

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.12186 of 2020 (O&M)

Date of decision: 8th September, 2020

Sumedh Singh Saini

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. A.P.S. Deol, Senior Advocate with
Mr. Himmat S. Deol, Advocate for the petitioner.

FATEH DEEP SINGH, J.

“Between malice in fact and malice in law, there is a broad distinction which is not peculiar to any particular system of jurisprudence. A person who inflicts an injury upon another person in contravention of law is not allowed to say that he did so with an innocent mind, he is taken to know the law and he must act within the law. He may therefore be guilty of malice in law, although so far as the state of his mind is concerned, he acts ignorantly and in that sense innocently.”

were the famous lines in **Shearer V Shields** and rather aptly applies to this Civil Writ Petition filed by the present petitioner, a former Director General of Police of Punjab Police, whereby he has sought invocation of Articles 226, 227 of the Constitution of India to hold that:-

- i) the investigations in case bearing FIR no.77 dated 06.05.2020 under Sections 364, 201, 344, 330, 219, 120-B IPC pertaining to Police Station Mataur, District S.A.S. Nagar (Mohali) (Annexure P10), are non-est in the eyes of law;
- ii) is an outcome of malice, vengeance due to political considerations;
- iii) further investigations into this case by the police be stayed and the matter be transferred outside the State to any other Agency or Central Bureau of Investigation;
- iv) presentation of the challan be stayed;
- v) and there being lack of jurisdiction with the police on account of quashment of previous FIR on same set of facts.

The concise background of the instant case is that one Balwant Singh Multani (referred to as 'deceased'), a Junior Engineer with Chandigarh Industrial and Tourism Development Corporation Limited (CITCO) living in Mohali, son of a senior IAS officer of Punjab, was taken away illegally by the Chandigarh Police on early morning of 11.12.1991. At that time, petitioner happened to be the Senior Superintendent of Police of Chandigarh. The family adopted all recourses of law but to no avail. The deceased was subsequently shown to have been arrested in case FIR No.440 dated 13.12.1991 under Sections 212, 216 IPC; Section 25 of the Arms Act, and Sections 3 and 5 of the

Terrorist and Disruptive Activities (Prevention) Act, 1987 pertaining to Police Station Sector 17, Chandigarh and inhumanly/barbarically tortured. Thereafter, the deceased was shown deceptively to have been taken to Quadian, District Batala where he is claimed to have escaped in spite of heavy Police and paramilitary forces. Since then, the deceased was not heard of nor his body found and presumed to have been eliminated. The father, with valiant efforts, got an FIR bearing No.RC51/08(S)0010 dated 02.07.2008 registered under Sections 364, 343, 330, 167, 193, 120-B IPC P.S. CBI/SSC/CHG. However, the Supreme Court vide orders dated 07.12.2011 quashed the said FIR but passed the following orders:-

“80. However, it is open to the applicants who had filed the petitions under Section 482 Cr.P.C. to take recourse to fresh proceedings, if permissible in law.”

It is in pursuance of this order the brother of deceased, present complainant Palwinder Singh stepped into the shoes of his deceased father and got the present FIR bearing no.77 dated 06.05.2020 registered under Sections 364, 201, 344, 330, 219, 120-B IPC pertaining to Police Station Mataur, District S.A.S. Nagar (Mohali) against the petitioner and other police officials in which subsequently offence under Section 302 IPC too was added when sufficient evidence had come about in the investigations. It is against this case the petitioner accused has filed this instant petition.

The Coordinate Bench vide orders dated 19.08.2020 at the initial hearing before issuing notice of motion, posed the question of maintainability of the petition upon which arguments have been heard from petitioner's side.

The contentions of Mr. A.P.S. Deol, learned Senior Advocate assisted by Mr. Himmat Singh Deol, Advocate that the initial complainant Darshan Singh Multani had since died and how the son Palwinder Singh could again initiate fresh proceedings on same facts after the Supreme Court had earlier quashed the FIR and that too after such a long delay.

It needs to be kept in mind that "*A crime never dies*" in light of maxim "*nullum tempus aut locus occurrit regi*" i.e. time lapse is no bar to take cognizance. Reliance placed on '**Japani Sahoo vs. Chandra Sekhar Mohanty**' (2007) 7 SCC 394. Furthermore, in a similar proposition the Apex Court in the case titled '**Sajjan Kumar vs. Central Bureau of Investigation**' (2010) 9 SCC 368 has clearly laid down, the proposition by relying upon **Japani Sahoo's ratio (ibid)** and remarking "... .. *It is settled law that a criminal offence is considered as a wrong against the State and the Society even though it has been committed against an individual. Normally in serious offences prosecution is launched by the State and a Court of law has no power to throw away prosecution solely on the ground of delay... ..*"

Moreover, such matters need only to be adjudicated at trial on merits

where it can be appreciated of the likelihood of prejudice to the accused. Moreover, it is well elicited on the records which clearly remains unrebutted that immediate upon illegal detention the family set into motion the law and so there is no apparent delay. However, since the local police were accused and the petitioner had by then attained much wider influence and power, frustrated all these endeavours. Since the father died, in view of the provisions of Section 256 Cr.P.C. the Magistrate can continue with the proceedings in light of serious allegations of Murder and the legal heir, a son, can certainly step into the shoes of the deceased father. Reliance placed on '**Chand Devi Daga & others vs. Manju K. Humatani and others**' (2018) 1 SCC 71. So these submissions of the petitioner side fall to the ground.

