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

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Date of decision: 5th November, 2024

Prabhat Sharma and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sudhir Sharma, Advocate and
Mr. Amit Gupta, Advocate for the petitioners.

Mr. A.S. Samra, AAG, Punjab.

MANISHA BATRA, J (ORAL):-

The instant petition has been filed under Section 482 of Code of Criminal Procedure (for short 'Code') seeking quashing of challan report filed under Section 173(2) of the Code and proceedings having emanated therefrom in case arising out of FIR No. 90 dated 26.04.2023 initially registered under Sections 323, 341 and 506 read with Section 34 of IPC (offences under Sections 451 and 452 of IPC having been added later on), at Police Station Sadar Kharar, District SAS Nagar.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of statement got recorded by the complainant Jaivinder Singh Negi on 26.04.2023 alleging therein that he was engaged in the business of property

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management and was caretaker of two showrooms existing in World One High Street Building, at Landran. A gym under the name of 'old school' was built on the top floor of showrooms No. 9 and 10 which were taken care of by the complainant. He alleged that on 03.04.2023, he was present in the gym for regular maintenance checking, when the present petitioners entered inside the same after hatching some conspiracy and caught hold of him. They opened an attack upon him and extended beatings to him and also criminally intimidated him. He was rescued by other persons present in the gym. After registration of FIR under Section 323, 341 and 506 read with Section 34 of IPC, the petitioners were arrested and were extended benefit of bail since the offences for which they had been booked were bailable. During the course of investigation, offence under Section 451 of IPC was added and they were released on bail for that offence also. After completion of investigation, challan report under Section 173 of Cr.P.C. was prepared. As per the allegations, this report was checked by the District Attorney and as per the recommendation made by him, offence under Section 452 of IPC was added, challan report was amended accordingly and then was presented to the concerned Court. The petitioners aggrieved by the addition of offence punishable under Section 452 of IPC in the challan report, have sought quashing of the challan report and all the proceedings having arisen therefrom.

3. It is argued by learned counsel for the petitioners that after conducting a detailed investigation, the investigating agency had prepared challan report under Sections 323, 341, 451 and 506 read with Section 34 of



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IPC as against the petitioners. The action of respondent No. 3 i.e. SHO of concerned Police Station of adding offence under Section 452 of IPC was not valid as he had done so simply on the recommendation of the District Attorney who himself had no authority to direct or recommend addition of such offence or for that matter any other offence to the investigating agency. It is argued that the conducting of investigation and presentation of challan was prerogative of the investigating agency and the District Attorney/ public prosecutor had no *locus standi* whatsoever for giving direction for adding some particular offence. With these broad submissions, it is urged that the challan report is liable to be quashed to the extent to which offence under Section 452 of IPC has been added. To fortify his arguments, learned counsel for the petitioners has placed reliance upon authorities cited as ***R.Sarla Vs. T.S. Telu and others, 2000(2) RCR (Criminal) 637, Niyamvedi Vs. Raman Srivastava, 1995(1) RCR (Criminal) 612, State of Bihar Vs. J.A.C. Saldanna 1980 (1) SCC 554, S.N. Sharma Vs. Bipen Kumar Tiwari (1970) 3 S.C.R. 946 and Abhinandan Jha Vs. Dinesh Mishra [1967] 3 S.C.R. 668.***

4. The respondents filed a joint reply/status report submitting therein that initially a case under Section 323, 341 and 506 read with Section 34 of IPC was registered against the petitioners. During the course of investigation, offence under Section 451 of IPC was made out and as per the recommendation made by DSP, SBCI, who had conducted inquiry, offence under Section 451 of IPC was added into the array of offences. Challan was accordingly prepared. During the checking of challan, the District Attorney



had recommended for addition of offence under Section 452 of IPC and the same was added. Thereafter amended challan report prepared and then presented before the Court of Competent Jurisdiction. Charges are to be framed now. It is argued by learned Public Prosecutor that no ground for allowing the petition is made out and it is urged by him that the petition is liable to be dismissed.

5. Admittedly and evidently, the petitioners had been initially booked for commission of offences punishable under Sections 323, 341 and 506 read with Section 34 of IPC on the basis of complaint lodged by the complainant. During the course of investigation, offence under Section 451 of IPC was added. It is not in dispute that the offence under Section 452 of IPC was added in this case when challan report had been prepared and checked by the District Attorney and he had made recommendation for the same. So far as the term 'investigation' is concerned, it is defined in Section 2(h) of the Code to include all the proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf. 'Police report' is defined under Section 2(r) of the Code to mean a final report forwarded by a police officer to a Magistrate under sub-Section (2) of Section 173. Chapter XII of the Code deals with information to the police and their powers to investigate. Section 156 relates to police officer's power to investigate cognizable cases. As per sub- Section 1 of this Section, officer in-charge of a police station is empowered to investigate any cognizable case without the order of the Magistrate. Under Section 159, the only power

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which the Magistrate can exercise on receiving a report from the Officer Incharge of a Police Station, is to make an order in those cases which are covered by the proviso to Section 157(1) i.e. the cases in which the officer incharge of the police station does not proceed to investigate the case. Until the police officers files final report/challan, the Court cannot interfere with the process of investigation. It is well settled that it is upon to a police officer including any investigating officer to seek the best legal opinion on any legal aspect concerning the preparation of any report and there is nothing objectionable for the investigating officer to consult a public prosecutor before laying a report under Section 173(2) of the Code. The power under Section 173 of the Code as conferred upon the police officer/investigating officer is subject only to supervision of superior police officers in rank.

