

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

**CRM-M-61926-2018 (O&M)
Decided on:-06.02.2023**

Jaswinder Singh

....Petitioner..

vs.

State of Punjab and another

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Bikramjit Singh Bajwa, Advocate,
for the petitioner.

Mr. Ravinder Singh, AAG, Punjab.

Mr. R.K. Choudhary, Advocate,
for respondent No.2.

HARKESH MANUJA J. (Oral)

CRM-10457-2022

Application is allowed as prayed for. Copy of order dated 28.03.2017 (Annexure P-11) is taken on record, subject to all just exceptions.

Main case

By way of present petition under Section 482 Cr.P.C., prayer has been made for quashing of order dated 22.02.2014 passed by the court of learned Sub-Divisional Judicial Magistrate, Baba Bakala, District Amritsar, whereby a cancellation report submitted by the investigating agency pertaining to FIR No.17, dated 26.02.2012, under Sections 302, 148 and 149 IPC, Police Station Tarsika, District Amritsar, has not been accepted.

The facts of the case are that on account of unfortunate demise

of one Jasbir Singh, who happened to be the brother of respondent No.2, FIR in question came to be registered against the petitioner and three others. The investigating agency after thorough investigation and finding no incriminating substance against the alleged accused, submitted a cancellation report dated 21.01.2013 before the court of learned Sub-Divisional Judicial Magistrate, Baba Bakala, District Amritsar. Instead of accepting the same, the trial court sent back the matter to the investigating agency by observing that there was scope for further investigation. Again a second cancellation report was filed before the trial court, however, vide order dated 22.02.2014, the trial court still refused to accept the same with similar observations of there being scope of further investigation.

Aggrieved against the aforesaid orders dated 21.01.2013 and 22.02.2014, the petitioner filed the present petition, wherein, notice of motion was issued vide order dated 21.12.2018.

During pendency of the present petition, again a cancellation report came to be submitted before the trial court, however, the same was again not accepted vide order dated 28.03.2017. Copy of the same has been placed on record as Annexure P-11 along with CRM No.10457-2022

Learned counsel for the petitioner submits that three cancellation reports have been submitted by the investigating agency in the aforementioned FIR, however, the trial court on all the three occasions refused to accept the same by passing non-speaking and unreasoned order, which as per him was against the law laid down by this Court in case of ***“Harinder Pal Singh vs. State of Punjab”, 2004(2) RCR (Criminal)307.***

While referring to the impugned orders, learned counsel for the petitioner also submits that even the complainant had appeared before the

concerned court on both the occasions and had supported the investigation carried out by the investigating agency with a specific statement made in this regard before the trial court.

Even, learned State counsel as well Sh. R.K. Choudhary, Advocate appearing on behalf of respondent/complainant also support the cancellation reports submitted by the investigating agency,

I have heard learned counsel for the parties and have gone through the record.

Perusal of record shows that thrice cancellation report has been submitted by the investigating agency before the trial court and on all the three occasions, the trial court without even recording reasons in support has ordered for return of the same while making one line observation to the effect that there was scope of further investigation into the matter. Not even a single document or statement from the final report submitted before it has been referred to or relied upon by the trial court while recording its opinion as regards scope of further investigation. The impugned orders passed by the trial court are in total ignorance of the law laid down by this Court in ***Harinder Pal Singh's*** case (supra), which clearly records that the court has to record valid reasons while forming an opinion of not accepting the repeated closure reports submitted by the investigating agency and for passing order for further investigation. Relevant paragraphs No.13 and 14 of the aforesaid judgment are reproduced hereunder:-

13. *Thus, from the aforesaid judgments, it is clear that the Policy 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.

14. *In the light of the aforesaid legal position, I have examined the impugned order. In my opinion, the Special Judge, while not accepting the closure report for the second time and order re-investigation in the matter for the third time, has not given valid reasons. On the first occasion when the cancellation report was not accepted and direction was issued for further investigation, it was mentioned that Jump(er) Slip in question was not taken into possession by the investigating agency. During the re-investigation, after taking all the relevant documents including the Jump(er) Slip into possession, the CBI again came to the conclusion that in view of the fact Jump(er) Slip was Issued by the petitioner on 1-6-2000, there was no reason and motive for him to demand and accept bribe on 6-6-2000. After going through the contents of the cancellation report submitted by the CBI for the second time, in my opinion, there was no reason for issuing direction to further reinvestigate the matter. The Special Judge could not reject the cancellation report submitted for the second time on the same ground and again order for further investigation. If at all he was not satisfied with the closure report submitted by the CBI for the second time and was of the opinion that report was not based on full and complete investigation, he could have taken cognizance of the offence under Section 190(1)(c) of the Code, but could not order for re-investigation of the matter for the third time. Further, in my opinion, the Special Judge has not fully applied his mind in the case, especially when he has not taken into consideration the statement made by the complainant made before him to the effect that he did not object to cancellation of the case against the petitioner. In view of this, the fate of the prosecution case was imminent and it would be futile exercise to get the matter re-investigated.”*

Similar view has also been taken by this Court in case of “*Ranjeet Kaur and others vs. State of Punjab*”, 2022(3) *Law Herald* 2703 and “*Dr. Rajiv Sharma vs. State of Punjab*” 2008(2) *Cri.Court Cases* 255.

More than that, on two occasions even the complainant himself had appeared before the court and supported the innocence of the petitioner by making a specific statement to this effect, which has been brushed aside by the trial court for no valid reason in support while making observation about scope for further investigation.

In view of the aforesaid discussion, orders dated 21.03.2013, 22.02.2014 and 28.03.2017 passed by the trial court are set aside and the matter is remanded back to pass a fresh order in view of the observations recorded herein above.

Since, the matter is pertaining to the year 2012, the trial court is requested to pass a final order within a period of three weeks from the date of receipt of certified copy of this order, after granting an opportunity of hearing to the petitioner by passing a well reasoned and speaking order.

06.02.2023
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(HARKESH MANUJA)
JUDGE

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