Mohinder Singh Vs State of Punjab and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 18, 2006

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 482
Penal Code, 1860 (IPC) â€" Section 120B, 427

Citation: (2007) 1 RCR(Criminal) 535

Hon'ble Judges: Ajai Lamba, J

Bench: Single Bench

Advocate: R.S. Ghuman, for the Appellant; Eklavya Kumar, Assistant Advocate General, Punjab For the Respondent Nos. 6, 7, 8, 10, 13, 14 and 15 Mr. Harsh Kinra, for the Respondent

Final Decision: Allowed

Judgement

Ajai Lamba, J.
This is a petition u/s 482 Cr.P.C. seeking directions to respondent Nos. 1 to 5 i.e. official respondents, for registering FIR

against respondent Nos. 6 to 15, alleged accused, under Sections 427, 447, 448, 452, 379, 380, 506/ 120-B IPC.

2. The case set up by the petitioner is that he is a non resident Indian from England and is a senior citizen. He purchased land measuring 56 kanals

vide sale deed registered on 3.11.2003 from Harbhajan Singh. The wife of Harbhajan Singh, namely Surinder Kaur and his son Surjit Singh were

not happy with the action of Harbhajan Singh in selling the land.

3. The petitioner had sown wheat crop. It was harvesting time when on 18.4.2004, a telephone call was received that the wheat crop was being

cut by certain persons. The petitioner went to the spot. The other witnesses to the incident are stated to be Swaran Singh, Satnam Singh and

Major Singh. It is the case of the petitioner that respondent Nos. 6 to 15 were found armed with deadly weapons and they cut the crop per force

and removed the wheat thereby committing the offences as alleged. Since cognizable offences had been committed, therefore, the petitioner in

accordance with law, sent a complaint dated 19.4.2004, Annexure P-1, to the Senior Superintendent of Police, Nawanshahar, with a copy to the

Station House Officer, Police Station, Sadar, Nawanshahar. No action thereupon was taken and therefore, another complaint was made vide

Annexure P-2 which is dated 24.4.2004 to the Director General of Police and the Additional Director General of Police, Crime Branch, reflecting

the facts given in the earlier application/complaint, Annexure P-1. Alongwith the complaint, Annexure P-2, sale deed was attached to prima facie

establish the title and possession of the petitioner. The petitioner has also placed on record the sale deed, Annexure P-3, in which there is a clear

recital to the effect that the possession of the land was delivered to the vendee i.e. the petitioner.

4. Learned counsel for the petitioner so as to show that his title stands established, has drawn my attention towards various cases on civil side

traded between the parties. Annexure P-4 is a civil suit titled `Surjit Singh v. Mohinder Singh and Harbhajan Singh'' for permanent injunction to

restrain the defendants from interfering in the possession of the plaintiff. Vide Order dated 27.5.2004, the Civil Court while dealing with interim

application for injunction, found possession over the land as that of petitioner, Mohinder Singh. Accordingly, the injunction application moved on

behalf of Surjit Singh was dismissed.

5. Reference to the other litigation, which was decided much later in time, is not required so as to adjudicate over the issue involved. Suffice it to

say that cases were filed by Harbhajan Singh, his wife Surinder Kaur, the son Surjit Singh against the petitioner as also by the petitioner against

Harbhajan Singh, Surjit Singh and Surinder Kaur. All the cases have been decided in favour of the petitioner thereby upholding his ownership and

possessory title to the land under sale deed registered on 3.11.2003. The cases set up to the contra by the other three persons mentioned above

stand disproved. The judgments/orders of the Civil Courts in the above regards have been placed on the record as Annexures P-12 to P-15.

Regular Second Appeal is stated to be pending in this Court.

6. Learned counsel has also drawn the attention of the Court towards the order of mutation on the basis of sale deed, which has been placed on

record as Annexure P-6. It has been contended that the Sub Divisional Magistrate-cum- Assistant Collector Ist Grade, vide Order dated

12.7.2004, after taking into account the entire material and evidence in the contested case and after considering the objections raised by

Harbhajan Singh found the sale deed dated 3.11.2003 to have been executed legally and duly proved. The transfer of possession has also been

established by way of this document. It has also been found that the sale proceeds had been exchanged. Accordingly, the mutation was sanctioned

in favour of petitioner, Mohinder Singh.

