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Surinder Kumar and others Vs State of Pb and others

Present: Mr.S.K.Jain, Advocate with
Mr. Anubhav Singla, Advocate and
Mr.Abhimanyu Garg, Advocate for the petitioners.

Mr. I.P.S. Sabharwal, DAG, Punjab.

1. The petitioners have filed the present petition under Section 482 Cr.P.C with a prayer to issue appropriate directions to respondent No.5 not to harass the petitioners by calling them unnecessarily in his office, in respect of complaint made by respondent No.6, as earlier two inquiries reports dated 17.01.2022 (Annexure P-2) and 02.06.2023 (Annexure P-4) had already been filed by the superior police officers and allegations levelled by respondent No.6 against the petitioners have been found to be of civil nature.

2. Learned counsel for the petitioners contends that a dispute relating to a plot is pending between petitioner No.1 and respondent No.6. Even though it was a civil dispute, but with a view to harass the petitioners, respondent No.6 filed a complaint bearing I.D. No.20210024420 before the office of Senior Superintendent of Police, SAS Nagar (Mohali)-respondent No.2 for investigation, which was marked by him to Superintendent of Police (City), SAS Nagar-respondent No.3 for enquiry. Respondent No.3 conducted a detailed enquiry and found that the matter in dispute is of civil nature and moreover no document as proof had been submitted by respondent No.6 in support of his allegations and the enquiry was ordered to be closed vide detailed enquiry report dated 17.01.2022 (Annexure P-2). Learned counsel further submitted that with a mala fide intention to harass



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and pressurise the petitioners and their family members, respondent No.6 again moved a complaint before the office of Senior Superintendent of Police, SAS Nagar-respondent No.2 on the same set of allegations and got it marked to Superintendent of Police (P.I.B.), SAS Nagar (Mohali)-respondent No.4. Again, respondent No.4 conducted a detailed enquiry and submitted a report dated 02.06.2023 (Annexure P-4), wherein it was found that no case was made out to register a case against the petitioners and being a case of monetary transaction, it was a case of civil nature. Even no evidence had been found with regard to the commission of fraud by the present petitioners.

3. Learned counsel for the petitioners further contends that again on the same set of allegations, respondent No.6 moved a complaint to Senior Superintendent of Police, SAS Nagar-respondent No.2, who had marked the third enquiry to DSP (Traffic), District SAS Nagar (Mohali)-respondent No.5 and now the matter of civil nature is being enquired into by respondent No.5. He further contends that now the petitioners had been called to join the enquiry at the office of respondent No.5. Learned counsel further submitted that once two detailed enquiries had been conducted by respondents No.3 and 4, respectively, there was no justification of holding an enquiry again. He further contends that as per the instructions issued by the office of DGP, Punjab, no such enquiries can be conducted on the basis of same set of allegations, when the complaint has been moved by same complainant to the Senior Superintendent of Police, SAS Nagar. Still further, the earlier enquiry was conducted by an officer of the rank of



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Superintendent of Police, who was superior in rank to respondent No.5, who is presently proceeding with the third enquiry in the case in hand.

4. Learned counsel further contends that in fact the matter concerning the original sale deed, which is the subject matter of dispute, is *sub judice* before the Civil Court at Dera Bassi in the shape of civil suit and copy of the plaint in this regard had been annexed as Annexure A-3.

5. This case was taken up on 01.02.2024 and the learned State counsel was directed to seek instructions in the matter. Again on 02.02.2024, no police official had instructed the learned State counsel and the statement could not be made by him with regard to the status of the enquiry, which was being conducted by respondent No.5.

6. Today in the morning session, the case was taken up and a request for pass over was made to seek further instructions in the matter. However, in the post lunch session, the case was taken up again. The learned State counsel was unable to assist the Court as he had not been informed with regard to the status of the enquiry in the present case. This clearly proves that the concerned officer, who is conducting the enquiry, has scant regard for the orders passed by this Court and has not even bothered to instruct the learned State counsel, before this Court.

7. 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-M-21452-2004) 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



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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.”

8. Still further, while considering the issue relating to holding multiple enquiries by the police, without registration of the FIR, was considered again by this Court and the following observations were made by this Court in its order dated 12.01.2006 passed in CRM-M-18244-2009 titled as ‘Jaswinder Singh Vs State of Punjab and others:-

“Multiple inquiries not only cause injustice to the petitioner-complainant 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? A sort of self-discipline is required to be instilled in Punjab Police by the officials who are at the helm of affairs.

To await the affidavit of the DGP, adjourned to 13th August, 2008.

At this stage, Counsel for the petitioner states that now Senior Superintendent of Police, Ropar has assumed the jurisdiction and in a fresh inquiry, has called the petitioner to appear.

Till the affidavit is furnished by the DGP, petitioner need not appear before the Senior Superintendent of Police, Ropar.”

