

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

CRM-M-46465-2017

Date of Decision:-25.01.2023

Jagsir Singh @ Raja Manila.

.....Petitioner.

Vs.

State of Punjab & Anr.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Achin Gupta, Advocate for the Petitioner.

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab.

JASJIT SINGH BEDI, J.(ORAL)

The prayer in the petition under Section 482 Cr.PC is for quashing of FIR No.16 dated 20.01.2017 (Annexure P-1) under Section 171-B IPC registered at Police Station Dayalpura, District Bathinda and all consequential proceedings arising out of the said FIR.

2. The brief facts of the case are that the Returning Officer 90-Rampura Phul Vidhan Sabha Election Constituency intimated vide his letter no.38/Elections dated 20.01.2017 to DSP Phul that the petitioner had violated the model code of conduct which was in force in view of the Punjab Legislative Assembly elections by distribution of Pullovers to voters at the AAP rally on 19.01.2017 at village Burj Thror, Tehsil Rampura Phul. It was informed through the said letter that on the basis of information received in his office a flying squad was sent to the village to enquire about

the distribution of pullovers to the villagers. In the inquiry it was found to be correct. The Returning Officer reported that as per the report of flying squad team the petitioner Jagsir Singh @ Raja Manila NRI had distributed 'T' Shirts to 5-7 persons upon which "From Raja Manila" was scribed. The Returning Officer specifically ordered the registration of an FIR under Section 171-B IPC against the petitioner.

On the basis of this order, the FIR in question came to be registered which is attached as Annexure P-1.

3. The petitioner filed the instant petition for quashing of the FIR pleading that the offence under Section 171-B IPC was punishable under Section 171-E IPC and was non cognizable. Therefore, the police was not empowered to register a criminal case since the offence was itself non cognizable. Reference was made to Section 171-B IPC and Section 171-E IPC in the petition.

4. When the matter came up for hearing on 15.01.2018 the following order was passed:-

" Ld. Counsel for the petitioner contends inter alia that the offence mentioned in the FIR (Section 171-B/E) is non cognizable according to the Court.

Notice of motion for 21st May, 2018.

Further proceedings qua the present petitioner be stayed in the meantime."

5. The matter was adjourned from time to time and ultimately a reply dated 23.10.2018 by way of affidavit of Mr. Gurpreet Singh, PPS, Deputy Superintendent of Police, Phul, District Bathinda came to be filed. As per the para 4 of the reply on merits it was admitted that the offence under Section 171-B IPC was a non cognizable offence. However, the FIR had been registered on the specific orders of the Returning Officer.

6. The Counsel for the petitioner has raised a singular argument that an offence under Section 171-B IPC was a non cognizable offence. Therefore only a private complaint was maintainable and accordingly the FIR along with subsequent proceedings arising therefrom deserves to be quashed.

7. The Counsel for the State while referring to the reply dated 23.10.2018 contends that the argument raised by the petitioner is correct. The offence indeed is non cognizable. However, the FIR had been registered at the instance of the Returning Officer 90-Rampura Phul Vidhan Sabha Election Constituency-cum-Sub Divisional Magistrate on a complaint being made to the DSP. He also states that the investigation in this case has been completed.

8. I have heard learned Counsel for the parties.

9. Before proceedings further it would be apposite to refer to the provisions of Section 171-B IPC and the same are reproduced hereinbelow:-

“ 171B. **Bribery**.—Whoever—

(i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right; commits the offence of bribery:

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he

does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

The provisions of Section 171-E IPC are reproduced herein below:-

*“ 171-E **Punishment for Bribery**- Whoever commits the offence of bribery shall be punished with imprisonment of either description for a terms which may extend to one year, or with fine, or with both”
Provided that bribery by treating shall be punished with fine only.
Explanation.—“Treating” means that form of bribery where the gratification consists in food, drink, entertainment, or provision.*

Classification of Offence

Punishment-Imprisonment for 1 year, or fine, or both or if treating only, fine only-Non Cognizable-Bailable-Triable by Magistrate of the first class-Non-compoundable

10. The Hon'ble Supreme Court in the case of ***State of Haryana & Ors. Vs. Bhajan Lal & Ors. 1992 Supp. (1) 335*** has held as under:-

“ 102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases 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 guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercise:.

(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”.

11. A combined reading of Section 171-B IPC and 171-E IPC with the judgment in **Bhajan Lal's case (supra)** would show that one of the grounds for quashing of the FIR is where the offence itself is a non cognizable one. In the instant case the contention of the petitioner that the offence under Section 171-B IPC which is punishable under Section 171-E IPC is a non cognizable offence, has been admitted in the State reply as also in the arguments raised by the learned Counsel for the State. The stand taken by the State that since the FIR had been registered on the asking of the Returning Officer the proceedings were maintainable, is fallacious. Once

the offence itself is a non cognizable one the question of registration of the FIR would not arise irrespective of who had passed the order regarding the registration of the same. Therefore, the very initiation of the proceedings in the present case are illegal, unlawful and are liable to be quashed.

12. In view of the above discussion, I find merit in the present petition and therefore the FIR No.16 dated 20.01.2017 (Annexure P-1) under Section 171-B IPC registered at Police Station Dayalpura, District Bathinda and all consequential proceedings arising out of the said FIR are quashed in the interest of justice.

(JASJIT SINGH BEDI)
JUDGE

January 25, 2023
Vinay

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