

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

201

**CRM M-29579 of 2018 (O&M)
Date of Decision: 13.09.2023**

Jasbir Singh ...Petitioner
Versus
State of Haryana and another ... Respondents

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

Present : Mr. I.S. Pabla, Advocate, for the petitioner.

Mr. Gaurav Gurcharan Singh Rai, DAG, Haryana.

Mr. Himmat Singh, Advocate, 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. 13 dated 08.01.2018 under Sections 457, 380 and 411 of IPC, registered at Police Station Shahbad, District Kurukshetra and all subsequent proceedings arising therefrom.

2. The FIR in the present case has been got registered by the Secretary, Municipal Committee, Shahabad The FIR has been reproduced as under:-

*“Report No. 15 dated 25.12.2017 Daily Diary 2:00 PM
that Secretary Madan Lal Municipal Corporation
Shahbad appeared at Police Station and submitted his
complaint. The contents of complaint are as follows:*

From Secretary Municipal Corporation Shahbad Markanda

*To Police Station Incharge Police Station Mohalla Satya Nagar Shahbad Letter No. 2302 MCS Dated 25.12.2017.
Subject: Regarding theft of material in Cold Store and registration of FIR.*

Regarding the above cited subject Municipal Corporation under Case No CWP 14340 of 2009 copy enclosed vide which the illegal possession over land of Municipal Corporation which is near Punjab National Bank Shahbad for which case has been filed against owner Khareti Lal and others for which judgment is delivered in favour of Municipal Corporation. On dated 24.12.2017 7:00 PM the above mentioned material was filled in tractor trolley and rehri by Sh. Mohit and Sh. Rohit sons of Sh. Surendra Kumar (s/o owner Sh. Khareti and others) for which a complaint was received by the undersigned at about 7:00 PM, on which the undersigned called Sh. Rakesh Kumar, Sewadar, Sh. Krishan Kant and Sh. Vikram Kumar, Municipal Corporation, Shahbad on the site and the tractor trolley and rehri were recovered but the accused during night absconded from the site. One gas cutter, cylinder and cut parts of iron were recovered by employees of municipal corporation and in addition to this before the employees of municipal corporation reached the site about 2 to 3 tractor trolleys which were filled with iron parts have already been moved for which complete details have been mentioned in the office of Municipal Corporation which cannot be presented today being holiday in office. Today, the FIR regarding same

may be registered and action be taken against the accused and theft material may be recovered.

Sd/- Madan Lal, Secretary, Municipal Committee

3. Learned counsel for the petitioner submits that the petitioner was the member of the Municipal Committee Shahabad on the date of the alleged occurrence and the FIR in the present case had been registered by the Secretary Municipal Committee, under the influence of the Chairman of the Municipal Committee due to political enmity. In fact, Ankit co-accused was having number of litigation with Municipal Committee, Shahabad. His grand father Kaharaiti Lal was in possession of municipal land. However, Kaharaiti Lal and his other family members were ordered to be ejected from the premises in the proceedings held under the provisions of Haryana Public Premises and Land (Eviction and Land Recovery) Act, 1972. As per the complainant, after losing all the litigation with Municipal Committee, Rohit and Mohit, both sons of Surinder son of Kaharaiti Lal had tried to remove goods from the Municipal property at about 7.00 p.m., on 24.12.2017. On getting the information, the complainant had sent the employees of the Municipal Committee and they had taken into possession tractor trolley and one other vehicle in their possession. Even, the employees of the Municipal Committee had seen Ankit co-accused running away from the spot on seeing the employees of the Committee at the spot. During the course of investigation, the police recorded the statements of

several witnesses of the present case, who were present at the spot. Even, as per the statements of Rakesh Kumar, Peon, Vikram Kumar, Sweeper and Krishan Kumar, Peon (Annexure P-1), the goods were being stolen in a tractor trolley by Rohit and Mohit. The said persons had named Ankit son of Surender also as the accused. The persons, who were found with tractor trolley, also disclosed that Ankit had also fled from the spot.