7. Learned counsel has pointed out that having received the complaints, Annexures P-1 and P-2 from the petitioner, an enquiry was marked to the

Deputy Superintendent of Police, Nawanshahar. The Deputy Superintendent of Police, Nawanshahar, in discharge of his duties, vide Annexure P-

5 dated 6.6.2004 which document has also been placed on record by respondent State as Annexure R-1, recorded the following findings :-

Earlier also a case No. 304 dated 26.11.03 U/s 342/420/120-B I.P.C, P.S. Nawanshahr has been registered against Mohinder Singh by Surinder

Kaur w/o Harbhajan Singh R/o Sahlon. Which was enquired by S.P. (D) Nawanshahr and whose enquiry report is annexed herewith . Who has

written in his opinion that the above said offence is not proved to have been committed.

But still to prove the ownership statement of Dharminder Kumar Naib-Tehsildar and deed writer Parshotam lal were recorded. Who has told that

in their presence whole amount was paid and registry was prepared. From which it is proved that according to registry only Mohinder Singh is in

possession and according to the statements of respectable persons, Mohinder Singh had sown wheat. But Harbhajan Singh and party has cut the

wheat forcibly and stealthily. The complaint, which have been given by Mohinder Singh, who is a N.R.I. and is residing in England permanently is

absolutely correct. Because on the basis of carefully perusing the documents only Mohinder Singh is owner in possession and it is proved that he

had sown the wheat. The complaints which have been given by Mohinder Singh against Harbhajan Singh are absolutely correct, even then opinion

of D.A. (Legal) be obtained.

Report alongwith statements of gentlemen, photostat copy of enquiry report of S.P (D) Nawanshahr and copy of Judgment of Civil Court

Nawanshahr produced for your kind perusal and for appropriate orders.

8. While referring to the afore-reproduced portion, it is contended that the contents of the complaint had been considered in the context of the sale

deed. The relevant enquiries had been conducted by way of examining the Naib Tehsildar and Deed Writer who endorsed the fact that the sale

consideration was paid. Possession of petitioner, Mohinder Singh, was found to be established, however, Harbhajan Singh and his party had cut

the wheat forcibly. It has been argued that on such enquiry, the facts given in the complaint having been prima facie established, there was no

scope for the police authorities not to have registered an FIR in terms of Section 154 Cr.P.C. Reference to various judgments of the Hon''ble

Supreme Court and this Court has been made which I shall deal with in later part of the judgment.

9. As against the above, learned counsel for the respondent State has relied on subsequent enquiries conducted. It has been argued on behalf of

the respondent State that enquiry report dated 6.6.2004 was not endorsed by the Senior Superintendent of Police and therefore, had no value and

could not form the basis for registration of FIR. Reference has been made to Annexure P-8, dated 7.7.2004 to contend that the enquiry was

marked to the Deputy Superintendent of Police (C), Nawanshahar, however, the said Officer found that the enquiry had already been conducted

by another Deputy Superintendent of Police i.e. dated 6.6.2004 (Annexure R-1), who was equivalent in rank and therefore, so as to maintain

propriety, the enquiry should be marked to a senior officer. Subsequently, the Superintendent of Police (D), had conducted an enquiry, the report

whereof is Annexure P-9.

10. Having gone through the report, learned counsel for the respondent State has not been able to establish or point out any material reflecting any

enquiry into the incident of 18.4.2004. Rather it is brought out from the report that even the Superintendent of Police (D) found that the sale deed

was registered in favour of petitioner and it was only afterwards that Surinder Kaur wife of Harbhajan Singh got an FIR registered, the same being

FIR No. 304 dated 26.11.2003, under Sections 342, 420 and 120-B IPC, Police Station, Nawanshahar, so, it was concluded that the same

could not have been registered at the instance of Surinder Kaur. Perusal of the concluding portion shows that the report was seen by the Senior

Superintendent of Police on 12.7.2004 and it has been endorsed ""Seen. Filed.

11. Learned counsel appearing for the respondent State while arguing the matter further has referred to Annexure R-2 dated 1.8.2004 appended

with the second affidavit filed in Court which is an enquiry conducted by the Deputy Superintendent of Police, Nawanshahar. It is stated on behalf

of the respondent State while relying on enquiry report dated 1.8.2004, Annexure R-2, that FIR is not required to be registered as the factum of

sowing of wheat crop by the petitioner and forcibly harvesting by Harbhajan Singh and threats etc. were found without substance of truth. A

perusal of the affidavit of Gurmukh Singh Cheema, PPS, Deputy Superintendent of Police, Nawanshahar, dated 26.9.2006 shows that the receipt

of complaints, Annexures P-1 and P-2 from the petitioner is not in dispute. The enquiry conducted earlier by the Deputy Superintendent of Police

has also not been disputed. It has also been admitted in the affidavit that second time the enquiry was marked to the Deputy Superintendent of

Police, however, the same was remitted back with a request that the same be marked to some senior officer. No explanation has come-forth in the

affidavit as to under what circumstances, despite the matter having once been remitted back by the Deputy Superintendent of Police, enquiry was

again marked to the Deputy Superintendent of Police and a different conclusion drawn was accepted.

