
(2013) 08 P&H CK 0822

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. M 35188 of 2011

Pankaj Sharma and
Another

APPELLANT

Vs

State of Punjab and
Another

RESPONDENT

Date of Decision: Aug. 1, 2013

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 173(8), 321, 482
- Penal Code, 1860 (IPC) - Section 120B, 323, 420, 465, 468

Hon'ble Judges: Rekha Mittal, J

Bench: Single Bench

Advocate: Ramesh Goyat, for the Appellant; Neeraj Sharma, AAG, Punjab and Mr. Yogesh Goel, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Rekha Mittal, J.

The present petition filed u/s 482 Cr.P.C., lays challenge to order dated 08.08.2008 (Annexure P6), passed by the Chief Judicial Magistrate, Hoshiarpur, framing charges against the petitioners in FIR No. 188 dated 08.08.2004, registered at Police Station City Hoshiarpur for offence under Sections 120-B, 420, 465, 468, 471, 323 IPC and order dated 20.09.2011 (Annexure P8) passed by the Additional Sessions Judge, Hoshiarpur, whereby the revision petition preferred by the petitioners, has been dismissed. Counsel for the petitioner submits that after lodging of FIR No. 188 dated 08.08.2004 on the statement of Brijesh Kumar Goyal (respondent No. 2 herein), a cancellation report was submitted by the Investigating Agency on 30.08.2005 (Annexure P3). The cancellation report was not accepted by the Court and the file was returned to the police, vide order dated 16.01.2007, passed by the Chief Judicial Magistrate, Hoshiarpur. Subsequent thereto, the Sr. Supdt. of Police, Hoshiarpur, vide order dated 19.02.2007 directed further investigation by ASI Ravinder Pal Singh. Before any further investigation could be

conducted, in compliance with the order passed by the Sr. Supdt. of Police, Hoshiarpur, the Station House Officer, P.S. City Hoshiarpur, submitted a charge sheet in the Court on 04.03.2007, without permission from the Senior Superintendent of Police concerned. An application dated 23.04.2007 (Annexure P4) was filed before the Court for return of challan with permission for conducting further investigation in the matter. The application was dismissed by the trial Court on 02.05.2007 and following order was passed:-

Application presented today. Keeping in view of provisions contained u/s 173 Cr.P.C. if any material facts have come into light, the same can be submitted by the police subsequently u/s 173(8) Cr.P.C. and there is no provision for return of challan as such application be attached with the main file.

2. The prosecution filed cancellation report dated 02.06.2007 (Annexure P5) before the trial Court. It is submitted that the learned trial Court, without taking into consideration the two cancellation reports dated 30.08.2005 and 02.06.2007, in an illegal manner framed charges against the accused (petitioners herein) and the order passed by the trial Court has been wrongly affirmed by the revisional Court. It is prayed that the order passed by the trial Court and the Additional Sessions Judge, Hoshiarpur, should be set aside and a direction may be issued to the trial Court to re-consider the matter in regard to framing of charges after taking into account two cancellation reports submitted by the prosecuting agency.

3. Counsel for the contesting respondent, on the other hand, submits that the petitioners, who are residents of Delhi, committed a fraud with the complainant and prepared forged documents and caused injuries to the respondent. The learned trial Court on the basis of material available on record in view of the report submitted u/s 173 Cr.P.C., has rightly held that there is a prima facie case against the petitioners and, accordingly, charge sheeted them. It is further submitted that the petitioners, who are guilty of committing fraud, forgery and physical assault on the respondent, are not entitled to invoke extra ordinary jurisdiction u/s 482 Cr.P.C.

4. I have heard counsel for the parties and gone through the case file.

5. From a perusal of averments of the petition and reply filed by the respondent, there is hardly any controversy on facts. A cancellation report was submitted in 2005 against which, a protest petition was filed by the complainant and after hearing the complainant, the cancellation report was not accepted by the trial Magistrate and the records were returned. Thereafter, the Station House Officer, Police Station City Hoshiarpur, wherein the FIR was lodged by the complainant, submitted a charge sheet against the petitioners. The trial Court took cognizance of the matter and fixed the case for consideration on charge. The application filed by the prosecution for return of the challan and to conduct further investigation was disposed of by the trial Court with the observations that there is no provision for return of challan but the prosecution can bring on record any material facts which came (sic) into light during further investigation of the case u/s 173(8) Cr.P.C.

Counsel for the petitioners has failed to point out any legal provision which empowers the prosecution to file a cancellation report subsequent to the Court having taken cognizance of the offence. The only remedy available to the prosecution is to seek withdrawal from prosecution in exercise of powers u/s 321 Cr.P.C. As the prosecuting agency has no power to file a cancellation report subsequent to the stage of taking cognizance by a Court of law, I do not find any merit in the contention of the petitioners that the cancellation report filed on 02.06.2007 was required to be taken into consideration by the Court at the stage of framing of charge. As admitted by the petitioners, the earlier cancellation report was rejected by the Court and subsequent thereto, charge sheet was submitted in the Court. The question of taking the earlier cancellation report into consideration otherwise does not arise in the present set of circumstances.

6. In view of what has been discussed hereinabove, no error much less illegality or infirmity can be noticed in the order passed by the trial Court, framing charges against the petitioners without taking into consideration the cancellation reports. The revisional Court has rightly affirmed the findings of the learned trial Court. For the reasons recorded hereinabove, the petition is dismissed. No order as to costs.