

Neutral Citation No. 2024:PHHC:058152
CRM-M-31662-2017 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on : April 15, 2024
Date of Decision : April 29, 2024

CRM-M-31662-2017 (O&M)

Parveen Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By : - Mr. Inderjeet Singh, Advocate for the petitioner.

Mr. Sumit Jain, Addl. A.G., Haryana.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 Cr.P.C., petitioner prays to quash challan dated 12.06.2017 (Annexure P-3) and charge-sheet 08.09.2017 (Annexure P-4), under Sections 199, 201, 203, 211, 182 of IPC and Section 27 (wrongly mentioned as Section 25) of the Arms Act, 1959 alongwith subsequent proceedings against the petitioner in case FIR No.58 dated 24.03.2017, registered at Police Station Radaur, Yamuna Nagar.

2. On perusal of the paper book, it emerges that on the complaint of one Dolly D/o Manjit Singh, FIR No.23 dated 23.03.2017 (*copy Annexure P-2*) under Sections 354-A(1), 354-B, 354-D and 506 of IPC was registered at Police Station Women Police Station, Yamuna

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Nagar against petitioner – Parveen Kumar regarding the alleged incident of 18.03.2017. On the other hand, FIR No.58 dated 24.03.2017 (*Annexure P-1*), pertaining to the present case, was registered on the statement of petitioner Parveen Kumar, under Sections 307, 341/34 of IPC and Section 25 of the Arms Act, at Police Station Radaur, District Yamuna Nagar, in which it was alleged by him that on 21.03.2017, two unidentified persons came on a bike and caused injuries by firing from a pistol on his right arm and fled.

3. During the investigation of FIR No.23 of 2017, petitioner was arrested on 02.05.2017 and on interrogation, he suffered disclosure statement, as per which as the parents of Dolly had gone to the police station and made a complaint against him and got registered a case against him, therefore, in order to save himself and to put pressure on the girl's side of the family, he had himself fired a gun shot on his own arm and that bullet had remained in his arm and he had thrown the country-made pistol in the pond.

4. In view of the aforesaid disclosure statement suffered by the petitioner during investigation of case FIR No.23 dated 23.03.2017, Sections 199, 201, 203, 182, 211 IPC and Section 27 of the Arms Act were added in case FIR No.58 dated 24.03.2017, and the offences under Sections 307, 341/34 of IPC and Section 25 of the Arms Act were deleted. Final report under Section 173 Cr.P.C. (challan) (*Annexure P-3*) was filed against the petitioner, so as to prosecute him under Sections

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182, 195, 203, 211 IPC and Section 25 of the Arms Act in case FIR No.58 of 24.03.2017, which was ironically registered on the complaint of petitioner himself. The Court of learned Addl. Sessions Judge, Yamuna Nagar, charge-sheeted the petitioner (*Annexure P4*) on 08.09.2017 under Sections 199, 201, 203, 211 and 182 of IPC, besides Section 27 of the Arms Act, to which he pleaded not guilty and claimed trial.

5.1 Challenging the aforesaid proceedings, i.e. challan filed against him and the charges frame against him in case FIR No.58 of 2017, it is contended by learned counsel that the police has adopted a novel way, totally contrary to the law, by charge sheeting the petitioner in the case, which was lodged on his own complaint, instead of filing any cancellation report, in case the allegations made therein were found to be false, so as to afford opportunity to the petitioner to file a protest petition. Learned counsel refers to “*Minu Kumari and Anr v. State of Bihar and ors.*” 2006(3) R.C.R. (Criminal) 271.

5.2 Still further, it is contended that the cognizance for the offences under Sections 182, 199, 201 and 211 of IPC is barred except as per the procedure laid down in Section 195 Cr.P.C.

5.3 Besides, petitioner had already filed a private complaint (*copy Annexure P-5*) on 23.10.2017 with regard to the incident of firing upon him, as alleged in FIR No.58 of 24.03.2017, in which preliminary evidence has already been recorded and in view of the pendency of that private complaint, proceedings under Section 182 IPC cannot be lodged.

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Reliance has been placed upon “*Tarlochan Singh v. State of Punjab*”, 2007(3) RCR (Criminal) 791 and “*Shobha Rani v. State of Haryana*”(CRM-24770-M of 2008, decided on 09.04.2010).

5.4 Learned counsel has also placed on record copy of the judgment dated 08.05.2023 passed by Learned Judicial Magistrate 1st Class, Yamuna Nagar at Jagadhari, so as to contend that petitioner has already been acquitted in case FIR No.23 of 23.03.2017, which was registered against him on the complaint of Dolly. Still further, it is argued that simply on the basis of the disclosure statement allegedly suffered by petitioner during the investigation of FIR No.23 of 2017, the allegations made by him in FIR No.58 of 2017, could not be held to be false.

