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

**CRM-M-28338 of 2012
Date of Decision: 25.01.2023.**

Rajinder Aggarwal

.....Petitioner

Vs.

State of Punjab and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. R.S. Cheema, Senior Advocate with
Mr. K.S. Nalwa, Advocate and Mr. Satish Sharma,
Advocate for the petitioner.
Mr. R.S. Khaira, DAG, Punjab.
Mr. Brijender Kaushik, Advocate for respondents
No.2 and 3.

DEEPAK GUPTA, J.

Petitioner is complainant of FIR No.40 dated 16.05.2022 registered at Police Station Ferozepur Cantt., District Ferozepur under Sections 384, 388, 192, 211, 148 and 149 IPC and Sections 25 (Act N: 54) of the Arms Act, 1959. The said FIR was lodged against respondents No.2 and 3. After investigation, Police submitted cancellation report on 05.12.2004 on the direction of Additional Director General of Police (Crime), Punjab, which was rejected by the learned Chief Judicial Magistrate, Ferozepur vide order dated 14.01.2006 with the direction to re-investigate the matter. Police re-submitted cancellation report, which was again rejected vide order 27.11.2009 (Annexure P.14) by the learned Chief Judicial Magistrate, Ferozepur by holding that there was a prima-facie case to prosecute the accused – respondents No.2 and 3 under Section 389 read with Section 120-B IPC. This order dated 27.11.2009 was challenged in the revision by the respondents, which has been accepted by the learned Additional Sessions Judge, Ferozepur vide order dated 21.04.2012

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(Annexure P.15), which is assailed by the petitioner- complainant in this petition.

2. (i) Genesis of the case is business rivalry between petitioner and respondent No.3, who are close relatives. They had a joint business for making bus bodies at Lalru for Swaraj Mazda Limited. They separated their business vide written settlement deed dated 11.08.1999, whereby respondent No.3 along with his family members agreed not to seek business from Swaraj Mazda Limited for a period of 5 years, for which they were duly compensated by the petitioner.

(ii) However, backtracking from said settlement, respondent No.3 sought business from Swaraj Mazda, constraining petitioner to file Civil Suit No.28 dated 13.03.2000 at Panchkula Court, in which injunction order under Order 39 Rules 1 and 2 CPC was granted in his favour, restraining respondent No.3 from seeking business from Swaraj Mazda for five years. Said order of the Panchkula Court was upheld upto Hon'ble Supreme Court.

(iii) It is alleged that having failed to get the stay order vacated, respondent No.3 and his brothers became frustrated and started demanding ₹5 crore from the petitioner for not seeking business from Swaraj Mazda Company for five years. Petitioner refused. At this, respondent No.3 with the help of his brothers started adopting illegal tactics. It is alleged that petitioner started receiving threatening calls of extortion from the anti-social elements. The caller wanted the petitioner to pay ₹5 crore to respondent No.3 and his family for not seeking the business from Swaraj Mazda for five years. Complaint was made by the petitioner to SHO, Police Station, Sector 3, Chandigarh as well as SHO Police Station City Lalru on

29.09.2001.

(iv) Respondent No.3 then lodged FIR No.556 dated 18.12.2001 under Sections 323, 506, 34 IPC at Police Station Panchkula against the petitioner and his son alleging that they had assaulted respondent No.3. After investigation of the case, cancellation report was submitted by the Police, which was accepted by the Chief Judicial Magistrate, Panchkula. It is alleged further that respondents No.2 and 3 then hired Pappu Yadav, underworld don of Bihar to get the issues settled with the petitioner, which fact was also stated by SSP, Panchkula in a statement made to the Press on 23.01.2002.

