

(2014) 03 P&H CK 0170

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R.M.-M No. 4464 of 2012 (O&M)

Ravinder Singh Dhankar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: March 20, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 482, 82, 83
- Penal Code, 1860 (IPC) - Section 148, 149, 420, 447, 506

Citation: (2014) 2 RCR(Criminal) 551

Hon'ble Judges: Rekha Mittal, J

Bench: Single Bench

Advocate: Mahavir Sandhu, Advocate for the Appellant; Loveleen Dhaliwal Singla, Sr. D.A.G., Haryana for the State and Ajay Dahiya, Advocate for the Respondent Nos. 3 to 5, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Rekha Mittal, J.

The present petition u/s 482 of the Code of Criminal Procedure (for short "the Code") has been preferred seeking quashing of order dated 28.1.2012 (Annexure P-5) passed by the Additional Chief Judicial Magistrate, Jhajjar and report dated 28.1.2011 (Annexure P-4) submitted by respondent No. 2. Counsel for the petitioner contends that the petitioner submitted a complaint dated 4.12.2010 to the Superintendent of Police, Jhajjar for initiating action against the accused (respondents No. 3 to 5 herein) on the premise that they destroyed the mustard crop standing in Khasra No. 1797, in the evening of 3.12.2010. F.I.R. No. 749 dated 7.12.2010 was registered for commission of offence punishable under Sections 148, 149, 420, 447, 506 IPC against the accused. The accused were declared as proclaimed offenders and their property was ordered to be attached in view of the provisions of Sections 82/83 of the Code and thereafter, the file was consigned to records.

2. It is argued with vehemence that an application was filed by Virender Singh, Inspector, Station House Officer through public prosecutor for cancellation of order dated 17.10.2011 and the application was allowed by the Chief Judicial Magistrate, Jhajjar vide impugned order dated 28.1.2012 without providing an opportunity of hearing to the petitioner/complainant. It is further submitted that it is unknown to law that such an application can be filed by the concerned police officer and allowed by the Court without filing any report in compliance with the provisions of Section 173 of the Code. According to counsel, a very strange and noble procedure has been followed by the concerned officer which shows that the investigating agency was favourably inclined towards the respondents-accused.

3. Counsel for the State of Haryana has submitted that a cancellation report in the aforesaid F.I.R. has been submitted in the Court of Illaqa Magistrate and the same is pending consideration.

4. Counsel representing private respondents would submit that a false case has been got registered by the petitioner against the respondents and for that reason, a cancellation report has been submitted in the Court as the Investigating agency did not find any evidence to substantiate the allegations set up by the petitioner. It is further submitted that as there was no material on record to point an accusing finger towards private respondents, no fault can be found in the impugned order setting aside the order vide which the respondents were declared as proclaimed offenders and the property was ordered to be attached.

5. I have heard counsel for the parties and perused the records. Indisputably, the private respondents were arraigned as accused in the aforesaid F.I.R. lodged at the behest of petitioner Ravinder Singh Dhankar. They were declared proclaimed offenders and their property was ordered to be attached. It is an admitted position of the case that as the investigating agency did not find any material against the accused, a cancellation report has been prepared and submitted in the court. However, before submitting the cancellation report, the application was filed for setting aside order dated 17.10.2011 whereby the accused were declared as proclaimed offenders and their property was ordered to be attached, in view of Sections 82/83 of the Code. As the proceedings in the matter were being conducted by the State of Haryana through its prosecuting agency, there is no requirement of law that a notice was to be served upon the complainant to provide him an opportunity of hearing before passing the impugned order. The petitioner, in these circumstances cannot find fault with the impugned order on the premise that it was passed without compliance of principle of natural justice. At the same time, this court is mystified by the manner in which the concerned police officer approached the Court for cancellation of order dated 17.10.2011 without submitting a report in regard to fate of F.I.R. lodged with the police. It further appears that even the court concerned without bothering to know about the status of the proceedings and submission of report u/s 173 of the Code, accepted the prayer and set aside order

dated 17.10.2011. The manner in which the investigating agency and the prosecuting agency preceded in the matter shows that the private respondents enjoyed political patronage or otherwise.

The petition stands disposed of with liberty to the petitioner to take recourse to appropriate proceedings to challenge the cancellation report.