

(2008) 01 P&H CK 0266

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 54610-M of 2007

Sarbdeep Singh Virk

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision: Jan. 17, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 120B, 168, 169, 216, 218
- Prevention of Corruption Act, 1988 - Section 13(1)(d)(e), 13(2), 7

Citation: (2008) 1 RCR(Criminal) 934

Hon'ble Judges: H.S. Bhalla, J

Bench: Single Bench

Advocate: R.S. Cheema, with Mr. K.S. Nalwa, for the Appellant; Reeta Kohli, A.A.G., Punjab for the Respondent Nos. 1, 4, 5 and 8, for the Respondent

Judgement

H.S. Bhalla, J.

The prayer made in the petition filed u/s 482 of the Code of Criminal Procedure is for issuance of a direction to hand over the investigation of case FIR No. 98 dated 13.3.2007 registered under Sections 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code in Police Station, Kharar, District SAS Nagar, Mohali (Annexure P-22) and FIR No. 10 dated 8.9.2007 registered under Sections 168, 169, 216, 218, 120-B of the Indian Penal Code and Sections 7, 13(1)(d)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 in Police Station Vigilance Bureau, FSI, Punjab, District Mohali (Annexure P-33) to the Central Bureau of Investigation or any other Independent Agency outside the control of the State of Punjab, as these two FIRs are the result of mala fide and political vendetta or any other order which this court may deem fit and proper in the facts and circumstances of the case be passed.

2. Learned counsel appearing for the petitioner has vehemently contended that the petitioner has lost confidence in the investigating team being headed by Surinder

Pal Singh, respondent No. 8, who is bent upon to involve the petitioner by conducting investigation in a biased manner under the direction of the Director, Vigilance Bureau, Punjab, respondent No. 5. Learned counsel has further contended that the FIR registered against the petitioner is primarily on the ground of amassing property disproportionately from his known sources of income and is the result of mala fides and political vendetta. Learned counsel has further contended that there is no private complainant in the present FIR and the same has been registered at the behest of the Vigilance Bureau itself, Punjab, making Shri Surinder Pal Singh, respondent No. 8 as a complainant and Investigating Officer of the case. Learned counsel has further vehemently contended that respondent No. 8 Shri Surinder Pal Singh, while conducting investigating of this case, completely suppressed participation of his wife regarding purchase of land from the Cooperative Society in question of which she is a member of the Executive Body. Learned counsel has further contended that the present government repealed the Punjab State Vigilance Commission Act, 2006 (for short 'the Act') to give undue advantage to the officers of its liking. Learned counsel has further hotly contended that arrest of the petitioner was done in a haphazard manner, thereby violating the rules and guidelines laid down by the Hon"ble Supreme Court with a view to defame him and malign his reputation in the eyes of society.

3. Per contra, Learned Additional Advocate General appearing for the State of Punjab has valiantly contended that the present petition filed u/s 482 of the Code of Criminal Procedure is not maintainable and the same is liable to be dismissed on this short ground alone. Learned counsel has further laid much stress on the point that the apprehension of the petitioner that the investigation will not be done in a fair manner is without any basis, particularly when Shri Surinder Pal Singh, respondent No. 8, has not actively participated in the investigation nor his wife is beneficiary in any manner. Learned State counsel has further contended that the appointment of the Director, Vigilance Bureau, Punjab is in accordance with law and that there is no personal grudge against the petitioner in any manner.

4. I have heard learned Senior counsel Shri R.S. Cheema appearing for the petitioner assisted by Shri K.S. Nalwa, Advocate and Ms. Reeta Kohli, learned Additional Advocate General, appearing for the State of Punjab meticulously.

5. Before I deal with the point of maintainability of the petition, I would like to refer to the relevant points raised during the course of arguments and to be discussed hereinafter and if the court, on the basis of mala fide intention on part of the investigating team, comes to a conclusion that injustice has been done to the petitioner and thereby making the mockery of law contained in the statute, then certainly to secure the ends of justice and to preserve the faith of common people in the judicial system and in the administration of justice, interference of the court u/s 482 of the Code of Criminal Procedure is required to be invoked. At this stage, I would like to examine the points on which the learned counsel has laid much stress

that the investigation of this case is required to be handed over to an independent agency for thorough probe honestly and expeditiously since the petitioner by filing the present petition has lost confidence in the present investigating team being headed by Surinder Pal Singh (respondent No. 8), who, according to the learned counsel, is bent upon to involve the petitioner by conducting investigation in a biased manner and also by suppressing the real fact from the court that wife of respondent No. 8 was beneficiary by purchasing land from the Cooperative Society in question.

