of the Court. In fact, this Court has inherent power and corresponding duty to prevent abuse of the process of any court or otherwise to secure the ends of justice. In the instant case, the impugned complaint in result of mala fide as the respondent was nursing grudge against the petitioner as discussed herein above. The witnesses cited by the respondent were also aggrieved against the petitioner. The alleged incidents dated 9/10.9.1999 were not mentioned in letter dated 10.9.1999 (Annexure R-4) sent by the respondent. There was long and unexplained delay in reporting the matter to the police. After investigation by Gazetted Officer, the FIR lodged in the same matter was found to be false and cancellation report was submitted by the police. The respondent, despite being aware of the cancellation report, concealed the same from the learned Magistrate. The impugned summoning order has also been passed without considering or even referring to the cancellation report. Keeping in view all these circumstances, it is a fit case in which this Court has to exercise its inherent powers under Section 482 of the Code by quashing the

impugned complaint and summoning order so as to prevent the abuse of process of court and to secure the ends of justice. In addition to it, the alleged offences are also not made out from the allegations in the impugned complaint.”

This Court in the case of **Savera Sidhu** (supra), observed that, “The argument that violation of Section 210 Cr.P.C does not vitiate the proceedings in the facts of the present case as both the complaint and State case stand committed to the Court of Sessions, has no merit. In case, a charge sheet is presented under Section 173 Cr.P.C and the Magistrate, on the basis of the complaint without taking into consideration the report under Section 173 Cr.P.C, on the same set of allegations, comes to the conclusion that no offence is made out, the same is liable to cause prejudice to the complainant, whereas, in case, a cancellation report is submitted in the FIR and the Magistrate without taking into consideration the cancellation report comes to the conclusion that a prima-facie case is made out, the same is likely to prejudice the accused. Thus, ignoring the pendency of the investigation in an FIR, shall prejudice one of the two parties in either of the two situations. As such, the violation of Section 210 Cr.P.C will vitiate the proceedings. Hence, the provisions of Section 210 Cr.P.C requiring the Magistrate to stay the proceedings of an enquiry or a trial and call for a report on the matter from the police officer conducting the investigation was equally mandatory.”

In the case at hand, on 27.06.2011, a complaint was filed at the Police station, Narnaul on the basis of which the FIR No. 273 dated

23.07.2011 under Sections 406, 120 B, 506 IPC read with Section 25 (54) of Arms Act was lodged and after the investigation, a cancellation report dated 15.4.2012 was filed. The complainant-firm filed a protest petition on 22.3.2013. After recording of preliminary evidence, the petitioners were summoned vide order dated 20.08.2016. Though in the summoning order, there is a reference to the factum of filing of cancellation report under Section 173 CrPC., however, it is apparent therefrom that it was not considered, to that extent the Magistrate has fallen in error, in terms of the mandate of Section 210 CrPC and the judicial pronouncements.

In so far as the submission with regard to the revision filed by the petitioner having been dismissed in default is concerned, it has been held by Hon'ble the Supreme Court in the case of **Madan Lal Kapoor vs. Rajiv Thapar and others** (2007) 7 SCC 263 while following the dictum in **Bani Singh and others vs. State of UP**, (1996) 4 SCC 720 and **Parasuram Patel vs. State of Orissa**, (1994) 4 SCC 664, that dismissal of criminal revision for default or non- prosecution without going into the merits of the case is not permissible, as the law laid down that a criminal appeal cannot be dismissed in default also applies to criminal revision.

The issue with regard to Section 202 CrPC is left open for determination by the Magistrate.

In view of the aforesaid discussion, the present petition is partly allowed. The impugned summoning order dated 20.08.2016, impugned in

CRM-M-41684-2016
CRM-M-3107-2019

CRM-M-41684-2016, and orders dated 04.09.2017 and 14.12.2018, challenged in CRM-M-3107-2019 are set aside.

The case is remitted to the Magistrate to decide afresh on merits, in accordance with law.

The observations made hereinabove, are only for the purpose of adjudication of the present cases and shall not be construed as an expression of opinion on the merits of the case. The trial Court is requested to decide the matter expeditiously, as it pertains to the year 2011.

A photocopy of the judgment be placed on the file of connected case.

(AMAN CHAUDHARY)
JUDGE

March 22, 2023
S.Sharma(syr)

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