

(2014) 09 P&H CK 0219

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Misc. No. M-2895 of 2013

Rattan Chand

APPELLANT

Vs

Lachhman Dass

RESPONDENT

Date of Decision: Sept. 4, 2014**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 190(1)(c), 210, 482
- Penal Code, 1860 (IPC) - Section 306

Citation: (2014) 4 RCR(Criminal) 162**Hon'ble Judges:** Mehinder Singh Sullar, J**Bench:** Single Bench**Advocate:** Mansur Ali, Advocate for the Appellant; Tajinder Pal Singh, Advocate and Jaspreet Singh, AAG Punjab, Advocate for the Respondent

Judgement

Mehinder Singh Sullar, J.

The matrix of the facts & material, culminating in the commencement, relevant for the limited purpose of deciding the core controversy, involved in the instant petition and emanating from the record, is that initially, on the basis of complaint of petitioner-complainant Rattan Chand S/o. Karam Singh (for brevity "the complainant"), a criminal case was registered against accused, Lachhman Dass S/o. Bakshi Ram and others (respondent Nos. 1 to 4), vide FIR No. 28 dated 30.1.2006 (Annexure P1), on accusation of having committed an offence punishable u/s. 306 IPC by the police of Police Station Banga, District Nawanshahar (now SBS Nagar). However, subsequently, police has closed the chapter and submitted the cancellation report in the case. Meanwhile, the complainant has filed the private criminal complaint (Annexure P2) against the pointed accused. Consequently, in view of preliminary oral as well as documentary evidence brought on record by the complainant, the accused were summoned to face the trial for commission of an offence punishable u/s. 306 IPC, by virtue of summoning order dated 27.2.2009 (Annexure P3) by the Chief Judicial Magistrate.

2. Aggrieved thereby, the respondents-accused filed the revision petitions to challenge the summoning order (Annexure P3). The revisional Court partly accepted the revision petitions and directed the trial Magistrate to comply with the provisions of Section 210 Cr.P.C., by way of impugned order dated 8.8.2012 (Annexure P4).
3. Sequently, the complainant did not feel satisfied and has preferred the present petition to challenge the impugned order (Annexure P4) of revisional Court, invoking the provisions of section 482 Cr.P.C.. That is how I am seized of the matter.
4. Assailing the impugned order, the learned counsel for the petitioner-complainant has contended with some amount of vehemence that the concerned police has already submitted the cancellation report in the case, instituted on a police report and no investigation was pending with it. The argument is that even since the trial Court has already obtained the police report at the time of admission of the complaint (Annexure P2), so, there was no occasion for it to call for the report again & again and revisional Court committed a legal mistake in this relevant connection.
5. Hailing the impugned order, on the contrary, the learned counsel for respondents-accused has vehemently urged that as the trial Court summoned the accused in the private complaint without deciding the fate of cancellation report, therefore, the revisional Court has rightly directed it (trial Court) to again obtain the report u/s. 210 Cr.P.C. and no interference is warranted in the impugned order. In support of his contention, he has placed reliance on the judgment of Hon"ble Supreme Court in case [Abhinandan Jha and Others Vs. Dinesh Mishra](#), and of this Court in case [Savesa Sidhu Vs. Harleen Sidhu and Another](#), .
6. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, to my mind, the instant petition deserves to be accepted in this context.
7. At the very outset, it may be added here that on the peculiar facts & in the special circumstances of Abhinandan Jha's case (supra), the Hon"ble Apex Court has held that there is certainly no obligation, on the Magistrate, to accept the cancellation report, if he does not agree with the opinion formed by the police and still, he has the Jurisdiction to take cognizance u/s. 190(1)(c) of the Code. Similarly, this Court in Saveria Sidhu's case (supra), has observed that in case, the investigation by the police is pending in relation to the same offence, the Magistrate will call for a report on the matter from the police u/s. 210 Cr.P.C..
8. Possibly, no one can dispute with regard to the aforesaid observations, but, to me, the same would not come to the rescue of the respondents-accused in the present controversy, for the reasons mentioned here-in-below.
9. As is evident from the record that in the wake of complaint of the petitioner-complainant, a criminal case was registered against the pointed accused, by means of FIR (Annexure P1), for the commission of an offence punishable u/s.