6. I am conscious of the fact that the powers possessed by the High Court u/s 482 of the Code of Criminal Procedure are very wide, but at the same time, it also requires a great caution in its exercise. of course, no hard and fast rule can be laid down in regard to cases in which the court will exercise its extra-ordinary jurisdiction to secure the ends of justice. This reasoning of mine is also supported by the law contained in wherein it has been laid down as under:-

"Criminal Procedure Code, Section 482. - Inherent powers of High Court u/s 482, Cr.P.C. are sweeping, awesome and have no limit but power is to prevent abuse of process of court and to secure the ends of justice. Such power can be invoked only:

- (1)(a) to give effect to any order passed under the Code of Criminal Procedure or
- (b) to prevent abuse of process of any Court, or
- (c) otherwise to secure the ends of justice.

Such powers may have to be exercised in an appropriate case to render justice even beyond the law.

(2) Considering the nature, width and amplitude of the powers, it would be unnecessary, inexpedient and imprudent to prescribe or stipulate any strait- jacket formula to identify cases where such powers can or need not be invoked.

(3) But such powers can be invoked only in exceptional and rare cases and cannot be involved as a matter of course - Where the Code provides methods and procedures to deal with the given situation, in the absence of exceptional and compelling reasons, invocation of the powers u/s 482 of the Code of Criminal Procedure is not necessary or permissible.

(4) Conscious of the general principles, the High Court has to consider in each case whether the powers u/s 482 of the Code of Criminal Procedure deserved to be invoked - Judicial wisdom, sagacity, sobriety and circumspection have to be pressed into service to identify that rare and exceptional case where invocation of the extra-ordinary inherent jurisdiction is warranted to being about premature termination of proceedings subject of course to the general principles narrated above."

7. The above quoted law clearly spells out that such powers may have to be exercised in an appropriate case to render justice even beyond the law and no strait-jacket formula can be followed to identify the cases. I am conscious of the fact that such powers can be invoked in exceptional and rare cases and cannot be invoked as a matter of course, but in the present case, the complainant has stepped into the shoes of Investigating Officer and is also heading the Special Investigating Team and has actively participated during the course of investigation and in such like circumstances, powers u/s 482 of the Code of Criminal Procedure deserve to be invoked.

8. If it is found that the Investigating Officers have failed to perform their statutory duties or acted in such a manner that people may lose faith in the investigation agency and administration of justice, this court may issue appropriate direction while exercising its inherent powers. The petitioner alleges that since the wife of the complainant-Investigating Officer was involved to some extent, no investigation in a proper and fair manner is expected to be conducted. It is a matter of great concern that the Director, Vigilance Bureau did not become alive to the situation when he learnt that in charge of the Investigating Team, to whom the other Investigating Officers are required to submit reports as per his order, has some interest in the society through his wife. It is the job of the Investigating Officer to make investigation in such a manner that people should not lose faith in the investigating agency. The investigation should not be carried out with a biased mind. The ultimate act is to arrive at the truth and in order to achieve that object, an order for investigation by an independent agency or by another team can be passed, particularly when the investigating agencies have been found to have not performed their role in the manner in which it was expected to do so.

9. Dealing with the first contention of the learned counsel that there was apprehension in the mind of the petitioner that the new government had already deputed a group of Police Officers with a view to involve him in criminal proceedings by any means, which is clearly evident from the fact that when a speech was made in the Punjab Vidhan Sabha on 24.2.2006 specifically naming the petitioner with regard to the role played by him during the Congress regime, which clearly shows biasness in the mind of the present government, a copy of which is annexed with the petition as Annexure P-2. A news item in "The Hindustan Times" dated 2.1.2007 has also been placed on the record as Annexure P-3 with the petition mentioning therein "DGP a Congressman, shift him out: Sukhbir to EC". These remarks were uttered by SAD General Secretary Sukhbir Singh Badal addressing Mediapersons in Jalandhar on Monday. Further, the apprehension in the mind of the petitioner is also abundantly clear from letter dated 22.3.2007 (Annexure P-9) written by him to Shri V.K. Duggal, Union Home Secretary, Ministry of Home Affairs, Government of India, North Block, New Delhi, a relevant portion of which is reproduced as under:

From

S.S. Virk, IPS,
Director General-cum-Chief Engineering Director,
Punjab Police Housing Corporation,
Chandigarh.

To

Shri V.K. Duggal,
Union Home Secretary,
Ministry of Home Affairs,
Government of India,
North Block, New Delhi.

Subject:-

1. Ref. to my letter No. 028/PA/CMD/PPHC dated 25.1.2007 addressed to Chief Election Commissioner, New Delhi copy of which is endorsed to the Union Home Secretary, Ministry of Home Affairs, (Govt. of India), New Delhi &
2. Letter No. 058/PA/CMD/PPHC dated 5.3.2007 requesting for termination of State to State Deputation.

