

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

125

CRM-M-11542-2023

Date of Decision : 24.04.2023

Beant Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.N.K.Manchanda, Advocate
for the petitioner.

Mr. Vipin Pal Yadav, Addl.A.G., Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Section 482 Cr.P.C. is seeking quashing of FIR No.74 dated 30.07.2019 registered at Police Station Ajitwal, District Moga, under Sections 452, 354, 506 and 120-B of IPC as well as impugned order dated 19.12.2022 whereby trial Court has treated the cancellation report as complaint and directed the complainant to lead evidence.

2. The brief facts of the case are that complainant lodged the aforesaid FIR against the petitioner. The police, after completing investigation, filed a cancellation report which came up for consideration before the jurisdictional Magistrate. The complainant filed a protest petition. The Magistrate vide order dated 25.10.2021 directed the police to conduct further investigation. The police conducted further investigation and filed cancellation report which came up for consideration before the jurisdictional Magistrate who vide order dated 19.12.2022 ordered to treat the cancellation report as complaint and directed the complainant to lead evidence.

3. Learned counsel for the petitioner relying upon the judgment of a Co-ordinate Bench of this Court in *Dharambir vs. State of Haryana, 2011(15) RCR (Criminal) 702, Om Parkash vs. State of Punjab, 2002(1) RCR (Criminal) 563* and *Rajinder Singh and others vs. State of Punjab, 2003(2) CrI.CC 5* submits that the Magistrate in the absence of 2nd time protest petition could not take cognizance and treat the cancellation report as complaint.

4. Learned State counsel, who is present in Court on advance notice, submits that police has 3rd time conducted investigation and found the petitioner innocent. Cancellation report has been filed and the matter is fixed before jurisdictional Magistrate for 20.05.2023.

5. Learned counsel for the private respondent submits that police after completing investigation three times filed cancellation report and complainant was left with no other option except to file protest petition. The Trial Court has passed a very detailed and reasoned order. Trial Court has considered pre-summoning evidence led by the complainant and thereafter summoned the petitioners.

6. I have heard the arguments of learned counsel for the parties and perused the record.

7. The conceded position emerging from record is that an FIR under different Sections of IPC came to be registered against the petitioner. Police filed cancellation report and on notice, the private respondent filed protest petition. The trial Court did not accept cancellation report and asked the Investigating Officer to conduct further investigation. The police after further investigation filed cancellation report and trial Court on the basis of protest of the respondent ordered to treat cancellation report as complaint

and asked the respondent-complainant to lead evidence.

8. It is undisputed fact that the complainant filed protest petition and Magistrate asked for further investigation. The Magistrate did not treat protest petition as complaint, however, asked for further investigation. Police again filed cancellation report and at this time, no written protest petition was filed and Magistrate treated cancellation report as complaint.

9. While advertizing with power of Magistrate to deal with cancellation report, in **Dharambir's case (supra)**, this Court has held :

“5. It has been submitted by learned counsel for the petitioner that after the registration of the FIR, the investigation was conducted by Sultan Singh, SI, who recorded the statement of Ashwani Kumar and Rameshwar, and they fully supported the version of the petitioner as given in the FIR. Both of them stated that it was Asludeen, who impersonated himself as Faquiria and executed the agreement to sell in favour of the petitioner. Once that evidence has been collected, the Investigating agency was to submit the challan against Asludeen. The Investigating agency took a somersault and again recorded the statements of these witnesses to the effect that the agreement to sell has been forged by the petitioner himself. The same was not permissible. That itself is a ground for quashing the report submitted against the petitioner under Section 173 of the Code and for ordering re-investigation by some independent agency.

6. It has been submitted by learned State counsel that an application was moved by Asludeen, in which enquiry was conducted by DSP and during that enquiry it transpired that in fact

the petitioner conspired with others to fabricate the agreement in question in order to usurp the land of Faquiria. Thereafter, the statements of the attesting witnesses of the agreement were recorded and they come out with the statements that the agreement to sell has been fabricated by the petitioner with their connivance.

7. *The questions raised in the present petition are disputed questions of facts and the same cannot be decided while dealing with the present petition. The remedy of the petitioner lies before the trial court itself. In case he is not satisfied with the report submitted under Section 173 of the Code, he can file a private complaint under Section 200 of the Code. This Court cannot order re-investigation as the same is not permissible. There can only be an order of further investigation. When the petitioner has an alternative remedy, the present petition is not competent.”*

9.1 In **Om Parkash's case (supra)**, this Court has held :

“4. In view of the affidavit of Devinder Singh, SHO, Police Station, Mandi Gobindgarh, Sh. G.S. Dhanoa, Dy. Supdt. of Police and Shri R.S. Jangu, SDM, Amloh, no direction can be issued for the arrest of the respondents 5 and 6. If the petitioner has any grievance against the cancellation report, he has right to protest it as and when it is produced before the illaqua Magistrate and he has also alternative remedy to file a complaint before illaqua Magistrate as it has been laid down in Balabhadra Dash and another v. State of Orissa and others, 1991 CrL L.J. 2457 as under:—

