

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

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CRM-M-6484-2019 (O&M)

Date of decision: 15.03.2023

MUNISH KUMAR @ MONU AND OTHERS

....petitioners

Versus

STATE OF PUNJAB AND OTHERS

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Anurag Chopra, Advocate for the petitioners.

Mr. Manipal Singh Atwal DAG Punjab.

Mr. R.S. Bains, Sr. Advocate with

Mr. Vishesh Chandhok, Advocate for the complainant.

AMAN CHAUDHARY. J.

Present petition has been filed under Section 482 CrPC for quashing the order dated 15.10.2015, Annexure P-1 passed by Chief Judicial Magistrate, Tarn Taran whereby the petitioners have been summoned in the FIR No.24 dated 14.04.2011 under Sections 307, 324, 323, 452, 506, 295-A, 148, 149 of the IPC and Sections 25/27/54/59 of the Arms Act registered at Police Station Jhabhal and further to quash the order dated 07.01.2019, Annexure P-2, passed by learned Additional Sessions Judge, Tarn Taran dismissing the revision petition preferred by the petitioners.

Briefly put the facts of the case are that the FIR was registered on the statement of complainant dated 14.11.2011. Perusal of statement of complainant shows that complainant has specifically stated in his statement

recorded by the police that on 01.04.2011 when he was sitting in his shop and at about 12:00 PM accused Munish Kumar alias Monu son of Parshotam Lal, resident of Adda Jhabal armed with *datar*, Gurjant Singh @ Janta son of Kashmir Singh armed with *datar*, Baldev Singh @ Monu son of Joginder Singh armed with *datar*, Sunny son of Resham Singh armed with *datar*, Gurwant Singh son of Mohinder Singh armed with Kirpan, Kuldeep Singh @ Billa son of Jarl Singh armed with Kirpan, Dilbagh Singh son of Kartar Chigh armed with Kirpan, Manjinder Singh @ Sonu son of Gurcharan Singh armed with pistol 32 bore and 4/5 unidentified persons armed with *datars* and *kirpans* came at his shop from the street adjoining to the shop of the complainant and Manjinder Singh Sonu has gun pointed his pistol towards the complainant and rest of the accused entered his shop along with respective weapons. He further stated that he got perplexed and accused Munish Kumar @ Monu had removed his turban and caught hold of him from his hair and he started dragging him and hitting him and he received injuries due to those blows. Afterward Munish Kumar alias Monu stated him that he is helping their opposite party, due to that reason today, they will punish him and he raised lalkara to catch hold him and afterward accused Baldev Singh @ Patty has given two blows of his *datar* with an intention to kill him and in order to save himself, he raised his right hand and he received injury on his right elbow. Afterward Dilbag Singh accused with intention to kill him had given two *kirpan* blows and just to save him, he raised his left arm and he received injuries on the left elbow of his ann. Afterward Gurjant Singh accused had given three *kirpan* blows with the intention to kill him and he again missed his left arm in order to save the

blows and he received injury on his left wrist. Afterward he raised shouts to save him and Arjmer Singh Sarpanch, resident of Chhapa as well as his younger brother Jagjit Singh Fauji immediately came there to save him but accused Manjinder Singh @ Sonu had threatened them that in case they will try to enter in the shop of complainant, then he will kill them and due to fear, they both did not step forward to save him. Rather they supported him by raising '*raula*' to save the complainant. Afterward accused Sunny had give two blows with his *datar* with an intention to kill him which hit on his left knee as well as outside of his left leg. Afterward Gurjant Singh gave three *kirpan* blows with intention to kill him, which hit on his right knee of his right leg. Afterward accused Munish Kumar raised '*lalkara*' by asking his companion to leave this person as he will punish him. In the meantime Baldev Singh gave two *datar* blows on his person which hit him on his little finger of his left hand and second blow hit him on his head. Afterward, accused Munish Kumar gave a *datar* blow which hit him on his head and he fell down on the ground and afterward all the accused fled away from the spot along with their respective weapons with the apprehension that complainant is no more now. Afterward Jagjit Singh as well as Ajmer Singh Sarpanch arranged for vehicle and shifted to Gupta Hospital, Jhabal for his medical treatment, where concerned doctor referred him to Hargun !Hospital at Amritsar, where he has been got admitted for his medical treatment.

