

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

Criminal Revision No.1249 of 2006

Date of Decision: January 31, 2007

SI Mohan Lal

...Petitioner

**VERSUS**

State of Punjab

...Respondent

**CORAM: HON'BLE MR.JUSTICE RANJIT SINGH**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**Present:** Mr.T.S.Sangha, Advocate,  
for the petitioner.

Mr.M.C.Berry, Senior DAG, Punjab,  
for the State.

Mr.Hitesh Sood, Advocate,  
for Mr.Harsh Aggarwal, Advocate,  
for the complainant.

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RANJIT SINGH, J.

Order passed by Special Judge, Rupnagar is impugned in the present revision petition. Grievance raised in the revision is very limited. The petitioner is aggrieved against the part of the order, whereby the Special Judge has issued direction to the prosecuting agency to obtain sanction for

prosecution and for filing of challan. As per the counsel, such directions are beyond the purview of the trial court.

The facts, in brief, are that FIR No.24 dated 17.8.2005 was registered against the petitioner under Sections 7, 13(2) of the Prevention of Corruption Act at Police Station, Vigilance Bureau/FS-I, Mohali. SI Mohan Lal, the petitioner, is alleged to have demanded a sum of Rs.3000/- from Naresh Kumar for deciding the case in his favour. Petitioner Mohan Lal was deputed to investigate a dispute between Deed Writer Karnail Singh and one Naresh Kumar, Registration Clerk. It is in this context that the petitioner demanded bribe from Naresh Kumar, who complained about it to the Vigilance Officer, Moga, leading to registration of the present FIR. On the other hand, SI Mohan Lal petitioner maintained that he did not receive any money and the same had been left under a cot in the PCO Room. Bhajan Kaur, wife of petitioner Mohan Lal moved an application before S.P.Vigilance Bureau, Punjab, Chandigarh for enquiring into the matter. Thereupon it was found that Naresh Kumar went with money to the office of Anti Fraud Staff and petitioner Mohan Lal did not accept the same. It was also found that the complainant roamed around the office of the petitioner and subsequently took him to the PCO's office where there was exchange of blows leading to falling of their turbans. It is claimed that it was in the process of this grappling that the powder of the currency notes touched the hands of the petitioner, SI Mohan Lal. Ultimately the cancellation report was filed before the court of Special Judge, Rupnagar. When the said cancellation report came up for hearing before the Special Judge, a notice was issued to the complainant, who raised objection for

acceptance of the cancellation report. Statement of the complainant in this regard was recorded by the Special Judge and ultimately on 20.5.2006, the Judge passed the impugned order, inter-alia, directing:-

“In view of these circumstances the report is sent back to the D.S.P.Vigilance Bureau F.S.Unit-I, Mohali and the sanction of the competent authority of the accused be obtained for his prosecution and then challan be filed before this court. File alongwith copy of order of this Court be sent to the concerned office immediately.”

The grievance of the petitioner, as noticed, is that the Special Judge would not have any jurisdiction to direct the investigating agency to obtain sanction or issue direction for filing of a challan.

Notice in the revision petition was issued. The complainant also moved an application for being impleaded as a respondent.

Mr.T.S.Sangha, the counsel for the petitioner, while relying on Mohd.Zakir Hussain v. State of Haryana, 2003(4) RCR (Criminal) 661 has contended that court cannot direct investigating agency to file challan. He has also placed reliance on Krishna Iyer v. State of Kerala, 2005(1) RCR (Criminal) 909, wherein it was held that the court cannot issue mandamus directing competent authority to grant sanction.

The State counsel, however, defended the impugned order.

