

Neutral Citation No. 2024:PHHC:076561

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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRM-M-42014-2021 (O&M)
Reserved on : 25.04.2024
Pronounced on : 29.05.2024

Sarabjit ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Deepak Verma, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

MANISHA BATRA, J.

1. The present petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing of enquiry report dated 27.03.2021 (Annexure P-6) along with all the subsequent proceedings including registration of Rapat/GDD No. 17 dated 25.06.2021, under Sections 354, 341, 323 and 34 of IPC, whereby some offences have been added in the cross version recorded vide Rapat/GDD No. 58 dated 25.07.2020, registered under Section 323 read with Section 34 of IPC at Police Station Mahilpur, District Hoshiarpur and some sections have been deleted from FIR No. 154 dated 25.07.20202, under Sections 452, 341, 323, 506 read with Section 149 of IPC registered at the said police station, on the basis of fictitious enquiry conducted by the police.

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2. Brief facts of the case relevant for the disposal of the present petition are that the cousin brother of the petitioner Ram Lubhaya is a non-resident Indian, residing in England. He is having a house at village Kaindowal. In his absence, the petitioner and his brother Resham Lal used to take care of his house and even used to sleep therein. It is alleged that Sukhwinder Singh and his family members, who were also residing in the same vicinity, used to throw dirty water and garbage in front of the gate of the house of Ram Lubhaya and in this regard, complaints were made to village Sarpanch and other authorities, several times. He alleged that on 28.06.2020, his brother Resham Lal informed him and then a complaint was made to the Sarpanch of the village regarding throwing garbage by the above named Sukhwinder Singh etc. in front of the gate of house of Ram Lubhaya and qua using abusive language and extending threats to them. A panchayat was convened by the respectable persons of the village, wherein Sukhwinder Singh and his family members apologized and assured not to commit such acts again. He further alleged that on the intervening night of 24/25.07.2020, the petitioner along with his brother Resham Lal had entered inside the house of Ram Lubhaya and switched on the lights, then all of sudden Sukhwinder Singh, his son Raghveer Singh, his daughter Amanpreet Kaur and some other persons forcibly entered inside the said house and opened an attack upon both of them. They physically assaulted them. Rescue alarm raised by them attracted the neighbours, who reached there and on seeing them, the assailants left, while extending threats to face dire consequences and hurling abuses to the petitioner and his brother. Both of them were taken to Civil Hospital, Mahilpur and were given treatment. The matter was reported to the police and

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on the statement of Resham Lal, a case bearing FIR No. 154 was registered on 25.07.2020 under Sections 323, 341, 452, 506 read with 149 of IPC.

3. As per further allegations, on coming to know about the factum of lodging of FIR by the brother of the petitioner and in order to create their defence, Sukhwinder Singh etc. set up a cross version and got registered a Rapat bearing No. 58 dated 25.07.2020 under Sections 323 read with 34 of IPC, on the basis of a complaint made by Amanpreet Kaur by leveling false allegations against them. The petitioner further alleged that despite registration of FIR on the complaint of Resham Lal, the police did not arrest either of the persons named as accused therein for a period of about six months, thereby compelling the petitioner and his brother to file a petition before this Court, bearing *CRM-M-1941-2021*, which was disposed of on 14.01.2021 by giving direction to complete the investigation as expeditiously as possible. The petitioner alleged that even thereafter no further action was taken by the police in the matter.

4. The petitioner had, thereafter, filed an application with RTI Cell of CPRC, Hoshiarpur and a copy of enquiry report dated 27.03.2021 was provided to him, as per which, only offence under Sections 323 read with 34 of IPC was committed by the persons named as accused in the aforesaid FIR lodged by the brother of the petitioner, whereas offences under Section 341 and 354 of IPC were recommended to be added in the cross case registered on the complaint of Amanpreet Kaur, daughter of accused Sukhwinder Singh. The petitioner aggrieved of this enquiry report has challenged the legality of the same on the grounds that this enquiry was conducted on the complaint of one Pritam Kaur, who was sister of Amanpreet Kaur, and was in fact not even present at the spot at the time of occurrence and also that after registration of

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the FIR, no fresh enquiry could be marked and further on the ground that the allegations levelled in Rapat No. 58, as lodged by the opposite side, were totally false, fictitious and concocted ones. It is, therefore, prayed that the enquiry report dated 27.03.2021 (Annexure P-6) and the subsequent proceedings conducted on the said report by way of addition of offences under Sections 341 and 354 of IPC in the cross case registered against the petitioners be set aside and the sections, for which the accused had been booked on the basis of the complaint of Resham Lal, be again added as the same have wrongly been deleted. To fortify his argument, learned counsel for the petitioner has relied upon ***Pankaj Kumar @ Panki and others vs. State of Punjab : 2021 (2) RCR (Criminal) 633.***

