

2023:PHHC:146687

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

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CRM M-11184-2021

Date of Decision: 06.09.2023

Baaj Singh

...Petitioner

Vs.

State of Punjab and another

...Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Ankush Rampal, Advocate for
Mr. Kushagra Mahajan, Advocate
for the petitioner.

Mr. Mohit Chaudhary, AAG, Punjab.

Mr. Rohit Sapehiya, Adovcate
for respondent No. 2.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the FIR No. 186 dated 29.08.20217 registered under Section 336 IPC at Police Station Jandiala, District Amritsar Rural and all consequential proceedings arising therefrom.

2. The FIR in the present case was got registered by Baljinder Singh son of Nirvail Singh. As per the complainant, he was an agriculturist. The name of his elder brother is Jarmanjeet Singh. People in their village had different political affiliations and there were some civil cases pending in the Court with regard to the land. At about 09/10.00 p.m. on 28.08.2017, he was coming back from the house of his uncle Gurdev Singh and was in his land. At that time,

Dalwinder Singh son of Paramjit Singh was shouting in his house and at that time son of his uncle (Taya) Baaj Singh son of Sarabjeet Singh was also present there and the main door of the house was open. Dalwinder Singh fired five times in the air from his licenced revolver and had created a atmosphere of terror in the village. Dalwinder Singh, who was in inebriated condition, was still screaming and yelling and was using foul language with other family members. Dalwinder Singh created terror by firing five rounds from his licenced revolver and legal action may be taken against him.

3. Learned counsel for the petitioner contends that in the present case, all the allegations have been targeted only against Dalwinder Singh, who had fired five times from his revolver and had created the atmosphere of terror in the village. There is no averment in the FIR, which proves that the petitioner was also involved in the crime. It has simply been shown that the petitioner was also present at the time, when Dalwinder Singh had committed the offence. Even the petitioner was named in the present incident dated 28.08.2017 as the complainant Baljinder Singh and father Nirvail Singh were ordered to be convicted by this Court on 18.05.2017 in a criminal case, which was registered on the basis of the statement made by the present petitioner. Consequently, in the present alleged occurrence, which had taken place after the three months of conviction of the complainant,

the complainant named the petitioner also due to the said enmity. Thus, the petitioner has been falsely involved in the present case.

3. On the other hand, the learned State counsel submits that the petitioner was also present at the place of occurrence and was present with the main accused Dalwinder Singh. Even, the statements of eye witnesses Sukhchain Singh and Kirandeep Singh were recorded on 29.08.2017 by the Investigating Officer, who also corroborated the version of the FIR. Still further, the challan in the present case, has already been presented against Baaj Singh on 05.08.2023 and the petitioner is liable to be prosecuted by the trial Court.

4. I have heard learned counsel for the parties and perused the record.

5. In the various judgments passed by the Hon'ble Supreme Court and this Court, it has been held repeatedly while referring to the provisions of Section 482 Cr.P.C. that nothing under the Code of Criminal Procedure shall deem to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. The Hon'ble Supreme Court in the matter of Ajay Mitra Vs. State of M.P. & others, 2003(3) SCC 11, has held as follows:-

“Leave granted.

These appeals by special leave are directed against the judgment and order dated January 16, 2002 of High Court of Madhya Pradesh, by which three Petitions filed by the appellants under Section 482 Cr.P.C. were dismissed.

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Thereafter, the appellants filed three Criminal Miscellaneous Petitions under Section 482 Cr.P.C. before the High Court for quashing of the FIR and the proceedings of the case before the learned Magistrate. After hearing the parties, the High Court held that the investigation had not yet commenced in connection with the FIRs which had been registered at the Police Station and, therefore, the Petitions were pre-mature and accordingly all the three Petitions were rejected.

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The High Court has held that the Petitions filed by the appellants for quashing the complaint and the FIRs registered against them are pre-mature. The question which arises is that where the complaint or the FIR does not disclose commission of a cognizable offence, whether

the same can be quashed at the initial stage? This question was examined by this Court in State of West Bengal & Ors. V. Swapan Kumar Guha & Ors., AIR 1982 Supreme Court 949 and it was held that the First Information Report which does not allege or disclose that the essential requirements of the penal provision are prima facie satisfied, cannot form the foundation or constitute the starting point of a lawful investigation. It is surely not within the province of the police to investigate into a Report (FIR) which does not disclose the commission of a cognizable offence and the code does not impose upon them the duty of inquiry in such cases. It was further held that an investigation can be quashed if no cognizable offence is disclosed by the FIR. The same question has been considered in State of Haryana & Ors. V. Ch. Bhajan Lal & Ors. 1991(3) RCR (Criminal) 383 (SC) and after considering all the earlier decisions, the category of cases, in which the Court can exercise its extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 Cr.P.C. either to prevent abuse of the process of any Court or to secure the ends of justice, were summarised in

para 108 of the Report and sub- paras 1 to 3 thereof are being reproduced hereinbelow :

"1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused."

6. The said judgment by the Three Judges Bench of the Hon'ble Supreme Court had affirmatively held that where an FIR does not disclose the essential requirements of the penal provision or does not disclose the commission of a cognizable offence, the same can be quashed at the initial stage. Reference has also been made to

the judgment of Hon'ble Supreme Court in case "***State of Haryana and others Vs. Ch. Bhajan Lal & Ors., 1991(3) RCR (Criminal) 383***", in which, it was observed that the High Court can exercise its extraordinary power under Article 226 of the Constitution or the inherent power under Section 482 Cr.P.C. 1973 either to prevent abuse of the process of any Court or to secure the ends of justice.