Sir,

Vide my letters mentioned above I had conveyed my fears that I would face ill-treatment at the hands of the new government in Punjab as their key functionaries seemed deeply interested in leveling serious allegations against me to seek my transfer as D.G. Punjab. Now my fears are proved correct as the new Government has already deputed a group of police officers to fabricate some case against me and involve me in criminal proceedings by any means.

Sir, during my entire service I have never acted illegally at any stage and have stood by professional principles. Even in Punjab I have worked during the President's rule, the Congress Rule (1992-1997), SAD-BJP Rule (1997-2002) and again Congress Rule (2002-2007) following the same character of duties and the change over had always been very smooth. However, the present government due to reasons explained in my above references have deputed some officers specifically to implicate me in some case by hook or by crook in order to discredit me. I may come out clean at the end but false involvement in a criminal case and its undue publicity would definitely be a very severe set back. The only reason for the wreath (wratj ?) of the present government is that I worked sincerely for the success of the erstwhile Congress government and performed my duties of maintaining peace and public order in Punjab sincerely and effectively.

Under the circumstances, I would request you to explore the possibility of Ministry of Home Affairs (Govt. of India) unilaterally terminating/concluding my State to State deputation in order to save me from becoming a victim of pure political vendetta. If such orders are issued it would enable me to come out of Punjab and get out of the clutches of the Government of Punjab. I also give an undertaking that if any substantive default is found against me I shall be willing to face any action as per directions of the Union Govt.

In view of the urgency of the situation early action is requested and the orders may kindly be conveyed to me directly.

Thanking you Sir,

Yours faithfully,

Sd/- (S.S. Virk) IPS

D.G.-cum-CMD

Pb. Police Housing Corporation,

Chandigarh."

10. The contents of the letter, as referred to above, clearly go to show that the present government was biased against the petitioner and after formation of the government, the first step taken by them was to prepare a group of officers to involve the petitioner in criminal proceedings. On the basis of the material available on the file, it can be easily inferred that the apprehension in the mind of the petitioner is not without any basis.

11. Another circumstance that led to the conspiracy hatched by Senior Police Officers against the petitioner in involving him in a corruption case vide FIR No. 98 dated 13.3.2007 under Sections 420/465/467/468/471 and 120-B of the Indian Penal Code was on account of personal wreck vengeance of Shri Sumedh Singh Saini with the petitioner. It is in this context that the said Police Officer was heading the Special Investigating Team in a "Naya Gaon Rape Case" wherein a Journalist, namely, Gautam Dheer was picked up illegally for custodial interrogation and the petitioner gave a piece of advice to Shri Sumedh Singh Saini, Director, Punjab Vigilance in an official letter written to the latter on September 30, 2005, wherein it is written that "It is professionally incorrect and unethical to become personal and subjective during investigations, a point that you need to take note of". In the letter dated 28.9.2005 Shri Sumedh Singh Saini had written a demo official letter to his Advocate that he had consulted Virk about the arrest of Dheer and Inspector Jagjit Singh. The letter was sent to Virk on September 29, 2005. Flatly, refuting his claim, Virk wrote back to Saini in a sharply worded letter that at no point of time, he had consulted him (Virk) about the arrest of two persons. The relevant portion of the letter dated 30.9.2005 (Annexure P-15) reads as under:-

"It is a fact that you called me on my cell phone in the afternoon on August 28, 2005. As the signals were disturbed, I gave you a ring in the evening when you gave me a detailed account of various developments in the investigation of the Nayagaon rape case (FIR No. 99/2003, under Sections 376/34 IPC, PS Mohali). You also mentioned that you had taken the quarters concerned into confidence and were concluding investigation as per those guidelines. However, at no stage did you ever mention that you were planning to arrest Inspector Jagjit Singh and Gautam Dheer on that day. Therefore, the issue of `consulting me" and `my consent" would not arise. It is surprising that this issue has never been raised earlier during the proceedings of the case before the Hon"ble High Court and is being raised now.

It was learnt subsequently that some of the officers and NGOs who actually arrested Gautam Dheer from his house, were not members of the SIT and some of them were called from the neighbouring districts.

It would not be out of place to mention that one officer selected by you as member of the SIT submitted an application requesting that he be removed from the duties of the Special Investigating Team. The reason given by him was that you pressed him to wrongly implicate some senior IAS and IPS officers by including their names in some of the statements being recorded during the investigation of the rape case.

I would like you to understand that as Director General of Police, it is my duty to check and correct my junior colleagues wherever required. In this case, if it felt that you had effected the arrest of Shri Gautam Dheer on the basis of inadequate evidence, I had only two options available. Firstly, to cover up your action of arresting him at night contravening all instructions/guidelines on the subject or secondly, by ensuring that the persons guilty of committing the rape and a Journalist at the most guilty of threatening a witness on cell-phone and arrested 23 years later, are not treated as equal criminals during the investigation. It was for this reason that I decided that Gautam Dheer be released on bail. I felt that it was necessary to correct the mistake rather than to justify our wrong action. It is professionally incorrect and unethical to become personal and subjective during investigations, a point that you need to take note of.

