



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

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CWP-24930-2018

Date of decision: 02.08.2024

KAMALJEET SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Gurveer Singh Sidhu, Advocate
for the petitioner.

Ms. Niharika Sharma, AAG, Punjab.

Mr. C.S. Jattana, Advocate for respondent No.8.

VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present writ petition is to the order dated 12.07.2018 passed by the Punjab State Commission for NRIs, Chandigarh, hereinafter referred to as “the Commission”.

2. Vide the aforesaid order, the Commission directed the respondent that the cancellation report be not filed and instead a challan be filed against the petitioners. Aggrieved thereof, the petitioner approached this Court.

3. At the time of issuing notice of motion, the following order was passed on 28.09.2018.



This petition is directed against the order of the NRI Commission dated 12.07.2018.

Learned counsel for the petitioner, in brief, has submitted that the petitioner and respondent No.8 got married in the year 2011 and started living in Australia in year 2013. They both got Permanent Residence (PR) status in 2014. Both the petitioner and respondent No.8 had suspicion about their having extra marital affairs. The petitioner filed the divorce petition in Australia which was allowed on 17.04.2015. Respondent No.8 lodged FIR No.9 dated 14.11.2015 under Sections 420/406 IPC at Police Station NRI, Sangrur with the allegation that she had a joint account with the petitioner which has been operated upon by the petitioner alone. The investigation was carried out in the said FIR, and cancellation report was submitted to the Illaqa Magistrate on 14.12.2016. The cancellation report was not accepted by the Court on the objection/protest by the father of respondent No.8 and the Court passed the order of reinvestigation. It is further submitted that in the reinvestigation recommendation was made for cancellation of report again. However, before that respondent No.8 had approached the Commission with the complaint. The Commission has stayed the submission of cancellation report during the pendency of the complaint. It is submitted that although it has been found in investigation that no case is made out against the petitioner yet the Commission has now directed that the Investigating Officer shall present the challan.

Learned Counsel for the petitioner has submitted that the Commission has no jurisdiction to issue such kind of direction to the Investigating Officer to present the challan if the Investigating Officer is of the view that there is no case made out against the accused/petitioner after the investigation.

Notice of motion.



In the meantime, operation of the impugned order shall remain stayed.

4. The Counsel for respondent-State contends that initially enquiry was conducted into the complaint of respondent No.8 & recommendation was made only against the petitioner for offence under Section 498 A of the IPC. FIR No. 09 dated 14.11.2015 was later registered against the petitioner. On investigation it revealed that parties resided in Australia after marriage and had a dispute due to suspicion about commitment. A divorce was granted by the Courts in Australia. Both the parties were joined in and a cancellation report was sent vide No. 17/C/SP-NRI dated 19.05.2015 which was approved by AIG, NRI Wing; the Joint Director, Prosecution and then by the IGP, NRI Wing Mohali. A cancellation report was presented in Court on 14.12.2016 but the Illaqa Magistrate directed further investigation. A fresh cancellation report was filed again on 15.11.2017. Notice was issued to complainant to appear. Instead of appearing before the Illaqa Magistrate, a complaint No. 1550 was filed before the Commission. All material was shown to the Commission but the order under challenge was passed. She contends that the complainant is the contesting party.

5. Learned Counsel appearing on behalf of the contesting respondent No.8 does not dispute the facts noticed above as well as in the reply of respondent-State. He is also not able to refer to any position in law as per which any such directions, which are in the nature of steering the investigation and mandating the investigation to be conducted in a particular manner could be issued by the NRI Commission to the Investigating



6. On being confronted, he accepts that the role of the NRI Commission is only recommendatory and that it does not have powers of the Court or to direct about the nature of final report to be filed, which is the sole prerogative of the investigating agency. In doing so, the NRI Commission has in fact taken upon itself about the report to be filed under Section 173 of Cr.P.C. Hon'ble the Supreme Court in the matter of "**M.C. Abraham and another versus State of Maharashtra and others**" reported as **(2003) 2 SCC 649** held as under:-

13. This Court held in the case of J.A.C. Saldanha that there is a clear- cut and well-demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved by the executive through the police department, the superintendence over which vests in the State Government. It is the bounden duty of the executive to investigate, if an offence is alleged, and bring the offender to book. Once it investigates and finds an offence having been committed, it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the court requesting the court to take cognizance of the offence under Section 190 of the Code of Criminal Procedure, its duty comes to an end. On cognizance of the offence being taken by the court, the police function of investigation comes to an end subject to the provision contained in Section 173(8), then commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime. In the circumstances, the judgment and order of the High Court was set aside by this Court.



17. *The principle, therefore, is well settled that it is for the investigating agency to submit a report to the Magistrate after full and complete investigation. The investigating agency may submit a report finding the allegations substantiated. It is also open to the investigating agency to submit a report finding no material to support the allegations made in the first information report. It is open to the Magistrate concerned to accept the report or to order further enquiry. But what is clear is that the Magistrate cannot direct the investigating agency to submit a report that is in accord with his views. Even in a case where a report is submitted by the investigating agency finding that no case is made out for prosecution, it is open to the Magistrate to disagree with the report and to take cognizance, but what he cannot do is to direct the investigating agency to submit a report to the effect that the allegations have been supported by the material collected during the course of investigation.*

18. *In the instant case the investigation is in progress. It is not necessary for us to comment on the tentative view of the investigating agency. It is the statutory duty of the investigating agency to fully investigate the matter and then submit a report to the Magistrate concerned. The Magistrate will thereafter proceed to pass appropriate order in accordance with law. It was not appropriate for the High Court in these circumstances to issue a direction that the case should not only be investigated, but a charge-sheet must be submitted. In our view the High Court exceeded its jurisdiction in making this direction which deserves to be set aside. While it is open to the High Court, in appropriate cases, to give directions for prompt investigation etc. the High Court cannot direct the investigating agency to submit a report that is in accord with its views as that would amount to unwarranted interference with the*



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investigation of the case by inhibiting the exercise of statutory power by the investigating agency.”

7. The Commission cannot exercise a power which is not even available to the Courts. Any such direction would amount to not only discrediting the investigation conducted by the Police but also amount to unwarranted interference on the satisfaction of the Investigating Agency and by thrusting its own opinion over that of the investigating agency.

8. In view of the law laid down by the Hon’ble Supreme Court, NRI Commissions cannot steer the investigation or issue any such direction about the final reports are to be filed by the Investigating Agency. Such a prerogative and decision is vested with the Investigating Agency.

9. In view of the above, the present writ petition is allowed and the order dated 12.07.2018 passed by the Punjab State Commission for NRIs, Chandigarh directing filing of a charge sheet against the petitioner is set aside.

(VINOD S. BHARDWAJ)
JUDGE

AUGUST 02, 2024
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No