

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-59247-2023 (O&M)

Date of Decision: 01.04.2024

Ishan Arora

... Petitioner

VS.

State of Punjab & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Sidhant Vermani, Advocate for the petitioner

Mr. Rajiv Verma, DAG Punjab

Sandeep Moudgil, J.

(1). This petition under Section 482 CrPC has been filed by the petitioner seeking to quash the 2nd re-enquiry proceedings initiated in pursuance to the complaint submitted by respondent No.3 (Annexure P10) pending before respondent No.2 on the ground that the same stands decided twice vide Annexures P11 & P12, respectively.

(2). Learned counsel for the petitioner submits that the complainant Lekh Raj, father of Dolly Arora who is wife of the petitioner-Ishan Arora, had made a representation dated 15.09.2022 before the Commission of Police, Ludhiana for registration of criminal case against the petitioner and his family members and the same representation was inquired into by the Assistant Commissioner of Police, Indl.Area-B, Ludhiana who vide his report dated 29.09.2022 (Annexure P11) recommended to file the complaint and during the pendency of the matter, the brother of the respondent No.3 committed suicide, which led to registration of FIR No.236 dated 26.11.2022 under Section 306 IPC at Police Station Kotkapura, District Faridkot against the petitioner.

(3). It is contended that the complainant party being dis-satisfied with the recommendations (Annexure P11) again approached the respondent No.2 on 29.11.2022 i.e. after the son of the complainant committed suicide and the said complaint dated 29.11.2022 was re-inquired into by SP Pragya Jain and vide 2nd inquiry report dated 08.02.2023, it was recommended that that the application does not require any action and as such to consign the same.

(4). The argument raised on behalf of the petitioner is that when two consecutive inquiries conducted by the official respondents on the same complaint have already exonerated the petitioner holding that no offence has been committed by him moreso when the contents of the complaints filed by the complainant and her daughter did not inspire any merit and were found to be baseless and false, in such circumstances, the action of the respondents in conducting enquiry on the same set of allegations, for the third time, itself is totally against the criminal jurisprudence of law.

(5). Learned State counsel, on the other hand, has filed reply dated 28.03.2024 by Surinderjeeet Kaur, PPS, AIGP (Complaints Cell), BoI, Punjab which is taken on record. It is averred in the reply that the representation dated 29.11.2022 was inquired into by SP, PBI/Investigation Khanna in which recommendation was made to file the said representation of Dolly Arora. It is further stated that Senior Superintendent of Police, Khanna sent his report dated 08.02.2023 to the Director, Bureau of Investigation with the recommendation to file the complaint, however, the same were kept pending awaiting clarification of queries from the SSP, Khanna, however, in the meantime, CRM-M-7917-2023 filed by the petitioner was disposed of as infructuous on

the statement of the official respondents that *“a free and fair inquiry was conducted and the same already stands completed...”*.

(6). What is astonishing for this Court is to note that when a specific stand was taken by the respondents themselves, before this Court, that free and fair inquiry has been conducted whereby the complaints filed by the complainant and his daughter, were recommended to be filed, as to how and in what circumstances and incriminating material, re-enquiry was ordered to be conducted on the representations dated 20.04.2023 and 04.05.2023 while transferring the investigation of FIR No.236 of 2022 to the Bureau of Investigation, Punjab.

(7). It becomes pertinent to mention that both the enquiries on the complaints, containing similar set of allegations, were conducted by the IPS Officers in the rank of Assistant Commissioner and Superintendent of Police and the reply is conspicuously silent as to the factual aspect and materials which were before the Bureau of Investigation but were not available with the 1st and 2nd Enquiring Authorities. The relevant extract of the enquiry report dated 29.09.2022 conducted by the Assistant Commission of Police is reproduced as under:-

“...the parents of Dolly Arora had given her matrimonial advertisement in newspaper and afterwards both the families had performed their marriage with mutual consent. This marriage is found to have performed with Hindu rites and ceremonies. Ishan Kumar and Dolly Arora also used to do whatsapp chat with each other. Complainant Lekh Raj has levelled allegations of forcible marriage and rape but these allegations could not be proved during enquiry nor has complainant party presented any substantial evidence in support of allegations of forcible marriage

and rape. Complainant's daughter Dolly Arora wanted to go to Canada and her husband want to send her to U.K. He has paid her college fees in U.K. and has also got conducted her medical for sending her to U.K. Documents are attached herewith. The matter is of mutual differences between both families. Local police is not required to take any action on complaint. Complaint should be filed to office record.”

(8). Even in the 2nd enquiry report conducted on the complaint of Dolly Arora, the Senior Superintendent of Police, Khanna in letter dated 08.02.2023 addressed to the Director, Bureau of Investigation, Punjab, on the basis of the report of investigation conducted by Dr. Pragya Jain, IPS, SP (I/PBI), Khanna, recommended that the application moved by the complainant does not require any action and the same be consigned. The relevant portion of the said letter reads as under:-

“...Relevant records were produced by both the parties. Application Verification of marriage certificate regarding marriage of Dolly Arora and Ishaan Kumar from Marriage Registrar, Amritsar-1 was got conducted from which it was found that the applicant Dolly Arora and Ishaan Kumar are legally husband and wife. Which has been confirmed to be organized according to Hindu rituals. Which is confirmed from the photos of Dolly Arora and Ishaan Kumar during their wedding and their WhatsApp chats. Regarding Dolly Arora's going abroad, both the parties have been found to have transferred money to each other's bank accounts. They jointly applied for overseas visa for Australia and later UK with mutual consent to go abroad. Apart from this, the applicant Dolly Arora and Ishaan Kumar have been found to move around as husband and wife at their own will after marriage. Nothing has come out about the allegations made by the applicant Dolly Arora...”

