

202 Ist case

2023:PHHC:089771

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-25334-2014 (O&M)

Date of decision: 14.07.2023

RANBIR SINGH MANN AND ANR

...Petitioners

VS

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr.K.S.Nalwa, Advocate and
Mr. Yajur Sharma, Advocate and
Mr. Hakikat Singh, Advocate,
For the petitioners.

Mr. Vikas Bhardwaj, AAG, Haryana.

Mr. Paramveer Singh Dhull, Advocate for
Mr. Samir Rathaur, Advocate,
For respondent No.2.

ARUN MONGA, J. (ORAL)

Personal vendetta between two brothers namely, Ranbir Singh Mann and Brijender Singh Mann, apart from their political rivalry, since both of them owe allegiance to different parties, seems to be the real reason of dispute. Petitioner No.1, who is nephew of complainant/respondent No.2 Surinder Singh Mann. At the latter's instance, a State case bearing FIR No.10 dated 18.06.2001, registered under Sections 406, 420, 467, 468, 471, 120-B IPC at State Vigilance Bureau (H), Rohtak, District Rohtak was instituted ostensibly on the ground that the diesel that was supplied by Indian Oil Corporation to the factory premises of the petitioners concern M/s Ravindra Papers Mills was purchased without paying the sales tax by

evasion of the applicable sales tax thereby causing loss to the State exchequer.

2. Facts of the case make for a telling tale as to how the criminal justice system has been put to misuse just to settle personal scores. It would, therefore, be apposite first to enumerate the facts, which are stated hereinafter in chronological order:

1) *Petitioner No.1 (now deceased, who passed away in 2022) was one of the directors of M/s Ravindra Paper Mill Pvt. Ltd., Kaithal Road, Chirao, Karnal, a medium scale unit manufacturing craft paper. Petitioner No.2 is the manager of the Company. Petitioner No.1 as director of the Company was looking after the marketing. In 1994 there was extension in the Company and for the smooth production, two generator sets of 650 KVA each were installed in the premises of the Company. For the generator sets, vehicles and machinery etc. large quantity of diesel (HSD) was required. Earlier the Company was purchasing diesel from the market on daily basis. The Company of the petitioners came to know that Indian Oil Corporation (IOC) sets quota/allocation for the supply of diesel to companies. The approximate monthly consumption of the Company was 42000 litres of diesel. The Company made a written request to Divisional Manager, IOC at Karnal for the allotment of quota of 42000 litres HSD per month. A team of IOC carried out site inspection and thereafter IOC at Ambala started supply of HSD to the Company of the petitioners which was brought to Karnal on hired oil tankers.*

ii) *One Rajesh Gupta, Proprietor M/s Petroleum Product Carrier, C-7, Shivaji Park, Punjabi Bagh, West New Delhi who was in the business of transportation of oil, approached the Company stating that diesel (HSD) will be cheaper and transportation charges will be less if diesel (HSD) is purchased from Delhi. The Company verified that the inter-state supply of HSD from Delhi had sales tax of 4% and from Ambala it was 7%. The Company entered into a written agreement dated 15.07.1995 with Rajesh Gupta's company for transport of diesel (HSD) from Delhi to Karnal. The Company of the petitioners made a request to IOC that they will purchase HSD from Delhi and hence the supply of HSD commenced from IOC Delhi through transport company of Rajesh Gupta. The Company used to issue authority letter signed by petitioner No.2 along with bank draft favouring IOC A/c of M/s Ravindra Paper Mills Pvt. Ltd. These documents were sent to the transporter who used to fill the tanker number and name of driver etc. and forward the same to IOC Bijwasan Depot, Delhi. The supplies started on 24.07.1996. In the meantime, Rajesh Gupta started another company namely M/s Sandeep*

Bulk Roadlines and the transporter used to supply HSD on oil tanker of either of the companies.

iii) In June 1999, the Company of the petitioners came to know that the transporter was selling HSD in Delhi purchased under the name of the Company. The IOC record also confirmed that huge quantity of HSD was supplied to the firm's account. On confrontation by brother of petitioner no.1, Rajesh Gupta had admitted that he had taken delivery of diesel (HSD) in the name of M/s Ravindra Paper Mills by forging the signatures of the authorized representative of the Company and preparing other fake documents of the company. Rajesh Gupta made payments through pay orders from different banks of Delhi favouring IOC Account of Ravindra Paper Mills.

