

112

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-6515-2023

Date of decision : 08.02.2023

Manphool Singh

...Petitioner

Vs.

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. J.S.Bhandohal, Advocate

for the petitioner.

Mr. Gurdarshan Singh Sidhu, AAG, Punjab.

DEEPAK MANCHANDA, J.

Petitioner-Manphool Singh has filed this petition under Section 482 Cr.P.C. for quashing of the FIR No.0524 dated 13.12.2022 registered under Sections 379 and 34 Indian Penal Code, 1860 at Police Station Sohana, District SAS Nagar.

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present FIR and the allegations against the petitioner are that on 16.06.2022 the cemented pipe from the passage were stolen by the unknown persons and on 13.12.2022, complainant/respondent No.2 came to know that these were stolen by petitioner, who is sarpanch, which are false. He further submits that the petitioner did not demolish the passage nor tried to restrain the complainant/respondent No.2 forcibly rather he filed eviction petition before the Collector against respondent No.2/complainant by adopting the legal course and the present FIR is nothing, but the misuse of process of law just with a motive to get him suspended from

the post of sarpanch and grab the public property. He also submits that respondent No.2/complainant encroached over the shamlat land in collusion with the influential person, who is a retired IAS officer and is having farm house adjoining to the land of gram panchayat, wherein he runs a resort for commercial purposes. He also submits that he wants to grab the panchayat land and had filed a civil suit for permanent injunction, wherein an application under Order 39 Rule 1 and 2 CPC was declined vide order dated 22.12.2022. The Gram Panchayat filed a Eviction petition under Section 7 of Punjab Village Common Lands, (Regulation) Act, 1961 before the Collector against him and the present case is registered to harass the petitioner with a motive to compel him to not to protect the public property.

On the other hand, learned State counsel on receipt of advance copy submits that the present petition is pre-mature at this stage as the investigation is still going on and should not be entertained until and unless the investigation is completed.

I have heard learned counsel for the parties and have gone through the case file carefully.

The Hon'ble Supreme Court in its judgment rendered in "**M/s Neeharika Infrastructure Pvt.Ltd. Vs. State of Maharashtra and others**", **2021 AIR (Supreme Court) 1918** has dealt with the issue of quashing of FIR while exercising the power under Section 482 Cr.P.C and made the following observations:-

"23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what

*circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or **till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C.** and/or under Article 226 of the Constitution of India, our final conclusions are as under:*

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;*
- ii) Courts would not thwart any investigation into the cognizable offences;*
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;*
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).*
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*
- vi) Criminal proceedings ought not to be scuttled at the initial stage;*
- vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;*
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;*
- ix) The functions of the judiciary and the police are complementary, not overlapping;*
- x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*
- xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*
- xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer*

may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of

“no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”

In the light of above and the fact that impugned FIR No.0524 dated 13.12.2022 (Annexure P-1) is just at the stage of investigation, the same cannot be scuttled at the initial stage, therefore, when the investigation by the police is in progress, this Court is not inclined to go into the merits of the allegations in the FIR and the same would be pre-mature to pronounce the conclusion based on the facts that the FIR does not deserve to be investigated or that it amounts to abuse of the process of law. After investigation, if investigating officer or the police authorities finds that there is no substance in the FIR got registered by the respondent No.2/complainant, the law will take its own course by filing the appropriate report before the concerned Magistrate, which can be considered in accordance with law.

In view of the above discussion, this Court is not inclined to exercise the power under Section 482 Cr.P.C.

Resultantly, petition is dismissed.

(DEEPAK MANCHANDA)
JUDGE

08.02.2023
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No