

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

CRM-M-28603 of 2015 (O&M)

Date of Decision: 10.02.2023

Mohd. Usman

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Jai Vir Yadav, Senior Advocate with
Ms. Sunita Shekhawat, Advocate for the petitioner.

Mr. Parveen Kumar Aggarwal, Addl. AG, Haryana.

Mr. Rajesh Lamba, Advocate for the complainant.

DEEPAK GUPTA, J.

Prayer in this petition filed under Section 482 Cr.P.C is to quash
FIR No.400 dated 18.09.2014 registered at Police Station Bilaspur, under
Sections 218 and 120B (Annexure P.1); final report under Section 173(2)
Cr.P.C filed under Sections 218, 120B & 166 IPC (Annexure P.2) and all
the consequent proceedings.

2. The complaint dated 08.07.2014 was made by Nasib Khan to
Police Commissioner, Gurgaon alleging that his son Shakir Hussain had
been falsely involved in case FIR No.10 dated 09.01.2014 registered under
Sections 395 & 397 IPC and Section 25 (Act No.54) of 1959, Arms Act at
Police Station Pataudi, District Gurgaon, by resident of the same village,
namely, Mohammad Usman (*petitioner herein*) working as Sub Inspector in
CIA Department, Gurgaon by colluding with the Investigator Officer of the

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case, namely, Yahia Khan, CIA Bilaspur, Gurgaon.

3. The matter was investigated by Assistant Commissioner of Police, Crime-I, Sector-51, Gurgaon. It was found that accused, namely, Rifa, Azad and Najmuddin of FIR No.10 dated 09.01.2014 as referred above, who had earlier allegedly suffered disclosure statement naming the complainant's son, disclosed during investigation of this case that they neither knew Shakir Hussain son of Nasib Khan nor said Shakir Hussain was involved in any criminal case. The disclosure statements allegedly made by this co-accused bear the signature of Constable Shabbir Ahmad. Said Constable Shabbir Ahmad disclosed that ASI Yahia Khan had got his signatures on the disclosure statement. Call detail records of Shakir Hussain were collected and it was found that he was not in contact with Rifa at any point of time. Though it was disclosed by Azad Mohammad and Rifa that other accused belong to their village Gwarka but they never disclosed the name of Shakir Hussain son of complainant Nasib Khan. During investigation, call details of SI Mohammad Usman, i.e. petitioner and ASI Yahia Khan were also collected and they were found to be in regular touch. It was concluded that both of them had hatched a conspiracy and by misusing their official position, committed illegal act by recording false disclosure statement of the arrested accused persons for involving Shakir Hussain son of Nasib Khan in case FIR No.10 of 2014.

4. On the basis of above report of Joint Police Commissioner (Crime), Gurugram, FIR was registered. After registration of the FIR, matter was investigated by Shri Anil Dhawan, DCP South, Gurugram, who found enmity between the family of petitioner SI Usman Khan and the com-

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plainant. It was found that SI Usman & ASI Yahia Khan had colluded with each other to involve son of the complainant. Final report under Section 173 Cr.P.C was filed before the Court after concluding the necessary investigation.

5. It is submitted by the petitioner that FIR has been lodged at the instance of Nasib Khan with an evil design to get his son Shakir cleared from case FIR No.10 dated 09.01.2014 by leveling allegations against the petitioner and by taking advantage of the fact that the petitioner is a government employee. It is further contended that the petitioner was not the Investigating Officer of FIR No.10/2014 and that he has been involved only under Section 120-B IPC, on the basis of call detail records, which are of no significance because there was no conversation when the alleged disclosure statements had been recorded.

6. As per the reply filed by the respondent- State, scrutiny/ review was conducted by ACP Manesar and it was revealed that ASI Yahia Khan, the Investigating Officer of FIR No.10/2014 registered at Police Station Pataudi, Gurugram, at the instance of his co-accused, Usman Khan (petitioner), who was police personnel, prepared false and fabricated disclosure statement of accused Azad and Rifa in said case FIR No.10/2014 under Sections 395/397 IPC and Section 25 (Act No.54) of 1959 of Arms Act, in which it was mentioned that accused Shakur Hussain son of Nasib Khan, resident of Khandawli was the co-accused. It was found to be false and fabricated disclosure statement inasmuch as Shakir Hussain son of Nasib Khan had no role to play in the crime. The involvement of the petitioner with ASI Yahia Khan was confirmed by their regular conversation on the mobile even on

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28.02.2014 and other dates. It has also been submitted in the reply that accused Rifa and Azad Mohammad in their disclosure statements had disclosed the name of Shakir Hussain son of Khusiya resident of Gwarka, Police Station Tauru as co-accused in the incident caused by them in Jhajjar, while ASI Yahia Khan prepared disclosure statement of the aforesaid accused in case FIR No.10/2014 and the name of Shakir son of Khusiya resident of Gwarka was substituted/ changed to Shakir Hussain son of Nasib Khan resident of Khandawali, which is the peak of high handedness and fabrication of judicial documents.

7. Having considered submissions of both the side, this court finds no merit in this petition. In **State Of Haryana And Ors vs Ch. Bhajan Lal 1992 AIR 604**, Hon'ble Supreme Court has laid down the guidelines wherein FIR can be quashed. It was held as under:-

“8.1. In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide- i7 myriad kinds of cases wherein such power should be exercised:

(a) 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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

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(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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.”

8. In the present case, the facts found during investigation as reflected in reply filed by the respondent- State would reveal that this case is not covered under any of the parameters for quashing of the FIR as laid down in **Bhajan Lal’s case (supra)**. As such, the present petition is dismissed.

February 10, 2023
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(DEEPAK GUPTA)
JUDGE

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