5. The respondent-State has filed short reply by way of affidavit of Deputy Superintendent of Police, Sub Division Garhshankar, wherein it is submitted that FIR No. 154 dated 25.07.2020 was initially registered under Sections 323, 341, 452 and 506 read with 149 of IPC against Sukhwinder Singh etc. on the basis of the statement of complainant Resham Lal, who is brother of the petitioner. A cross case bearing Rapat/GDD No. 58 was also registered on the same date under Sections 323 and 34 of IPC on the statement of Amanpreet Kaur d/o Sukhwinder Singh, which was later on converted into FIR No. 54 dated 25.07.2020. She had levelled allegations against the petitioner and his brother. A proper enquiry was conducted in the matter and on the basis of the same, offences under Sections 452, 341, 149, 506 of IPC were not made out against Sukhwinder Singh etc. and the said sections were deleted from FIR No. 154, whereas offences under Sections 354 and 341 of IPC were added in the cross case registered against the petitioner and his brother. It is submitted that since vide order dated 27.10.2021, the

presentation of challan in cross case, lodged on the basis of the statement of Amanpreet Kaur, has been ordered to be stayed by this Court, therefore, final report will be presented before the Court concerned at Garhshankar after completion of investigation.

6. Due deliberations have been given to the contentions as raised by both the parties, besides going through the material placed on record.

7. As per the submissions made in the petition, the petitioner and his brother Resham Lal had been taking care of a house, owned by their cousin Ram Lubhaya, who is an NRI, residing in England. The dispute arose between the petitioner and his brother Resham Lal on one side and their neighbour Sukhwinder Singh and his family members being on the other side regarding throwing of garbage by Sukhwinder Singh etc. in front of the said house. On the fateful day, i.e. intervening night of 24/25.07.2020, Sukhwinder Singh etc. are alleged to have opened an attack on the petitioner and his brother Resham Lal by entering into the aforesaid house, in which the petitioner and his brother are alleged to have sustained some injuries. On making complaint by both the parties, one case and one cross case were registered against both the parties as mentioned above and during investigation, on the basis of impugned enquiry report, offences under Sections 452, 341, 149, 506 of IPC were deleted from the FIR registered at the instance of Resham Lal against Sukhwinder Singh etc., whereas offences under Sections 341 and 354 of IPC were added in the cross case registered at the behest of Amanpreet Kaur, who is daughter of Sukhwinder Singh, against the petitioner and his brother. The petitioner, by way of filing the present petition under Section 482 of Cr.P.C., is seeking quashing of impugned enquiry report and addition of offences under Sections 452, 341, 149, 506 of

IPC in the FIR registered against Sukhwinder Singh etc. and deletion of offences under Sections 341, 354 of IPC from the cross case registered against them.

8. Admittedly, in the wake of order dated 27.12.2021, passed by this Court, further proceedings of investigation could not take place and the same are still pending and final report is yet to be presented before the Court concerned. Now the question that arises before this Court is as to whether this Court can interfere in the investigation either by quashing the impugned enquiry report or by giving direction to the investigating agency to add or delete some particular offence in the FIR and its cross case? In the considered opinion of this Court, the answer to this question must be in the negative. It is settled principle of law that the Courts have got no jurisdiction to issue any direction during the course of investigation unless and until there are violation of statutory provisions. The investigation in this case is still pending and challan has not yet been filed. In this scenario, any order, writ or direction to the Investigating Agency at this juncture of investigation is not proper. It amounts to unnecessary and illegal interference. The Apex Court in a number of decisions has clearly laid down that the court should not interfere in investigation.

9. Hon'ble Supreme Court in the case of *State of A.P. v. Golconda Linga Swamy (2004) 6 SCC 522*, while considering the decisions of that Court rendered in the cases of *R.P. Kapur v. State of Punjab AIR 1960 Supreme Court 866* and *State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335* and other decisions on the exercise of inherent powers by the High Court under Section 482 Cr.P.C., has observed that it is important to bear in mind, the distinction between a case where there is no legal evidence or where

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there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. It was also held that the High Court being the highest court of a State should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Reliance in this regard can also be placed upon ***Janata Dal v. H.S. Chowdhary : (1992) 4 SCC 305*** and ***Raghubir Saran (Dr.) v. State of Bihar AIR 1964 Supreme Court 1.***

10. On applying the ratio of law as laid down in the aforecited judgments, it is apparent that this Court should refrain from interfering in the

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matter as it is still under investigation. More so, a perusal of the short reply filed by the respondent-State shows that the investigating agency had conducted a thorough investigation in the matter and on the basis of the evidence forthcoming on record during investigation, the aforesaid offences were deleted/added in the FIR/cross case. The veracity of the allegations can only be assessed and evaluated by the trial Court after appraising the evidence led before it. This Court cannot appreciate the allegations or evidence at this stage while deciding a petition filed under Section 482 of Cr.P.C. as it is not a case where the statutory provisions can be stated to have been violated. Even otherwise, the petitioner has ample remedy available in law to challenge the framing of charge before this Court at appropriate stage. The ratio of law laid down in *Pankaj Kumar*'s case (supra) is distinguishable on its facts as in the present case, the investigation is still pending and challan has not been submitted.

11. In view of the discussion as made above, finding no merit in the present petition, the same is dismissed. The Investigating Agency may proceed further with the investigation in accordance with law.

29.05.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

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