(v) It is alleged further that another FIR No.3 dated 21.01.2002 was got registered by respondent No.2, brother of respondent No.3 against petitioner and his son under Sections 307, 342, 323, 427, 148 and 149 IPC and under Sections 25 of the Arms Act at Police Station Ferozepur Cantt. making allegations of kidnapping and firing at respondent No.2. Petitioner wrote letters to various authorities against his false implication. After thorough investigation, cancellation report was submitted before learned Area Magistrate. Learned Chief Judicial Magistrate declined to accept the cancellation report and ordered for further investigation. Detailed inquiry was conducted and again cancellation report was submitted, which was accepted by learned Chief Judicial Magistrate, Ferozepur vide detailed order dated 09.05.2007. The said order was upheld uptill this High Court.

3. Further case of the petitioner is that during course of investigation of FIR No.3, he made a complaint to the Ferozepur Police by narrating that how he and his son had been falsely implicated in the above-

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referred cases and in fact, respondent No.3 and his brothers wanted to extort ₹5 crore for not seeking business from Swaraj Mazda for five years and as he (petitioner) had refused to fulfill this demand, he had started receiving threatening calls and then respondent No.3 had got lodged FIR No.556 dated 18.12.2001 under Sections 323, 506, 34 IPC at Police Station Panchkula and FIR No.3 dated 21.01.2002 under Sections 307, 342, 323, 427, 148 and 149 IPC and under Sections 25 of the Arms Act at Police Station Ferozepur Cantt. On the basis of this complaint of the petitioner, FIR No.40 dated 16.05.2002 was registered at Police Station Ferozepur Cantt., against respondents No.2 and 3 with the allegations that the petitioner had been put in fear of false accusation by said respondents No.2, 3 and others in order to commit extortion of ₹5 crore.

4. Instead of investigating the allegations contained in this FIR No.40, the Police simply prepared the cancellation report on the basis of a letter dated 22.09.2004 of ADGP, Crime, Punjab stating therein that allegations were false and even if taken to be true, the same disclosed offences under Sections 182 and 211 IPC only. The cancellation report was rejected by learned Chief Judicial Magistrate, Ferozepur on 14.01.2006. Cancellation report was re-submitted in the Court which was again rejected by learned Chief Judicial Magistrate, Ferozepur vide order dated 27.11.2009. However, the revision filed against that order has been accepted by learned Additional Sessions Judge, Ferozepur by way of the impugned order dated 21.04.2012, remanding the case with the direction to pass fresh order on the ground that registration of the FIR No.40 would amount to double jeopardy.

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5. It is contended by Ld. Counsel for the petitioner that learned Additional Sessions Judge failed to appreciate that the allegations in FIR No.3 and FIR No.40 are totally different. In the present case, it was categorically alleged that petitioner had been put in fear of false accusation by respondents No.2 and 3 and their associates in order to commit extortion of ₹5 crore; that learned Additional Sessions Judge had found sufficient evidence regarding commission of the said offence and so, there was no justification to set aside the order of the Chief Judicial Magistrate. While remanding the case back for consideration, learned Additional Sessions Judge has given a finding on facts, leaving no scope to give an independent finding by the Chief Judicial Magistrate. Two FIRs are not connected with each other and so, the observation of the learned Additional Sessions Judge that as proceedings under Section 182 IPC have been initiated against respondent No.2 on account of the fact that the allegations in FIR No.3 dated 21.01.2002 had been found completely false and baseless, so it will amount to double jeopardy is not correct because the allegations of two FIRs are not connected. Learned Additional Sessions Judge brushed aside the basic material fact that respondent No.3 was the main architect of the entire extortion, who falsely implicated the petitioner and his son in bogus FIR No.556 at Panchkula and then got registered FIR no.3 at Ferozepur Cantt.

6. Respondents defended the impugned order.

7. I have considered submissions of both the sides at considerable length.

8. After concluding the investigation in case FIR No.40 dated

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16.05.2002 at Police Station Cantt. Ferozepur, cancellation report was submitted by the Police, which was rejected by the Chief Judicial Magistrate, on the direction of ADGP, Crime. Re-submission of the cancellation report met the same fate, as Chief Judicial Magistrate again rejected the same and ordered for summoning of respondents No.2 and 3 to face prosecution under Section 389 and 120-B IPC. The question is whether the order passed by the learned Chief Judicial Magistrate dated 27.11.2009 was illegal or perverse in any manner whatsoever.