6. So far as, a public prosecutor is concerned, as per Section 24 of the Code, he is appointed for conducting any prosecution, appeal or other proceeding in the Code. That apart, he has power to withdraw any case from prosecution with the consent of the Court. He is an officer of the Court. He has to deal with a different field in the administration of justice and is not involved in investigation. As per the scheme of the code, it is permissible for an officer incharge of the police station to depute some subordinate officer to conduct some of steps in the investigation. However, the final step in the investigation; viz the formation of opinion as to whether or not there is a case to place the accused on trial is to be that of the officer incharge of the police station as there is no provision permitting delegation thereof but only

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a provision entitling the senior officers to supervise or participate in the investigation. However, as already discussed, there is no bar for the investigating officer to discuss with the public prosecutor on his own volition or on his own initiative any point for the purpose of forming his opinion as to the report to be laid in the Court and it is always open to him to get the best legal opinion.

7. Now considering the contentions of the petitioner in the above discussed background, the concerned SHO in this case prepared challan report under the provisions of Section 173 of the Code after the investigation was over and had submitted the same before the District Attorney for consultation. The District Attorney/public prosecutor recommended addition of offence under Section 452 of IPC. After considering such recommendation, offence under Section 452 of IPC was added and challan report was presented before the Court of Competent Jurisdiction. No doubt, the investigating officer was neither under any obligation nor it was mandatory for him to consider the recommendation of Public Prosecutor. There is nothing on record to show that the investigating officer on feeling legally obliged to take opinion of the public prosecutor and as per the recommendation so made, had added offence under Section 452 of IPC. As such, it cannot be stated that there was any illegality that had been committed while adding offence under Section 452 of IPC in the final report prepared under Section 173(2) of Cr.P.C. It is not a case where the concerned Court had caused any interference with the process of investigation or had given any direction to add the aforementioned offence. Rather the



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investigating officer out of his own volition has done so. No doubt the investigating officer could not be directed to be influenced by the opinion of the public prosecutor but it is not a case where any such direction had been issued by any Court. It is note worthy that once challan has been presented before the Magistrate, then under Section 227 of the Code, he has to look into the material placed before him to determine whether a *prima facie* case is made out or not qua commission of a particular offence. The Magistrate is competent to even discharge accused, if he considers that there are no sufficient grounds for proceeding against him/them. A Magistrate is also competent to form an opinion on the basis of material placed on record that the accused has committed a particular offence or not or by evaluating such material, he can frame charge or discharge an accused accordingly. As challan report already stands presented before the Magistrate, therefore, obviously the jurisdiction vests in him to take or not to take cognizance of the offence under Section 452 of IPC. The Magistrate is yet to take cognizance of the matter. As already discussed, the police officer of competent jurisdiction/concerned SHO was very much competent to seek best legal opinion on some legal aspect of the case by consulting the public prosecutor/District Attorney. No illegality can be stated to have been committed by him by making addition of offence under Section 452 of IPC after consulting the public prosecutor. It is now for the Magistrate to go through the record and consider as to whether *prima facie* case for framing charge under the aforementioned Section as well has been made out against the petitioners or not. There are no sufficient reasons to infer at this stage



that the challan report as submitted by the concerned SHO is liable to be quashed simply because offence under Section 452 of IPC has been added. This Court in exercise of its inherent powers vested under Section 482 of Cr.P.C. cannot make observations on disputed questions of fact and giving direction amounting to a mandamus not to take cognizance of a particular offence or not to frame charge under the same and it is for the concerned Magistrate to do so after considering the contents of the challan report submitted by the police. As a consequence and fallout of the above discussed facts, it is held that since the powers under Section 482 of the Code are to be exercised sparingly carefully and with caution and only when such exercise is justified by tests specifically laid down in the Section itself and as the present one does not appear to be a fit case for exercising such power, therefore, no ground has been made out for quashing the challan report as well as the proceedings having emanated therefrom. The authorities that have been cited by learned counsel for the petitioners are not applicable to the peculiar facts and circumstances of the present case. Accordingly, the petition is dismissed.

8. Since the main petition has been dismissed, pending application, if any, is rendered infructuous.

[MANISHA BATRA]
JUDGE

5th November, 2024
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |