

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

267

CRM-M-41420-2018

Date of decision: 08.08.2023

Puneet Khanna

....Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Veneet Sharma, Advocate for the petitioner

Ms. Himani Arora, AAG, Punjab.

AMAN CHAUDHARY, J.

1. Prayer in the present petition filed under Section 482 of the Code of Criminal Procedure is for quashing of FIR No.11, dated 05.02.2012, registered under Section 420 IPC at Police Station Bholath, District Kapurthala and order dated 19.11.2014 along with all consequential proceedings arising thereof.

2. Learned counsel contends that the allegations against the petitioner are that he along with one Nishant Nakra had taken money from complainant-respondent No.2 for sending students abroad, as he himself is running a travel agency by the name and style of Satguru Bholath, Kapurthala. However, neither the students were sent abroad nor the amount was returned. The petitioner is a businessman and has nothing to do with the overseas travel. He has been falsely implicated in the case, as there was no complaint received from any student. After investigation, a cancellation report was submitted on 19.11.2014, Annexure P-2, which was accepted by the trial Court. However, police had

investigated the matter again and submitted the cancellation report on 16.07.2020, which was returned on 16.02.2021, on account of non-appearance of the complainant. He relies upon the judgment of **Prithvi Raj Sehgal vs. State of Punjab and others**, (2007) 146 PLR 460 dated 22.02.2007 to submit that in similar facts and circumstances, this Court had allowed the petition and dropped the proceedings in the FIR.

3. Learned State counsel affirms the fact as has been demonstrated by the learned counsel for the petitioner and in addition thereto, while relying upon the reply, submits that cancellation report has been prepared for the third time and will be shortly presented before the trial Court.

4. Heard the learned counsel and perused the file.

5. It would be apposite to make a reference to order dated 05.02.2012, whereby the cancellation report was not accepted, that reads thus:

“During the investigation, the police came to know that all the accused are innocent and in fact the complainant Harjinder Singh has duped many persons on the pretext of sending them abroad and filed a false complaint u/s 420 of Indian Penal Code. However, no FIR has been registered against Harjinder Singh. Now on being summoned several times, the notice are not duly served to him. At this stage, it cannot be said on the basis of cancellation report that accused are innocent. There is evidence on record to prove the contention alleged in the cancellation report, so, in such circumstances, the present cancellation report stands dismissed.”

6. The State has filed a reply by way of affidavit dated 07-08-2023 of DPS, Sub Division Bholath, Kapurthala to the present petition, the relevant paras of which read thus:

“12. That thereafter on 20-06-2012 Inspector Harbhajan Singh then SHO P.S. Bholath prepared cancellation report in present case and after approval from SSP Kapurthala same was presented before the Court of Ld, JMIC Kapurthala and said Court vide order dated 19-11-2014 returned the cancellation report to verify the address of complainant Harjinder Singh and

to initiate re-investigation however after various attempts to verify the address of Harjinder Singh his address could not be ascertained as such cancellation report was again prepared and presented before Ld, Trial Court on 16-07-2020 and same was returned by said Court on 16-02-2021 for non-appearance of complainant.

13. That after due inquiry allegations against petitioner and Nishant Nakra could not be proved as such cancellation report was prepared in present case and presented before Ld, Trial Court twice however same have been returned for re-investigation.

14. That now cancellation report shall be again presented before Ld, Trial Court shortly.”

7. This Court in **Prithvi Raj Sehgal** (supra) by following **Harinder Pal Singh vs. State of Punjab**, 2004(2) RCR (Criminal) 207, wherein reliance had been placed on the judgment of Hon'ble Supreme Court in the case of **Abhinandan Jha v. Dinesh Mishra**, 1968 Cri LJ 97, allowed the petition by setting aside the order passed by the Magistrate and accepted the cancellation report by observing and holding thus:

“In Chapter XIV of the Code of Criminal Procedure (hereinafter referred to as 'the Code'), the Police has been given ample powers for the purpose of registering the case involving a cognizable offence and its investigation. Section 173 of the Code provides for an investigation to be completed without unnecessary delay and also makes it obligatory on the Officer-in-charge of the Police Station to send a report to the Magistrate concerned in the manner indicated therein, containing the various details. If the police submits a report under Section 173 of the Code to the effect that a case is made out for sending the accused for trial, the Magistrate is not bound to accept the opinion of the Police. It is open to the Magistrate to take the view that the facts disclosed in the report do not make out an offence for taking cognizance or he may take the view that there is no sufficient evidence to justify 5 of 14 and accused being put on trial. On the other hand, if the Magistrate agrees with the report, then he will take cognizance of the offence. In case, the Police submits a report stating therein that no case is made out against the accused for sending him for trial, the Magistrate, agreeing with the report, may accept the final report and close the proceedings, but the Magistrate may also take a view on