6. Learned State counsel, on the other hand, has opposed the petition by submitting that FIR No.58 of 2017 was lodged by the petitioner in order to save himself from his possible prosecution in case FIR No.23 of 2017 by self-inflicting the injuries and therefore, he has been rightly challaned and charge-sheeted in this case.

7.. I have considered submissions of both the sides and have apprised the record.

8. Let the case of the prosecution be taken to be true at its face value, the question is whether the petitioner can be prosecuted in the manner, in which he is sought to be prosecuted. While lodging the FIR, it was alleged by the petitioner that two unknown persons had caused fire arm injury to him. Prosecution alleges that petitioner had self-inflicted the

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said injuries upon him, in order to save himself from the possible prosecution in case FIR No.23 of 2017. In case, the case of the prosecution is taken to be true, the proper course for Investigating Agency was to prepare cancellation report in FIR No.58 of 2017, registered on the statement of petitioner himself and to file the same in the concerned court of Jurisdictional Magistrate, so that petitioner could be afforded the opportunity to file the protest petition, if he so desired. Instead of doing so, the Investigating Agency deleted Sections 307, 341 IPC and challaned the petitioner in the same FIR, so as to prosecute him under Sections 182 and 211 IPC etc.

9. Section 173 (2) Cr.P.C, is relevant here, which reads as under:

“173. Report of police officer on completion of investigation.—

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(1A) xxxxxxxx

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—

- (a) the names of the parties;
- (b) the nature of the information;
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;
- (d) whether any offence appears to have been committed and, if so, by whom;
- (e) whether the accused has been arrested;
- (f) whether he has been released on his bond and, if so, whether with or without sureties;
- (g) whether he has been forwarded in custody under section 170.

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(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or section 376E of the Indian Penal Code (45 of 1860).

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

10. Interpreting the scope of Section 173(2) CrPC in ***Minu Kumari's case (supra)***, it has been held by Hon'ble Supreme Court:-

“When a report forwarded by the police to the Magistrate under Section 173(2)(i) is placed before him, several situations arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further investigation under Section 156(3) and require the police to make a further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he has again option of adopting one of the three courses open i.e., (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police under Section 156(3). ***Where the Magistrate decides not to take cognizance and to drop the proceeding or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, notice to the informant and grant of opportunity of being heard in the matter becomes mandatory.***”

[Bold & Italicized portion emphasised by this court]

11. In view of the aforesaid legal position, it was not at all proper for the Investigating Agency, so as to file the challan against the

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petitioner to prosecute him in the FIR, which was lodged on his own complaint, instead of filing the cancellation report, in case the allegations contained in the FIR were found to be false. It is to be noted that by not filing the cancellation report, petitioner was not afforded any opportunity to file protest petition. In these circumstances, petitioner had to file private complaint before learned Area Magistrate (*copy Annexure P-5*), in which preliminary evidence has already been recorded.

12. Further, relevant part of Section 195 Cr.P.C. reads as under:-

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.— (1) No Court shall take cognizance—

- (a) (i) of any offence punishable under sections **172 to 188** (both inclusive) of the Indian Penal Code, (45 of 1860), or
(ii) of any abetment of, or attempt to commit, such offence, or
(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;
- (b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections **193 to 196** (both inclusive), **199, 200, 205 to 211** (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or
(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or
(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.”

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13. It is clear on bare perusal of the aforesaid provisions that no Court can take cognizance of the offence under Section 182 IPC, except on the complaint, in writing, of the public servant concerned or of some public servant, to whom he is administratively subordinate,

In the present case, no such procedure was followed by the police

14. Similarly, no Court can take cognizance of offence under Sections 199 and 211 IPC, except on the complaint in writing of that Court or by such officer of the Court or the authorized person by the Court, or by some other Court to which that Court is subordinate, where such offence is alleged to have been committed.

15. Not only this, petitioner has already been acquitted in case FIR No.23 of 23.03.2017, which was registered against him on the complaint of Dolly vide judgment dated 08.05.2023 passed by Learned Judicial Magistrate 1st Class, Yamuna Nagar at Jagadhari, in which petitioner had allegedly suffered disclosure statement, due to which allegation made by him in FIR N: 58 of 2017 were found by the investigating agency to be false.

16. Moreover, the private complaint (Annexure P-5) has already been filed by the petitioner regarding the incident as alleged in FIR No.58 of 2017, which was still pending for trial and therefore, petitioner could not have been prosecuted under Sections 182 IPC.