12. The other argument is that khasra girdawari in favour of the petitioner had not been entered and therefore, the petitioner has no case for

registration of the FIR. Once FIR No. 304 dated 26.11.2003 had been registered at the instance of Surinder Kaur with the allegation that sale

deed in favour of the petitioner was forged, the second FIR could not have been registered.

13. Learned counsel for the private respondents has argued that there is no dispute with regard to proposition of law that once commission of

cognizable offence is reported, FIR has to be lodged in terms of Section 154 Cr.P.C. It has however been contended that it was the duty of the

petitioner to have revealed the factum of earlier FIR No. 304 dated 26.11.2003 having been lodged against the petitioner. This fact was material

and since it has been concealed, the petition should be dismissed. The other argument raised by the learned counsel for the private respondents is

that the information given in Annexures P-1 and P-2 is insufficient for registration of FIR. With regard to the cases on civil side referred to by the

learned counsel for the petitioner, it is stated that Regular Second Appeal is pending and therefore, the matter is still subjudice.

14. No other argument has been raised by the learned counsel for the parties. No reliance has been placed on any case law by the learned counsel

for the respondents.

15. Learned counsel for the petitioner has referred to a number of judgments on the issue. Reference to the case law in extensois required as it has

been observed that in a large number of cases, enquiries are being conducted one after another though the complaint itself discloses suspicion of

commission of a cognizable offence.

16. It will be convenient and useful to reproduce certain parts of the judgments, which are as under :

17. Reliance has been placed on the judgment of Hon''ble Supreme Court in the case of Superintendent of Police, C.B.I. and Others Vs. Tapan

Kr. Singh, . The relevant portion of the judgment on the issue is contained in Para 20 which is reproduced hereunder :-

It is well settled that a First Information Report is not an encyclopedia, which must disclose all facts and details relating to the offence reported. An

informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even

know how the occurrence took place. A first informant need not necessarily be an eye witness so as to be able to disclose in great details all

aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the

information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the

police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied

that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may

have been committed, he is bound to record the information and conduct an investigation. At this stage, it is also not necessary for him to satisfy

himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or

otherwise of the information. Similarly, even if the information does not furnish all the details, he must find out those details in the course of

investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the

investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether

the information furnished provides a reason to suspect the commission of an offence, which the concerned police officer is empowered u/s 156 of

the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any

other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the

manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are

alien to the consideration of the question whether the report discloses the commission of a cognizable offence, Even if the information does not give

full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can.

18. The other judgment to which reference has been made is Ramesh Kumari Vs. State (N.C.T. of Delhi) and Others, . The relevant portion of the

judgment is contained in Paragraphs 3 to 5 which are reproduced hereunder :-

3. ..... We are not convinced by this submission because the sole grievance of the appellant is that no case has been registered in terms of the

mandatory provisions of Section 154(1) of the Criminal Procedure Code. Genuineness or otherwise of the information can only be considered

after registration of the case,. Genuineness or credibility of the information is not a condition precedent for registration of a case. We are also

clearly of the view that the High Court erred in law in dismissing the petition solely on the ground that the contempt petition was pending and the

appellant had an alternative remedy. The ground of alternative remedy nor pending of the contempt petition would be no substitute in law not to

register a case when a citizen makes a complaint of a cognizable offence against a police officer.

4. That a police officer mandatorily registers a case on a complaint of a cognizable offence by the citizen u/s 154 of the Code is no more res

integra. The point of law has been set at rest by this Court in State of Haryana v. Bhajan Lal. This Court after examining the whole gamut and

intricacies of the mandatory nature of Section 154 of the Code has arrived at the finding in paras 31 and 32 of the judgment as under : (SCC pp.

354-55)

31. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate

of Section 154(1) of the Code, the police officer concerned cannot embark upon an enquiry as to whether the information, laid by the informant is

reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the

officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the

commission of an offence which he is empowered u/s 156 of the Code to investigate, subject to the proviso to Section 157. (As we have

proposed to make a detailed discussion about the power of a police officer in the field of investigation of a cognizable offence within the ambit of

Sections 156 and 157 of the Code in the ensuing part of this judgment, we do not propose to deal with those sections in extenso in the present

context). In case, an officer in charge of a police station refused to exercise the jurisdiction vested in him and to register a case on the information

of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the

substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him

discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to

him in the manner provided by subsection (3) of Section 154 of the Code.

32. Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression

`information'' without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, `reasonable complaint'' and `credible

information'' are used. Evidently, the non-qualification of the word ''information'' in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code

may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to

register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In the other words,

`reasonableness'' or `credibility'' of the said information is not a condition precedent for registration of a case. A comparison of the present Section

154 with those of earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word `information'' without qualifying

the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that

`every complaint or information'' preferred to an officer in charge of a police station should be reduced into writing which provision was

subsequently modified by Section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that `every complaint'' preferred to an officer

in charge of a police station shall be reduced in writing. The word `complaint'' which occurred in previous two Codes of 1861 and 1872 was

deleted and in that place the word `information'' was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and

190(c) of the present Code of 1973 (Act 2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for

recording a first information report is that there must be an information and that information must disclose a cognizable offence.

Finally, this Court in para 33 said : (SCC p. 355)

33. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station

satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the

prescribed form, that is to say, to register a case on the basis of such information.

5. The views expressed by this Court in paras 31, 32 and 33 as quoted above leave no manner of doubt that the provisions of Section 154 of the

Code is mandatory and the officer concerned is duty-bound to register the case on the basis of such an information disclosing cognizable offence.

19. The other judgment to which reference has been made is Mohindro Vs. State of Punjab and Others, . The relevant portion of the judgment is

reproduced hereunder :-

1. The grievance of the appellant is that though she has approached the authority for registering a case against the alleged accused persons but the

police never registered a case and never put the law in motion, and therefore, having failed in an attempt in the High Court to get a case registered,

she has approached this Court. Pursuant to the notice issued the respondents have entered appearance. Though the learned counsel appearing for

the State of Punjab stated that there had been an enquiry, we fail to understand as to how there can be an enquiry without registering a criminal

case. On the facts alleged, it transpires that the appellant approached the police for registering a case and get the allegation investigated into and

yet for no reason whatsoever the police failed to register the case. In the aforesaid premises, we allow this appeal and direct that a case be

registered on the basis of the report to be lodged by the appellant at the police station within a week from today and thereafter the matter will be

duly investigated into and appropriate action be taken accordingly.

20. Learned counsel for the petitioner has referred to judgment of this Court in support of his argument. Reference is made to Bhupinder Kaur v.

State of Punjab through Home Secretary, Punjab, 1997 (2) RCR(Cri) 244. The relevant portion on the issue is contained in Para 4 and 5 which

are reproduced as under :-

4. The written statement on record shows that the registration of the case was resisted on merits on the ground that Gurinder Kaur had married

respondent No. 4/Kewal Singh and a copy of DDR No. 26 dated 30.3.1996 (Annexure R-1) was filed in that regard. The written statement is

more confined to the merits of the case than to the claim regarding non-registration of the case. The registration of the FIR is mandatory in cases

where commission of cognizable offences has been disclosed. It is only after registration of the FIR that the police will investigate into the matter

and if no case is made out the police/Investigating Agency is at liberty to file a cancellation report and if the allegations made in the FIR are prima

facie found correct then a challan has to be filed as per provisions of Section 173 Cr.P.C. The police cannot prejudice the issue and refuse to

register a case because it feels that on merits perhaps the allegations made by the complainant are not true.

5. That being so, respondents No. 2 and 3 are directed to register a case on the complaint filed by the petitioner, a copy of which is Annexure P-

1.

21. Particular reference has been made to the case of Manjit Singh v. Senior Superintendent of Police, 1997(2) RCR (Cri) 412 to contend that

there is no scope u/s 154 Cr.P.C. to conduct enquiry and re-enquiry into the incident in view of the settled law laid down by the Hon''ble Supreme

Court of India and this Court in State of Haryana and others Vs. Ch. Bhajan Lal and others, The relevant portion of the judgment is contained in

Paragraphs 5 and 6 which are reproduced hereunder :-

5. The pointer in this subsequent para is towards Baljinder Singh and aforesaid persons. This report was also put up before Harbans Singh, District

Attorney, Faridkot under the orders of the SSP for his opinion. The District Attorney vide his report dated 9.10.1996 gave an opinion that prima

facie a case under Sections 365, 323, 342, 347, 465, 467 and 468 read with sections 511/120-B IPC was made out. Strange enough that in spite

of the fact that the enquiry was conducted at the level of Superintendent of Police, the Police did not go into action for the registration of the case,

against the dictum of the Hon''ble Supreme Court reported as State of Haryana and others Vs. Ch. Bhajan Lal and others,).

6. The learned defence counsel submitted that another enquiry was conducted also at the level of S.P., in which the allegations of the complainant

were found to be false. It has also been submitted by the learned defence counsel that the department has moved to the District Magistrate under

the Police rules for necessary action against Baljinder Singh. The defence taken up by the State strengthens the opinion of this Court that it is a fit

case where a criminal case should be registered against the five persons mentioned in the head-note of the petition in order to elucidate the truth.