The order dated 07.12.2011 of the Supreme Court clearly elucidates that the complainant side can take recourse to fresh proceedings if permissible in law. Sh. A.P.S. Deol could not impress upon the Court how the second FIR was as such impermissible. A serious and heinous crime has come about which has its repercussions on the Society at large and the Courts being concerned with dispensation of Law are also tools of Social Justice as well. The first FIR case was not quashed on merits but on grounds of misdemeanor. So the principle of Res-judicata does not come into play.

It needs to be kept in mind that by the Scheme of Cr.P.C. the power of the police to investigate a cognizable offence is not to be lightly

interfered with by the judiciary. Reliance placed on '**S.N. Sharma vs. Bipen Kumar Tiwari and others**' 1970 AIR 786 and in a similar situation in the case of '**State of Bihar and another v/s J.A.C. Saldanha and others**' 1980 AIR 326 same is the ratio laid down by the Supreme Court. Though in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution of India provided the Court is convinced that the power to investigate has been exercised malafidely. The counsel, though has adverted to at length of the alleged heroic acts of the petitioner and his victimization at the hands of the Politicians, but sad to say that the same does not come to his aid to wash off the blood of the crime from his smudged hands. Moreover, panicked over the law coming close on his heels the petitioner has raked up this subterfuge as a last resort to take undue sympathies of the Court and which are subject to only appreciation at the trial.

In a subsequent view in '**United Bank of India v/s Satyawati Tondon and others**' 2010 AIR (SC) 3413 the Supreme Court has laid down that besides other factors, before exercising its powers under Article 226 of the Constitution of India the Court is to see if the petitioner has any alternative/effective remedy for alleged redressal of his grievance which is well elucidated in the Cr.P.C. where all these reliefs fall within the Code of Criminal Procedure within powers of the High Court. The petitioner failed to exhaust the alternate remedy. Moreover,

the petitioner has been provided with Z+ security for his protection and has the resources to engage best of the legal brains whereas the poor complainant, the victim side, out of fear and deficiency of resources may be prejudiced in pursuing the matter if it is transferred out. More so, the investigating agency is collecting evidence which is only available in the State of Punjab and it is easier even for the witnesses to get themselves examined before the SIT. The transfer would also result in protracted delay which suits the petitioner at this game of wits who since 1991 has managed to keep the law at bay. So, as has been held in '**Abdul Nazar Madani v/s State of Tamil Nadu and another**' 2000(2) RCR (Criminal) 770, it is not only likely to prejudice the complainant but would also result in denial of fair investigations and trial.

The question of quashment of the FIR and the proceedings in investigations qua the petitioner is too preposterous. The investigation has just set into motion and is at infancy stage and in light of well enshrined law laid down in '**State of Haryana and others v/s Bhajan Lal & others**' 1992 (Suppl.) (1) SCC 335, the Supreme Court has laid the following circumstances where such a recourse can be adopted which though are illustrative and not exhaustive, are as follows:-

(1) where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the first information report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

None of these essentialities is either prima facie made out in the case of the petitioner nor the petition qualifies on those counts. Moreover, allegations are of very heinous nature and need a thorough probe for keeping alive the faith of the Society in the system of dispensation of Justice.

Further, in the case of ‘A.R. Antulay v/s R.S. Nayak’ (1988) 2 SCC 602, stressing on morality by Public Servants it was remarked that ***“... .. we must remind ourselves that purity of public life is one of the cardinal principles which must be upheld as a matter of public policy. Allegations of legal infractions and criminal infractions must be investigated in accordance with law and procedure established under the Constitution. Even if he has been wronged, if he is allowed to be left in doubt that would cause more serious damage to the appellant. Public confidence in public administration should not be eroded any further. One wrong cannot be remedied by another wrong...”***

The petitioner, then a DGP, the highest officer of the State Police force had shown such a scant regard for law, and has not only seriously undermined the Fundamental Rights of a citizen but gone to the extent of eliminating a precious Human Life in a manner which is beyond

retribution. He has set up a poor image and precedent for the Force which is by virtue of the uniform and service oath to be the Protectors of humans and not the Terminators. What has come across to this Court from the records depict depravity of mind and for which the petitioner deserves no compassion. The celebrated Judge J. Krishna Iyer had remarked ***“If the use of the power is for fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal.”***

In what has been discussed above, there is no substance in the present writ petition nor on the face of it is maintainable and thus stands dismissed in limine.

(FATEH DEEP SINGH)
JUDGE

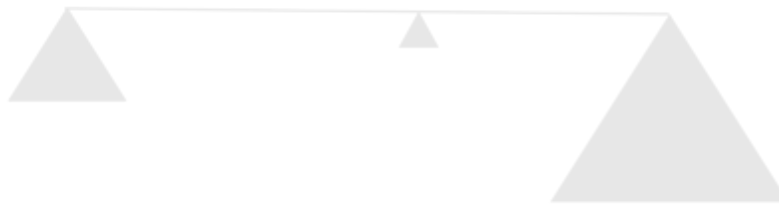
September 8, 2020
rps

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No



Mr. Siddharth Luthra, Senior Advocate with
Mr. Harin P. Raval, Senior Advocate, assisted by

Mr. Karan Bharihoke, Mr. Sheezan Hashmi,
Mr. Anmol Kheta, Advocates; and

Ms. Anusha Nagarajan, Dy. Advocate General, Punjab;
Ms. Diya Sodhi, Assistant Advocate General, Punjab

for respondents No.1, 3 and 4.

Mr. A.M. Punchhi, Public Prosecutor, UT with
Mr. Anupam Bansal, Advocate
for respondent No.2.

Mr. Sartej Singh Narula, Special Public Prosecutor
for respondents No.5 and 6.

Mr. Sumeet Goel and Ms. Manju Goyal, Advocates
for respondent No.8.