Shri Sumedh Singh Saini, IPS

Inspector General of Police,

EW & Spl. Operations Punjab

Yours sincerely,

Sd/-

(S.S. Virk)"

11. The letter clearly spells out that there was a difference of opinion between the two officers regarding "Naya Gaon rape case", which, subsequently, proved to be in

an animosity between the two culminating into registration of cases and then his arrest in a case registered against him regarding amassing property disproportionately from his known sources of income and that too in gross violation of the law of the land. The mala fide intention on part of the SAD government further clearly proves from this aspect of the matter as well that this government, after coming into power repealed the Punjab State Vigilance Commission Act, 2006, which was earlier introduced by the Congress regime for conducting inquiries into offences alleged to have been committed under the Prevention of Corruption Act, 1988 by Public Servants of the State Government, Corporations, Government Companies, Societies and Local Authorities. This Act was repealed vide notification dated 22.3.2007, a copy of which is annexed with the petition as Annexure P-38. No reason has been assigned for the repealment of the Act and then again when appointment of the Director took place at that time, the said Act had not been repealed. Meaning thereby that, some top brass senior officers to the liking of the government were deputed to the key posts and a Special Investigating Team was formed to investigate into the cases of the petitioner. I find force in the contention of the Learned counsel appearing for the petitioner that on the basis of correspondence available on the record between the petitioner, when he was the Director General of Police and Shri Sumedh Singh Saini, relations between them became strained. All this clearly shows that there was mala fide intention on part of the government and its instrumentalities in repealing the Vigilance Act, differences of opinion between petitioner and Shri Sumedh Singh Saini, the Director, Vigilance, Punjab within on account of personal wreck vengeance regarding "Nayagaon Rape Case" and apprehension expressed in anticipation on part of the petitioner to the Union Government that he will be involved in some criminal cases, these are the sequence of events supported by documentary proof that create suspicion in the mind of the petitioner that in case the investigation of this case is done by the special investigation team formed by the Vigilance Department, no justice will be done to him and that is why, he seeks transfer of the investigation of his case by some independent agency.

12. Before examining the acts of mala fides on the part of the present Investigating Team, I would like to observe that such a plea is not only to be clearly pleaded, but specifically proved by adducing cogent evidence. The mere, allegations and suspicions would not be sufficient. In the instant case, the persons against whom mala fides conduct are attributed, are also party in the proceedings and have also been impleaded as respondents. It is unfortunate case, which tends to shake the credibility of police investigation and undermines the faith of a common man in the Punjab Police, which is supposed to maintain a law and order and protect life and liberty of citizens. There have been serious allegations against Surinder Pal Singh, respondent No. 8 and further about the manner in which the investigation against the petitioner was investigated and then again the manner in which the special team for investigating the case against the petitioner was formed.

13. So far as the contention raised by the learned counsel that Shri Surinder Pal Singh, respondent No. 8 is the complainant and Investigating Officer of this case is concerned, this court is of the view that the learned counsel has cited number of instances and sufficient material on the basis of which it could be inferred that the stand of the learned counsel is justified. Refuting the contention of the learned counsel for the petitioner, learned Additional Advocate General appearing for the State of Punjab had valiantly argued that Surinder Pal Singh, respondent No. 8 is not the complainant/author of the FIR and in fact, only the reports of the other Investigating Officers were required to be submitted to him, but this contention of the learned counsel is contrary to the record available on the file and the same is liable to be noticed only for the sake of rejection. A perusal of the FIR clearly spells out that the same was registered on the basis of source report submitted by Shri Jora Singh, Deputy Superintendent of Police, Vigilance Department and thereafter, a draft FIR was prepared on account of that source report and which was sent to the Director, Vigilance Bureau for his approval as is crystal clear from letter dated September 7th, 2007. In order to appreciate the point involved with regard to this fact, it is necessary to reproduce this letter, which runs as under:-

"From

The Director,

Vigilance Bureau,

Punjab, Chandigarh.

To

Sh. Surinder Pal Singh, IPS,

Superintendent of Police,

Flying Squad I, V.B.,

Chandigarh.

Memo No. 249/PA/DVB,

Dated Chandigarh the 7th September, 2007

"Please find enclosed a draft FIR. A case be registered at Police Station FS- I, VB, Mohali. As mentioned in the draft FIR, the case be investigated by SPs Sh. H.S. Bhullar, Sh. B.S. Sidhu and Sh. Surinder Pal Singh.

