

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

109

CRM-M-20652-2020

Date of Decision : December 07, 2023

AMIT KUMAR

-Petitioner

V/S

STATE OF PUNJAB AND OTHERS

-Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Ms. Dolli Sharma, Advocate for
Mr. S.S. Majithia, Advocate
for the petitioner.

Ms. Kanica Sachdeva, A.A.G., Punjab.

Mr. Rustam Garg, Advocate
for the respondent No.4.

KULDEEP TIWARI, J. (ORAL)

1. Through the instant petition, as instituted under Section 482 of the Cr.P.C., a prayer is made for issuance of directions upon the respondent No.2, to ensure that a proper and impartial enquiry is being conducted in FIR No.316 dated 19.11.2016, under Sections 420/506 of the IPC, and, Sections 66E/67 of the Information Technology Act, 2000, registered at P.S. Jodhewal, Ludhiana City.

2. The grievance of the petitioner is that the inquiry in FIR (supra), which was registered after four years of making complaints, is not being conducted in a proper and fair manner, as all efforts are being made to protect the respondent/accused.

3. The learned counsel appearing for the petitioner submits that earlier an untraced report was filed before the learned Illaqa Magistrate concerned, however, it did not find favour with him, as the learned Illaqa

Magistrate concerned made an order for further inquiry. However, despite that, the inquiry is not being conducted in a fair and proper manner.

4. A Coordinate Bench of this Court, on 15.05.2023, had directed the respondent-State to file latest status report, and, in compliance of said directions, a status report, through affidavit of Sumit Sood (PPS), ACP, North, Ludhiana has been filed. The relevant paragraphs of the status report (supra) are extracted hereinafter:-

“4. After the registration of case against respondent no.4/accused, respondent no.4/accused appear before the higher officials and moved different complaints vide UID No. 1260010 dated 12.01.2018 and UID No. 124601 dated 04.12.2017, which were marked to ADCP Zone-4 Ludhiana Sh. Rajveer Singh Boparai for investigation, who after the thorough investigation reduced the offence of 420/506 IPC and to confirm about the ID from which the obscene photos were uploaded, wrote to Cyber Cell Ludhiana Vide letter no. 346-5A/ADCP Zone-4 dated 16.02.2018. Cyber Cell Ludhiana wrote to Facebook Administration, but no proof was procured against respondent no.4/accused, so the concerned ADCP Zone-4 for taking consent wrote to the Commissioner of Police Ludhiana vide Letter No. 656-5A/ADCP Zone-4 dated 22.05.2018.

5. The then Commissioner of Police Ludhiana marked the complaint to ADCP Law and Order Ludhiana Sh. Sandeep Kumar Garg IPS for further investigation vide order no. 511-14/reader C.P. dated 01.06.2018 and after his transfer further investigation was carried on by Miss. Madhvi Sharma P.P.S Incharge PS Jodhewal Ludhiana. Then further investigation was carried on by Sh. Deepak Parekh IPS. During the investigation Sh. Deepak Parekh IPS send a notice U/s 91 Cr.P.C. to Facebook for getting the information about the account "Facebook: [https:// www.facebook.com/kay.kumar.737?](https://www.facebook.com/kay.kumar.737?)" and received a reply from the Law Enforcement Office that " Hello, we are in receipt of your request as stated provisionally, facebook discloses account

records slowly in accordance with its term of service and applicable law. On a review of the account, Kay.kumar. 737? the user appears to be outside of your jurisdiction. If you wish to pursue the matter further, we advise you to liase with the relevant law enforcement authorities in the United Kingdom. Even if the account holder was in you jurisdiction we can confirm based on our review of your request that under applicable law and our terms of service, a mutual legal assistance treaty (MLAT) request of letter rogatory would be required before we could provide the information sought in the same". So on the instructions of ADCP, Incharge Cyber Cell issued rogatory and wrote to the Director BOI Chandigarh Punjab vide letter no. 98056/AC-3 dated 16.08.2019. Reply was not received. No record was received from Facebook Administration or from law Enforcement Agency regarding the upload of obscene photos to prove that the photos were uploaded by respondent no.4/ accused.

6. That from the above said investigation no offence was proved against respondent no.4/accused, to which ADCP Zone-1 Ludhiana questioned respondent no.4/accused through E-Mail, which were dully answered by respondent no.4/accused. From the above said investigation no offence was proved against respondent no.4/ accused.

7. That complainant Amit Kumar joined the investigation. No record was present to show about the uploading of the obscene photos, so, offence U/s 66-E/67 Information Technology Act 2000 is not required in the case. There is no proof to prove respondent no.4/accused Kulwinder Kallah guilty of offence. Complainant was unable to produce any account details for transferring the money or any written receipt nor able to produce any agreement.

8. Inspector Goldy Viridi filled untraceable report on 10.02.2021 and on 12.04.2021 untraceable report was sent before the Illaqa Judicial Magistrate, Ludhiana for approval, on which complainant suffered a statement before the Illaqa Judicial Magistrate, Ludhiana that he is not satisfied with the untraceable report. On 15.10.2022 the court of Ms. Rajwinder Kaur, JMJC, Ludhiana ordered to re investigate the matter.

9. On 10.05.2023 after receiving the file investigation was conducted by Inspector/SHO. Complainant Amit Kumar was joined in the investigation on 09.10.2023 and re-investigate the matter thoroughly. During the investigation no new facts had come to light nor the complainant had produced any new evidence. So the investigating officer is fully satisfied with the earlier investigation and with the untraceable report filed earlier. On 08.11.2023 Inspector/SHO filed untraceable report, as no new facts came on file during re-investigation, nor complainant was able to produce any new evidence at the time of joining the investigation on 09.10.2023. Untraceable report filed by Inspector/SHO on 08.11.2023 will be sent before the Illaqa Judicial Magistrate, Ludhiana for approval.”

5. The averments made in the status report (supra) clearly reveal that every effort was made by the investigating agency to collect incriminatory evidence, however, no such evidence could be collected, for the reasons assigned in the status report (supra). The investigation was conducted even by senior police officers.

6. Moreover, the learned State counsel, on instructions imparted to her by ASI Achar Ram, intimates this Court that the Final Report is already presented before the Illaqa Magistrate concerned.

7. In view of the above, the grievance of the petitioner does not survive, which consequently, does not warrant any inference by this Court. Therefore, the instant petition is **dismissed**, however, liberty is reserved to the petitioner to, in case any grievance is left, take all statutory recourse(s), as prescribed by law, before the learned trial Court concerned for redressal of his grievance.

December 07, 2023
devinder

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No