9. In order to examine this issue, it is required to be seen as to what options were there before learned Chief Judicial Magistrate while considering the cancellation report submitted by the Police. It is the consistent position of law that when a report under Section 173 Cr.P.C comes up for consideration before the Magistrate, there may be two situations, one is that report may conclude that offence appears to have been committed by a particular person or persons; and the other is that no offence appears to have been committed. In the first situation, the Magistrate has three options:- (a) he may accept the report and take cognizance of the offence and issue process; (b) he may disagree with the report and drop the proceedings; and (c) he may direct further investigation under Section 156(3) Cr.P.C and require the Police to make a further report. In the second situation, when the Police report says that no offence appears to have been committed, Magistrate has again three courses open to him:- (a) he may accept the report and drop the proceedings; (b) he may disagree with the report and take the view that there is sufficient ground for proceeding further and take cognizance of the offence and issue the process (which

course has been adopted by the Chief Judicial Magistrate in this case while rejecting the second cancellation report); and (c) he may direct further investigation to be made by the Police under Section 156(3) Cr.P.C. Reliance in this regard can be placed upon ***Bhagwant Singh Vs. Commissioner of Police and another, (1985) SCC 537, H.S. Bains, Director, Small Saving-cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State (UT, Chandigarh) (1980) 4 SCC 631 and M/s India Carat Pvt. Ltd., Vs. State of Karnataka & Another, (1989) 2 SCC 132.***

10. In this case, Police submitted report in respect of FIR No.40 dated 16.05.2002 that no offence appears to have been committed. Ld. Chief Judicial Magistrate, adopted the second course, i.e. rejected the report and took cognizance. It may be noted here itself that while rejecting the cancellation report and taking cognizance, learned Chief Judicial Magistrate, gave detailed reasons in his order dated 27.11.2009 (Annexure P.14), though it was not even necessary for him to do so. It has been observed by Hon'ble Supreme Court in ***Nupur Talwar Vs. Central Bureau of Investigation Delhi and Another, (2012) 2 SCC 188***, by referring to ***Kanti Bhadra Shah and another Vs. State of West Bengal, 2000(1) SCC 722*** that though at the time of passing an order of discharge in favour of accused, reasons are to be recorded but it is not so mandated at the time of framing charges against the accused.

11. Having adopted the course of taking cognizance by rejecting the cancellation report, learned Chief Judicial Magistrate acted within his jurisdiction. The said order could have been interfered with by the Revisional Court only if it was found to be perverse or passed on no

material. Reliance in this regard can be again placed upon ***Nupur Talwar's case (supra)***, wherein it was held by Hon'ble Supreme Court as under:-

“15. Now the question is: what should be the extent of judicial interference by this Court in connection with an order of taking cognizance by a Magistrate while exercising his jurisdiction under Section 190 of the Code?

16. Section 190 of the Code lays down the conditions which are requisite for the initiation of a criminal proceeding. At this stage the Magistrate is required to exercise sound judicial discretion and apply his mind to the facts and materials before him. In doing so, the Magistrate is not bound by the opinion of the investigating officer and he is competent to exercise his discretion irrespective of the views expressed by the police in its report and may prima facie find out whether an offence has been made out or not.

17. The taking of cognizance means the point in time when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence which appears to have been committed. At the stage of taking of cognizance of offence, the court has only to see whether prima facie there are reasons for issuing the process and whether the ingredients of the offence are there on record.

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19. The correctness of the order whereby cognizance of the offence has been taken by the Magistrate, unless it is perverse or based on no material, should be sparingly interfered with. In the instant case, anyone reading the order of the Magistrate taking

cognizance, will come to the conclusion that there has been due application of mind by the Magistrate and it is a well-reasoned order. The order of the High Court passed on a criminal revision under sections 397 and 401 of the code (not under Section 482) at the instance of Dr. Mrs Nupur Talwar would also show that there has been a proper application of mind and a detailed speaking order has been passed.”

