



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

1. CRM-M-30932-2022
Reserved on : 14.11.2024
Pronounced on : 03.12.2024

Hardyal Inder SinghPetitioner

Versus

State of PunjabRespondent

2. CRM-M-28881-2022
Reserved on : 14.11.2024
Pronounced on : 03.12.2024

Hardyal Inder SinghPetitioner

Versus

State of PunjabRespondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Sunil Chadha, Sr. Advocate with
Mr. Akshay Chadha, Advocate,
Mr. Tara Dutt, Advocate and
Mr. Raghav Chadha, Advocate
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

MANJARI NEHRU KAUL, J.

1. This order shall dispose of above-referred two petitions as they both arise out of the same FIR and similar questions of facts and law are involved in them.

2. The petitioner in CRM-M-30932-2022 is seeking quashing/setting aside of order dated 14.07.2022 passed by learned Additional Chief Judicial Magistrate, Ludhiana vide which the petitioner had been declared as a proclaimed person and proceedings



CRM-M-30932-2022
CRM-M-28881-2022

under Section 174-A of the IPC had been directed to be initiated against him; in addition, to trace out his property and furnish the list thereof before the Court in case FIR No.44 dated 28.02.2022 under Section 380 of the IPC (Sections 411, 427, 454, 409, 201 and 120-B of the IPC added lateron) registered at Police Station Division No.5, Ludhiana. In **CRM-M-28881-2022**, the petitioner is seeking quashing of order dated 04.07.2022 vide which cancellation report dated 19.05.2022 submitted by the prosecution had been discarded and instead a direction had been issued to the investigating officer of the aforementioned FIR to apprise the Court within a week therefrom, regarding his stance qua the petitioner, regardless of the inquiry conducted by the DCP (Detective), Ludhiana.

3. Learned senior counsel for the petitioner contends that the learned Trial Court, vide impugned order 14.07.2022, erroneously declared the petitioner as a proclaimed person in contravention to the statutory requirements under Section 82 of the Cr.P.C. It is argued that the mandatory procedure prescribed under Section 82 of the Cr.P.C., including affixation, public proclamation, and adherence to the time prescribed, was not complied with.

4. Learned senior counsel for the petitioner further submits that it is a matter of record that the petitioner was neither named in the FIR in question nor was any role attributed to him. In support, learned senior counsel has drawn the attention of this Court to the challan dated 16.04.2022, which was presented solely against Chetan Kumar and Deepak Dogra, with the petitioner being placed in column No.2.



CRM-M-30932-2022
CRM-M-28881-2022

Learned senior counsel has highlighted that the brother of the petitioner had moved an application dated 08.03.2022 before the Commissioner of Police, Ludhiana, asserting the innocence of the petitioner. This application was marked to Deputy Commissioner of Police (DCP), Detective, Ludhiana, for inquiry.

5. The inquiry, conducted by the DCP, Detective, Ludhiana, concluded that there was insufficient evidence linking the petitioner to the alleged criminal conspiracy involving the theft of a judicial file from the Court of learned CJM, Ludhiana. The findings were endorsed by the Commissioner of Police, Ludhiana, who recommended that the petitioner be declared innocent. This recommendation was further corroborated by legal opinions obtained from the District Attorney (Legal).

6. Learned senior counsel has still further emphasized that the prosecution, relying on the inquiry report dated 19.05.2022, had itself filed an application dated 01.07.2022 seeking the recall of the non-bailable warrants issued against the petitioner. It is contended that the learned Trial Court failed to consider the findings of the inquiry and the application moved by the prosecution, and instead proceeded to declare the petitioner as a proclaimed person without waiting for the expiration of the 30 days period, mandated under Section 82 of the Cr.P.C.

7. In CRM-M-28881-2022, learned senior counsel has contended that the learned Trial Court erred in taking cognizance of the offence against the petitioner while dealing with an application (Annexure P-6) filed by the prosecution seeking the recall of the arrest



CRM-M-30932-2022
CRM-M-28881-2022

warrants and proclamation issued against the petitioner, which application remained practically undecided. While drawing the attention of this Court to the impugned order, annexed as Annexure P-10, learned senior counsel submits that the report dated 19.05.2022, prepared by the DCP Investigation, Ludhiana, had been erroneously discarded by the learned Trial Court on the ground that it constituted a parallel enquiry, while relying on a judgment dated 18.03.2021 passed by a Coordinate Bench of this Court in ***Pankaj Kumar @ Panki Vs. State of Punjab, CRM-M-16013-2020, decided on 18.02.2021***. It has been contended that this judgment, however, was challenged before the Hon'ble Supreme Court vide SLP (Crl.) No. 5016 of 2021. The Hon'ble Supreme Court, in its interim order dated 19.07.2021, stayed the operation of the said judgment to the extent of quashing the instructions issued vide Notification No. 3903-50/CRLA-3 dated 04.05.2017 and subsequently Hon'ble the Supreme Court, in its order dated 29.04.2022, set aside the impugned judgment and quashed the said instructions. Learned senior counsel has vehemently contended that the reliance placed by the learned Trial Court on ***Pankaj Kumar @ Panki's case (supra)*** to discard the enquiry report is, therefore, legally flawed.