“Inherent power is wide in nature and Section 482 in Cr. P.C. having been made to secure ends of

justice or to prevent abuse of the process of Court, such power is to be exercised with great restraint. Wider would be the power, greater should be the restraint. Ordinarily, trial of an accused in a criminal prosecution is to be concluded under the provisions of criminal procedure code and High Court would be reluctant to conclude the same at an interim stage. Therefore, prayer for quashing charge or taking cognizance ought not to be entertained in a routine manner and unless High Court is satisfied that there is abuse of process of Court or ends of justice demand it, such prayer ought not to be entertained. Even if, such prayers are entertained, all endeavours should be made to examine if the abuse of powers of Court can be eradicated without bringing the proceeding to an end in the midway. Where accused would be put to such inconvenient position that subsequent examination of these questions would materially affect him which would be irreparable in nature, High Court can for reasons to be recorded in that regard, examine the materials to interfere with the continuance of trial. Therefore, where all the accused persons had an opportunity to advance submissions before the Magistrate that materials on record do not call for framing of charge against them, High Court declined exercise of inherent powers for quashing cognizance. In subordinate authority normally higher authority should not exercise its powers to give same relief.”

In Mohan Lal and another v. State, Opposite Parties, 1974 CrL.. L.J. 1407 it has been held as under:—

“The inherent power of the High Court under that provision, to my mind, cannot be pressed in aid for the purposes of indirectly undoing or modifying an

order which is appealable or revisable and has become final because no appeal or revision was filed against it or having been filed were dismissed thus giving finality to the same. The order of the learned Magistrate dated 17th January, 1969 and the appellate order therefrom are not in challenge in these proceedings.”

9.2 In **Rajinder Singh's case (supra)**, this Court has held :

“5. This stand on behalf of the State is absolutely wrong as according to order dated 29.11.1996 passed by the Magistrate, the cancellation report had been filed in the present case. Thus, the stand of the State Government cannot be accepted. In view of the above facts, it is clear that learned Judicial Magistrate has converted the FIR into the complaint and had started recording evidence. In case cancellation report is not accepted by the Magistrate, then it can direct the complainant to file a separate complaint and only thereafter can pre-charge evidence can be recorded, but the FIR cannot be converted into a complaint.”

10. A two Judge Bench of Hon'ble Supreme Court in **Popular Muthiah vs. State represented by Inspector Police, (2006) 7 SCC, 296** has held that a Magistrate has jurisdiction to accept the final report and in the event of protest petition to treat the protest petition as complaint and issue the process. The relevant extracts of the judgment read as :

“54. We have noticed hereinbefore that the jurisdiction of the learned Magistrate in the matter of issuance of process or taking of cognizance depends upon existence of conditions precedent therefor. The Magistrate has jurisdiction in the event a final form is filed (i) to accept the final form; (ii) in the event a protest petition is filed to treat the same as a complaint petition and if a prima

facie case is made out, to issue processes; (iii) to take cognizance of the offences against a person, although a final form has been filed by the police, in the event he comes to the opinion that sufficient materials exist in the case diary itself therefor; and (iv) to direct reinvestigation into the matter. (See Abhinandan Jha v. Dinesh Mishra [(1967) 3 SCR 668 : AIR 1968 SC 117 : 1968 Cri LJ 97] and Minu Kumari v. State of Bihar [(2006) 4 SCC 359 : (2006) 2 SCC (Cri) 310 : (2006) 4 Scale 329] .)”

11. Section 190 of Cr.P.C. provides that a Magistrate may take cognizance of offence upon receiving a complaint or police report or upon information received from any person or upon his own knowledge. Section 190 of Cr.P.C. for the ready reference is reproduced as below :-

190. Cognizance of offences by Magistrates.—(1) *Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—*

- (a) upon receiving a complaint of facts which constitute such offence;*
- (b) upon a police report of such facts;*
- (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.*

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try”

From the perusal of Section 190(1)(c) of Cr.P.C., it is quite evident that Magistrate may take cognizance upon information received from any person or upon his knowledge.

12. In the case in hand, the Magistrate has taken cognizance and treated cancellation report as complaint, on the basis of objection raised by the complainant. A Magistrate is not supposed to act as a mute spectator or post office of the investigating agency. A Magistrate is supposed to apply his mind and if he comes to a conclusion that prima facie commission of offence is made out, the Magistrate not only on the complaint of a person other than a police officer but also suo motu can take cognizance of commission of offence. The Magistrate may treat the protest petition as complaint and take cognizance, however, in view of judgments of this Court, Magistrate cannot treat cancellation report as complaint. The complainant on the earlier occasion filed protest petition, however, no such protest petition was filed later on.

13. Having considered facts and circumstances of the case, ratio of judgments of this Court and law laid down by Hon'ble Supreme Court, this Court is of the considered opinion that impugned order deserves to be set aside and accordingly set aside. The trial Court is directed to pass afresh order after considering protest petition already filed or if any other is filed by complainant and different cancellation reports filed by Investigating Agency.

14. The parties at the first instance are directed to appear before Trial Court on 20.05.2023 and thereafter as directed by learned Magistrate.

15. Disposed of.

24.04.2023
anju

(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>