

CRR-2685-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2685-2023
Reserved on: 12.12.2023
Pronounced on: 19.12.2023

Umed Singh ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Mohinder Pal, Advocate
for the petitioner(s).

Mr. Rajat Gautam, Addl. AG, Haryana.

ANOOP CHITKARA, J.

Aggrieved by the dismissal of application filed by the petitioner before the Sessions Court for invoking its powers under Section 91 of CrPC to call for CCTV footage, call details, RC and driving licence of police officials present with the police team at the time of trap, in which, petitioner's brother-in-law was nabbed with Rs. One lac which he had taken as bribe, he has come up before this Court by filing the present criminal revision petition.

2. Facts of the case are being taken from para Nos.3 to 5 of the reply dated 11.12.2023 filed by the concerned DySP, Anti Corruption Bureau(H), Hisar Range Hisar, which reads as follows:-

3. That the brief facts of the case are that complainant Sunil Kumar S/o Ramphal moved a written complaint before the police alleging therein that he is an Advocate and a case bearing FIR No. 99/2021 u/s 420, 467, 468, 471, 120-B IPC was registered against him at Police Station, Narnaund and he is on bail in the said case. One another FIR No. 17 dated 07.01.2021 was also registered against him at police station city Hansi and petitioner/accused Umed Singh Inspector was investigating that case.

Complainant further alleged that he met with petitioner/accused Umed Singh, who asked him that he will not arrest him (complainant) and can save him from the said case but for that he (complainant) has to give the "Karcha-Pani" and petitioner/accused also asked the complainant to meet with his brother-in-law Shiv Kumar, JE in this regard, to whom he had already told everything. The petitioner/accused also provided mobile number 8222023772 of his brother-in-law Shiv Kumar to complainant. Complainant further alleged that he met with Shiv Kumar and talked with

petitioner/accused Umed Singh Inpsector and thereafter, demanded Rs. 7 Lacs as bribe to save the complainant from the said criminal case.

Complainant further alleged that Shiv Kumar J.E. also extended threat that if he (complainant) will not give the bribe money, then he will ask petitioner/accused Umed Singh inspector to arrest him (complainant). Thereafter, he (complainant) paid the bribe money of Rs. 5.50 Lacs to shiv kumar in the month of March but despite that petitioner/accused Umed Singh and Shiv Kumar JE are creating pressure upon him to pay the remaining amount of bribe money and in that context, Shiv Kumar JE had called him with bribe money of Rs. 1,00,000/- (One Lac).

Complainant further alleged that he does not want to give the bribe money to petitioner/accused Umed Singh and Shiv Kumar JE and requested that legal action be taken against them. Complainant further alleged that he is having the recording of accused persons regarding the alleged demand of bribe money. As such on the basis of version of complaint of complainant, a case FIR No. 10 dated 10.04.2023 u/s 384, 120-B IPC & 7, 7A, PC Act PS, SVB, Hisar registered against the petitioner and co- accused Shiv Kumar. Later on section 180 IPC & 13(1)(b) r/w 13(2) PC Act were added during course of investigation.

4. That thereafter, a raiding party was constituted under the supervision of Kailash Chand, DSP, ACB, Hisar (Deponent), and after doing the pre raid formal proceedings, a successful raid was conducted on Co- accused Shiv Kumar and tainted bribe money of Rs. 1,00,000/- (One Lac) was recovered from him in presence of independent witness i.e. Sh. Rahul, SDO, Irrigation Department, Safidon and Amit Kumar, JE, Irrigation Department, Safidon.

5. That during the course of investigation accused/petitioner was arrested on 10.04.2023.

3. Petitioner filed an application under Section 91 CrPC only on the grounds mentioned in para 2 of the said application:-

“That the Police has allegedly conducted the so-called investigation in the case and though has filed a formality sake Challan/Final Report under Section 173 Cr.P.C. in the Court, but after going through the said particular Challan it has been transpired that the Police intentionally has not got preserved the record in respect of Government vehicles and that of ACB Karnal Team, Registration Certificate of the vehicle and driving license of the driver, GPS location and mobile number and location used by the Duty Magistrate and other person accompanying with the said vehicle. Shri Rahul S.D.O., Water Services Sub- Division, Safidon was the Duty Magistrate alongwith the raiding party ic. ACB Karnal, but no record of the said particular team including that of Duty Magistrate has been preserved intentionally. Besides the CCTV footage of dated 10.04 2023 of the following areas has also not been obtained:-