8. It has further been submitted by the learned senior counsel that even otherwise the report dated 19.05.2022 cannot, by any stretch of imagination, be termed as a parallel enquiry, as the original challan itself mentioned that the enquiry regarding the petitioner was pending and there was no other investigation or material in the FIR (Annexure P-1) indicating any role of the petitioner. Even the cancellation report,



CRM-M-30932-2022
CRM-M-28881-2022

prepared and based on the said report, categorically stated that the petitioner was found innocent during the investigation, and subsequently DCP Investigation, Ludhiana, and the District Attorney (Legal) both concluded that the petitioner had no involvement in the alleged offence.

9. Learned senior counsel while drawing the attention of this Court to the enquiry report has further argued that it was prepared by the same officer, DCP Investigation, Ludhiana, who was directed by the Commissioner of Police, Ludhiana, on 02.03.2022 to supervise the investigation after the registration of the FIR and the reasons provided in the report for declaring the petitioner innocent are self-explanatory, which were not addressed by the learned ACJM, Ludhiana, while discarding the report and ordering further investigation against the petitioner.

10. *Per contra*, learned State counsel while opposing the prayer and submissions made by the learned senior counsel for the petitioner, has asserted that the declaration of the petitioner as a proclaimed person was in compliance with the provisions of Section 82 of the Cr.P.C. It is submitted that the petitioner was duly informed of the charges against him and that multiple attempts were made to secure his presence, including public reading of the proclamation in a crowded area, near his residence and affixation of the proclamation at conspicuous places such as his residence and the notice-board of the Court. Despite all these efforts, the petitioner failed to appear before the authorities.



CRM-M-30932-2022
CRM-M-28881-2022

11. However, it is not disputed by the learned State counsel that the prosecution, after the inquiry report dated 19.05.2022, had moved an application on 01.07.2022 seeking the recall of the non-bailable warrants against the petitioner. It has also been acknowledged on instructions, that the challan was presented only against Chetan Kumar and Deepak Dogra, with the petitioner being kept in column No.2; while the prosecution had initially sought the issuance of non-bailable warrants against the petitioner due to his non-cooperation during investigation, the subsequent inquiry exonerated him of involvement, leading to the application for recall.

12. Learned State counsel has argued that the procedural formalities under Section 82 of the Cr.P.C. were duly followed before the petitioner was declared a proclaimed person, but he has not disputed the sequence of events concerning the application for recall of the order by the prosecution.

13. I have heard learned counsel for the parties and perused the relevant material on record.

14. Before delving into the merits of the present case, it is imperative to encapsulate the facts leading to its filing:

(i) On 28.02.2022, an FIR was registered on the statement of Karan Kumar, Ahlmad of the District Court who alleged certain criminal acts. The FIR stands reproduced hereinunder:-

“Statement of Karan Kumar son of Rajinderpal, Ahlmad in the Hon'ble Court of Sh. Sumit Makkar C.J.M. Ludhiana, Age about 34 Years, Mob. No. 94633-07355. I hereby state that I am posted as Ahlmad in the Hon'ble Court of Sh. Sumit Makkar C.J.M. Ludhiana. Judicial files of criminal



CRM-M-30932-2022
CRM-M-28881-2022

cases pending in court remain under our possession. Our office is in front of court of C.J.M. Sahib. Apart from me, 3 other employees also work with me in office. We open our office at about 9:00 AM and close at about 5:30 PM daily. We lock the gate of our office and all employees working in our office have separate keys of lock. On dt. 25.02.2022 our office was opened at about 9:00 AM and in evening our employee Sachin had locked the office at about 5:30 PM and due to two day court holiday we had gone to our houses. On dt. 27.02.2022 at time about 7:30 PM I received phone call of Chowkidar Rajinder Singh that your office is not locked and door is bolted from outside. Whereupon, I alongwith Civil Ahlmad Shekhar Bansal went to my office at District Court Complex Ludhiana and saw that our office was not locked and the door was bolted from outside. I opened the door and went inside and saw that Computer Screen Sr. No. UXB1JSIC21H1756623 was missing. I have doubt that any unknown person has stolen the computer screen by breaking the lock of Ahlmad Office. Necessary legal action be taken. Statement got recorded, heard, is correct. Sd/- Karan Kumar.”