Learned counsel has submitted that while summoning the petitioners, the Courts below have not properly considered that the investigating agency had found nothing incriminating against the petitioners

as initially, untraced report was submitted on 20.07.2014, and thereafter, upon reinvestigation, ordered by the learned Magistrate vide order dated 18.10.2014, a cancellation report was submitted on 11.02.2015 by recording that the accused could not be traced. There was no justification with the Magistrate to have passed the impugned orders against the petitioners.

Learned State counsel assisted by learned counsel for the complainant oppose the petition on the ground that the Courts have after properly appreciating the entire facts and material placed on record rightly summoned the petitioners. There was sufficient evidence on record with the police, however the investigating agency had intentionally filed untraced reports. No reinvestigation was also carried out by it, as no statements of witnesses were recorded. The ocular evidence coupled with the medical evidence was rightly taken into consideration by the courts below while passing well reasoned order, which they pray be sustained, being supported by the judgments in the cases of **Dharampal and another vs. State of Haryana** (2014) 3 SCC 306 and **Dr.Mrs. Nupur Talwar vs C.B.I. Delhi and another**, (2012)1 SCC (Cri) 711.

Heard.

It is apposite to make a reference to the order dated 15.10.2015 passed by learned Chief Judicial Magistrate, whereby the petitioners have been summoned. The relevant portion thereof reads thus:-

“Further perusal of file shows at there is MLR on file of complainant Puran Singh dated 2.4.2011, as per which he received 19 injuries on his person. Afterward investigation of this case has been conducted by the concerned investigating officer but inspite of sufficient evidence on record to proceed against the above mentioned accused, the prosecution not only submitted

cancellation report on the basis of enquired made by concerned officer, also submitted untraced report and it is very strange, especially in the light of the fact that complainant Puran Singh has attributed a specific role to specific accused and he had given full address of each accused who inflicted injuries on his person on the date of occurrence in his statement dated 13.4.2011, In spite of that untraced report has been filed in this case, for the reason best known to the prosecution. There are also X-ray films on the file and X-ray report, as per which injuries No.1,5,6, 8 and 10, 11,13,14,15, 16 and 18 and 19 were kept under observations for the purpose of X-ray and as per X-ray report fractures are seen on various parts of the body.

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.So, in the light of these facts and circumstances I find merit in the protest petition and disagree with the untraced report submitted by the prosecution and it be registered and there is sufficient material on the file to proceed against all the accused under Sections 307, 323, 324, 452, 506, 295.A, 148 and 149 IPC 1967. along with Section 25/27 of Arms Act, 1965.”

The submissions of learned counsel for the petitioners that the learned Magistrate in face of two reports arriving at the same very conclusion by the Investigating agency, finding the petitioners to be in effect innocent, which were approved by authority concerned, recommending filing of cancellation/untraced report are found to have no substance, in view of the law laid down by Hon’ble The Supreme Court of India in the case of **Dr.Mrs. Nupur Talwar** (supra),wherein reliance was placed on to a three Judge Bench decision of the Apex Court in the case of **M/s. India Carat Private Ltd. vs. State of Karnataka & Anr.** (1989) 2 SCC 132, wherein succinctly relevant principles were explained that, “The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) 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) 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) and direct the issue of process to the accused..." It was further observed, "We feel constrained to observe that at this stage, this Court should exercise utmost restraint and caution before interfering with an order of taking cognizance by the Magistrate, otherwise the holding of a trial will be stalled. The superior Courts should maintain this restraint to uphold the rule of law and sustain the faith of the common man in the administration of justice."

In the case of **Dharampal and another vs. State of Haryana** (2014) 3 SCC 306, Hon'ble The Supreme Court of India held that, "The view expressed in Kishun Singh's case, in our view, is more acceptable since, as has been held by this Court in the cases referred to hereinbefore, the Magistrate has ample powers to disagree with the Final Report that may be filed by the police authorities under Section 173(3) of the Code and to proceed against the accused persons *dehors* the police report, which power the Session Court does not have till the Section 319 stage is reached. The upshot of the said situation would be that even though the Magistrate had

powers to disagree with the police report filed under Section 173(3) of the Code, he was helpless in taking recourse to such a course of action while the Session Judge was also unable to proceed against any person, other than the accused sent up for trial, till such time evidence had been adduced and the witnesses had been cross-examined on behalf of the accused.” Further held, “In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(3) Cr.P.C. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column no.2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.”