DIG Sh. B.K. Bawa shall supervise the investigation and entrust areas of investigation to other officers as per the requirements of investigation of the case.

Director,

Vigilance Bureau,

Punjab."

14. The above quoted letter clearly spells out that a direction was passed by the Director, Vigilance Bureau, Punjab to register a case at Police Station FS-I, VB, Mohali and a draft FIR was also enclosed with this letter and the case was ordered to be investigated by SPSs/Shri H.S. Bhullar, B.S. Sidhu and Surinder Pal Singh (Respondent No. 8). A perusal of the FIR further spells out that the same was registered by respondent No. 8 by acting as a Station House Officer, Police Station FS-I, VB, Mohali, Punjab. FIR further spells out that the case is being registered and shall be investigated by SPs S/Shri H.S. Bhullar, B.S. Sidhu and Surinder Pal Singh (complainant No. 8). I fail to understand that how does it lie in the mouth of the learned Additional Advocate General in view of these admitted facts that respondent No. 8 Surinder Pal Singh had no role to play in the investigation of the case and he was only at the receiving end for the purpose of receiving the reports to be submitted by the other Investigating Officers and this fact is borne out from the order dated 9.9.2007 passed by the Director, Vigilance Bureau, Punjab, by virtue of which the various Investigating Officers were allotted areas of investigation. Meaning thereby that, Shri Surinder Pal Singh was deputed to look into the entire material collected by the other Investigating Officers. The role played by Shri Surinder Pal Singh, respondent No. 8, is further authenticated from the fact that it was respondent No. 8 Surinder Pal Singh, who was heading the party, when the petitioner was arrested at Delhi. The arrest of the petitioner also took place in hot haste manner as if the team was bent upon in arresting him. It is the manner of arrest from which mala fide action of registration of the case and vindictive attitude of the Punjab Government is evident. As already discussed above, there is no private complainant and the complaint or allegations have been made at the behest of the Vigilance Bureau itself. FIR was, allegedly registered on 8.9.2007 in the evening and the same very night, the team of police headed by four SP rank officers left for Delhi and without any warrants arrested the petitioner from Maharashtra Sadan, New Delhi at about 6.00 a.m. on the morning of 9.9.2007 and brought him to Punjab. The team of officers of respondent No. 5, who had gone to Delhi, their sole motive was to arrest the petitioner in the FIR in question. The Deputy Commissioner of Police Delhi vide letter dated 25.9.2007 informed the son of the petitioner that the Punjab Vigilance Team has not given any information regarding the arrest of the petitioner. The letter dated 25.9.2007 addressed to the son of the petitioner by the Deputy Commissioner- cum-Public Information Officer, New Delhi Distt. New Delhi runs as under:-

"To

Shri Pardeep Virk,

S/o Shri S.S. Virk,

House No. 1068, Sector 27,

Chandigarh (Punjab).

Subject: Reg. An application submitted under Right to Information Act, 2005.

Sir,

With reference to your application dated 24.10.2007 received in this office on 25.10.2007, on the subject cited above, I am to state, that Punjab Vigilance Team Chandigarh has not given any information regarding the arrest of Sh. S.S. Virk.

Yours faithfully,

Sd/-

(Anand Mohan) IPS

Dy. Commissioner of Police-cum-Public Information Officer,

New Delhi Distt.

New Delhi."

15. All this clearly spells out that the arresting team had failed to give any information to Delhi Police or Local Magistrate. D.D. No. 2B dated 9.9.2007 (Annexure P-34) clearly shows that the factum of arrest of the petitioner was concealed nor the Local Magistrate was approached for transit remand. Learned counsel for the petitioner has rightly submitted that the arrest of the petitioner was in gross violation of the Punjab Police Rules, which are statutory in nature. The raiding team deliberately did not follow the rules while arresting the petitioner in violation of the guidelines laid down by the Hon"ble Apex Court in and Clause 26.1 of the Punjab Police Rules referring to the discretion conferred upon the police officials in the matter of arrest of an accused. There is nothing on record to spell out or to reflect upon the question as to whether it was necessary to arrest the petitioner at all in a case of amassing assets disproportionately to his known sources of income. It does not require such an arrest for effective investigation, especially at the initial stage. A notice could have been issued to the petitioner to appear before the Vigilance Bureau as also permissible under the law and in fact, it is settled law that the Investigating Officer is not expected to act in a mechanical manner and in all cases to arrest the accused as soon as the report is lodged. After some investigation, the Investigating Officer may make up his mind whether it is necessary to arrest the accused persons. Since the power is discretionary, a Police Officer is not always bound to arrest an accused even if the allegation against him is of having committed a cognizable offence. By virtue of an arrest, liberty of the citizen is curtailed and it also affects the reputation and status. Therefore, the power has to be cautiously exercised. All depends upon the nature of the offence alleged and in the instant case, the respondents have not been able to justify that the power was not exercised in a mechanical manner. The manner in which the petitioner was arrested adds another feather to the cap of the mala fide.