(ii) Subsequent investigation in the matter revealed, through CCTV footage, statements made by the witnesses, and disclosure statements of the co-accused, that not only a computer but also a judicial file had been stolen. Co-accused Chetan Kumar disclosed that he was paid by co-accused Deepak Dogra to steal the judicial file. Co-accused Deepak Dogra, in his disclosure statement, implicated the petitioner, alleging that the theft was carried out at the behest of the petitioner, and thereafter the stolen judicial file was handed over to him; the petitioner allegedly arranged thereafter for the judicial file to be kept at one Ali Saloon.

(iii) During investigation, the stolen judicial file was recovered from Ali Saloon, where its owner Ali, gave a statement under Section 161 of the Cr.P.C., confirming that the petitioner, a regular customer,



CRM-M-30932-2022
CRM-M-28881-2022

had telephonically requested him to keep the judicial file with him.

(iv) While a challan was presented against co-accused Chetan Kumar and Deepak Dogra, the investigation regarding the petitioner remained pending, as he evaded arrest. Upon an application moved by the investigating agency, arrest warrants were issued against the petitioner, followed by non-bailable warrants (NBWs) on 28.04.2022. Despite issuance of NBWs, the petitioner could not be apprehended. On 18.05.2022, the NBWs were returned unexecuted, with the report indicating non-cooperation from the family of the petitioner, who purportedly did not divulge any information qua his whereabouts. Consequently, proclamation under Section 82 of the Cr.P.C. was issued against the petitioner for 04.07.2022.

(v) Meanwhile, the brother-in-law of the petitioner submitted a representation on 09.03.2022 before the Police Commissioner, Ludhiana, asserting the innocence of the petitioner. Pursuant to this, the Deputy Commissioner of Police (DCP) conducted an inquiry and exonerated the petitioner.

(vi) On 01.07.2022, the investigating agency filed an application to recall the arrest warrants and proclamation against the petitioner, citing the inquiry report of the DCP. However, the learned Trial Court vide order dated 04.07.2022 rejected the application and also rejected the inquiry report. Learned Trial Court also noted that the proclamation period of 30 days had expired, and the petitioner had not still appeared, leading to him being declared a proclaimed person. The learned Trial Court also directed the investigating agency to apprise



CRM-M-30932-2022
CRM-M-28881-2022

regarding its stance qua the petitioner vide another order dated 04.07.2022.

(vii) On 14.07.2022, the learned Trial Court again enquired about the position of the investigating agency qua the petitioner wherein the innocence of the petitioner was reiterated in terms of the inquiry report submitted by the DCP. After evaluating the material on record, including the statements of witnesses made under Section 161 of the Cr.P.C. and the disclosure statements of the co-accused, the learned Trial Court concluded that the exoneration of the petitioner was not substantiated. The learned Trial Court further took cognizance against the petitioner, dismissed the application moved by the investigating agency for recalling the proclamation, and directed for initiation of proceedings under Section 174-A of the IPC.

15. Learned senior counsel for the petitioner has raised two grievances : (i) the learned Trial Court erred in discarding the inquiry report of the DCP by relying on judgment of this Court in ***Pankaj Kumar @ Panki's case (supra)***, which had been stayed by Hon'ble the Supreme Court, and (ii) declaration of the petitioner as a proclaimed person was premature, as the investigating agency had filed an application for recalling the arrest warrants and proclamation before expiry of 30 days.

16. The petitioner has also challenged the order dated 04.07.2022, whereby the learned Trial Court, relying on the judgment in ***Pankaj @ Panki's case (supra)***, rejected the inquiry report and directed the investigating agency to clarify its position. However, this



CRM-M-30932-2022
CRM-M-28881-2022

order subsequently culminated in the order dated 14.07.2022, wherein the learned Trial Court, noting the stay granted by Hon'ble the Supreme Court in ***Pankaj @ Panki's case (supra)***, proceeded to take cognizance against the petitioner.

17. The pivotal question that arises for consideration before this Court is whether the learned Trial Court acted within its authority or committed any illegality by rejecting the inquiry report, which had exonerated the petitioner, and by proceeding to take cognizance against him.

18. This Court finds no merit in the grounds raised by learned senior counsel for the petitioner for the reasons to follow:

(a) **Scope of powers of a Magistrate under Section 173(2) of the Cr.P.C.:** It is settled law that upon presentation of a police report under Section 173(2) of the Cr.P.C., a Magistrate may :

- accept the report, take cognizance, and issue process;
- disagree with the report and drop proceedings; or
- direct further investigation.

