

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Date of Decision:-03.04.2024

CRM-M-44440-2018

Neeraj.

.....Petitioner.

Versus

Chander Bose & Anr.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Pawan Kumar Hooda, Advocate for the Petitioner.

Mr. Kamal Mor, Advocate for the respondent no.1.

Mr. Rajiv Goel, Deputy Advocate General, Haryana.

JASJIT SINGH BEDI, J.

The prayer in this petition under Section 482 Cr.PC is for quashing of the complaint No.12/2016 dated 25.04.2016 (Annexure P-1) titled as Chander Bose Vs. State of Haryana & Anr. under Sections 394/34 IPC filed by the complainant against the untraced report dated 30.01.2016 in case FIR No.143 dated 15.04.2014 under Sections 394/34 IPC P.S. Matlauda, District Panipat in which the petitioner has been summoned to face trial under Sections 394/34 IPC vide impugned summoning order dated 07.06.2017 (Annexure P-2).

2. The brief facts of the case are that the FIR No.143 dated 15.04.2014 under Sections 394/34 IPC P.S. Matlauda, District Panipat came to be instituted at the instance of the complainant/respondent no.2 with the

allegations that three unknown persons had robbed his son of a Mahindra Maxico bearing no.HR-69-A-1401 on 06.01.2014. The copy of the FIR is attached as Annexure P-3 to the present petition.

After conducting a detailed investigation and subjecting the petitioner to a Polygraphy examination an untraced report was submitted on 13.01.2016 (Annexure P-5). The relevant extract of the same is reproduced as under:-

“ Thereafter SI Anand Prakash was transferred and the case investigation was conducted by ASI Krishan Police Post Incharge Urlana. During investigation complainant's son Gurdeep s/o Chandrabose was summoned and details of the site were procured. Dump Expert Constable Nisal Ali DPO PPT's statement was recorded As per the aggrieved boy Gurdeep's statement the portraits of accused were prepared by Cyber Branch and as per portrait persons were included in the investigation but no was found about the accused or the clue material lost in the case. That the investigation has already been delayed a lot and now there in no point to further continue the investigation. Therefore, in the case report is submitted. Incase in near future if any clue is found about the case then investigation will again be conducted. Complainant has been informed about the same separately. Thereafter in the case investigation were conducted as per instructions of officers by CIA-I Panipat. During investigation detailed questioning was conducted and accused Neeraj s/o Rajesh r/o Lajwana District Jind on dated 02.07.2015 was undergone Polygraph Test but in the case no clue has been found so far despite several efforts. Therefore, in the said case report is being submitted again on dated 29.01.2016.

Report is submitted.

*Sd/- ASI
PP Urlana
Dt.30/1/2016”*

3. Against the filing of the aforementioned untraced report a protest petition was filed by the petitioner(complainant) on 25.04.2016. The copy of the same is attached as Annexure P-1 to the petition.

4. The Court ordered an enquiry under Section 202 Cr.PC which report once again exonerated the petitioner. The copy of the said report dated 11.04.2017 is attached as Annexure P-7 to the present petition and is also reproduced hereinbelow:-

“ Sir,

Complaint Letter has been received from Chandra Bose s/o Zile Singh r/o Khaspur Khurd Tehsil Gohana District Sonapat to State of Haryana through Superintendent of Police Panipat against Neeraj son of Sh.Rajesh Kumar r/o Village Lajwana Kalan, Tehsil Julana, District Jind, in the Court of Ms.Sonia Sheokand JMIC, Panipat at Sr.No. 15 dated 01.02.2017, Case No. 12116 Dated 25.04.2016 which was received via Post in Police Post Urlana Kalan, Panipat. Regarding the same complainant party and respondent party were included in investigation and their statements have been included in the case. relevant During persons the investigation which include other Ramphal Sarpach s/o Rishala, Ran Singh s/o Babu Lal, Jugal Kishore s/o Nathu Ram, Ram Mehar s/o Duli Chand and Krishan Kumar s/o Sheondhi Ram r/o Lijwana Kalan Police Station Julana District Jind and they have submitted their respective affidavits regarding character and conduct of Respondent Neeraj s/o Rajesh Kumar Caste Brahmin r/o Lijwana Kalan. The same are enclosed in the case.

Complainant Chandra Bose has filed case no.143 dated 15.04.2014 u/s 394 & 34 IPC PS MTD Panipat against unknown accused. During the investigation of the same no clue was found of accused and material and thereafter in the case on dated 30.01.2016 report has been submitted.

Complainant Chandra Bose in the year 2015 has submitted complainant letters to senior officers and different officers have conducted investigations of separately but no allegation has been proven.

In this regard, CIA, Panipat has conducted separate investigation. During the investigation response Neeraj's Polygraphic Test was conducted at FSL Madhuban. That in the Polygraphic test also accused Neeraj has been found innocent. Polygraphic Test photo copy is enclosed.