Since it is stated that there are contradictory findings with regard to the allegations of the complainant, therefore, for this reason, directions are

further given that after the registration of the case, the investigation be handed over to S.P. (Crimes). The officers, who earlier conducted the

enquiry need not to participate in the investigation.

22. The other judgment of this Court to which reference has been made is Balwant Singh v. State of Punjab, 1998 (2) RCR (Cri) 454. The

relevant portion of the judgment is contained in Para 3 which is reproduced hereunder :-

3. Section 154 Cr.P.C. makes it obligatory for the officer Incharge of the Police Station to register F.I.R. in respect of a cognizable offence.

Undoubtedly, the offence of murder punishable U/s 302 IPC is cognizable offence and henious most offence attracting the minimum punishment of

death sentence and life imprisonment, but herein the informant express his views relating to his wife. Respondents No. 2 and 3, however, thought it

proper to close the matter on the ground that the cause of death was natural. They even denied to register F.I.R. and proper investigation in

accordance with law as laid down in the Cr.P.C. The stand taken in the reply is quite unreasonable and contrary to law. In these facts and

circumstances, I deem it appropriate to allow this petition. The petition is allowed. Direction is issued to respondent Nos. 2 and 3 for registration

of FIR on the basis of DDR No. 19 copy of which is Annexure P/1. Respondent No. 2 shall undertake for investigation of this case under his

personal supervision and get it enquired into by an Officer other than one who had already enquired into it. Investigation shall be completed in

accordance with law and result of the same shall be submitted to the Court of competent jurisdiction for further action.

23. The other judgment to which reference has been made is Amarjit Kaur v. State of Punjab, 1996 (3) RCR(Cri) 628. It is contended that in this

judgment, the civil suit was pending between the parties and the authorities had refused to register the FIR on that count. This Court, however,

found that it is not a good ground not to register an FIR, accordingly, direction was issued to the Station House Officer to register an FIR. On

similar proposition, reference has also been made to another judgment of this Court in Bachni Devi v. State of Haryana, 1996 (3) RCR(Cri) 597.

24. The other judgment to which reference has been made is Palwainder Singh v. State of Punjab, 1997 (1) RCR (Cri) 639 to contend that the

police authorities cannot take refuge under the Punjab Police Rules to delay registration of an FIR on the pretext that enquiries are required to be

held first. The relevant portion of the judgment of this Court is contained in Paragraphs 10 to 12 which are reproduced hereunder :-

10. The legal position as emerges from the above judgment of the apex Court is that any information disclosing a cognizable offence if conveyed to

an Officer in charge of the police station satisfying the requirements of Section 154(1) of the Code, the said police officer cannot refuse to register

a case on the ground that the information is not reliable or credible. On the other hand, he is bound to enter the substance thereof in the prescribed

form; i.e. to say, to register a case on the basis of such information. It is only after the registration of a case as envisaged by Section 154 of the

Code that the said police officer has been given the option by Section 157 of the Code to make up his mind as to whether he would or would not

enter on an investigation. An identical question had arisen before me in Smt. Gurmito''s case (supra). After examining the scope of Section 154(1)

of the Code and Rule 24.4 of the Punjab Police Rules, 1934, it was observed as under :

This rule was enacted in the year 1934, and has lost its statutory force in view of the enactment of the Code of Criminal Procedure, 1973, and the

provisions of Section 154 of the Code having been interpreted by the apex Court, as stated above. It has been specifically made clear by their

Lordships that the legislature had purposely thought it fit to employ only the word ""information"" without qualifying the said word with the prefix

''reasonable'' or ''credible''.

In the same case, it was further observed that :-

The investigation of a cognizable offence is the field exclusively reserved for the police officer whose powers in that field are unfettered, but if a

police officer transgressers the circumscribed limits and exercises his investigatory powers improperly and illegally thereby causing serious

prejudice to the informant or other persons, then the Court on being approached by the person aggrieved for the redress of any grievance, has to

consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of the

police echelons.

11. It is not desirable for this Court to express any opinion on merits of the allegations or the counter version put forward by the parties in their

respective pleadings before me. Suffice it so say that the report made by ASI Sukhwinder Singh after recording a statement of Sukhdev Singh

hardly inspires any confidence. For instance, it has been pointed out by him that after investigation it has been revealed that no weapon was used in

the occurrence. But according to the three medico-legal reports of the three injured persons prepared by the doctor of the civil hospital Batala go

to show that all the three injured had some injuries caused with a sharp weapon and Sukhdev Singh had one grievous injury also. It is also clear

from Annexures P.6 and P.7 that the petitioners had approached Senior Superintendent of Police, Batala, as well as Director General of Police,

Punjab, with a request for the registration of a case in respect of this incident u/s 154 of the Code but without any result.