Furthermore, if the Magistrate discerns from the police report that a person not arraigned as an accused, is prima facie involved, cognizance can be taken against such a person under Section 190(1)(b) of the Cr.P.C. This legal position has been settled by Hon'ble the Supreme Court in ***Dharampal and others Vs. State of Haryana and another : 2014 (3) SCC 306*** and reaffirmed by the Apex Court in ***Nahar Singh Vs. State of Uttar Pradesh and another : 2022(2) RCR (Criminal) 492***. It would be relevant to refer to the following



CRM-M-30932-2022
CRM-M-28881-2022

observations of the Constitution Bench in *Dharampal's case (supra)*:-

“35. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(2) CrPC. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.”

It would also be apposite to reproduce the relevant observations of Hon'ble the Supreme Court in *Nahar Singh's case (supra)*, wherein the following position of law was reiterated:-

“20. In the cases of Raghubans Dubey (supra), SWIL Ltd. (supra) and Dharam Pal (supra), the power or jurisdiction of the Court or Magistrate taking cognizance of an offence on the basis of a police report to summon an accused not named in the police report, before commitment has been analysed. The uniform view on this point, irrespective of the fact as to whether cognizance is taken by the Magistrate under Section 190 of the Code or jurisdiction exercised by the Court of Session under Section 193 thereof is that the aforesaid judicial authorities would not have to wait till the case reaches the stage when jurisdiction under Section 319 of the Code is capable of being exercised for summoning a person as accused but not named as such in police report. We have already expressed our opinion that such jurisdiction to issue summons can be exercised even in respect of a person whose name may not feature at all in the police report, whether as accused or in column (2) thereof if the Magistrate is satisfied that there are materials on record which would reveal prima facie his involvement in the offence. None of the authorities limit or restrict the power or jurisdiction of the Magistrate or Court of Session in summoning an accused upon taking cognizance, whose name may not feature in the F.I.R. or police report.”



CRM-M-30932-2022
CRM-M-28881-2022

(b) Consideration of the material evidence by the learned

Trial Court: In the instant case, the petitioner was kept in column No.2 by the investigating agency as the investigation qua him remained pending whereas challan was presented against co-accused Deepak Dogra and Chetan Kumar. Thereafter, the petitioner was exonerated in the inquiry conducted by the DCP. Although the learned Trial Court initially relied upon the judgment in *Pankaj @ Panki's case (supra)* which was later stayed by Hon'ble the Supreme Court, it subsequently undertook an independent and comprehensive evaluation of the evidence on record. The statements of the witnesses under Section 161 of the Cr.P.C. and the disclosure statements of the co-accused, prima facie, implicating the petitioner. The learned Trial Court also noted the glaring inconsistencies in the investigation and observed that the petitioner had never cooperated with the investigating agency or joined investigation. The order dated 14.07.2022, therefore, reflects a judicious application of mind, wherein it meticulously analyzed the material evidence and only then proceeded to take cognizance against the petitioner.

(c) Compliance with the provisions of Section 82 of the

Cr.P.C.: The arguments by the learned senior counsel for the petitioner regarding the premature declaration of the petitioner as a proclaimed person, is also devoid of merit. While the investigating agency filed an application for recalling the proclamation before expiry of 30 days period, the Court retained the discretion to reject the application. Once a proclamation was issued against the petitioner, it was incumbent upon



CRM-M-30932-2022
CRM-M-28881-2022

the petitioner to appear before the Court. It needs to be clarified that the investigating agency lacks the authority to either issue or recall a proclamation, as such powers are exclusively vested in the Magistrate by the Legislature. The learned senior counsel's assumption that the learned Trial Court was obligated to accept the application moved by the investigating agency for recalling the proclamation against the petitioner is legally untenable and also undermines the authority of a Court of Law.

That being said, the material on record clearly indicates compliance with the mandatory provisions of Section 82 of the Cr.P.C., including adherence to prescribed period of proclamation. Consequently, this Court finds no illegality in the impugned order declaring the petitioner a proclaimed person.

(d) Ambiguity in the investigation carried out by the investigating agency: It is evident that the investigating agency has oscillated in its stance regarding the culpability of the petitioner in the present case. Nevertheless, this inconsistency does not in any manner undermine the well reasoned findings based on the evidence on record, by the learned Trial Court.

19. In view of the foregoing discussion, this Court finds no illegality or infirmity in the orders passed by the learned Trial Court. The contentions raised by the learned senior counsel for the petitioner lack merit and are accordingly rejected. Consequently, both the petitions are hereby dismissed.

CRM-M-30932-2022
CRM-M-28881-2022

20. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

03.12.2024
Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No