consideration of the final report that the opinion formed by the Police is not based on full and complete investigation and in such a situation, the Magistrate can order for further investigation. It is always open for the Magistrate to decline to accept the closure report and direct the Police to further investigate the matter, but once the closure report is not accepted by the Magistrate and the matter has been ordered to be re- investigated, then for the second time the Magistrate cannot compel the Police to take a particular view in the matter and submit the challan in the case. If the Magistrate does not agree with the opinion formed by the Police and still suspects that an offence has been committed, he is entitled, notwithstanding the opinion of the police, to take cognizance under Section 190(1)(c) of the Code, but in my opinion, he cannot direct the Police to re-investigate the matter for the third time.

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Thus, from the aforesaid judgments, it is clear that the Police is the master of the investigation and formation of opinion as to whether, on the material collected, a case is made out to place the accused for trial is the exclusive function of the officer in charge of the Police Station and/or his superior officers. The Magistrate, while accepting or rejecting the report, cannot compel the investigating agency to change its opinion and to form a particular opinion or to submit the challan. The formation of the said opinion by the police is the final step in the investigation and that final step is to be taken only by the Police and not by other authority.

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Hence, this petition is allowed and the impugned order dated 5.8.2003 passed by J.M.I.C, Patiala, is set aside and the cancellation report dated 17.11.2001 submitted by the police is hereby accepted. Consequently, F.I.R. No. 64 dated 6.4.1999 under Sections 406/498A/506 I.P.C. registered at Police Station Civil Lines, Patiala, and all the subsequent proceedings arising therefrom, are hereby ordered to be dropped.”

8. A perusal of the orders and record reveals that on 05.02.2012, when the first time the cancellation was not accepted, which the trial Court has termed as having “dismissed”, the ground thereof stated was that in fact the complainant has duped many persons, however, no FIR has been registered against him and that despite he having been sent several notices, he was not being served. However, though there was no specific order of

further investigation, yet the investigating agency had conducted again investigation in the case and a cancellation report was submitted on 20-06-2012 after approval from the concerned Senior Superintendent of Police, which vide order dated 19-11-2014 was again returned to verify the address of complainant-Harjinder Singh. Apparently, the police after having been unable to ascertain the whereabouts of the complainant, presented the cancellation report on 16-07-2020, which stood returned by said Court on 16-02-2021, on account of non-appearance of the complainant. Yet again as stated by learned State counsel, the cancellation report has been prepared and is in the process of being presented in a short while.

9. It is not in dispute that the Magistrate has the power to not accept the cancellation report as also to direct the further investigation. However, the Magistrate cannot coerce the investigation agency or impose its own opinion to alter its perspective or form a new or to submit challan. Nevertheless, de hors the opinion of the investigating agency, the Magistrate is empowered to take cognizance and proceed as envisaged under Section 190(1)(c) of the Code.

10. Reverting to the case at hand, firstly, the Magistrate was of the view that the cancellation report requires not to be accepted, as according to him, the complainant ought to have been proceeded against on account of having duped number of persons and was not getting served through summons. The second time, the cancellation was not accepted and it was returned on the ground that the address of complainant be got verified. The third time, again it was returned on account of the non-appearance of the complainant. Now the cancellation report is being submitted fourth time

over. The proceedings in the FIR were dropped in the judgment in **Prithvi Raj Sehgal** (supra), on the ground that the matter had been investigated thrice by different police officers.

11. The non-appearance of the complainant and repeated attempts made to ascertain his whereabouts, having been unsuccessful and the cancellation report not being accepted time and again, for practically the same reasons, is also prejudicial to the accused, as the sword of Damocles is hanging over, in the present case, for the last more than a decade, leads this Court to arrive at an irresistible conclusion that the matter now requires to be put at rest.

12. In **Rasal Singh vs. State of Punjab and another**, CRM-M-28441-2017 dated 21.02.2023 and **Ravinder Kumar vs. State of Punjab**, 2020(4) RCR (Criminal) 137 also the orders passed by the Magistrate of not accepting the cancellation report, were set aside by this Court.

13. In view of the aforesaid discussion, the present petition is allowed. FIR No.11, dated 05.02.2012, registered under Section 420 IPC at Police Station Bholath, District Kapurthala along with all consequential proceedings arising therefrom are hereby quashed.

(AMAN CHAUDHARY)
JUDGE

08.08.2023

Ankur

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No