iv) M/s Ravindra Paper Mills (P) Ltd. through its authorized signatory i.e. Brijender Singh Mann, brother of petitioner No.1, also a director in the Company filed complaint dated 25.08.2000 to SHO, P.S. Kapashera, New Delhi against Rajesh Gupta and his firm alleging that he in connivance of officials of IOC depot had withdrawn HSD much more than the sanctioned quota by forging the signatures of the authorized representative of the Company. During the course of inquiry, police officials of Delhi Police visited the premises of the Company as also the residence of petitioner No.1. During the course of their visits, Surinder Singh Mann, paternal uncle (Chacha) of petitioner No.1 got a chance to interact with Delhi police officials as the family of petitioner No.1 and family of Surinder Singh Mann were living in the same house (partitioned) but with separate entrances. Both the families had a long drawn family dispute and Sh. Surinder Singh Mann had been getting various false and frivolous FIRs registered against petitioner No.1 and his family members. By using political influence of the then government, Surinder Singh Mann got registered six FIRs between 29.07.2000 and 18.06.2001. Surinder Singh Mann filed a complaint dated 30.08.2000 to the Hon'ble Chief Minister, Haryana alleging that M/s Ravindra Paper Mills had sold diesel in open market and against normal tax of 10% had only paid 4% of tax.

v) During the enquiry, Delhi Police issued a letter/certificate dated 10.10.2000 (P4/Pg43) stating that complaint filed by Ravindra Paper Mills (P) Ltd against Mr Rajesh Gupta is being enquired and it seems IOC officials are not giving documents and seems if they are involved in crime. On 17.10.2000 FIR No.174 u/s 420, 468, 471 IPC was registered at P.S. Kapashera, New Delhi on the complaint filed by the company against Rajesh Gupta, the transporter. Further report under section 173 Cr.P.C. dated 21.10.2004 (P8/Pg63) was filed by the Delhi Police.

vi) On 18.06.2021, impugned FIR No.10 was registered against the petitioners on complaint filed by Insp Vikas Dhankar under sections 406, 420, 467, 468, 471, 120-B IPC at P.S. SVB (H) Rohtak. Further report under section 173 Cr.PC dated 31.12.2003 was presented against the petitioners.

2. *On 19.07.2006, a letter was written by SP-cum-Principal Secretary, Government of Haryana, Administration of Justice Department for withdrawal of six FIRs registered against petitioner No.1 and his family members which were directly or indirectly registered at the behest of Surinder Singh Mann. A perusal of this document shows that in a span of four months, four FIRs were registered and in total six FIRs were registered including the present FIR i.e., FIR No.10.*

3. *In terms of letter dated 19.07.2006 and independent application of mind by the Ld. Public Prosecutor, applications under section 321 CrPC for withdrawal of prosecution were filed in all the six FIRs including the present FIR.*

4. *Learned Magistrate allowed all the six applications for withdrawal of prosecution. In the present FIR, the statement of complainant Vikas Dhankar, DSP dated 23.03.2007 was recorded, who gave his no objection for withdrawal of the prosecution. The Ld. JMIC, Karnal vide his well reasoned order dated 02.02.2008 (P12/Pg81) allowed the application of the prosecution filed under section 321 CrPC.*

5. *Against the order (P12), Surinder Singh Mann filed a revision before the Ld. Additional Sessions Judge, Karnal. The Ld. Additional Sessions Judge Karnal vide order dated 29.01.2010 remanded back the case for fresh consideration while observing that a speaking order be passed in the light of the observations made in this order.*

6. *Learned JMIC, Karnal vide impugned order dated 18.02.2013 dismissed the application of the prosecution for withdrawal of prosecution. The State went in Revision before the Ld. Additional Sessions Judge, Karnal which was also dismissed vide order 11.04.2014.*

7. *The present petition was filed by the petitioners challenging the two impugned orders Annexures P-14 and P-15."*

3. It appears that when dust settled and the State functionaries had a re-look at entire matter, they realized the fallacy of multiple FIRs registered against petitioner No.1 and his family members. As a result thereof and vide an administrative decision dated 19.07.2006 (Annexure P-9) very senior functionary of the Government i.e. Financial Commissioner-cum-Principal Secretary to the Government of Haryana, Administration of Justice Department instructed the Prosecution Department to withdraw all the six FIRs registered against the petitioner No.1 and his family members, which were registered at the instance of respondent No.2-Surinder Singh

Mann directly or indirectly. The said administrative decision (Annexure P-9) is reproduced hereinbelow:-

XXX XXX XXX

To
The District Magistrate,
Karnal

Memo No.8/25/2006-3JJ(1)
Dated Chandigarh, the 19/07/2003

Subject: Regarding withdrawal of following FIRs from prosecution:-

XXX XXX XXX

“Reference subject noted above
2 It has been decided by the Government to withdraw the Following FIRs from prosecution.
1 FIR No 10 dated 18.6.2001 P.S S.V.B. Rohtak Versus Ranbir Singh Mann and others
2. FIR No.93 dated 29.07.2000 P.S.Civil Lines, Karnal Versus Harjinder Singh etc.
3. FIR No.54 dated 12.02.2001, P.S.Sadar Karnal Versus Tejinder Pal Mann and others
4. FIR No. 200 dated 11.10.2000 P.S.Civil Lines, Karnal Versus Tejider Pal Mann and others
5. FIR No.380 dated 09.08.2000 P.S. Sadar Karnal Versus Aroor Singh and Shri Ranbir Singh
6. FIR No. 444 dated 25.09.2000 P.S. Sardar Karnal Versus Gulfan and others.
3. You are requested to take necessary action to withdraw the above cases from the concerned courts under intimation to Government (in Home Department).