In compliance of the above order dated 23.7.2008 passed by this Court, Director General of Police, Punjab, Chandigarh has file an affidavit on behalf of State of Punjab. He has stated as under:-

"1. That it was observed, enquiries in criminal cases were being got conducted by the parties from time to time resulting in multiplicity and different reports.

2. That, therefore, this office issued instructions on 1.4.2008



elaborating the procedure to be followed in future. These instructions are normally being 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 it becomes imperative to get the matter further enquired. Some times further enquiry is ordered/directed by Judicial Court or Human Rights Commission or other statutory bodies or the State.”

In view of the affidavit filed, it will be necessary to hold that instructions issued by the Director General of Police, Punjab on 1.4.2008 be strictly construed 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 say 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. Any violation of the instructions, Annexure P-9, shall not be looked favourably and the concerned person holding enquiry shall be fastened with costs.”

9. During the course of hearing, it is learnt that DGP, Punjab, had informed this Court that his office had issued instructions on 01.04.2008, elaborating the procedure to be followed in future and the instructions will be followed in principle by the field officer. It was also stated that as a matter of principle, only one inquiry was required. After consideration of the reply filed by DGP, this Court had clearly observed that any violation of the instructions (Annexure P-9), issued by DGP, Punjab, shall not be looked



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favourably and the concerned person holding inquiry shall be fasten with costs.

10. Even the Hon'ble Supreme Court had deprecated the holding of enquiries by the police officers, without registration of an FIR and had laid down certain guidelines in this regard in the matter of *Lalita Kumari Vs. Govt. Of U.P(SC) 2013(4) RCR Criminal 979., which are as under:-*

“77. The term inquiry as per Section 2(g) of the Code reads as under : '2(g) - "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court." Hence, it is clear that inquiry under the Code is relatable to a judicial act and not to the steps taken by the Police which are either investigation after the stage of Section 154 of the Code or termed as 'Preliminary Inquiry' and which are prior to the registration of FIR, even though, no entry in the General Diary/Station Diary/Daily Diary has been made.

78. Though there is reference to the term 'preliminary inquiry' and 'inquiry' under Sections 159 and Sections 202 and 340 of the Code, that is a judicial exercise undertaken by the Court and not by the Police and is not relevant for the purpose of the present reference.

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111. In view of the aforesaid discussion, we hold:

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an



inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under : a) Matrimonial disputes/ family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases

e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.



vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

11. Later on, a Criminal Misc. Application was filed in **Lalita Kumari's** case (supra) before the Hon'ble Supreme Court and clause (vii) of paragraph 111 of the judgment is modified in the following manner:-

“(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed fifteen days generally and in exceptional cases, by giving adequate reasons, six weeks time is provided. The fact of such delay and the causes of it must be reflected in the General Diary entry”. To this extent, clause (vii) of paragraph 111 of the judgment is modified.”

12. From the above-referred discussion, it is clear that the official respondents have violated the directions issued by the Hon'ble Supreme Court in the matter of **Lalita Kumari's case (supra)** and this Court in **Jaswinder Singh's** case (supra) and thus, this Court is of the prima facie opinion that respondents No.2 and 5 have committed the contempt of court



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for having violated the directions issued by the Hon'ble Supreme Court and this Court in this regard.

13. Consequently, respondents No.2 and 5 are directed to remain present in person before this Court on the next date of hearing.

14. Apart from that, it has also come to the notice of the Court that in number of cases, the 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.

15. In the present case also, it is evident that third enquiry is being conducted on the basis of complaint moved by the same complainant on the same set of allegations. This Court has reasons to believe, after dealing with several similar cases in District SAS Nagar (Mohali) that multiple enquiries are being conducted by different police officials for the last several months in District SAS Nagar, which is violative of the Article 21 of the Constitution of India of every accused in such complaint and is also in violation of the directions issued by the Hon'ble Supreme Court in **Lalita Kumari's case (supra)**.

16. Consequently, the Senior Superintendent of Police, SAS Nagar-respondent No.2 is directed to submit the following details with regard to the enquiries being conducted by various police officers in District SAS Nagar in different complaints, without registration of the FIR and the following details may be submitted by way of his personal affidavit.

- (1) Name of the complainant;
- (2) date and receipt of the complaint;
- (3) date of initiation of the enquiry;
- (4) number of enquiries conducted in every such matter;

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- (5) the fate of each enquiry conducted by the police;
- (6) name of the official, who is conducting the present enquiry;
- (7) how many inquiries have been conducted in each case.

17. Ms. Tanu Bedi,, Advocate, (P-1317/2001) XXXXXXXXXX who is present in the Court, is appointed as Amicus Curiae to assist the Court

18. Learned counsel for the petitioner is directed to supply a complete set of paper book to the learned Amicus Curiae during the course of the day.

19. List in urgent on 12.02.2024.

20. A copy of this order be handed over to the learned State counsel, under the signatures of Bench Secretary of this Court, for strict compliance thereof.

05.02.2024

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**(N.S. SHEKHAWAT)
JUDGE**