12. For reasons mentioned above, this petition is allowed. A direction is issued to the Senior Superintendent of Police, Batala to get a case

registered on the basis of the allegations contained in the present petition as well as the complaint (Annexure P.6). After the case is registered, the

investigation shall be carried out by an officer not below the rank of a Deputy Superintendent of Police. The Registry is directed to sent a copy of

this order along with the copy of the petition as well as the complaint (Annexure P.6) to the Senior Superintendent of Police, Batala, for the

information and necessary compliance.

24-A. Learned counsel has also referred to a judgment of the Division Bench of Delhi High Court in Satish Kumar Goel v. State, 2001(1) RCR

(Cri) 25 to argue that at the stage of registration of FIR, the accused has no locus standi to contend that no offence has been committed and

justifying his action. Reference has been made to Paragraphs 17 to 19 which are reproduced hereunder :-

17. Before parting with the case we would like to point out that in V.C. Shukla v. State (Delhi Administration), 1980 Supp SCC 249 : 1980 SCC

(Cri) 849, it was held that when a first information report is filed before a police officer, the law does not require that the officer must hear the

accused before recording it or submitting a charge-sheet to the Court. In this regard, it was held as follows :-

.....Similarly, when a first information report is filed before a police officer, the law does not require that the officer must hear the accused before

recording it or submitting a charge-sheet to the Court. Another instance is to be found where a complaint is filed before a magistrate who chooses

to hold an inquiry u/s 202 of the Code of Criminal Procedure before issuing process or summons to the accused. It has been held in several cases

that at that stage the accused has got no locus to appear and file his objections to the inquiry. The right of the accused to be heard comes into

existence only when an order summoning the accused is passed by the Magistrate u/s 204 of the Code of Criminal Procedure.

18. To the same effect is the decision of the Supreme Court in K. Veeraswami v. Union of India and others, 1991 (2) RCR (Cri.) 559 (SC) :

1991(3) SSC 655. Therefore, in view of the legal position, Inspectors Arun Kumar Sapra and Manu Sharma have no locus standi or any say in

the matter at this stage. 19. It may also be pointed out that at this stage we are not concerned with the question whether the allegations made in the

complaint are true or false. It is only after the FIR has been registered that the police can make an investigation into the matter and in case it finds

that the allegations cannot be supported by evidence; it will file a closure report before the Magistrate.

25. The law as settled in Palwainder Singh"s case (supra) clearly shows that such enquiry is not contemplated even under Rule 24.4 of the Punjab

Police Rules, 1934. The rule lost its statutory force in view of the enactment of the Code of Criminal Procedure, 1973 and provisions of Section

154 of the Code as interpreted. The Legislature had purposely thought it fit to employ only the word `information" without qualifying the said word

with the prefix `reasonable" or `credible".

26. Reference may also be made to The King Emperor v. Khwaja Nazir Ahmad, 1945 CRI LJ 413 (PC). The relevant portion of the judgment

reads as under :-

....in any case, the receipt and recording of an information report is not a condition precedent to the setting in motion of a criminal investigation. No

doubt in the great majority of cases, criminal prosecutions are undertaken as a result of information received and recorded in this way, but their

Lordships see no reason why the Police, if in possession through their own knowledge or by means of credible, though informal, intelligence which

genuinely leads them to the belief that a cognizable offence has been committed, should not of their own motion undertake any investigation into the

truth of the matters alleged. Section 157 of the Cr.P.C., when directing that a Police Officer, who has reason to suspect from information or

otherwise that an offence which he is empowered to investigate under s. 156 has been committed, shall proceed to investigate the facts and

circumstances, supports this view.

In truth, the provisions as to an information report (commony called a first information report) are enacted for other reasons. Its object is to obtain

early information of alleged criminal activity, to record the circumstances before there is time for them to be forgotten or embellished, and it has to

be remembered that the report can be put in evidence when the informant is examined if it is desired to do so.

27. The early recording of information is also required as with the delay in recording of information, injustice is likely to be caused as the evidence

relating to the incident could be lost, destroyed or tampered with. In fact, Section 173 Cr.P.C. itself provides that every investigation under

Chapter XII should be completed without unnecessary delay.