306 IPC by the police of Police Station Banga, District Nawanshahar (now SBS Nagar). However, subsequently, police has closed the chapter and submitted the cancellation report. At the same time, the complainant has filed the private criminal complaint (Annexure P2) against the indicated accused, in which, the trial Court passed the following order on 8.5.2006:--

"Complaint presented today. Let it be registered. Now to come up on 10.6.2006 for preliminary evidence of the complainant. Report from concerned police station be also called for that date."

10. Likewise, the following order was passed by the trial Court on 21.7.2006:--

"Report from concerned police station has already been received. As such counsel for the complainant prayed for adjournment, that he wants to lead preliminary evidence. In view of his request, now to come up on 19.8.2006 for entire preliminary evidence of the complainant."

11. Thereafter, considering the preliminary oral as well as documentary evidence brought on record by the complainant, the accused were summoned to face the trial for commission of an offence punishable u/s. 306 IPC, by virtue of summoning order dated 27.2.2009 (Annexure P3) by the trial Magistrate. The accused challenged the same and the revisional Court directed the trial Court to comply with the provisions of Section 210 Cr.P.C. in the manner depicted here-in-above.

12. Such thus being the legal position and material on record, now the short and significant question, though important, which invites an immediate attention of this Court and arises for determination in the instant petition is, as to whether the provisions of section 210 Cr.P.C. are applicable to the facts of the present case at this stage or not?

13. Having regard to the rival contentions of learned counsel for the parties, to my mind, the answer must obviously be in the negative.

14. As is apparent that Section 210 of the Code postulates that where in a case instituted otherwise than on a police report, it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence, which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation. Sub-section (2) posits that if a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person, who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. According to sub-section (3), if the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any

offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

15. Therefore, a conjoint and meaningful reading of these provisions would reveal that the Magistrate shall stay the proceedings in the complaint case and call for the report from the police only, if it made to appear to him that an investigation by the police is still in progress in relation to the offence, which is the subject-matter of the inquiry or trial held by him and not otherwise. The words "an investigation by the police is in progress in relation to the same offence" occurring, are very important and carry significant meaning to infer the legislative intent/mandate underlined in this section. In case, the investigation has already been completed, cancellation report was filed and chapter was closed by the police as in the instant case, in that eventuality, to me, the provisions of Section 210 Cr.P.C. would not come into play in this relevant direction, as contrary urged on behalf of the accused. Assuming for the sake of argument, even if, the cancellation report is not accepted and the trial Court decides to take cognizance in the case, then, both the matters i.e. the private complaint and the case instituted on a police report, would be clubbed and decided together simultaneously by it, as contemplated u/s. 210 Cr.P.C.

16. There is yet another aspect of the matter, which can be viewed entirely from a different angle. As reproduced here-in-above, not only that, although the police has already submitted the cancellation report after completion of the investigation and closed the chapter, but still, the trial Court has again sought the police report at the time of admission of private complaint (Annexure P2), by means of pointed order dated 8.5.2006 and it was actually received, which is clear from the order dated 21.7.2006. In other words, once the Magistrate has already received the indicated police reports before summoning the accused, therefore, there was no occasion to call or the question of calling third police report, as directed by the revisional Court, did not arise at all, after completion of the investigation and submission of cancellation (police) reports. To my mind, the revisional Court has slipped into a deep legal error in this relevant direction. Thus, the impugned order (Annexure P4) cannot legally be sustained in the obtaining circumstances of the case.

17. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

18. In the light of aforesaid reasons, taking into consideration the totality of the facts & circumstances, oozing out of the record, as described here-in-above and without commenting further anything on merits, lest it may prejudice the case of either side during the course of subsequent hearing of the case, the instant petition is accepted and the impugned order (Annexure P4) is hereby set aside. Consequently, the case is remitted back to the revisional Court to decide the matter afresh on merits and in accordance with law. At the same time, the parties, through their counsel, are directed to appear on 24.9.2014 and since the matter is lingering on for the last about 8-1/2 years, so, the revisional Court is directed to decide the

revision petition within a period of three months thereafter positively.