

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

117

CRM-M-60546-2022 (O&M)

Date of decision: 17.01.2023

LAIT KUMAR SHARMA @ LALIT @ LALIT CONSTABLE

....Petitioner(s)

Versus

STATE OF HARYANA AND ANOTHER

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Keshav Partap Singh, Advocate for
Mr. Parshant Singh Chauhan, Advocate
for the petitioner.

AMAN CHAUDHARY. J.

The present petition under Section 482 Cr.P.C. has been filed for quashing of the impugned order dated 14.09.2022 passed by learned Additional Chief Judicial Magistrate, Sonipat, whereby while exercising power under Section 156(3) CrPC, the SHO was directed to register the FIR and FIR No.729 dated 08.10.2022 under Sections 166, 341, 356, 364-A and 120-B of IPC was registered at police station Kundli, District Sonipat, Haryana.

Briefly put, the facts as discernible from the FIR are that the complainant is the resident of Village Safiabab Tehsil District Sonipat and he deals in the sale of country made liquor and Indian Made Foreign liquor under license No. 031-L2207786 issued by the Excise Taxation Department, Govt. of Haryana along with his partner namely Sumit S/o Phool Kanwar R/o Vill. Halal Pur District Sonipat under License No. 031L2207779 and they have a common Godown at Village Nahri District Sonipat. On 05.08.2022, the complainant hired

a Canter No. HR-69-E-0429 for the transportation of liquor from one place to another and got loaded 1200 boxes from his Godown at Village Nahri District Sonipat for the supply of the same to various liquor shop at various places and they started from Village Nahri at 06:30 AM with Ranbir S/o Ramesh R/o Village Manirpur District Sonipat as its Driver. After some time on the enquiry of the complainant, it was reported that the supply of the liquor was not effected to them and then on the basis of the GPS system so provided on the Canter, the complainant came to know that the vehicle loaded with liquor after crossing Movi Kalan Toll reached in Barot-UP, thereafter GPS system of the vehicle was stopped. After enquiry, the complainant came to know that when the Canter reached at Chhatehra Bahadurpur, the petitioner along with three other persons, who were in a Swift Car No.HR-15-E 5866 had stopped the canter and forcibly put Ranbir Driver of the Canter in their car and then the petitioner who was in police uniform along with one more person entered into the Canter, whereupon the petitioner drove the Canter and took the same to UP, while the other two accused along with the Driver Ranbir followed the Canter. The complainant got arranged the CCTV footage from various places to know about the location of the vehicle and then Sumit followed the vehicle and found the said Canter along with UP police at Rehmana Toll UP. After getting the information, the complainant also reached there and he informed the UP Police in detail about the above mentioned incident, but the UP Police forcibly took them to LM Chowki and demanded Rs.10 lacs for the release of vehicle and when the complainant expressed his inability to pay such amount, the UP Police in collusion with SHO Kandla registered a false FIR against the complainant and his partner Sumit along with the Driver Ranbir. The complainant has valid All India Arms License and

despite the fact that the same was shown to the SHO PS Kandla, but still the UP Police challaned the complainant under the Arms Act and the UP Police snatched the phone and the entire amount in possession of the complainant which was to the tune of about Rs.1,30,000/-. The complainant is engaged in the supply of liquor with due legal permission from the concerned authorities and the complainant reported the matter to DGP UP Police and Chief Secretary of UP Government in this regard, but no action was taken by any authority till date. The complainant also moved one application before Chowki Incharge Barota District Sonipat and to the SHO PS Kundli and also to the SP Sonipat in this regard. Thereafter respondent No.2 had filed a complaint before the learned Additional Chief Judicial Magistrate, Sonipat under Section 156(3) of Cr.P.C., for direction to the SHO concerned to register the FIR. Vide order dated 14.09.2022, Annexure P-8, the complaint was sent to the SHO for registration of FIR.

Learned counsel contends that the present FIR is a counter blast to the FIR lodged by the Uttar Pradesh Police against respondent No.2 and his accomplices carrying illegal liquor. It is his further submission that the petitioner is innocent and has committed no offence. He being a Government servant was discharging his official duties in Uttar Pradesh. He submits that the FIR seems to be concocted and the same could not constitute the offences under Sections 166, 341, 356, 364-A and 120-B of IPC against the petitioner. There is no tangible and clinching material on record to support the allegations and charges against the petitioner.

Heard.

Hon'ble The Supreme Court in the case of **Vinod Raghuvanshi Vs.**

Ajay Arora, (2013) 10 SCC 581 has held thus :-

"30. It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not "kill a stillborn child", and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither can the court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein."

In **M/s Neeharika Infrastructure Pvt. Ltd. vs State of Maharashtra and others** Criminal Appeal No. 330 OF 2021, decided on 13.04.2021, Hon'ble The Supreme Court of India has held thus:

"23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

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iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

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xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

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Hon'ble The Supreme Court of India in the case of **Ramveer**

Upadhyay and Another vs. State of U.P. and Another 2022 SCC Online SC

484 has held thus:

39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction

under Section 482 of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under Section 482 of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Atrocities Act. Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. The Complaint Case No. 19/2018 is not such a case which should be quashed at the inception itself without further Trial. The High Court rightly dismissed the application under Section 482 of the Cr.P.C.”

As is apparent, the FIR that has been registered based on a direction passed by learned Additional Chief Judicial Magistrate, Sonipat, upon which the investigation commenced and is at a nascent stage. The petitioner had challenged the said order before the learned Additional Sessions Judge, Sonipat which was withdrawn on 14.09.2022, with a liberty to file afresh, but instead, the petitioner has filed the present petition. The serious allegations levelled against the petitioner are required to be thoroughly investigated. As is the law enunciated by Hon'ble The Supreme Court of India in the above referred judgments, the investigation cannot be scuttled and has to be allowed to be culminated.

This Court is not inclined to interfere with the impugned order by invoking the powers under Section 482 Cr.P.C. which as per the exposition of law, have to be exercised sparingly and with circumspection, that too in rarest of

rare cases, which the present case does not fall within.

In view of the above, the present petition being devoid of merit is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

January 17, 2023

M.Kamra

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