

CRM-M-28505-2017

2023:PHHC:090590

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

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CRM-M-28505-2017(O&M)

Date of decision: 18.07.2023

Gurdhian Singh and others

...Petitioners

Versus

State of Punjab and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

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Present : Mr. Rahul Sharma-I, Advocate for the petitioners  
Mr. Manipal Singh Atwal, DAG, Punjab  
Mr. HPS Ghuman, Advocate for respondent No.2

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**AMAN CHAUDHARY. J.**

1. The prayer in the present petition filed under Section 482 CrPC is for quashing of complaint No.90 dated 18.08.2012, Annexure P-3 and all subsequent proceedings arising therefrom including the charge-sheet dated 04.10.2016, Annexure P-11, the order dated 03.07.2017, Annexure P-14, passed by learned Additional Sessions Judge, Patiala, dismissing the revision filed against the order dated 04.10.2016, Annexure P-10, whereby the trial Court charge-sheeted the petitioners and also order dated 22.09.2016, Annexure P-9, vide which their application filed under Section 311 CrPC was dismissed.

2. Learned counsel for the petitioners would submit that both the parties are in close relation, complainant is married to Jagdish Singh, brother of petitioner No.3, whose wife is petitioner No.2 and petitioner No.1 is their son, who was a minor at the time of alleged offence. The complainant and her family as well as the petitioners are residing in adjoining houses, which is a joint property devolved

upon them from their father, Shri Kishan Dass (since deceased). An FIR No.71 dated 04.08.2012, under Sections 325, 323, 451 and 34 IPC, registered by the complainant-respondent No.2 against the petitioners, was investigated thrice over and each time cancellation was recommended and finally accepted by the Magistrate vide order dated 18.04.2017, Annexure P-2. However, complainant-respondent No.2 had, fourteen days after the lodging of the FIR filed a criminal complaint, wherein the petitioners were summoned vide order dated 27.10.2014 to face the trial under Sections 325, 452, 323, 506 and 34 IPC. The prime submission advanced by the learned counsel is that the learned Magistrate before issuing the process, had not taken into consideration the cancellation reports submitted in the case, as required by the mandatory provision of Section 210 CrPC, violation of which as per the judgments in the cases of **Kuldip Raj Mahajan vs. Hukam Chand** 2007 SCC OnLine P&H 1251 and **Savera Sidhu vs. Harleen Sidhu and another** 2010 SCC OnLine P&H 10659 vitiates the proceedings. Moreso, the application filed by the petitioners under Section 311 CrPC for placing on record the said cancellation report, was dismissed by the trial Court being not maintainable and a revision filed against the same also met the same fate.

2. On the other hand, learned counsel for the respondents would submit that the trial Court has rightly passed the summoning order, which was affirmed by the revisional Court and the orders assailed are legal and valid. Thus, it is prayed that the present petition be dismissed.

3. Heard the learned counsel for the parties and perused the case file.

4. The core issue of the instant case revolves around Section 210 CrPC, which reads thus:

**“210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.**

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under Section 173 and on such report cognizance of any offence to taken by the Magistrate against any person who an accused in the complaint case, the Magistrate shall inquire together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him in accordance with the provision of this code.”

5. A judgment of Hon'ble The Supreme Court in **Sankaran Moitra vs. Sadhna Das**, 2006 (4) SCC 584, can be gainfully referred to, wherein the provisions of Section 210 CrPC and its invocation had been elucidately interpreted thus:

"76. A bare reading of the above provision makes it clear that during an inquiry or trial relating to a complaint case, if it is brought to the notice of the Magistrate that an investigation by the police is in progress in respect of the same offence, he shall stay the proceedings of the complaint case and call for the record of the police officer conducting the investigation.

77. The object of enacting Section 210 of the Code is threefold:

- (i) it is intended to ensure that private complaints do not interfere with the course of justice;
- (ii) it prevents harassment to the accused twice; and
- (iii) it obviates anomalies which might arise from taking cognizance of the same offence more than once."

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79. It is thus clear that before Section 210 can be invoked, the following conditions must be satisfied.

- (i) There must be a complaint pending for inquiry or trial;

- (ii) Investigation by the police must be in progress in relation to the same offence;
- (iii) A report must have been made by the police officer under Section 173; and
- (iv) The magistrate must have taken cognizance of an offence against a person who is accused in the complaint case.”

6. Since, the Magistrate, in the case of **Kuldip Raj Mahajan** (supra), had passed the summoning order without taking into consideration the cancellation report, this Court set aside the same by holding thus :

“10. In the aforesaid context, learned counsel for the petitioner submitted that inspite of having called report from the Investigating Officer vide order date 1.9.2000 (Annexure P-18), the learned Magistrate, while passing the impugned summoning order dated 19.9.2002, did not take into consideration the cancellation/investigation report of the police. Perusal of impugned summoning order (Annexure P-2) reveals that there is no reference at all to the investigation report/cancellation report of the police in the summoning order. Without considering the investigation report/cancellation report of the police, the impugned summoning order could not have been legally passed by the learned Magistrate. The respondent, despite knowledge, concealed the cancellation report of the police from the learned Magistrate. This is another indicator of mala fide on the part of the respondent.