Case No.143 Dated 15.04.2014 u/s 394 & 34 IPC PS MTD Panipat investigation and the investigation conducted till date by various officers and polygraphic test report conducted by FSL Madhuban are enclosed and Medical report and statements of various persons regarding respondent Neeraj are also enclosed. The allegations could not proven against be respondent Neeraj. That Respondent Neeraj has been found innocent and the allegations leveled in Complainant letter are found to be false.

Report is submitted.

*Sd/ Vijender Singh, HC 122
Police Post Urlana Kalana,
Police Station Matlauda, Panipat
Dated 11.04.2017"*

5. Despite the report under Section 202 Cr.PC exonerating the petitioner, he came to be summoned to face trial for having committed the offences under Sections 394/34 IPC by the Court of Judicial Magistrate Ist Class, Panipat vide order dated 07.06.2017 (Annexure P-2).

6. The protest petition/complaint dated 25.04.2016 (Annexure P-1) and the summoning order dated 7.6.2017 (Annexure P-2) are under challenge in the present petition.

7. The Counsel for the petitioner contends that there is absolutely no evidence available against the petitioner for having committed the offences in question. The investigating agency conducted a detailed investigation and subjected the petitioner to a polygraphy examination. It was only then that the untraced report was filed. In fact it was the complainant who had refused to subject himself to the said polygraphy test. Even pursuant to the filing of the protest petition an enquiry under Section 202 Cr.PC was held which also culminated in favour of the petitioner. Despite the said enquiry report, the petitioner had been summoned vide a non speaking order on the grounds that meticulous examination of evidence was not required and only *prima facie* allegations were to be considered. In

the present case there was no evidence at all against the petitioner. In fact the petitioner was an army personnel with clean antecedents. He therefore contends that in the absence of any evidence whatsoever the protest petition/complaint and the summoning order were liable to be quashed.

8. The Counsel for the complainant on the other hand contends that for the purposes of issuance of process against the accused, the court was not required to scan the evidence in a manner so as to acquit or convict the accused and only the broad allegations of the case were to be considered. Therefore, no fault could be found with either the complaint or the consequential summoning order and the present petition was liable to be dismissed.

9. The Counsel for the State while not disputing the factual narration of the petitioner including the fact that the investigating agency had found him to be innocent contends that as the petitioner had been summoned by the Court, the present petition was liable to be dismissed.

10. I have heard Counsel for the parties.

11. When this matter had come up for hearing on 08.10.2018 the following order was passed:-

“ Counsel for the petitioner submits that admittedly the Police had investigated the matter and had not found the petitioner to be involved in the incident. Even thereafter, the Magistrate had directed the Police to investigate the matter under Section 202 of Cr.P.C. Even in this special investigation, the petitioner was found to be innocent. Still; for oblique motive, the complainant has named the petitioner as the accused, despite the fact that even in the polygraphy test, the petitioner was found to be not involved in the case. It is further contended by the counsel that, on the contrary, the complainant had refused to undergo the polygraphy test. Therefore, adverse inference is bound to be drawn against him. The Magistrate has acted only as a Post Office and has mechanically summoned the present petitioner. In the end, the counsel contends that the

petitioner is serving in the Army and he has no such track record of being involved in any unlawful activities.

Notice of motion for 01.02.2019.

In the meantime, further proceedings against the petitioner shall remain stayed.”

12. A perusal of the record would reveal that the FIR was registered after a substantial delay and that to at the instance of the petitioner who happens to be the father of the victim Gurdeep. During the course of the investigation absolutely no substantive evidence was found against the petitioner other than him being purportedly identified by the victim. Therefore, he was subjected to a polygraphy test, which report (Annexure P-6) culminated in his exoneration. On the contrary the complainant did not subject himself to a polygraphy test. It was in that situation that an untraced report was filed. The petitioner/complainant filed a protest petition in which the court ordered to hold an enquiry under Section 202 Cr.PC. The said report also culminated in favour of the petitioner holding that there was absolutely no evidence available against him. Despite the said enquiry report the petitioner has been summoned to face trial vide the impugned order which is completely non speaking. In fact it appears that the Trial Court was at pains to explain as to why at the stage of issuance of process against the accused, it was not required to scan the evidence in a detailed manner. What the summoning court did not consider is that in the instant case, there was absolutely no credible evidence whatsoever inculcating the petitioner and, therefore, he ought not have been summoned at all.

13. In view of the aforementioned discussion, I find considerable merit in the present petition and therefore the protest petition/complaint No.12/2016 dated 25.04.2016 (Annexure P-1) titled as Chander Bose Vs. State of Haryana & Anr. under Sections 394/34 IPC filed by the

complainant, summoning order dated 07.06.2017 (Annexure P-2) and all consequential proceedings arising therefrom stand quashed.

(JASJIT SINGH BEDI)
JUDGE

April 03, 2024
Vinay

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