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17. In *Shobha Rani's case (Supra)*, the issue before this Court was as to whether a Calendra can be presented under Section 182 IPC against the complainant, when the criminal complaint is pending and a Court of law which is seized of the matter is yet to express its final opinion on the matter. This Court observed as under:-

“4. This issue has arisen before this court on various occasions. One such case where this issue was examined is **Banta Singh v. State of Haryana 1995(3) RCR (Criminal) 133**. In that case also, the allegations levelled by the complainant were found to be false by the investigating agency which had presented calendra under Section 182 of I.P.C. Subsequently, the complainant instituted a private complaint and sought quashing of the calendra on the ground that the same cannot be proceeded with during the pendency of the complaint. This court in **Banta Singh's case (supra)**, following the ratio of law laid down in **State of Punjab v. Brij Lal Palta AIR 1969 Supreme Court 355**, held as under:-

"In **State of Punjab v. Brij Lal Palta, AIR 1969 Supreme Court 355**, a matter very much similar to the one in hand, was considered and it was held that once a complaint filed by the informant which is based on the same facts and allegations on which the first information was registered, is being proceeded with, it is not open to a Magistrate to take cognizance of any offence alleged to have been committed under section 211 Indian Penal Code. It was further held that although section 182 Indian Penal Code, is distinct from the offence under Section 211, the latter is a more serious offence and may include the offence under the former section. It is apparent that if the case under section 182 Indian Penal Code, is allowed to proceed, a decision in the said case would tantamount to pre-judging the complaint filed by the petitioner. The prosecution of the petitioner under section 182 Indian Penal Code, during the pendency of his complaint, is evidently an abuse of the process of the Court, and it would be but proper to secure the ends of justice, to quash these proceedings. It is ordered accordingly."

(Emphasis

supplied)

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5. This issue was again considered by this court in the case of **Ramesh Chand v. State of Haryana 2006(4) RCR (Criminal) 718**. In that case also the quashing of Kalendra under Section 182 of I.P.C. was sought on the ground that during the pendency of the complaint, these proceedings could not have been instituted. This court allowing the petition observed as under:-

"In view of the admitted facts that in the private complaint filed by the petitioner, the accused have been summoned, though they were found innocent by the police in the FIR and keeping in view the aforesaid settled proposition of law, at this stage it cannot be said that the allegations levelled by the petitioner in the FIR are false. Therefore, in my opinion, the proceedings initiated by the police against the petitioner under Section 182 I.P.C. are liable to be quashed."

(Emphasis supplied)

6. Even in the case of **Tarlochan Singh v. State of Punjab 2007(3) RCR (Criminal) 791** the proceedings under Section 182 of the Indian Penal Code were quashed as the criminal complaint on the same cause of action was pending. This court observed as under:

"5. There appears to be force and substance in the contention raised on behalf of the petitioner. Though, the police had investigated the FIR registered on the basis of a complaint submitted by the petitioner and found those allegations to be false, yet the petitioner has thereafter filed a fresh complaint Annexure P-3 and the said complaint is still pending and fixed for recording of preliminary evidence."

7. After adverting to the various case law on the point it was held that

"It is, thus, clear that if the case under Section 182 I.P.C. is allowed to proceed, a decision in the said case would tantamount to pre-judging the complaint filed by the petitioner. The prosecution of the petitioner under Section 182 I.P.C. during the pendency of his complaint on the same facts and allegations as mentioned in the FIR, would be an abuse of the process of the Court."

(Emphasis supplied)

8. The aforesaid proposition of law was followed more recently in the case of

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Babita v. State of Punjab 2008(4) RCR (Criminal) 516 wherein it was held that:

"7. Keeping in view the facts of the present case, where the final opinion by the Court is yet to be expressed as regard the falsity of the complaint made by the petitioner, permitting the respondents to proceed with the proceedings under Section 182 I.P.C. would amount to pre-judging the complaint filed by the petitioner. The same is premature and would amount to abuse of process of law. It would be proper, to secure the ends of justice, to quash the proceedings against the petitioner."

(Emphasis supplied)

9. From the perusal of the aforesaid judgments, the principle of which emerges is that the proceedings under Section 182 of I.P.C. cannot be permitted to continue when a private complaint on the same cause of action is pending before a court of law. When the truthfulness and veracity of the allegations have not been determined by a court, prosecuting the complaint under Section 182 will tantamount to prejudging the whole issue which would clearly be an abuse of process of law. Since this view has been consistently followed by this court and the counsel for the respondent has not been able to cite any case law to the contrary, I see no reason for deviating from the view taken by this court on various occasions."

18. Legal position as above is squarely applicable to the facts of the present case. Therefore, considering the factual and legal position as discussed above, it is held that prosecution of the petitioner in case FIR No.58 of 24.03.2017 (*Annexure P1*), cannot be allowed.

19. As such, challan dated 12.06.2017 (*Annexure P-3*) and charge-sheet 08.09.2017 (*Annexure P-4*), under Sections 199, 201, 203, 211, 182 of IPC and Section 27 of the Arms Act, 1959 alongwith subsequent proceedings arising therefrom against the petitioner in case

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FIR No.58 dated 24.03.2017, registered at Police Station Radaur, Yamuna
Nagar, are hereby quashed.

April 29, 2024
Sarita

(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking:	Yes
Whether reportable:	Yes