Sd/-
Under Secretary, Jails &Judicial
For Financial Commissioner & Principal
Secretary to Govt. Haryana,
Admin. Of Justice Department.”

4. Perusal of the above clearly reflects that how personal vendetta suddenly turned the family members of the rival camps into tainted criminals and all of that in a short span of 6 to 12 months allegedly having committed all those crimes as enumerated per the sections invoked in FIRs, which have already been stated in detail hereinabove.

5. As per the administrative decision taken by the Government, the prosecution filed an application and in all the aforesaid 6 FIRs, it turned out that the same were accepted, in all the cases.

6. It would be apposite to reproduce the relevant contents of the application (Annexure P-10) filed under Section 321 Cr.P.C., which are as under:

“4. That after making the full assessment of the facts in consonance with the documents placed on the judicial file, evidence and other circumstances of the case dispassionately and independently without being subject to any outside influence the undersigned in bonafide exercise of the executive function seeks to withdraw the prosecution case pending against the accused persons in this Hon’ble Court in the interest of justice on the following grounds:-

i That there are certain circumstances which clearly show that the object of administration of justice would not be advanced or furtherd by going on with the prosecution.

ii – That the accused persons had been implicated on account of political and personal vendetta.

iii – That there is bleak possibility of conviction of accused persons due to paucity of evidence, falsity of the evidence and to meet the ends of justice, the pendency of the criminal case will only be futile exercise and it will not be in the interest of administration of justice.

iv) – That from the perusal of the judicial file it reveals that the accused persons have already launched the prosecution against Rajesh Gupta of IOC officials in a Kapashera Police Station Delhi and the FIR No. 174 dt. 17.10.2000 on the basis of a complaint dt. 25.8.2000 was registered and investigation in that case was conducted by the police of P.S. Delhi and the Delhi Police came to the conclusion that there was no sale of diesel in Haryana and no offence was committed in the territory of Haryana by accused Rajesh Gupta who was the transporter of M/s Ravindra Paper Mills Private Ltd., Chirao and the diesel was carried on and the charge sheet was filed before the court of Illaqa Magistrate by the Delhi Police against Rajesh, officials of the IOC and in that case Rajesh Gupta was declared as P.O. and the present case was got registered by the police of SVB Rohtak on the basis of statement made by Rajesh Gupta who was an accused in the aforesaid case. It is settled law that there cannot be two FIRs for the same offence of the same occurrence. There cannot be a second FIR. In this case, FIR was already got registered in Delhi first in time. The allegations in the present case are based on the statement of Rajesh Gupta who happened to be accused in Delhi Police Station.

v) *That the accused persons have suffered enough harassment, mental fortune and injury and the prosecution is being used against them as a vehicle of oppression. That is why this application is being moved with a broader consideration of the public policy and peace.*

vi) *That the withdrawal from the prosecution is in the public interest and such withdrawal will not stifle or thwart the process of law or cause manifest in the justice."*

7. *Apropos above stand taken by the prosecution, learned Chief Judicial Magistrate vide order dated 02.02.2008 (Annexure P-12) passed the following order:*

"Arguments on the application u/s 321 Cr.P.C. heard and records of the case perused. The learned public prosecutor has sought the withdrawal of the present proceedings as during the course of investigation it was found that no sale of diesel in the State of Haryana had been made. An FIR had been registered in Delhi regarding the same allegations prior to the institution of the present proceedings.

Ld. Counsel for the complainant has submitted that the accused had conspired with each other to indulge in evasion of tax and, therefore, they were liable to be prosecuted

It is observed that this case was registered on the basis of an enquiry conducted by the Vigilance Department, Haryana, regarding the allegations that in the year 1999-2000, diesel was brought from Delhi and sold by evading sale tax. This fact became known to M/s Ravindra Papers Mills Private Limited, who got an FIR registered in Police Station, Kapashera Delhi on 25.08.2000. During the course of investigation, the allegations were found to be true and the matter is subjudice. The Delhi Police also found that the demand drafts and other documents were prepared from the account of Rajesh Gupta and his associates and the diesel was also transported in trucks owned by him. The Haryana police also came to the same conclusion. Rajesh Kumar has already been charge-sheeted by the Delhi police and as such two FIRs on the same cause of action cannot be simultaneously registered. Since the FIR registered in Delhi is prior in time and the matter is already pending before the Court, this Court has no hesitation in accepting the present application for withdrawal of proceedings. The accused are accordingly discharged. File be consigned to records."