28. In the various judgments referred to above, the issue has been dealt with. It has been held that the FIR need not be an encyclopedia. What is

of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a

basis for the police officer to suspect the commission of a cognizable offence. The police officer, at this stage is not required to be convinced or

satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received that a cognizable offence

may have been committed, he is bound to record the information and conduct an investigation. At this stage, it is not necessary for him to satisfy

himself about the truthfulness of the information or otherwise. That stage comes only after a complete investigation has been conducted. In case

information does not furnish all the details, he must find out those details in the course of investigation. The information given disclosing the

commission of a cognizable offence, only sets in motion the investigative machinery with a view to collect all necessary evidence and thereafter to

take action in accordance with law. Genuineness or credibility of the information is not a condition precedent for registration of a case. In case the

Officer in charge of a police station refuses to exercise the jurisdiction vested in him, and to register a case on the information of a cognizable

offence reported, he clearly violates the statutory duty cast upon him.

29. It is only after registration of the FIR and investigation into the matter, if no case is made out, Investigating Agency is at liberty file a cancellation

report. In case the allegations made in the FIR are prima facie found to be correct, then challan is required to be filed as per the provisions of

Section 173 Cr.P.C. The police cannot prejudice the issue and refuse to register a case because it feels that on merits, perhaps allegations made

by the complainant are not true. Thus, the law as settled by the Hon''ble Supreme Court leaves no measure of doubt that in the entire process,

there is no occasion for the police to conduct an enquiry if the information given provides a basis for the police officer to suspect the commission of

a cognizable offence.

30. In the case of Satish Kumar (supra), the Division Bench of Delhi High Court while relying on the judgment rendered by the Hon''ble Supreme

Court in the case of V.C. Shukla v. State (Delhi Administration), 1980 Supp SCC 249 : 1980 SCC (Cri) 849 has held that when a first

information report is filed before a police officer, the law does not require that the officer must hear the accused before recording it or submitting a

charge-sheet to the Court.

31. In a judgment rendered by the Hon''ble Supreme Court in State of Bihar and Another Vs. P.P. Sharma, IAS and Another, , the essentials of

investigation are reflected. It has been held that the duty of the Investigating Officer is not merely to bolster up the prosecution case with such

evidence as may enable the Court to record a conviction, but to bring out the real unvarnished truth. The Investigating Officer is the arm of the law

and plays pivotal role in the dispensation of criminal justice and maintenance of law and order. The duty of the Investigating Officer, therefore, is to

ascertain facts, to extract truth from half-truth or garbled version, connecting the chain of events. It is his duty to ferret out the truth. It is never his

business to fabricate the evidence to connect the suspect of the commission of the crime. Trustworthiness of the police is the primary insurance. It

is undoubted that no one should unnecessarily be harassed or face an ordeal of criminal trial unless sufficient materials are collected during the

investigation disclosing the crime committed. The Investigating Officer is not to act on a pre-conceived idea of guilt of the accused. The

Investigating Officer is expected to gather the entire material, so that the truth or falsehood of the accusation may be found by the Court at the trial.

It therefore follows that the stand point of the accused should also be considered to unearth the true facts.

32. Section 182 IPC provides the remedy to the public servant, in case a complainant gives to any public servant any information which he knows

or believes to be false. It shall be open to the police official to take recourse, if the facts and circumstances disclose commission of offence u/s 182

IPC, as provided by the provisions contained in Section 195 Cr.P.C.

33. Another judgment to which reference has been made is Binay Kumar Singh and others Vs. State of Bihar, to contend that it is only in cases

where absolutely cryptic information is given which is hardly sufficient for discerning the commission of cognizable offence that an enquiry can be

conducted to ensure commission of an offence. In the case in hand, however, the application is self explanatory with regard to the facts, details of

the witnesses as also the names of the accused. So much so, alongwith Annexure P-2 even the sale deed was sent to establish title of the

petitioner. The relevant portion of the judgment is contained in Para 9 which is reproduced hereunder :-

9. But we do not find any error on the part of the police in not treating Ext. 10/3 as the first information statement for the purpose of preparing the

FIR in this case. It is evidently a cryptic information and is hardly sufficient for discerning the commission of any cognizable offence therefrom. u/s

154 of the Code the information must unmistakably relate to the commission of a cognizable offence and it shall be reduced to writing (if given

orally) and shall be signed by its maker. The next requirement is that the substance thereof shall be entered in a book kept in the police station in

such form as the State Government has prescribed. First information report (FIR) has to be prepared and it shall be forwarded to the magistrate

who is empowered to take cognizance of such offence upon such report. The officer in charge of a police station is not obliged to prepare FIR on

any nebulous information received from somebody who does not disclose any authentic knowledge about commission of the cognizable offence. It

is open to the officer-in-charge to collect more information containing details about the occurrence, if available, so that he can consider whether a

cognizable offence has been committed warranting investigation thereto. (Tapinder Singh v. State of Punjab; Soma Bhai v. State of Gujarat; State

of U.P. v. P.A. Madhu.)

