

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-5992-2020 (O&M)
Date of Decision: 05.01.2024

Rajesh @ Raja and another

....Petitioner(s)

Versus

State of Haryana and another

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Kuldeep Khandelwal, Advocate, for the petitioners.

Mr. Naveen Kumar Sheoran, DAG, Haryana.

Mr. Bajrang Vats, Advocate, for respondent No.2.

JASGURPREET SINGH PURI, J.

1. The present is a petition filed under Section 482 of the Code of Criminal Procedure for quashing of impugned order dated 01.12.2018 (Annexure P-7) passed by learned Judicial Magistrate First Class, Hansi and also order dated 07.01.2020 (Annexure P-9) passed by learned Additional Sessions Judge, Hisar.

2. The brief facts of the present case which emerge from the submissions made by the learned counsel for the parties and also the pleadings of the case are that FIR No. 312 dated 10.08.2013, under Sections 323, 326, 341, 427 and 34 IPC, Police Station Sadar Hansi was lodged on the basis of statement of injured Krishan son of Bhalke Ram who stated that he works in Public Health Department, Village Umra and there is a dispute

of land which is pending in the Court between him and his brother namely, Subhash (Petitioner No.2). On 08.08.2013, after finishing his job, he was coming from village Umra towards his house which is constructed in the field, he planned to have some drink (alcohol). After reaching near Hansi-Umra road Dharmshala, he moved towards Hansi on his moped to get some snacks from a shop. At about 7.30 p.m when he reached near the field of Chhabila, Raja @ Rajesh son of Surajbhan (Petitioner No.1) and Subhash son of Bhalle Ram (Petitioner No.2) stopped him and asked as to where he was going to which he stated that he was going to get some stuff. There were two more unknown persons who had muffled faces who came and one of them hit him on his right shoulder with stick having in his hand and then another person hit him on his left eye-brow with stick having in his hand and then he fell down and Raja and Subhash hit him with sticks. All these three persons set him and his moped on fire by pouring oil and then they ran away. Due to his shouting and lighting of fire on his clothes, one person by the name of Raja son of Chhabila came running alongwith two more other persons who extinguished the fire by pouring water and then got him admitted to Government Hospital, Hansi by arranging a vehicle. Due to fire, his body was burnt upto chest and due to heavy burns and injuries, he was referred to PGIMS, Rohtak where he was taken by his family. Since he was not taken care of properly at PGIMS, Rohtak, his family brought him to Jindal Hospital, Hisar where he was admitted. It was further stated in the FIR by the aforesaid injured that Raja and Subhash (Petitioners) and two other persons inflicted injuries upon him due to enmity regarding property dispute and set him and his moped on fire and that he is fully conscious and action should be taken against them.

3. The aforesaid injured/complainant succumbed to injuries and died on 12.08.2013. The occurrence is of 08.08.2013, police registered the FIR on 10.08.2013 and complainant/injured died on 12.08.2013. The police after investigating the case prepared a cancellation report on 26.10.2013 which was sent to the Court on 11.01.2016. Notice of the cancellation report was issued to the complainant and the wife of the deceased filed a protest petition being not satisfied with the cancellation report on 10.05.2016. Upon hearing the protest petition, the learned JMIC, Hansi vide order dated 12.09.2016 observed that the matter needs further investigation in the interest of justice by a police officer not below the rank of Additional Superintendent of Police who shall file a status report in this regard. The wife of the complainant did not thereafter appear before the JMIC and the protest petition was dismissed in default. Thereafter, she filed an application for restoration of the protest petition which was restored and the matter was adjourned for filing FSL report. Thereafter vide impugned order dated 01.12.2018, the learned JMIC, Hansi disagreed with the cancellation report and observed that the present case warrants the Court to take cognizance against two accused (Petitioners) under Section 190 (1) Cr.P.C and the matter was fixed for 02.01.2019 for summoning of the petitioners and the complainant of the criminal complaint was also directed to file a copy of the complaint alongwith summons immediately. The aforesaid order passed by the learned JMIC, Hansi was assailed by the petitioners by filing a Revision petition before the learned Additional Sessions Judge, Hisar who after considering the submissions made by the learned counsel for the parties dismissed the Revision petition vide impugned order dated 07.01.2020 (Annexure P-9). The aforesaid two orders have been assailed by the

petitioners in the present petition under Section 482 of the Code of Criminal Procedure.