Further the contention of the learned Additional Advocate General, Punjab that respondent No. 8 was not the Investigating Officer of this case does not find favour with this court especially when he sought police remand and judicial remand before the trial court. The contents of the application dated 24.9.2007 (Annexure P-61) moved by Senior Superintendent of Police, Vigilance Bureau, E.O.W., Punjab, Chandigarh, are reproduced as under:

"In the Court of District and Sessions Judge, Ropar

Case FIR No. 10 dated 8.9.07 u/ss. 168, 169, 216, 218, 120-B IPC and 7, 13(1)(d)(e) R/W 13(2) 88 PC Act, P.S.V.B. Phase I, Punjab at Mohali.

State through Shri Surinder Pal Singh, IPS, SSP V.B. (E.O. Branch-I), Pb., Chandigarh. (Emphasis supplied)

Versus

Sarabdeep Singh Virk s/o Shri Kuldip Singh Virk, Former D.G.P., Punjab.

Application for grant of Police Remand

It is submitted that in the aforesaid case, accused Sarabdeep Singh Virk having been arrested on 9.9.07 was produced in the Court of Illaqa Magistrate, Mohali. The learned Judge had granted two days police remand of the accused but on 9.9.06 when the accused was taken to Civil Hospital, Phase-6, Mohali for his medical examination, he was admitted there due to being indisposed, from where he was further referred to P.G.I. The accused during his police remand remained admitted in the Hospital and learned Judge Sh. Lalit Kumar Singla, JMJC, Mohali, while granting the police remand had ordered that if the accused has to be interrogated then it could be done only subject to declaring him medically fit by the Doctor. However, during his police remand he remained unfit, so he could not be interrogated. Thereafter, owing to his ill health, on 11.9.07, the prayer was made to the Court to send him in police custody and the learned Judge while remanding him in judicial custody ordered that the accused be produced in the Court of District and Sessions Judge, Ropar on 24.9.07. The accused has been admitted in the Hospital. The accused could not be interrogated in this case so far.

Accused Sarabdeep Singh Virk is still admitted in PGI, who could not be interrogated in this case so far because the accused is persistently keeping ill health. Accused Sarbdeep Singh Virk, former D.G.P., Punjab, during his deputation in Punjab has amassed moveable and immovable property worth crores of rupees. The investigations thereof are going on. After the improvement in the health of the accused, the further action would be taken. Hence, it is prayed that 45 days judicial remand in respect of the accused may kindly be granted.

Sd/- Senior Superintendent of Police

Vigilance Bureau, E.O.W., Punjab

Chandigarh. 24.9.2007."

16. The order dated 11.9.2007 (Annexure P-60) passed on the application referred to above by Sub Divisional Judicial Magistrate, S.A.S. Nagar Mohali also finds mention that the presence of Shri Surinder Pal Singh was marked therein, a relevant portion thereof is reproduced as under:-

"Present:- APP for the State along with Sh. Surinder Pal Singh, Senior Superintendent of Police (Vig.) Investigating Officer.

(Emphasis supplied)

Accused S.S. Virk with counsel Sh. Charanjit Singh Bakshi, Advocate.

ORDER

A request for Judicial remand for the time being has been moved by the prosecution on the allegations that since the accused is presently admitted in PGI Hospital, Chandigarh, so earlier questioning of him is not possible and as and when accused is discharged from the hospital or is in condition when he can be questioned a prayer for police remand will be made in accordance with law.

On the contrary, Ld. Defence counsel has submitted that accused is ready to join investigation and he has got no objection if the accused may be remanded to Judicial custody. However, accused may be provided appropriate medical treatment at PGI Hospital, Chandigarh.

Heard. Since the police has made a request for Judicial custody of the accused, so accused is remanded to Judicial custody till 24.9.2007. Be produced before Ld. Sessions Judge 24.9.2007 at 10 a.m. sharp. However, as per observations of doctor dated 11.9.2007 on police request the investigating officer is directed to get admit back the accused at PGI Hospital, Chandigarh under Judicial Custody. Senior Superintendent of Police, Patiala and Superintendent Jail, Patiala are directed to make proper arrangement regarding security of the accused at PGI Hospital Chandigarh in accordance with law and rules for the period of Judicial custody at Hospital. Necessary medical facilities may be provided to accused during Judicial custody.

Announced

11.9.2007

Sd/-

Sub Divisional Judicial Magistrate

S.A.S. Nagar, Mohali."

