

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

202

CRM-M-46557-2017 (O&M)

Date of decision: 16.08.2023

Vijay Kumar Aggarwal

....Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Abhinav Gupta, Advocate for the petitioner.

Mr. Jaspal Singh Guru, AAG Punjab.

RAJBIR SEHRAWAT. J. (Oral)

1. The present petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') for quashing of FIR No.183 dated 30.12.2008 registered under Sections 452, 427, 148 and 149 of the Indian Penal Code (for short 'the IPC') at Police Station City Batala, Police District Batala and all consequential proceedings arising therefrom.

2. The allegations against the petitioner, in the FIR, are that the petitioner and his wife; along with other accomplices trespassed into the house of the complainant and started causing injuries. In the scuffle, even one police personnel was injured. Another FIR No.177 dated 13.12.2008 was registered on the statement of the said police official, Police Station City Batala. In the said FIR, he himself had recorded that some fight had taken place at the spot; and he had sustained certain injuries in the said incident. His presence at the spot was shown to be on account of the fact that a prior information was received in the Police

Station regarding the attempt to trespass and quarrel taking place on the site. However, the version of the complainant was not recorded by the Police; as such. Therefore, during the visit of the Administrative Incharge, High Court Judge of the said Sessions Division, the complainant made his representation. The Hon'ble Judge asked the police to take action as per law, as a result whereof, the present FIR was registered by the police, specifically involving the name of the petitioner, his wife and other persons. As the thing would be, some alleged inquiry is stated to have been conducted by the DSP of the area. In the said inquiry, although it was not disputed that the quarrel and trespass had, in fact, taken place, however, it was observed that the present petitioner was not present at the spot. On the basis of the said inquiry report, a cancellation report is stated to have been filed by the police, without conducting any further investigation into the matter. However, the complainant filed his objection to the cancellation report. As a result, the cancellation report was not accepted by the Magistrate and it was ordered that the matter be re-investigated. Accordingly, the matter was investigated by the police. In the said investigation, petitioner was found to be present at the scene of the occurrence and the allegations against the petitioner and his accomplices had also been substantiated. Accordingly, the challan was filed on 01.03.2017. Thereafter, even the charges have been framed vide order dated 22.03.2017. It is, thereafter, that the present petition has been filed by the petitioner; challenging, the order passed by the Magistrate, whereby the cancellation report was not accepted, as well as, the charges framed against him, along with all consequential proceedings.

3. It deserves mention here that in the meantime one more round of litigation was undertaken by the petitioner. He had filed petitions i.e. CRM-M-34425-2009 and CRM-M-34426-2009, seeking quashing of the present FIR.

However, the said petitions were not pressed by the counsel for the petitioner because the police had filed the abovesaid cancellation report before the Magistrate. Accordingly, the same were dismissed as not pressed.

4. Arguing the case, learned counsel for the petitioner has submitted that before filing of challan before the Magistrate, the police had again prepared second cancellation report on the basis of investigation conducted by the police pursuant to the abovesaid order passed by the Magistrate. However, the same was never presented before the Magistrate because there were some other intervening orders from the Magistrate to investigate the matter quickly and to present the report before the Court. The counsel has further submitted that since the cancellation report was prepared; and even the then SHO, who was present at the spot, had stated during investigation that the petitioner was not present at the spot, therefore, the entire process of filing the challan and consequent proceedings; are totally *mala fide*.

5. It is further submitted by counsel for the petitioner that although there was already an FIR No.177 dated 13.12.2008, regarding the said incident; therefore, no second FIR was required to be registered. The second FIR has been got registered only to pressurize the petitioner because he had already sold the property in question to one Rajbir and others. Therefore, the entire exercise being misuse of process of law, deserves to be quashed.

6. On the other hand, the counsel for the State, being instructed by ASI Lakhbir Singh, has submitted that during the investigation, name of the petitioner had duly surfaced. The presence of the petitioner at the scene of the occurrence has been testified before the Investigating Officer, at least, by two witnesses. Accordingly, the challan has rightly been filed by the police. Not only that, even

charges have been framed against the petitioner. Therefore, there is no reason or basis for invoking the jurisdiction of this Court under Section 482 Cr.P.C. for quashing of the FIR, as such. So far as the earlier cancellation report is concerned, referring to the material on file, learned counsel for the State has submitted that earlier cancellation report was filed under a wrong impression that there was some direction from the High Court for filing the cancellation report. However, when it was found that there was no such order, then further investigation was conducted by the police and in the said investigation, sufficient material was collected. Therefore, there is no ground for quashing the FIR and the consequent proceedings.

7. Having heard learned counsel for the parties, this Court does not find any substance in the arguments raised by the counsel for the petitioner. It is not even in dispute that report under Section 173 Cr.P.C. (challan) was filed against the petitioner way back on 01.03.2017. Thereafter, finding a *prima facie* case against the petitioner, the Court has even framed charges against the petitioner. Hence, by any means, it cannot be said that no case is made out against the petitioner as per the material on record. Otherwise also, a bare reading of the FIR shows that the petitioner is duly named in the FIR, and the statements which have come on the investigation file also indicate the involvement of the petitioner in the matter. The veracity or otherwise of the allegations is to be seen and adjudged by the trial Court during the trial, where both the parties would be getting due opportunities to substantiate their cases. The proceedings under Section 482 Cr.P.C. are not appropriate proceedings to see the truthfulness or falsity of the allegations raised in the FIR or during the investigation. Hence, the argument of the counsel for the petitioner that false allegations have been levelled is of no help

to the petitioner.

8. The argument of the counsel for the petitioner; that the FIR and the subsequent filing of challan are *mala fide* and abuse of process of law on the part of the complainant; is also not found sustainable. Although, the counsel for the petitioner has referred to the earlier statement made by the then SHO to the effect that petitioner was not present at the spot, however, the said SHO has not come forward to make a statement in the investigation on the basis of which the challan has been filed against the petitioner. Moreover, his assertion in the statement recorded by himself, pursuant to an FIR got registered by him only, is hardly any basis to lend credence to the same, particularly, when he had not even recorded the statement of the present complainant in the said alleged proceedings relating to the other FIR. Giving that much relevance to the sole statement of the then SHO would tantamount to negating the grievance of the complainant without it even being tested on the anvil of the law.

9. Even the argument of the counsel for the petitioner that the present proceedings have been initiated just to pressurize the petitioner because he had sold the property to Rajbir and others; is self contradictory. Once the petitioner had already sold the property to a third person, then there was hardly any ground left with the complainant to involve the name of the petitioner, unless, he was actually present on the scene of occurrence. If the complainant was to involve someone falsely then it would have been the new purchaser of the property; and not the person who no more had any concern with the same. Therefore, this argument of the counsel for the petitioner is also totally non-substantiated and cannot be countenanced.

10. Needless to say that the trial Court has already framed charges

against the petitioner on the basis of the material available on file. This Court does not find any illegality or impropriety with the same. Therefore, otherwise also, at this stage, it is not germane to quash the proceedings on totally unsubstantiated assertions made by the petitioners. The arguments of the learned counsel for the petitioner can, at the best, be said to be in the nature of the defence, which the petitioner can avail before the trial Court at the appropriate stage.

11. In view of the above finding no merit in the present petition, the same is dismissed.
12. However, anything observed hereinabove shall not be deemed as an expression on the merits of the case in any manner qua the proceedings of the trial; nor the same shall be taken to prejudice the case of either side.

(RAJBIR SEHRAWAT)
JUDGE

16TH AUGUST, 2023
S.Sharma(syr)

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No