1. Police Line Colony Gate for the time 5.30 PM to 6.30 PM.

X X X X X

3. S.P. Office, Hansi, District Hisar (Entrance Gate and EOW Office) for the time w.e.f. 6.00 PM to 9.00 PM.

4. ACB Police Station, Hisar for the time 2.00 PM to 10.00 PM.

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Besides it the previous call logs of all these employees including that of ACB team and duty magistrate has also not been preserved by the Police including that of complainant Sunil Kumar, resident of Village Dharam Kheri, District Hisar. The call logs of the following Numbers is to be preserved of dated 01.04.2023 to 11.04.2023-

1. 94169-xxxxx of Charan Singh, Inspector, ACB, Karnal.
X X X X X
3. 97233-xxxxx of Amit, J.E., Safidon;
4. 94162-xxxxx of Nafe Singh, A.S.I, ACB, Karnal;
5. 98136-xxxxx of Parveen Kumar, H.C., A.C.B, Karnal;
The calls logs of the following numbers is required for the period
w.e.f. 01.02.2023 to 11.04.2023.
6. 99921-xxxxx of Sunil Kumar Kharb (complainant)
7. 82220-xxxxx-Shiv Kumar accused No.1.

Besides it the copy of RC and name of driver and his driving license of the vehicle used by the ACB Team for conducting raid on dated 10.04.2023 is also to be directed to be obtained from the concerned team besides Roznamcha Report of dated 10.04.2023.

3. That in this manner a great prejudice being caused to the applicant/accused on account of non-preservation of the above records. The applicant has got every legal right to get preserved the records pertaining to the above record for all intents and purposes."

4. In para 3 of the application, the petitioner states that great prejudice is being caused to him on account of non-preservation of above records and he has legal right to get preserved the records. Petitioner did not mention one word to show that how he has been prejudiced. It has not been made part of the police report intentionally. In para 2, he simply says that it was intentionally not done but was not mentioned that for what malicious intention investigator has not done so.

5. Section 91 of CrPC is enabling provision vide which the concerned Court or any officer incharge of police station considers production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceedings under this Code, they may summon or call for the said records in terms of Section 91 CrPC. As such it is not the accused who has right to initiate such summoning but powers have been given either to the Court or to officer incharge of the police station. Vide this application, accused wanted the Court to exercise its powers and to enable the Court to exercise such powers, the accused stated that investigator intentionally did not preserve such CCTV footage and call records. The petitioner accused did not state any single reason for such malicious intent or that what prejudice has been caused by non-preservance.

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above said application on lack of special opportunities and not on the grounds as this Court is discussing. Be that as it may, even the reason given by the trial Court for dismissal, are valid but before any accused file application under Section 91 of CrPC., he must point towards the malicious intent which would cause prejudice to him or suspicion or whatever grounds, so that the concerned officer or the Court can take a decision considering such averments, which are absent in the present application.

7. Given above, such a cryptic application could not have been entertained and rightly dismissed. In the present criminal revision, the petitioner has taken additional points which were not part of the application. At the time of arguments, points which are not pleaded have been taken.

8. Counsel for the petitioner argued that trap was laid at Karnal, as such, Hisar Police had no jurisdiction to enter into Karnal. This point was never assumed in the application filed under Section 91 CrPC, as such petitioner has no legal right to address this argument. As mentioned in para 6 of the petition, petitioner's another ground is that since the complainant is a practicing advocate in District Court, Hisar and is well recognized by the Sessions Judge, Hisar, being member of Bar Association, Hisar, as such, it cannot be ruled out that the impugned order dated 05.09.2023 has been passed under his influence. This is absolutely unfair for the petitioner to level such uncalled and baseless allegations without substantiating the same. If this argument is taken as truthful, then every judge whatever prejudiced, in case any advocate comes before them and if judges have been posted in different courts, he would be interested in all such matters. This argument does not pass the test of prudence and it is liable to be rejected. Petitioner also tried to discuss all illegality in the trap which is not part of the petition, as such even that part cannot be considered and it is rejected.

9. Given above, there is no merit in the petition and the same is dismissed. Pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

19.12.2023
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.