IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR NO.1347 OF 2023(O&M)
Reserved on: 29.08.2023
Date of Decision: 02.09.2023

Kailash Kumar Singla

... Petitioner(s)

Versus

State of Punjab

…Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Akshay Bhan, Sr. Advocate with
Mr. HPS Sandhu, Advocate,
Mr. Shantanu Bansal, Advocate and
Mr. Yugank Goyal, Advocate
for the petitioner.

Mr. Luvinder Sofat, D.A.G., Punjab.

***

ANOOP CHITKARA, J.

Aggrieved by the dismissal of the application, praying for discharge, and consequent order directing framing of charges for the commission of an offense under Section 13(1)(e), 13(2) of the Prevention of Corruption Act, 1988 (for short, "the PC Act"), the petitioner-accused has come up before this Court under Section 397 read with section 401 of the Code of Criminal Procedure, 1973, after now called as 'CrPC.'

2. When this matter was listed before a coordinate Bench, notices were not issued. Even this Court has heard the petitioner's counsel to find out whether this case is worth issuance of notice. As such, this Court does not need to seek any reply/response from the respondent state.

3. Brief facts necessary to decide the present revision petition trace back to FIR No.1 dated 10.1.2017 under Sections 7 and 13(2) of the PC Act. The allegations in this first FIR were that the petitioner -Kailash Kumar Singla, who was posted as Executive Engineer in Punjab Water Resources Management and Development Corporation Limited, Division No.7, Bathinda, had demanded and accepted a bribe of Rs.50,000/- and after that, a trap was laid, and the police recovered a sum of Rs.50,000/- from him. The second FIR, i.e., FIR No.04 dated 15.3.2017 under Sections 13(1)(e) & 13(2) of the PC Act, was registered because after the petitioner's arrest in the first FIR, the

investigator came across disproportionate assets of the petitioner to the tune of more than Rs.2,74,00,000/-, which were 167.47% over the total income from all known sources of the petitioner.

4. Petitioner claims that in the first FIR, i.e., FIR No.1, vide judgment dated 2.3.2020 passed by Additional Sessions Judge Bathinda, he was acquitted in the said trial. It has been mentioned that the recovery memos. made in FIR No.1 also form part of the present FIR, i.e., FIR No.4.

5. Thus, the petitioner's first grievance is that the second FIR was registered based on the recovery memos made in the first FIR. As such, there was no independent inquiry before the registration of FIR, and it is violative of criminal jurisprudence and judicial pronouncements.

6. Petitioner's case is that if the prosecution had to start any inquiry for disproportionate assets, then before registering an FIR, they needed to conduct a preliminary inquiry, and only after that they could have registered the FIR. However, the petitioner's contention is without any merit. In the present case, the disproportionate assets case came to light only after the police had recovered a sum of Rs.50,000/-as illegal gratification demanded by the petitioner. After the said recovery, it was obligatory for the investigator to also find out about disproportionate assets because the alleged demand was not the first incident. The search and seizure memo of the present case only constitutes Rs.50,000/- while disproportionate assets, which were found in the petitioner's possession, were more than four crores rupees. Thus, it was neither the money involved in the first FIR, nor the documents mentioned in the first FIR that led to registration of second FIR. Indeed, the investigator conducted further inquiries and considered the total income and expenditure, and after doing that exercise, concluded that the petitioner had disproportionate assets to the extent of more than Rs.2,74,00,000/-. Thus, this argument is without any merit, and no illegality can be found in this regard.

7. Petitioner's next contention is that the second FIR violates Section 300 CrPC. This argument, on the face of it, is without any basis. Section 300 CrPC comes into operation only when, for the same occurrence, the accused is again tried before a Court of law. However, this is not the case in FIR No.4, which relates to the disproportionate assets of the petitioner, whereas FIR No. 1 was regarding the recovery of bribe money, in which he was caught red-handedly. It is a different matter than that of FIR No.1, in which the prosecution's case failed and the accused was acquitted. However, it would not imply that the petitioner is being tried on the same allegations for the second time. As such, there is no merit in the second submission.

8. Petitioner's third submission is that Section 221 CrPC has been violated. Section 221 CrPC is also not attracted in the present case because it would come into operation only when there was any doubt as to what offense has been committed in the given facts. There is no doubt about the commission of the second offence, which is altogether different and relates to the disproportionate assets of the petitioner.

9. The petitioner's last argument is that the report filed Section 173 CrPC in the second FIR was filed four years after the registration of the FIR, i.e., after the petitioner was acquitted in the first FIR. On the face of it, there is no illegality in this regard. If there is a delay in filing the report in the second FIR, which would undoubtedly cause the petitioner to face criminal trial, the remedy for the petitioner is to seek expediting of the trial, and this Court directs the trial court to do so.

10. Petitioner's counsel has also referred to the judgment of Supreme Court passed in ***T.T. Antony v State of Kerala (SC) 2001(3) RCR (Criminal) 436*** and submits that petitioner is entitled to the benefit under that ratio. However, the said judgment is not at all applicable in the facts and circumstances of the present case. In T.T. Antony v. State of Kerala, (2001) 6 SCC 181, Supreme Court holds,

> A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the Court. There cannot be any controversy that sub-section (8) of Section 173 Cr.P.C. empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narangs' case (supra) it was, however, observed that it would be appropriate to conduct further investigation with the permission of the Court. However, the seeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Cr. P. C. it would clearly be beyond the purview of Sections 154 and 156 Cr. P. C. nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of a fresh investigation based on the second or successive FIRs, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 Cr. P. C. or under Article 226/227 of the Constitution.

11. Given above there is no merit in the present revision petition, and the same is hereby dismissed. However, trial court is requested to expedite the trial. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

September 02, 2023
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No