17. The contention of the learned counsel for the petitioner that respondent No. 8 is the complainant is proved from the contents of the FIR as referred to above, which

clearly spells out that respondent No. 8 was the complainant and in such like circumstances, I fail to understand how he stepped into the shoes of the Investigating Officer. When he was associated with the investigation of this case, he should have withdrawn himself since he was the complainant in the case as is clear from the various documents referred to above. He did not even disclose to the Director Vigilance that his wife was one of the beneficiaries because of her involvement in the Housing Society for the land, allegedly, sold by the petitioner in the form of plots. No explanation has come forward that why respondent No. 8 did not opt out from being one of the members of the investigating team or why he did not disclose to the Director Vigilance that his wife was directly or indirectly involved in the purchase of the land. Once a finger was raised, he should have requested the Director not to entrust the investigation to him in any manner. The question arises that why he had not withdrawn himself from the team, but instead of doing so, he himself actively participated in the entire episode. He was heading the team, who arrested the petitioner at Delhi. He also sought police and judicial remand from the trial Court, as reflected above. Meaning thereby that, respondent No. 8 actively participated in the investigation and as per the order of the Director, the entire material to be collected against the petitioner was to be submitted by the other Investigating Officers to respondent No. 8. In such like circumstances, it does not lie in the mouth of the learned Additional Advocate General, Punjab to say that respondent No. 8 Surinder Pal Singh has nothing to do with the investigation. That apart, the petitioner has been able to show that Shri Surinder Pal Singh (respondent No. 8) was the complainant-cum-Investigating Officer in this case and the entire team of officers, including respondent No. 8, were acting in such a manner, which cannot be approved under the law. It is unfortunate to note the Vigilance Act was repealed and prior to repealment of the Act, respondent No. 7 was made the Director of the Vigilance Department. No explanation has come forward from the State that why, for the first time, an I.G. Rank officer was heading the Bureau and what were the reasons for repealing the Act. All this clearly spells out that everything was being done with ulterior motive, particularly when it is proved on record that respondent No. 4 was unhappy with the petitioner, when he was the Director General of Police. Since the petitioner, while exercising the powers of the Director General of Police, had addressed a letter to him that it was unethical to become personal in a case in which a Journalist Gautam Dheer was picked up from his house for custodial interrogation.

18. One more interesting part that strikes to the mind of this court that a "Draft FIR", as discussed above, was prepared and sent to Shri Surinder Pal Singh by the Director Vigilance, Punjab for registration of the case against the petitioner. To my mind, in the legal language or in the Act, there is no provision for the "Draft FIR" nor the learned Additional Advocate General could point out that under what rule and regulations, the draft FIR was prepared. It appears that some officer was at the helm of affairs and FIR was prepared under the direct supervision of that officer, which

was sent by the Director Vigilance Bureau to respondent No. 8 vide his letter dated 7.9.2007 and respondent No. 8 was directed that a case be registered at Police Station F.S. I, VB, Mohali in accordance with the draft FIR and the same be investigated by him along with SPs S/Shri H.S. Bhullar, B.S. Sidhu, under the supervision of DIG Shri B.K. Bawa. Preparation of a draft FIR further advances the case of the petitioner with regard to calculated move in a biased manner. All this clearly spells out mala fides on part of the government and its instrumentalities.

19. Moreover, I fail to understand as to why a special team was required to be constituted especially when it is an ordinary case under the Prevention of Corruption Act, which was registered on account of amassing property disproportionately to his known sources of income. Even if the case was registered against the petitioner, who was a former Director General of Police, that does not mean that it requires special treatment for investigation. Every case is to be tried by the law of the land and a case registered under the law does not require any special treatment by way of forming a special team for investigation. The learned Additional Advocate General appearing for the State of Punjab has not been able to furnish a plausible explanation in this regard.

20. Ordinarily, it is not within the province of the Court to direct the investigating agency to carry out the investigation in a particular manner, but the court is required to interfere with the functioning of the Investigating Agency only in exceptional cases or transfer the investigation of this case to an independent agency. It is futile to accept that an independent and wholly objective investigation was done by the present investigating team, that is being headed by Shri Surinder Pal Singh respondent No. 8. In such like circumstances, if the investigation is carried on by this team, general public would lose faith in the investigation, no matter, howsoever honest or objective the investigation may be. The State would not suffer in any manner in case a fresh team is constituted, who are not at all connected in any manner with the affairs of the Society.

