

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-48029-2019 (O&M)

Decided on 10.07.2024

Vinod Kumar

... Petitioner

VS.

Sanjeev Sood & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. CM Munjal, Advocate for the petitioner

Mr. Rajiv Verma, DAG Punjab

Sandeep Moudgil, J.

(1). This is a petition under Section 482 Cr.P.C. for quashing of COMI No.530 of 2015 dated 14.07.2015 “Sanjeev Sood vs. Sundram & Ors.” under Sections 324/323/326/148/149 IPC (Annexure P4) and summoning order dated 09.05.2019 (Annexure P6) passed by JMIC, Zira and all the consequent proceedings arising therefrom.

(2). Learned counsel for the petitioner submits that in FIR case, enquiry was conducted and the cancellation report was prepared. He further submits that in the complaint case, the cancellation report was presented before the Presiding Officer on 25.03.2016 (Annexure P-5) but in the present case, despite the cancellation report submitted by the police, the trial court has not taken any cognizance of the same and went on to pass the impugned summoning order without considering the cancellation report. He has relied upon **Kuldip Raj Mahajan versus Hukam Chand 2008(1) R.C.R. (Criminal) 370.**

(3). Learned counsel for State, on the other hand, submits that the petitioner in connivance with other co-accused persons raised the wall in

dispute and caused injuries to the complainant. Moreover, the CW appearing on the of the complainant duly narrated the incident as per the complaint and as such, the impugned order vide which the petitioner has been summoned is justified in the documents annexed with the complaint.

(4). Heard learned counsel for the parties.

(5). A perusal of the FIR would show that the dispute relates to raising of wall pending civil dispute between the parties. Notwithstanding that, the petitioner and his co-accused are alleged to have forcibly entered into the disputed area and tried to construct wall, which when obstructed by the complainant, lead to his physical assault at the hands of the accused persons including the petitioner-Vinod who is alleged to have given dang blow which hit on the left hand finger of the complainant.

(6). In the above background, the first question that arises before the court is as to whether this court is bound to accept the cancellation report filed by the police or court can take alternative steps as well. The answer to this question can be found in the ratio laid down by several judicial authorities.

(7). In **Gangadhar Janardan Mhatre vs. State Of Maharashtra [(2004) 7 SCC 768]**, the Supreme Court of India highlighted different situations which may arise before the Court when a final police report is filed before the court and the recourse available with the judge, in the following words:

“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). The position is, therefore, now well-settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(l)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(l)(b) does not lay down that a Magistrate can take cognizance of an offence only if the Investigating Officers gives an opinion that the investigation has made out a case against the accused.' The Magistrate can ignore the conclusion arrived at by the Investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise of his powers under Section 190(l)(b) and direct the issue of process to the accused.”

(8). In **H.S. Bains vs. State [AIR 1980 SC 1883]**, it was held by the Apex Court that on receiving the police report, the Magistrate may take cognizance of the offence under Section 190(1)(b) and straightaway issue process irrespective of the view expressed by the police in its report whether an offence has been made out or not. The Police report under Sec. 173 will contain the facts discovered or unearthed by the police and the conclusion drawn by the police therefrom, however, the Magistrate is not bound by the conclusions drawn by the Police and he may decide to issue process even if the Police recommend that there is no sufficient ground for proceeding further.

(9). In view of the above referred judicial precedents and legal aspects, it is amply clear that the Magistrate is not bound to accept the cancellation report submitted by the police and is well within its right to take cognizance of the matter and summon the Accused. Meaning thereby, that on the basis of same material on which the Investigating agency has reached a conclusion that no offence has been committed, court can apply its mind independently and conclude that the offence is *prima facie* made out.

(10). There is thus no merit in the submission made by the petitioner and the petition is accordingly dismissed.

10.07.2024
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No