The revisional Court has also extensively dealt with the matter and rightly affirmed the summoning passed, by observing thus:

“5. Having heard to the rival submissions and perusal of record, it is made out that present case came into existence on the basis of statement suffered by complainant Puran Singh and FIR No.24 dated 14.4.2011 was registered against the revisionists under sections 307, 323, 324, 452, 506, 295-A, 148 and 149 IPC and 25, 27 of Arms Act. Perusal of initial statement of complainant Puran Singh shows that he has specifically alleged that on 1.4.2011 he was present in his shop' then at about 12.00 noon Munish Kumar alias Monu armed with *datar*, Gurjant Singh son of Kashmir Singh armed with *datar*, Baldev Singh son of Joginder Singh armed with *datar*, Sunny son of Resham Singh armed with

datar, Gurwant Singh armed with Kirpan, Kuldeep Singh also armed with Kirpan, Dilbag Singh armed with Kirpan, Manjinder Singh armed with pistol 32 bore along with 4-5 unidentified persons, all armed with *daters* and kirpans entered his house. They were abusing him and raising lalkaras. Manjinder Singh pointed his pistol on him and the remaining persons entered his shop and Munish Kumar removed his turban and dragged him from his hairs and started him hitting with kicks and other persons attacked him with their respective weapons and caused him multiple injuries. Perusal of record further shows that 19 injuries were found on the person of complainant. Out of which seven injuries were grievous and the wrist were found to be simple a nature. X-ray was advised for most of the injuries and many fractures were found in his body. Accused Gurjan. Singh was arrested on 11.4.2012 who suffered disclosure statement and caused the recovery of *datar* used by him in the alleged occurrence. On 15.4.2011 police took into possession the blood stained cloths on the injured i.e complainant Puran Singh. SI Jagjit Singh SHO, police station Jhabal investigated the matter and found all the accused guilty except Dilbag Singh, Kuldeep Singh, Suny and Gurwant Singh, who were found not present at the spot at the time of alleged occurrence. Thereafter, DSP Ashwani Kumar visited the spot and endorsed the investigation conducted by SI Jagjit Singh. On 30.6.2011 DSP Kuljit Singh also agreed with the investigation conducted by SI Jagjit Singh. Despite the fact in investigation, the accused named by in the FIR were found guilty. Cancellation report has been submitted in this case. It is surprising once the investigation was complete in the year 2011 which is clear from the Zimni dated 30.6.2011 recorded by DSP Kuljit Singh, challan was not presented in the Court. Rather the Investigation was again conducted by SHO Jhabal SI Sukhbir Singh who gave entirely different report by submitting that the revisionists petitioners have not committed the alleged offence. They are not the real culprits, rather the injuries were caused by some other persons who are yet to be traced. His report was endorsed by DSP Sukhwinder Singh whereas perusal of record shows that the complainant has identified all the accused persons and they have been named in his original version.

This Court is not dwelling into the intricacies of the case lest it may prejudice the case of either party. The orders impugned in the present

case, can most certainly be not faulted with, the learned Courts having explicitly enumerated the reasons therein. Indubitably the complainant, who received multiple injuries including fractures as reflected in the MLR, had identified and named all the accused in his initial statement and Investigating Officer found all the accused guilty except four, despite which, after more than three years untraced report was submitted followed by another similar report upon reinvestigation. Therefore, without examining the facts of the matter any further, it would be suffice to record that a detailed order was passed by the Magistrate while summoning of the petitioners, so did the revisional Court by adopting the right course to deal with in detail each aspect that required due consideration and came to a conclusion that the Magistrate, justifiably took cognizance, there being ample evidence available on record.

Considering the peculiarity of facts and circumstances of the case in light of the exposition of law, this Court finds no illegality, infirmity or perversity in the impugned orders, which may call for any intervention. As such, the present petition is dismissed being bereft of merits.

It is clarified that no observations made hereinabove shall be considered as an expression of opinion on the merits of the case.

(AMAN CHAUDHARY)
JUDGE

15.03.2023
S.Sharma(syr)

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