21. I have perused the events available on the file. I refrain from entering into details thereof, lest it might prejudice any party since accusations are directed against the Director Vigilance Bureau, Punjab and Shri Surinder Pal Singh, respondent No. 8, who is virtually heading the investigating team and has undertaken active participation in the entire investigation, as discussed above. It would be desirable to entrust the investigation to another team under the direct supervision of Principal Secretary Home, Department of Home Affairs and Justice, Punjab so that people may have faith in the administration of justice and the petitioner may feel assured that new team, who will look into the matter, would lay the final outcome of the investigation in the free and fair manner. If the present team is permitted to submit a final report on the basis of investigation, then keeping in view the allegations levelled against the team howsoever faithfully they may carry out the investigation, the same will lack credibility. Since allegations have been

levelled against respondent No. 8, in such like circumstances, in the interest of justice, the present investigating team is required to be disbanded. The prayer made by the learned counsel appearing for the petitioner for handing over the investigation of this case to the Central Bureau of Investigation is not required and the same is not liable to be accepted since allegations of the petitioner are only against the particular officers, who are part of the present investigating team and not against the entire police force of the State of Punjab. In ordering so, I mean no reflection on the credibility of the present investigating team, but in fact, when such accusations were raised against respondent No. 8, he should have withdrawn himself from the investigating team, particularly when his wife was one of the members of the Society. It is a case in which there is need to do fresh investigation because of the unsatisfactory nature of the investigation done earlier and thus in the case in hand, fresh investigation is required to promote the cause of justice. I would like to impress upon that while making such an investigation, it is essential to ensure purpose of the statutory duty in accordance with law and in such a manner that people should not lose faith in the investigating agency or in the administration of justice and in order to achieve its object, a fair, honest and expeditious investigation should be conducted by the investigating team. It is duty of this court to ensure that the government agencies do their duty without any bias, mala fide and strictly in conformity with law. In such like proceedings the court is not required to go into the merits of the accusations or even express any opinion thereon, which is a matter of consideration by competent court in which charge-sheet is required to be filed. Ultimately, the judicial interference is not normally needed for investigation, but where the investigation is being done in a biased manner, then the question of interference arises by exercising inherent jurisdiction of the court and as such, petition filed u/s 482 of the Code of Criminal Procedure is maintainable.

22. In the light of what has been discussed and observed hereinabove, the inevitable result is that in the instant case, the First Information Report registered against the petitioner clearly spells out that it was registered under the Prevention of Corruption Act and such like routine matters should not be entrusted to the Central Bureau of Investigation. Of course, what is being shown by the petitioner is that the present Investigating Team is not doing proper investigation and/or that there is reason to believe that the present investigation has been done with a mala fide intention, particularly when complainant has stepped into the shoes of the Investigating Officer and then again, wife of the Investigating Officer is also involved in the affairs of the Society in question. The contention of the learned counsel for the petitioner, to my mind, that the matter is required to be investigated by the Central Bureau of Investigation, is not liable to be accepted, especially when serious accusations have been raised against the particular officers of the Punjab Police and to my mind, if they do not touch the investigation in the present case, the forming of another investigating team by the competent authority would meet the ends of justice and would also repose faith in the administration of justice and the State

Investigating Machinery as well.

23. Accordingly, the Director Vigilance, Punjab, is directed to disband the present Investigating Team, within a period of seven days from the date of passing of this order and the Principal Secretary, Home, Department of Home Affairs and Justice, Punjab in consultation with the Chief Secretary, Punjab shall appoint a Police Officer not below the rank of the Senior Superintendent of Police, within a period of 10 days thereafter, who further will be at liberty to form a fresh team of the Investigating Officers of his choice if the situation so demands. The Investigating Officer, so appointed by the competent authority aforesaid, shall conduct a fresh detailed thorough probe into the whole matter himself or with the cooperation of other members of the team so appointed by him, if any, conclude the investigation and submit a final report to the concerned trial Magistrate at the earliest possible time. However, it would be open to the Investigating Officer to submit such a report, as it considers appropriate, on the basis of the investigation to be carried out by the new Investigating Team having regard to the facts and circumstances of the case and result of the investigation. The Investigating Officer and his other co-associates of the team so appointed by him, if any, shall not be influenced in any manner by the material already collected by the previously investigating team. They shall act freely, fairly and independently without being influenced from either of the side. The petitioner is directed to assist and give full cooperation to the Investigating Officer. The Investigating Officer shall submit a status report positively to the Principal Secretary, Home, Department of Home Affairs and Justice, Punjab, periodically. After such a final report is submitted by the Investigating Officer, so appointed by the competent authority aforesaid, the Magistrate concerned shall proceed with the matter further strictly in accordance with law, without being influenced by any observation made by this Court while disposing of this petition. Petition stands disposed of in the manner indicated above.

Copies of this order be given to Ms. Reeta Kohli, Additional Advocate General, Shri R.S. Cheema, counsel representing the petitioner, and the same be also sent to the Principal Secretary, Home, Department of Home Affairs and Justice, Punjab and the Chief Secretary, Punjab, for strict compliance, under the signature of the Bench Secretary attached to this court.