4. Learned counsel appearing on behalf of the petitioners submitted that the impugned orders passed by both the learned Courts below were erroneous and perverse. He submitted that after the lodging of the FIR the police had thoroughly investigated the matter by recording the statements of the residents of the village and also the statements of the persons who had extinguished the fire and had taken the injured Krishan to the hospital and after recording statement of one Dhanpati, sister of the complainant and after considering the FSL report as well as the report of the crime scene team had recommended the cancellation of the FIR. The call details of the petitioners were also taken into consideration by which it was found that one of the petitioners was not even present in the vicinity where the occurrence had taken place and after thorough investigation it was found that the deceased was travelling on moped and due to accident the moped caught fire and the deceased also received burns and it was not a case of inflicting of any injury to the deceased but it was a case of an accident and, therefore, the police rightly submitted a cancellation report before the learned JMIC. He also submitted that after the submission of the cancellation report, the learned JMIC without application of mind directed further investigation. Still after the matter was further investigated, the police submitted a cancellation report and a protest petition was filed by the wife of the deceased. He further submitted that a separate criminal complaint was also filed by the complainant i.e. the wife of the deceased and the learned Magistrate has now summoned the petitioners without following the procedure of recording of preliminary evidence etc. and purely on the

acceptance of the protest petition and disagreeing with the cancellation report, the learned Magistrate summoned the petitioners which is not permissible under the law. He also submitted that there was no material available on the record to show as to why the petitioners were summoned to face trial because there was no fresh evidence/material available with the Court in this regard. He submitted that both the orders of the learned Courts below are therefore liable to be set aside and quashed. He also referred to a judgment of the Hon'ble Supreme Court in *M/s Pepsi Foods Ltd. Versus Special Judicial Magistrate, [1998 (5) SCC 749]* to contend that before summoning of an accused the Magistrate should examine the evidence available on record and may even examine the witnesses put forth by the complainant and after due application of mind can exercise the discretion of summoning.

5. On the other hand, learned counsel appearing on behalf of respondent No.2 submitted that the petitioners were hand in glove with the police and despite the fact that the matter was investigated twice by the police, a cancellation report was submitted to the Court which was thereafter properly considered by the learned JMIC who decided not to accept the cancellation report on the basis of the facts and circumstances of the present case. He further submitted that it is a case where the complainant of the FIR/deceased himself had got recorded his statement before the police on the basis of which the FIR was registered and it was specifically stated in the FIR that he was hit by sticks which hit on his right shoulder and also on his left eye-brow and thereafter, the petitioners and two more persons had set him and his moped on fire by pouring oil and consequently his body was burnt upto chest. The occurrence had taken place on 08.08.2013 but the

police did not care to even reach the spot after being informed and deliberately delayed the registration of the FIR which was registered after two days i.e. on 10.08.2013. The first cancellation report was submitted by the police even without receiving of the FSL report and it was filed before the Court in haste and in connivance with the accused persons. He further submitted that specific injuries have been shown in the MLR by blunt weapon even on the left eye brow and therefore, the injuries in the MLR are in consonance with that of the version of the deceased in the FIR. He further submitted that the statement of the deceased should have been considered as a dying declaration but the police was in connivance with the accused persons and did not fairly investigate the case and therefore, the wife of the deceased had to file a criminal complaint before the learned JMIC in addition to the protest petition. He also referred to a judgment of the Hon'ble Supreme Court in *Vishnu Kumar Tiwari Versus State of Uttar Pradesh and another [2019 (8) SCC 27]* and submitted that when in a given case a Magistrate takes a cognizance by disagreeing with the police report then such a cognizance is not a cognizance taken on a complaint but it is on the police report and therefore, the complainant was not required to be examined.

6. I have heard the learned counsel for the parties.

7. In the present case, the State has chosen not to file any reply to the present petition. Similarly, respondent No.2 has also not chosen to file reply and rather he had specifically stated before this Court on 17.08.2023 that he does not intend to file the reply.

8. Learned Judicial Magistrate First Class by passing the impugned order Annexure P-7 decided the protest petition which was filed

by the wife of the deceased in the aforesaid FIR. Learned Magistrate discussed the arguments raised by the learned counsel for the complainant that the occurrence had taken place on 08.08.2013 at 7.30 p.m and the injured was admitted in General Hospital, Hansi but the Medical Officer of the aforesaid hospital did not send any medical ruqqa to the police despite the fact that there were 85% burn injuries. Thereafter when the deceased was shifted to one Jindal Hospital, then ruqqa was sent to the police and thereafter, the police reached the hospital after two days i.e on 10.08.2013. The learned Magistrate also discussed that the police has not investigated the case from the angle of specific allegations of sustaining injuries including very serious burn injuries and did not treat the statement of the deceased as a dying declaration. Injury No.2 as per MLR is stated to be a lacerated wound of size 2.5 cm x .5 cm on the left eye brow and the other injuries were also in consonance with the ocular version of the injured. The cancellation report was prepared by the police on 26.10.2013 without waiting for the outcome of the FSL report which raises serious doubts about the genuineness of the prosecution version. Furthermore, the police was also silent about any hole in the oil tank of the moped and the police did not care to take the expert opinion about the origin of the fire. The complainant has also taken an objection that when the senior officers of the police have filed reply to the queries put by the Court, the same were not properly answered which shows extreme official apathy and indifference on the part of the police. The learned JMIC considered the submissions of the learned counsel for the complainant as well as learned APP and came to the conclusion that the police has failed to satisfy the Court regarding the cancellation report. Specific reasons were given by the learned JMIC in para

No.11 of the aforesaid impugned order in which it has been so observed that the manner in which the Medical Officer, General Hospital, Hansi failed to send the ruqqa to the police in such a critical case of burn injuries of 85%, extreme apathy on the part of the police to take action immediately, failure to take the opinion of Medical Officer, who medico-legally examined the injured at General Hospital, Hansi as well as the opinion of the treating doctor at Jindal Hospital, Hisar, filing of the cancellation report without waiting for FSL report, non-production of call details of the accused named in the complaint, failure on the part of the police to treat the first and last version of injured as dying declaration and specific names given by the injured who inflicted injuries to him clearly warrant that the Court should take cognizance against two accused who are the present petitioners under Section 190 (1) of Cr.P.C.