7. The Hon'ble Supreme Court of India in "**R Kalyani vs. Janak C. Mehta**" reported as 2009 (1) SCC 516 has held as under:

"Leave granted.

2. Appellant lodged a First Information Report (FIR) against the respondents on or about 4.1.2003 under Sections 409, 420 and 468 read with Section 34 of the Indian Penal Code.

3. First and second respondent approached the High Court for an order for quashing of the said FIR as also the investigation initiated pursuant thereto or in furtherance thereof. The High Court allowed the said proceedings by reason of the impugned order dated 29.4.2004. Mr. K.K. Mani, learned counsel appearing on behalf of the appellant, would, in support of the appeal, contend :

(1) The High Court exercised its inherent jurisdiction under Section 482 of the Code of Criminal Procedure wholly illegally and without jurisdiction insofar as it entered into the disputed questions of fact in regard to the involvement of the respondents as the contents of the first information report disclose an offence of cheating, criminal breach of trust and forgery.

(2) While admittedly the investigation was not even complete, the High Court could not have relied upon the documents furnished by the defendants either for the purpose of finding out absence of mens rea on the part of the applicants or their involvement in the case.

(3) Respondent Nos.1 and 2 herein being high ranking officers of M/s. Shares and Securities Ltd., a company dealing in shares, were vicariously liable for commission of the offence being in day to day charge of the affairs thereof.

(4) An offence of forgery being a serious one and in view of the fact that the respondent No.2 forwarded a letter purporting to authorise the accused No.3 to transfer shares to the National Stock Exchange, he must be held

to have the requisite intention to commit the said offence along with the respondent No.3.

(5) In any view of the matter, the respondent No. 3 being not an applicant before the High Court, the entire criminal prosecution could not have quashed by the High Court.

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In Hamid v. Rashid alias Rasheed & Ors. [(2008) 1 SCC 474], this Court opined :

"6. We are in agreement with the contention advanced on behalf of the complainant appellant. Section 482 Criminal Procedure Code saves the inherent powers of the High Court and its language is quite explicit when it says that nothing in the Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. A procedural Code, however exhaustive, cannot expressly provide for all time to come against all the cases or points that may possibly arise, and in order that justice may not suffer, it is necessary that every court must in

proper cases exercise its inherent power for the ends of justice or for the purpose of carrying out the other provisions of the Code. It is well established principle that every Court has inherent power to act ex debito justitiae to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court."

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One of the paramount duties of the Superior Courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.

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A vicarious liability can be fastened only by reason of a provision of a statute and not otherwise. For the said purpose, a legal fiction has to be created. Even under a special statute when the vicarious criminal liability is fastened on a person on the premise that he was in-charge of the affairs of the company and responsible to it, all the ingredients laid down under the statute must be fulfilled. A legal fiction must be confined to the object and purport for which it has been created. In Sham

*Sunder & Ors. v. State of Haryana [(1989) 4 SCC 630],
this Court held :*

*"9. But we are concerned with a criminal liability under
penal provision and not a civil" liability. The penal
provision must be strictly construed in the first place.
Secondly, there is no vicarious liability in criminal law
unless the statute takes that also within its fold. Section
10 does not provide for such liability. It does not make
all the partners liable for the offence whether they do
business or not."*

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*27. If a person, thus, has to be proceeded with as being
vicariously liable for the acts of the company, the
company must be made an accused. In any event, it
would be a fair thing to do so, as legal fiction is raised
both against the Company as well as the person
responsible for the acts of the Company.*

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*30. The appeal is dismissed with the aforementioned
observations.*

8. A perusal of the above judgments would show that it has been observed that the High Court cannot be a helpless spectator when it is made out that the criminal prosecution is *mala-fide* and an abuse of process of the Court. The High Court has inherent powers and a corresponding duty to prevent the abuse of the process of the Court or otherwise to secure the ends of justice. In the present case, if the facts of the case are considered in detail, it is apparent that it is an indicator of *mala-fide* on the part of the complainant and can very well serve as a ground for quashing of the FIR. Thus, three months prior to the alleged occurrence on 18.05.2017, the complainant and his father were ordered to be convicted by the Court under Sections 326, 323 and 34 IPC in a trial arising out of the FIR, which was got registered by the present petitioner. Still further, even from the uncontroverted allegations levelled by the complainant in the FIR, no offence is made out against the present petitioner. It has been stated that Dalwinder Singh was abusing and shouting and had fired five shots in the air to create the atmosphere of terror. Only, it has been alleged that the petitioner was present at the house and the main door of the house was open. There is no allegation that the present petitioner has also shared the common intention with Dalwinder Singh. Thus, it is apparent that the FIR in the present case is liable to be quashed by this Court. Even, there is no evidence to show that the present petitioner shared the common intention with Dalwinder

Singh, principal accused and no motive has been alleged against the present petitioner.

9. In view of above, FIR No. 186 dated 29.08.20217 registered under Section 336 IPC at Police Station Jandiala, District Amritsar Rural and all consequential proceedings arising therefrom are ordered to be quashed.

06.09.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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