4. Learned counsel for the petitioner further contends that the police also recorded the statement of Sandeep Kumar, Dinesh Kumar and Kamlesh, who also stated that they were labourers and had been employed by Sumit, Junk Dealer and at the instance of Sumit and Ankit, they had loaded the stolen articles in the tractor trolley. Even, they were acting on the directions of Ankit and Sumit, Junk Dealer. Learned counsel further contends that the petitioner was the Municipal Counselor of Municipal Committee, Shahabad and was affiliated to the main opposition party in the State whereas the Chairman of the Municipal Committee belonged to ruling party and the petitioners on many occasions had raised questions with regard to the functioning of the Committee and had protested against e-tendering by the Municipal Committee and lack of development work in his ward. Even, the petitioner had made several complaints against the Chairman of the Municipal Committee. Due to this, he has been falsely involved in the present case by recording the disclosure statement of the co-accused and a recovery of Rs. 1,000/- has been

effected from the present petitioner. Learned counsel further contends that from 17.12.2017 to 22.12.2017, the petitioner was in Mansa, Punjab in connection with a FIR filed by the Vigilance Bureau, Punjab against the authorities of Mansa Jail and the petitioner was a witness in the said FIR. Thereafter, the petitioner had left for Puri (Orissa) and was not present at Shahabad at the date of the alleged occurrence.

5. On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner and submits that 4 more FIRs were registered against the present petitioner. However, he has admitted that the petitioner had already been acquitted in the said cases. Apart from that, it was stated that Ankit had named the petitioner as one of the accused, apart from Sumit, Junk Dealer. Thus, the petition is liable to be dismissed by this Court.

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

7. The Hon'ble Supreme Court discussed the materials, which the High Court can assess to quash a FIR in ***State of Andhra Pradesh Vs. Golconda Linga Swamy, (2004) 6 SCC 522*** and held as follows:-

“5....Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to

prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

6. In *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866: 1960 Cri LJ 1239, this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings: (AIR p. 869, para 6)

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction:

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a

case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an Instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death...."

(Emphasis supplied)

8. Still further in the matter of ***State of Haryana Vs. Bhajan Lal, AIR 1992 SC 604***, the High Court had laid down the parameters for quashing of the FIR and held as follows:-

"(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 FIR 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.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

9. In the present case, it is apparent that at about 07.00 p.m. on 24.12.2017, the complainant received an information that the goods were being loaded in tractor trolley illegally by Rohit and Mohit sons of Surinder Kumar son of Kaharaiti Lal. In fact, it is also evident on the record that Kaharaiti Lal and his family members were having litigation with Municipal Committee, Shahbad and had lost the case. It was also stated that one person Ankit was seen running from the place of occurrence. Still further, various witnesses clearly stated that they had loaded the goods on the asking of Ankit and Sumit, Junk Dealer. In fact, none of the witnesses stated that the petitioner was present at the place of alleged occurrence or he had participated in the crime in any manner. None of the witness, whose statement was recorded by the police during the course of investigation, had attributed any specific role to the present petitioner, even though, the petitioner was member of the Municipal Committee on the said day. Still further, except the disclosure statement suffered by Ankit, co-accused, no other evidence was collected against the present petitioner. Even, in the disclosure statement suffered by Ankit, no specific role was assigned to him and general and vague allegations have been levelled against him. Apart from that, the petitioner was member of the Municipal committee, Shahbad on the date of the occurrence and the possibility of false implication on political ground could not be ruled out in the present case. Even, the allegations levelled against the petitioner are vague and are not specific with

respect to the alleged offence and the continuation of the proceedings against him would be an abuse of the process of the Court. Even, the essential ingredients to constitute the alleged offence were clearly missing in the present case.

10. In view of the above, the present petition is allowed. The FIR No. 13 dated 08.01.2018 under Sections 457, 380 and 411 of IPC, registered at Police Station Shahbad, District Kurukshetra and all proceedings emanating therefrom are hereby ordered to be quashed qua the petitioner.

13.09.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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