8. When the aforesaid order (Annexure P-12) was challenged before learned Sessions Court, the same was found to be lacking for reasons

and was set aside vide order dated 29.01.2010 (Annexure P-13) with a direction that fresh speaking order be passed, in the following terms:

“8. *There is no merit in the submission of ld. Counsel for the respondents that the revisionist had no locus standi to file the petition. Revisional jurisdiction can be exercised by the court even on its own motion. The case against the accused was initiated on complaint of revisionist and the petition at his instance is maintainable.*

9. *It appears that the registration of first information report at Delhi at the instance of Ravindra Paper Mill was the sole criteria for allowing the application for withdrawal. Copy of first information report, P.S. Kapashera is available on the record. The same shows that the case in Police Station Kapashera, Delhi under Sections 420, 468, 471 IPC was registered at the instance of Brijender Mann, Director Ravindra Paper Mill. The FIR is registered against one Rajesh Gupta who is not an accused in the case investigated by State Vigilance Bureau. A careful scrutiny of record will reveal that observation of Ld. Trial Court that the present case and the case at Delhi were based on the same cause of action is also against the record. The case at Delhi pertains to supply of diesel from Indian Oil Corporation at Bijwasan whereas in the present case, Ravindra Paper Mill was alleged to have taken supply of diesel from Panipat as well. Ld. Trial Court was, therefore, not justified in concluding that the matter was already pending at Delhi and FIR registered in Delhi was prior in time and allow the application for withdrawal on this ground.”*

9. Having perused the order (Annexure P-13) of learned Sessions Court vis-a-vis the reasoning given by the administrative decision (Annexure P-9) coupled with the order (Annexure P-12) passed by learned Chief Judicial Magistrate accepting the application under Section 321 Cr.P.C., I am unable to persuade myself as to how learned Sessions Court came to the opinion that there was *prima facie* tax evasion without there being any cogent material on record or without there being any other collateral material for the Court to apply its mind.

10. That apart, though technically matter was remanded to learned Chief Judicial Magistrate for passing fresh orders but in the teeth of the

observations made by learned Sessions Court, there was hardly anything left open for learned Chief Judicial Magistrate to apply fresh mind since in no uncertain terms, it was observed and practically directed that the application under Section 321 be rejected and trial be conducted.

11. As it seemed to be tone and tenor of learned Sessions Court order (Annexure P-13), passed by learned Sessions Judge the same was duly complied with and learned Chief Judicial Magistrate in the second round who dismissed the application vide impugned order dated 18.02.2013 (Annexure P-14) and thus commenced the trial.

12. Meanwhile, the present petition was filed before this Court on or after 18.07.2014. When it came up for hearing, at the relevant time, a coordinate Bench of this Court presided over by Mahavir S. Chauhan, J. (as he then was in this Court) vide order dated 08.08.2014 at the time of issuing notice of motion also directed that the proceedings before trial Court may go on but final order shall not be passed till the next date of hearing.

13. Instant petition has remained pending before this Court for nine years as for one reason or the other the same has been getting adjourned at the request of one party or the other. In the interregnum, it transpires that the entire evidence of the prosecution stands concluded. There were as many as 33 witnesses stated in the final report filed under Section 173 (2) Cr.P.C., out of whom only 18 were examined and rest were dropped. On a Court query, learned counsel for the petitioners states that there are 33 witnesses whereas only 18 have been examined and remaining have been given up. Out of these 18 witnesses, 10 witnesses have not supported the prosecution version and Surinder Singh Mann (PW3) also could not substantiate the prosecution case.

13.1 Learned counsel for the petitioners has contended even the solitary witness, on whose testimony the entire case is now to be argued, has also partially supported the prosecution version and the same, in any case, would not lead to conviction.

14. On being asked, learned State counsel is unable to react to these assertions made by learned counsel for petitioners.

15. Be that as it may, having observed hereinabove that learned Additional Sessions Court overstepped his jurisdiction while deciding the revision petition by making observations on merits while remanding the case and in the absence of any supporting material available before her, the said order (Annexure P-13) passed by the learned Additional Sessions Judge cannot be sustained and is set aside.

16. Petition stands allowed. Resultantly, order dated 02.02.2008 (Annexure P-12) passed by learned Chief Judicial Magistrate stands revived, which would lead to necessary consequences of accepting the application under Section 321 Cr.P.C., originally filed by the prosecution and pursuant thereto, all the six FIRs as well as all the consequential proceedings emanating therefrom which took place stand quashed.

17. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

14.07.2023

Vandana

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