12. In the present case, the order of Chief Judicial Magistrate is found to be neither perverse nor illegal in any manner. Though, he was not mandated to give reasons for rejecting the cancellation report and for taking cognizance, as only prima-facie case was to be seen at this stage, still learned Chief Judicial Magistrate have given reasons for taking the cognizance. In no way, the said order could be said to be illegal or perverse in any manner.

13. Apart from above, perusal of the impugned order dated 21.04.2012 passed by learned Additional Sessions Judge, Ferozepur, accepting the revision against rejection of the cancellation report by the Chief Judicial Magistrate, would reveal that revision has been accepted, as learned Additional Sessions Judge was of the view that registration of FIR No.40 dated 16.05.2002 for getting FIR No.3 dated 21.01.2002 registered on false grounds would amount to double jeopardy of respondents No.2 and 3, as case under Section 182 IPC had already been registered.

14. In ***Sangeetaben Mahendrabhai Patel Vs. State of Gujarat and another, (2012) 7 SCC 621***, Hon'ble Supreme Court considered the scope and application of doctrine of double jeopardy. After referring to Section 300 Cr.P.C and the various precedents, Hon'ble Supreme Court held as

under:-

“33. In view of the above, the law is well settled that in order to attract the **provisions of Article 20(2) of the Constitution** i.e. doctrine of *autrefois acquit* or **Section 300 CrPC or Section 71 IPC or Section 26 of the General Clauses Act**, the ingredients of the offences in the earlier case as well as in the latter case must be the same and not different. The test to ascertain whether the two offences are the same is not the identity of the allegations but the identity of the ingredients of the offence. Motive for committing the offence cannot be termed as the ingredients of offences to determine the issue. The plea of *autrefois acquit* is not proved unless it is shown that the judgment of acquittal in the previous charge necessarily involves an acquittal of the latter charge.

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39. There may be some overlapping of facts in both the cases but the ingredients of the offences are entirely different. Thus, the subsequent case is not barred by any of the aforesaid statutory provisions.”

15. In the present case, FIR No.3 was registered at the instance of respondent No.2 against petitioner and his son, alleging attack and firing on him, which allegations were found to be false and the cancellation report filed by the Police was upheld upto this High Court. Kalendra under Section 182 IPC was filed. Respondents have placed on record copy of order dated 26.02.2019 passed in CRM-A-569-MA-2013 (O&M), which reveals that acquittal recorded by learned Chief Judicial Magistrate in Kalendra was upheld by this Court.

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16. However, the allegations of FIR No.40 dated 16.05.2002, lodged on the complaint of the petitioner are different. Allegations therein are that having failed to get the stay order vacated, which was upheld upto Hon'ble Supreme Court, respondent No.3 along with his brothers wanted to extort ₹5 crore from the petitioner for not getting business from Swaraj Mazda for five years and in order to fulfill his threats, had initially lodged FIR No.556 dated 18.12.2001 and then FIR No.3 dated 21.01.2002 against petitioner and his son. Thus, allegations are different.

17. As observed by Hon'ble Supreme Court in *Sangeetaben Mahendrabhai Patel's case (supra)*, test to ascertain as to whether two offences are same, is not the identity of allegations but the identity of the ingredients of the offence. Though some facts are overlapping in two cases, but the ingredients of the two offences, i.e. one under Section 182 IPC on the basis of finding the facts of FIR No.3 to be false and that of FIR No.40 are entirely different.

18. Based on above discussion, it is held that impugned order dated 21.04.2012 passed by learned Additional Sessions Judge, Ferozepur cannot be sustained. Said order is set aside. Order dated 27.11.2009 (Annexure P.14) of learned Chief Judicial Magistrate, Ferozepur is restored. Petition is allowed accordingly.

January 25, 2023
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No