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 (Cri) 261 wherein while relying on Bhajan Lal''s case (supra), The State of Uttar Pradesh Vs. Bhagwant

Kishore Joshi, , P. Sirajuddin, etc. Vs. State of Madras, etc., , All India Institute of Medical Sciences Employees'' Union (Regd.) through its

President Vs. Union of India (UOI) and Others, 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 creats 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 u/s 154 Cr.P.C.

is a requirement of statute.

36. Considering the judgment rendered in Binay Kumar Singh''s case (supra) and Sanjeev Kumar''s case (supra), it is only in cases where

information given is not sufficient for discerning commission of cognizable offence even prima facie that an enquiry can be contemplated. Such

cases would include only those cases wherein police officer has no basis to even suspect the commission of a cognizable offence. In such cases,

the enquiry is required to be concluded at the earliest and preferably within a period of 15 days of the report of the incident so as to avoid any

delay in lodging of the FIR and undertaking investigation.

37. Having noticed the facts of this case, it becomes clear that with regard to the alleged incident of 18.4.2004, the matter was reported on

19.4.2004 vide Annexure P-1 and when no action was taken, on 24.4.2004 vide Annexure P- 2. Sale deed was appended with the complaint

Annexure P-2 to establish ownership and possessory title of the petitioner with effect from 3.11.2003. The matter was enquired into by the Deputy

Superintendent of Police, Nawanshahar who submitted his report on 6.6.2004 which has been reproduced in earlier part of the judgment and

shows that petitioner was the owner in possession and had sown the wheat crop. It has been specifically found that the complaints made against

Harbhajan Singh respondent No. 6 are absolutely correct.

38. An enquiry was conducted, possibly considering the nature of the case and disputed facts with regard to the possession of land, however,

despite the report dated 6.6.2004, Annexure P-5, the police officers of Police Station, Sadar Nawanshahar have failed in discharging their

statutory duties.

39. In my considered opinion, considering the case law as discussed above in the context of the facts of this case, there was sufficient material

available with the police officer to suspect the commission of a cognizable offence on receipt of complaint Annexure P-2 dated 24.4.2004.

Alongwith the complaint, sale deed dated 3.11.2003 was appended to prima facie reflect ownership and possessory title of the complainant.

Enquiry report dated 6.6.2004 Annexure R-1 further confirmed the suspicion. The police officer therefore was enjoined with a statutory duty to

record the information and proceed to investigate the case.

40. I fail to comprehend as to under what rule, regulation or law the second and third enquiries were ordered and conducted. The provisions of

Section 154 Cr.P.C. are mandatory and genuineness or credibility of information is not a condition precedent. The argument of the respondents

that enquiry report dated 6.6.2004, Annexure R-1, had not been endorsed by the Senior Superintendent of Police; Khasra Girdawari had not

been entered in the name of the petitioner; the earlier case lodged by Surinder Kaur had not been disclosed; subsequent enquiry conducted by

another Deputy Superintendent of Police dated 1.8.2004 (Annexure R-2) was at variance with the earlier enquiry dated 6.6.2004 (Annexure R-1)

are clearly dehors the jurisdiction to be exercised u/s 154 Cr.P.C. This is particularly in view of the facts of this case when the sale deed dated

3.11.2003 had been appended with the second complaint dated 24.4.2004, Annexure P-2, reflecting the title of the petitioner.

41. Thus, when the case law is collectively considered, the plea taken by the respondent State is found to be against the settled law. No reliance

on reports rendered in enquiry, re-enquiry or further enquiry can be placed as an excuse for not performing the statutory duty for registration of

FIR. The plea of the private respondents to the effect that because regular second appeal is pending, the matter is still subjudice, is also baseless.

Prima facie on the submission of the sale deed alongwith Annexure P-2 which narrates factum of possession in favour of the petitioner, the

commission of cognizable offence stands reported and therefore, u/s 154 Cr.P.C., it was statutorily required that FIR be lodged and investigation

undertaken.

42. Considering the facts and circumstances of the case and the law as considered above, the petition is allowed.

43. Direction is issued to the Senior Superintendent of Police, Nawanshahar, to issue appropriate directions to register FIR and conduct

investigation. In view of the delay caused and multiple enquiries, it is further directed that the investigation would be conducted and completed

within 90 days of registration of FIR. In view of the facts and circumstances of this case and nature of allegations in the petition, the investigation

would be conducted by an Officer not below the rank of Superintendent of Police. The officers who conducted enquiries would not be associated

with investigation.

A copy of this order be sent to the Home Secretary and Director General of Police, Punjab and Haryana through the respective Advocate

Generals.