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13. Learned counsel for the respondent emphasized that disputed questions of fact cannot be adjudicated upon in the instant petition under Section 482 of the Code. Reliance in support of this contention has been placed on judgment in the case of T.Banambar Patra and others v. Vinod Kumar Sethi and another, reported as 2007 (1) Law Herald (P&H) 54 and also on an unreported order dated 12.1.2006 of this Court in Crl. Misc. No. 2052-M of 2006 titled as Ranjit Singh and others v. Sharda Devi. There cannot be any quarrel with this legal proposition. Disputed questions of fact cannot be gone into in a petition under Section 482 of the Code. However, this Court cannot be a helpless spectator when it is made out that the criminal prosecution is mala fide and an abuse of the process of the Court. In fact, this Court has inherent power and corresponding duty to prevent abuse of the process of any court or otherwise to secure the ends of justice. In the instant case, the impugned complaint in result of mala fide as the respondent was nursing grudge against the petitioner as discussed herein above. The witnesses cited by the respondent

were also aggrieved against the petitioner. The alleged incidents dated 9/10.9.1999 were not mentioned in letter dated 10.9.1999 (Annexure R-4) sent by the respondent. There was long and unexplained delay in reporting the matter to the police. After investigation by Gazetted Officer, the FIR lodged in the same matter was found to be false and cancellation report was submitted by the police. The respondent, despite being aware of the cancellation report, concealed the same from the learned Magistrate. The impugned summoning order has also been passed without considering or even referring to the cancellation report. Keeping in view all these circumstances, it is a fit case in which this Court has to exercise its inherent powers under Section 482 of the Code by quashing the impugned complaint and summoning order so as to prevent the abuse of process of court and to secure the ends of justice. In addition to it, the alleged offences are also not made out from the allegations in the impugned complaint.”

7. This Court in the case of **Savera Sidhu** (supra) while observing that when once the factum of investigation by the police had come to the knowledge of the Magistrate, it was incumbent upon him to have stayed the proceedings and await or call for the police report, had held that, “The argument that violation of Section 210 Cr.P.C does not vitiate the proceedings in the facts of the present case as both the complaint and State case stand committed to the Court of Sessions, has no merit. In case, a charge sheet is presented under Section 173 Cr.P.C and the Magistrate, on the basis of the complaint without taking into consideration the report under Section 173 Cr.P.C, on the same set of allegations, comes to the conclusion that no offence is made out, the same is liable to cause prejudice to the complainant, whereas, in case, a cancellation report is submitted in the FIR and the Magistrate without taking into consideration the cancellation report comes to the conclusion that a prima-facie case is made out, the same is likely to prejudice the accused. Thus, ignoring the pendency of the investigation in an FIR, shall prejudice one of the two parties in either of the two situations. As such, the violation of Section 210 Cr.P.C will vitiate the proceedings. Hence, the provisions

of Section 210 Cr.P.C requiring the Magistrate to stay the proceedings of an enquiry or a trial and call for a report on the matter from the police officer conducting the investigation was equally mandatory.”

8. Proceeding with the facts of the present case, an FIR was lodged, in which after investigation, a cancellation report was filed on 31.01.2013, however, the same was sent back for further investigation. A probe having been made, again a cancellation report was filed on 01.10.2014, on the complainant still being not satisfied, it was sent back for further investigation. Even thereafter, upon investigation having been carried out, it was recommended vide letter No.2644/A dated 10.08.2016, to cancel the FIR, which was accepted by the Magistrate vide order dated 18.04.2017. Pertinently, a complaint dated 18.08.2012 had been filed by complainant-respondent No.2, within 14 days of lodging the FIR on 04.08.2012, appending therewith a photocopy of the FIR and stating that the police was not taking any action against the accused. The petitioners were summoned vide order dated 27.10.2014 and charge was framed on 04.10.2016. The trial Court instead of laying its hands off and/or seeking a report from the police as mandated by the provision of Section 210 CrPC, proceeded with the complaint, inspite of the existence of FIR being well within its knowledge, a fact discernible from the complaint itself. Not only this, CW-5, HC Karnail had also in his cross-examination dated 08.09.2016, Annexure P-6, specifically enumerated the facts of not only the FIR having been registered but also three cancellation reports having been submitted after conducting investigation and further investigation. As is discernible, the petitioners had filed an application dated 22.09.2016, Annexure P-8 under Section 311 CrPC, endeavouring to get the cancellation report produced in the Court, however, the same came to be

dismissed on an untenable ground that the said provision of law cannot be used to fill up lacuna in cross-examination and and it being not maintainable. In a challenge laid by the petitioners to the order framing charge, a ground of non-consideration of provision of Section 210 CrPC by the Magistrate was also taken, however, the revisional Court failed to return any finding on the same. Thus, the Courts below being aware of the registration of FIR wherein investigation/further investigation was going on at the time of filing of the complaint and in the interregnum, cancellation reports were also presented, contravened the mandatory provision of Section 210 CrPC and passed the impugned orders, which vitiates the proceedings in view of the explication of law, as referred to in the foregoing paragraphs.

9. As a corollary, the present petition is partly allowed. The orders dated 27.10.2014, 22.09.2016, 04.10.2016 and 03.07.2017 are set aside. The matter is remitted to the Magistrate to decide afresh by taking into consideration the cancellation report(s), on its own merits, in accordance with law.

10. The observations made hereinabove, are only for the purpose of adjudication of the present case and shall not in any which way be construed as an expression of opinion on merits.

**(AMAN CHAUDHARY)**  
**JUDGE**

**18.07.2023**

gsv/S.Sharma(syr)

Whether speaking/reasoned

: Yes /No

Whether reportable

: Yes /No