

(2006) 05 P&H CK 0015

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 21035-M of 2005

Panna Lal and Another

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision: May 17, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 407, 419

Citation: (2006) 3 RCR(Criminal) 636

Hon'ble Judges: T.P.S. Mann, J

Bench: Single Bench

Advocate: R.P. Singh Ahluwalia, for the Appellant; K.S. Godara, D.A.G., Haryana for the Respondent-State and Mr. P.L. Singla, Advocate for the Respondent No. 2, for the Respondent

Final Decision: Dismissed

Judgement

T.P.S. Mann, J.

Order dated 17.1.2005 passed by Judicial Magistrate Ist Class, Ambala Cantt while directing the investigating agency to reinvestigate the case has been challenged by the petitioners by filing the present petition u/s 482 Cr. P.C.

2. A complaint was filed by Ajay Sagar-respondent No. 2 to the Superintendent of Police on 22.6.2004, on the basis of which FIR No. 128 dated 23.6.2004 was registered at Police Station Mahesh Nagar, Ambala Cantt under Sections 407, 419, 420, 472, 473, 379 and 120-B against the petitioners. After investigation of the case, the police prepared a cancellation report, which was, thereafter, presented before the Magistrate. Accordingly, the Magistrate issued notice to the complainant, who filed a protest petition. After hearing the State and the complainant and after perusing the final report u/s 173 Cr. P.C. submitted by the police, the Magistrate came to a conclusion that the investigation had not been done properly, keeping in

view the allegations of the complainant-party. The various facts which needed to be investigated by the police were stated in para-8 in the order dated 17.1.2005. The same reads as under :

In the case the police, it appears, has not done the investigation properly keeping in view the allegations of the complainant party. The complainant should have been joined in the investigation so that they could have explained the matter properly. All the components, moulds of the company of the complainant and the company of the accused should have been taken into custody and it should have been ascertained whether the accused company had all the components, moulds etc. to prepare the Moisture Analyzer of which they had submitted the sample with Punjab Mandi Board. This has not been done at all. This was essential especially in view of the allegations of the complainant that the accused company had been successful in perhaps changing the samples submitted by them along with the tender. The police should have also got the photographs of the samples submitted by both the companies compared with the samples submitted by them and taken into custody during the investigation to come to a conclusion whether the samples taken into custody by the police during the investigation matched with those photographs or not. The police should also have taken the report of the Workshop like CIPET, Amritsar, which is a Central Government Room Workshop dealing with such instruments to come to a conclusion whether such types of Moisture Meters could be copied or not in the manner alleged by the complainant.

3. While assailing the aforementioned order passed by the Magistrate, learned counsel for the petitioners submitted that once the final report u/s 173 Cr. P.C. had been presented by the police, seeking cancellation of the case, the Magistrate had no option, but to accept the same. There was no power with the Magistrate to order reinvestigation/further investigation in the case. In support of his contention, learned counsel has placed reliance on [Randhir Singh Rana Vs. The State Being the Delhi Administration](#), .

4. In the aforementioned case, the police had presented charge-sheet against the accused and after the Judicial Magistrate had taken cognizance of the offence, the accused had also put in their appearance. It was at that stage that the Magistrate of his own ordered further investigation in the case. The facts in the present case are to the contrary. Here the police did not present charge-sheet against the accused, but submitted the cancellation report. After perusing the cancellation report and hearing the State and the complainant, the Court found it appropriate to order reinvestigation/further investigation. The various circumstances which needed to be further investigated were pointed out by the Magistrate in para-8 of the impugned order.

5. Learned counsel for the petitioners has also placed reliance on M.C. Abraham and Another v. State of Maharashtra, 2003 (1) RCR (Cri) 452, wherein the police had submitted a report u/s 169 Cr. P.C. that no case was made out. It was held that the

Magistrate had no power to direct the police to submit a charge-sheet. The power of the Magistrate to order further enquiry was held to be justified. The same is the position in the present case. The Magistrate has the power to order further enquiry by way of further investigation/reinvestigation. The Magistrate has not ordered or directed the police to submit charge-sheet.

6. The petitioners have also brought to the notice of this Court the judgment in Union Public Service Commission v. S. Papaiah, 1997 (4) RCR (Cri) 734. However, even in that case the police had already submitted the closure report and the same had been accepted by the Magistrate. The Magistrate was held competent u/s 173(8) to order further investigation.

7. The order passed by Judicial Magistrate is in accordance with the settled position of law and needs no interference.

The present petition is without any merit and hence, dismissed.

Petition dismissed.