

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-35800-2014

Date of Decision: 10.03.2023

Jagtar Singh & Ors.

... Petitioners

VS.

State of Punjab & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. PS Hundal, Sr.Advocate with
Mr. Vikramjeet Singh, Advocate for the petitioners

Mr. Rajiv Verma, DAG Punjab

Mr. Atul Goyal, Advocate for respondent No.2

Sandeep Moudgil, J.

(1) This petition under Section 482 CrPC has been filed by the petitioners seeking quashing of the FIR No.53 dated 04.03.2007 under Sections 452/427/506/148/149 IPC, registered at Police Station Shimlapuri, Ludhiana (Annexure P1), report under Section 173 CrPC dated 03.08.2014 (Annexure P2) and order dated 11.06.2014 passed by JMIC, Ludhiana (Annexure P3) directing the police to submit the challan against the petitioners, along with all subsequent proceedings arising therefrom.

(2) Learned counsel submits that while considering the cancellation report in the case, the police has been directed, by the Magistrate, to file challan for the trial of the petitioners though this order was not legally justified. The impugned order dated 11.06.2014 passed by JMIC, Ludhiana is bad in law as the trial court while declining the cancellation report had no jurisdiction and was not empowered to direct to present the original file in the form of challan and as such could not have ordered the accused to be

summoned to face trial. He urged that though a Magistrate has all powers to accept or reject the cancellation report, but it is settled law that a Court cannot direct the police to submit a report under Section 173 Cr.P.C. for the prosecution of persons mentioned in the FIR.

(3) Before proceeding further on merits, it would be apposite to reproduced the concluding portion of the impugned order dated 11.06.2014 passed by JMIC, Ludhiana which reads as under:-

“Thus, aforesaid investigative proceedings clearly corroborate and support the version of the complainant. In view of aforesaid memos and statement of witnesses, no credibility can be attached to the finding of Zimni dated 25.3.2007 of Inspector Davinder Singh SHO PS Shimlapuri that o damage was found to have taken place at the spot. Also conclusion in said Zimni, to the effect that statement of Pawan Kumar and one Ramesh Chand and secret investigation proved that no alleged occurrence has taken place is unworthy of credit. Flimsy reasoning has been given in said Zimni to the effect that if Jagtar Singh and other accused had entered house of the complainant by scaling the walls, there ought to have been injuries on the person of the complainant. The very strong and corroborative evidence collected by police itself, noted herein above, recovery of two cars stated to be used by accused, from outside the house of the complainant and there being no other explanation for presence of said cars at said spot and further, circumstance regarding taking into possession photographs regarding damage to the house of the complainant, which photographs have not been attached with present cancellation by police for obvious reasons have all been completely ignored and partisan and illogical conclusion has been arrived at regarding occurrence not having taken place.

Material on record is sufficient for taking cognizance against accused Jagtar Singh, Gurpreet Singh, Kuldeep singh and Harjit Singh u/s 452,427,506,148, 149 of IPC and accordingly instant cancellation is hereby declined and cognizance is taken against aforesaid accused under aforesaid sections and they are ordered to be summoned to face trial for next date fixed i.e. 28.7.2014.

Another application has been filed by complainant for issuing directions to register FIR against M/S Guru Nanak Dev Engg. and accused Jagtar Singh for sale of car bearing no. PB-10-BX.0441 obtained on Sapurdari by M/S Guru Nanak ATTE BY Engg., in violation of conditions of sapurdari. For effective adjudication of the said application, Ahalmad is directed to attach the papers of the sapurdari and other relevant papers of this case, with file for the date fixed i.e. 28.07.2014. In the meantime original file except judicial papers i.e. Zimni orders and two applications moved by applicant, be returned to police station concerned for presenting in the form of challan, before date fixed i.e. 28.07.2014.”

(4) From the above, it is clear that upon presentation of cancellation report, the trial court observed that in view of the memos and statement of witnesses, no credibility can be attached to the finding of Zimni order dated 25.03.2007 and as such, investigative proceedings, as alleged by the complainant is not based on true facts. The trial court has thus chosen not to accept the cancellation of FIR and has taken cognizance against the petitioners-accused under Sections 452/427/506/148/149 IPC with a direction to the police to present challan against the petitioners.

(5) At this stage, it would be apposite to reproduce Section 173 CrPC which reads as under:-

173. Report of police officer on completion of investigation.

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation,

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order- for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate alongwith the report-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements- recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject- matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub- section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub- section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub- sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub- section (2).”

(6) The Supreme Court in **TT Antony vs. State of Kerala & Ors.**

2001(3) RCR (CrL) 436 reiterated the law laid down by the Privy Council in

the case of **Emperor vs. Khwaja Nazir Ahmad, AIR 1945 PC 18**, and held that the right of the police to investigate into a cognizable offence is a statutory right over which the court does not possess any supervisory jurisdiction under the Cr.P.C. The Privy Council spelt out the power of the investigation of the police in the following words:-

"In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court."

(7) On the question whether a magistrate could direct the police to submit a charge-sheet, when the police, after investigation into a cognizable offence, had submitted a report of the action taken under Section 169, CrPC, the Supreme Court in **Abhinanadan Jha & Ors. vs. Dinesh Mishra (1967) 3 SCC 668** held that there was no such power conferred on a magistrate either expressly or by implication.

(8) It further held that the police should submit a report of the action taken, under Section 173, to the competent magistrate who considers it judicially under Section 190. If the report is a charge-sheet under s. 170 it is open to the magistrate to agree with it and take cognizance of the offence under s. 190(1) (b); or to take the view that the facts disclosed do not make out an offence and decline to take cognizance. But he cannot call upon the police to submit a report that the accused need not be proceeded against on the ground that there was not sufficient evidence. Further, if the report

is of action taken under Section 169, then the Magistrate may agree with the report and close the proceeding. If he disagrees with the report he can give directions to the police under Section 156(3) to make further investigation.

(9) Section 173 CrPC regulates the procedure of filing report of police officer on completion of investigation. The officer in charge of the police station is required to forward a police report in the form prescribed to the Magistrate empowered to take cognizance as soon as he has completed the investigation. Section 173(3) then provides that where a superior officer of police has been appointed under Section 158, then the report in a case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police to make further investigation.

(10) A perusal of Section 173(8) would show that further investigation in respect of an offence after submission of a report under Sub-section (2) is not precluded. Where the police officer carries further investigation and obtains further evidence oral or documentary, he is required to forward the same to the Magistrate a further report or reports in regard to such evidence in the form prescribed. No doubt, the police officers are not precluded from carrying out further investigation in respect of an offence after submission of a report under Section 173(2), but the question required to be seen is if this can be done by a police officer on his own or the same should be done after taking permission from the court.

(11) In view of the settled legal position that the closure report is not binding on the learned Trial Court, and the court is in fact expected to apply its independent mind to the material on the record. Once cancellation report has been filed by the police, the Court could not, without ordering any further investigation straightway take cognizance against the accused persons and direct the police to file challan. Such a recourse taken by the Magistrate is unknown to law and the trial court ought not have directed the police to file the original papers in the shape of challan.

(12) When the cancellation report forwarded by the officer-in charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may, on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section

(3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process.

(13) For the reasons aforestated, this petition is allowed in part to the extent that the order dated 11.06.2014 passed by JMIC, Ludhiana (Annexure P3) directing the police to submit the challan against the petitioners is quashed and the trial court is directed to proceed in accordance with law.

10.03.2023

V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No