(9). The matters pertaining to holding enquiry, re-enquiry and further enquiry in the complaints filed by various complainants, without registration of the FIR, has been discussed by this Court on 18.10.2004 in the matter of **Mohinder Singh Vs State of Punjab and others (CRM-M21452-2004)** wherein this court has observed as under:-

*“34. In the same context, reference may be made to a Division Bench judgment of the Delhi High Court reported as **Sanjeev Kumar v. Commissioner of Police, 2002(2) RCR (Criminal) 261** wherein while relying on **Bhajan Lal's** case (supra), **State of U.P. v. Bhagwant Kishore Joshi, AIR 1964 Supreme Court 221, P. Sirajuddin etc. v. The State of Madras, AIR 1971 Supreme Court 520, All India Institute of Medical Sciences Employees Union (Regd.) v. Union of India & others, 1997(4) RCR (Criminal) 594 (SC) : 1996(11) SCC 582 and Satish Kumar Goel's case** (supra) held in the following terms :-*

*"22. From the aforesaid precedents it is clear that following conclusions can conveniently be drawn : (i) whenever it is brought in writing or otherwise that a cognizable offence has been committed in terms of the decisions in the case of **Bhajan Lal** (supra) a First Information Report should be recorded, (ii) if the information given is not clear or creates a doubt as to whether it discloses the commission of a cognizable offence some enquiry can precede before registration of the offence, (iii) in case of a complaint of such nature made against public servants it is doubtful or similarly if it found that ex facie there is some un-truth in the same, an enquiry can be conducted before registration of the case, (iv) the enquiry need not partake that of an investigation. It only is a preliminary enquiry that can be held."*

35. In a large number of cases, it has been found that the police has been resorting to the measure of ordering enquiries at various levels. Reference has been made to the entire case law as decided by the Hon'ble Supreme Court and this Court which provides for no scope for any such enquiry in case information given discloses commission of a cognizable offence. The only requirement is that the information so lodged must provide a base for the police officer to suspect the commission of a cognizable offence. When this condition is satisfied, the registration of an FIR under Section 154 Criminal Procedure Code is a requirement of statute.”

(10). Multiple inquiries not only cause injustice to the aggrieved party but also become a source of abuse, harassment and cause delay in conclusion of criminal investigation and trial. How many inquiries and by how many officials? The matter regarding conducting of numerous enquiries at various stages by various police officers, in criminal cases were being got conducted by the parties from time to time resulting in multiplicity and different reports, as a result of which, the Director General of Police, Punjab, issued instructions dated 1.4.2008 elaborating the procedure to be followed by the police authorities in future to be followed in principle by field officers. As a matter of principle, only one enquiry is required. However, in some cases, in the interest of justice and fair play and to reach the truth, when it becomes imperative to get the matter further enquired, ‘further enquiry’ is ordered/directed by Judicial Court or Human Rights Commission or other statutory bodies or the State and once enquiry has been held, no further enquiry ought to be held by the police except for the orders given by the Courts and Human Rights Commission or any other statutory body of the State or as envisaged in the instructions issued by the Director General of Police, which says that if inquiry is to be got

conducted from officers of outside district/range, then the case be sent for further inquiry after approval of the Director General of Police and the Punjab Government.

(11). In order to demonstrate the fact that Punjab Police are in the spree of conducting multiple enquiries, on the basis of complaint moved by the same complainant on the same set of allegations in violation of Article 21 of the Constitution of India as also the directions issued by the Supreme Court in **Lalita Kumari Vs. Govt. Of UP (SC) 2013(4) RCR Criminal 979**, learned counsel for the petitioner submits that a Coordinate Bench of this Court vide order dated 05.02.2024 passed in ***Surinder Kumar and others Vs State of Pb and others (CRM-M-5292-2024)***, while dealing with similar situation where complaints are moved to the senior police officers and multiple/repeated enquiries are being conducted in every district of Punjab including SAS Nagar (Mohali) by various police officers in contravention of the DGP Instructions dated 01.04.2008, has taken serious note of the action of the said district Police and even issued contempt proceedings against the errant police officers calling upon them, *inter alia*, to furnish details with regard to the enquiries being conducted by various police officers in District SAS Nagar in different.

(12). Be that as it may, once the instructions restrain the police officers from conducting further enquiry/re-enquiry except with prior permission of the Director General of Police, Punjab and also taking into consideration the fact that the petitioner stood exonerated not once but twice in the enquiry conducted by the Assistant Commissioner of Police and Superintendent of Police on two different occasions, but on the similar set of allegations leveled by the

complainant and his daughter, the respondents No.1&2 cannot be allowed to order 2nd re-enquiry proceedings against the petitioner.

(13). For the reasons mentioned above, this petition is allowed and the action of the respondents No.1&2 in ordering to conduct investigation in FIR No.236 of 2022 and re-enquiry into the representations/complaints submitted by the respondent No.3 or the complainant by the Bureau of Investigation, Punjab, is quashed.

01.04.2024
V.Vishal

(Sandeep Moudgil)
Judge

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

Yes/No
Yes/No