

CRM-M-9253-2022
Date of decision: 21.02.2024

Sandeep Singh @ Sunny and anotherPetitioners

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Arshdeep Singh Cheema, Advocate
for the petitioners.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR No.210 dated 03.10.2019 under Sections 177/417/182/120-B of IPC registered at Police Station Phase-1, District SAS Nagar (Annexure P-1), report under Section 173 Cr.P.C. (Annexure P-13) along with all consequential proceedings arising therefrom.

The FIR (*supra*) was registered on the allegations that when the jurisdictional police authority went to the house of petitioner No.1 to serve the notice under Section 41-A Cr.P.C. for joining the investigation in case bearing FIR No.190 dated 08.09.2019 under Sections 420/465/467/468/471/120-B of IPC registered at Police Station Phase-1, Mohali, HC, Parshotam Singh prepared his report regarding service of notice which was written on the back side of notice to the effect that on the address given by petitioner No.1, Roshan Lal Sharma was found residing who informed the serving official that he has

purchased this house from petitioner No.1 and petitioner No.1 has gone away after selling this flat about one year ago and he is not residing at this address. At the time of obtaining anticipatory bail from the concerned Court, petitioner No.1 has furnished wrong address despite having knowledge and after obtaining his anticipatory bail, he joined the investigation on 02.10.2019 in FIR No.190 dated 08.09.2019. At the time of joining investigation also, he provided the same address knowing fully well that he has already sold this flat. He furnished a copy of his Aadhar Card having the same address. Petitioner No.2 who stood surety for petitioner No.1 has also furnished the wrong address of petitioner No.1 in the Court as well as to the police, as such, FIR under Sections 177/417/182/120-B of IPC was registered against the petitioners.

Learned counsel for the petitioners *inter alia* contends that a bare perusal of the FIR clearly indicates that no cognizable offence is alleged to have been committed by the petitioners as such, the very registration of the FIR is not legal in view of the provisions contained under Section 155 of Cr.P.C. and on this ground alone, the FIR (*supra*) along with final report are liable to be quashed. He further relies upon the judgments of the Hon'ble Supreme Court in 'State of Haryana Vs. Bhajan Lal and others' 1990 Supp (1) SCC 335 and 'Keshav Lal Thakur Vs. State of Bihar' (1996) 11 SCC 557.

Per contra, the learned State counsel submits that the petitioner is liable for providing false information at the time of procuring anticipatory bail and also at the time of submission of surety bonds.

Having heard learned counsel for the parties and after perusal of the record, the statutory provision provided under Section 155 Cr.P.C. provides

that in case an information as to the non-cognizable offence received by an officer Incharge of the Police Station, he has to refer the same to the Magistrate concerned and police officer cannot investigate the non-cognizable offence without obtaining an order from the Magistrate under Section 155 (2) of Cr.P.C. Admittedly, no such order was passed in the instant case, neither jurisdictional police authorities has followed the drill of Section 155 (1) of Cr.P.C. The perusal of the allegations contained in the FIR as well as the final report i.e. Annexure P-1 & P-13, respectively, indicates that no offence under Section 417 of IPC is made out and so far as the offences under Sections 177/182 of IPC are concerned, it would attract the bar under Section 195 of Cr.P.C. and without the complaint filed by the public servant concerned, no Court take cognizance.

The Hon'ble Supreme Court in ***Keshav Lal Thakur (supra)*** has made the following observations:-

*3. We need not go into the question whether in the facts of the instant case the above view of the High Court is proper or not for the impugned proceeding has got to be quashed as neither the police was entitled to investigate into the offence in question nor the Chief Judicial Magistrate to take cognizance upon the report submitted on completion of such investigation. On the own showing of the police, the offence under Section 31 of the Act is non-cognizable and therefore the police could not have registered a case for such an offence under Section 154 CrPC. Of course, the police is entitled to investigate into a non-cognizable offence pursuant to an order of a competent Magistrate under Section 155(2) CrPC but, admittedly, no such order was passed in the instant case. That necessarily means, that neither the police could investigate into the offence in question nor submit a report on which the question of taking cognizance could have arisen. While on this point, it may be mentioned that in view of the Explanation to **Section 2(d) CrPC**, which defines 'complaint', the police is entitled to submit, after investigation, a report relating to a non-cognizable offence in which case such a report is to be treated as a 'complaint' of the police officer concerned, but that explanation will not be available to the prosecution here as that relates*

to a case where the police initiates investigation into a cognizable offence — unlike the present one — but ultimately finds that only a non-cognizable offence has been made out.

4. On the conclusions as above we allow this appeal and quash the impugned proceedings.

Similar views have been expressed by the Hon’ble Supreme Court in *State of Haryana (supra)*, relevant para of the same is as under:-

‘(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.’

In view of the above, the FIR No.210 dated 03.10.2019 under Sections 177/417/182/120-B of IPC registered at Police Station Phase-1, District SAS Nagar (Annexure P-1), report under Section 173 Cr.P.C. (Annexure P-13) along with all consequential proceedings arising therefrom, are hereby quashed *qua* the petitioners.

(HARPREET SINGH BRAR)
JUDGE

21.02.2024
Neha

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