9. On a Revision petition being preferred by the petitioners, the learned Additional Sessions Judge also discussed the submissions of the learned counsel for the parties based upon record and came to the conclusion that there is no merit in the Revision petition and therefore, dismissed the petition. The learned Additional Sessions Judge observed that in the present case there is direct accusation of the complainant/injured before his death against the accused. The learned Additional Sessions Judge further observed that as per PMR there were injuries on the person of Krishan Kumar and therefore clearly there was an attack on him. In the proceedings under Section 175 Cr.P.C also, Sushil and Anil, sons of deceased Krishan Kumar have stated that they had taken their father to the hospital for treatment and they had enquired from their father about the injuries on which their father had told them about the causing of the same

by the present petitioners and two more persons who were having muffled faces. The learned Additional Sessions Judge further observed that when there is specific allegation against the accused for stopping and causing of the injuries which were further corroborated by the MLR and PMR and there is no question of dispute of identity as the assailants are close relatives, the order passed by the learned JMIC does not suffer from any illegality.

10. In the present case, the FIR came to be lodged on 10.08.2013 whereas the occurrence had taken place on 08.08.2013. The complainant /injured died on 12.08.2013. There are direct and specific allegations against the present petitioners in the FIR pertaining to causing of injuries by sticks on the shoulder and on the left eye. The aforesaid injuries appear to be also in consonance with the MLR where there is a lacerated wound on the left eye brow. The arguments which were raised by the learned counsel for the petitioners that since there was a criminal complaint by the wife of the complainant as well as the protest petition, then the learned Magistrate could not have summoned the petitioners without recording of the evidence of the complainant is unsustainable. A perusal of the impugned order passed by the learned JMIC would show that the impugned order has been passed on the protest petition itself and not on the criminal complaint filed by the wife of the deceased. The opening words of the impugned order passed by learned JMIC as well as the concluding words would show that the impugned order has been passed on the protest petition only and so far as the complaint is concerned, the complainant was directed to file a copy of the complaint. The learned Magistrate had directed the summoning of the accused under Section 190 (1) Cr.P.C on the acceptance of the protest petition. The reliance placed by the learned counsel for respondent No.2 on

the judgment of the Hon'ble Supreme Court in *Vishnu Kumar Tiwari (Supra)* is well placed. Whenever a Magistrate takes cognizance by disagreeing with the police report then it cannot be said that the Magistrate is taking cognizance on the basis of the complaint but it is on the basis of non-acceptance of the cancellation report and acceptance of the protest petition and therefore, on this ground it cannot be said that the impugned order was bad in law. Another argument was raised by the learned counsel for the petitioners that in the summoning order the provision under which summoning was to be ordered has not been mentioned. The aforesaid argument of the learned counsel for the petitioners is also not sustainable in view of the fact that the summoning has been made in the FIR which has been registereed under specific provisions and this aspect has been dealt with by the learned Sessions Judge while deciding the Revision petition. It was observed by the learned Additional Sessions Judge that non-mentioning of the sections in the impugned order is an irregularity and not an illegality because the accused have been ordered to be summoned taking cognizance of the matter in the protest petition filed against the cancellation of an FIR for the alleged commission of the offences under Sections 323, 326, 341, 427 and 34 IPC. The reasoning given by the learned Additional Sessions Judge does not suffer from any perversity and therefore such a plea taken by the learned counsel for the petitioners is devoid of any merit. The reliance placed by the learned counsel for the petitioners on the judgment of the Hon'ble Supreme Court in *M/s Pepsi Foods Ltd. (Supra)* is also not sustainable in view of the fact that the present case is a case where protest petition filed by the wife of the deceased was considered by the Magistrate and thereafter it was directed to summon the accused and therefore, the

aforesaid judgment is distinguishable from the facts of the present case.

11. This Court is of the considered view that the learned JMIC has properly appreciated the facts of the case and on being satisfied has accepted the protest petition and did not agree with the cancellation report filed by the police and therefore rightly directed that the petitioners be summoned. The learned Revisional Court has also thoroughly examined the facts of the case and after due application of mind has dismissed the revision petition. This Court does not find any illegality or infirmity or perversity in the impugned orders passed by the learned JMIC, Hansi and also by the learned Additional Sessions Judge, Hisar.

12. Consequently, the present petition is dismissed.

05.01.2024

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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