By now, it is almost a settled that the court would have power to direct further investigation in the matter, but while doing so, the court cannot direct the investigating agency to file a challan or to obtain sanction where it is essential to prosecute a person. In State Through CBI v. Raj Kumar Jain, (1998) 6 Supreme Court Cases 551, the Hon'ble Supreme Court was to observe as under:-

“From a plain reading of the above section it is evidently clear that a court cannot take cognizance of the offences mentioned therein without sanction of the appropriate authority. In enacting the above section, the legislature thought of providing a reasonable protection to public servants in the discharge of their official functions so that they may perform their duties and obligations undeterred by vexatious and unnecessary prosecutions. Viewed in that context, the CBI was under no obligation to place the materials collected during investigation before the sanctioning authority, when they found that no case was made out against the respondent. To put it differently, if the CBI had found on investigation that a prima facie case was made out against the respondent to place him on trial and accordingly prepared a charge-sheet (challan) against him, then only the question of obtaining sanction of the authority under Section 6(1) of the Act would have arisen for without that the Court would not be competent to take cognizance of the charge-sheet. It must, therefore, be said that both the Special Judge and the High Court were patently wrong in observing that the CBI

was required to obtain sanction from the prosecuting authority before approaching the court for accepting the report under Section 173(2) CrPC for discharge of the respondent.”

In Mansukhlal Vithaldas Chauhan v. State of Gujarat, 1997 A.I.R.(SC) 3400, the Hon'ble Supreme Court observed that where the order granting the sanction was passed on the behest of the High Court, such an order sanctioning the prosecution would not be valid and would be void ab initio. On this basis, the conviction in this case was set-aside. This was a case where the High Court had directed the Secretary, Road and Building Department to grant sanction within one month from the receipt of the order. The Secretary and the Deputy Secretary, who were examined as witnesses in this case, had stated that they faithfully obeyed the mandamus issued by the High Court. In this background, the Hon'ble Supreme Court held that in this process the legality and validity of the sanction, which constituted the basis of prosecution of the appellant in the said case stood void ab initio. Similarly the Division Bench of the Kerala High Court in Krishna Iyer's case (supra) held that High Court cannot issue a writ of mandamus directing the concerned authority to grant sanction. This Court in the case of Mohd.Zakir Hussain's case (supra) held that Magistrate though is not bound by the opinion expressed by the police, but it cannot direct filing of a challan by the investigating agency and it may be open for him to issue process by exercising power under Section 204 Cr.P.C. The relevant observations of this Court in Mohd.Zakir

Hussain's case (supra) are as under:-

“It is also well established that power of the Courts to interfere in the investigation to be carried by the police is limited. The Court cannot interfere in the investigation but at the time, the investigating agencies do not have a final word with regard to the conclusion reached by them in their reports submitted to the Courts. It has been repeatedly held that the police under Section 156 Cr.P.C. enjoys a free hand to investigate an allegation disclosing the commission of a cognizable offence. It can investigate without even the order of a Magistrate. The power to investigate neither can be interfered with or controlled by the Courts as has been held by the Privy council in Khwaja Nazir Ahmed's case (supra) which has been followed, applied and reiterated in Abhinandan Jha and others v. Dinesh Mishra, AIR 1968 SC 117; S.N.Sharma v. Bipin Kumar, (1970) 1 SCC 653 and H.S.Bains v. The State (Union Territory of Chandigarh), AIR 1980 SC 1883. It has been observed that both streams i.e. power of the police to investigate and that of the Court to take cognizance by issuing process run side by side but their water never intermingles. In this regard, the observations of their Lordships in H.S.Bains's case (supra) make it further clear that the opinion expressed by the police by submitting a report is not a final word. Although the Magistrate cannot direct the filing of a challan by the investigating agency but yet the Magistrate

can issue process by exercising power under Section 204 Cr.P.C.”

It is, thus, clear that the court would not have any power or jurisdiction for issuing direction for granting sanction in cases where the prosecution has to follow after such a sanction. It is further clear from the above noted judgments that the courts would also not have powers to direct filing of a challan, the investigation of a case being purely within the purview of the police. It is, however, open before the courts to accept or to reject the cancellation report given by the investigating agency, but directions to file challan would not be legally permissible in view of the settled position as referred to above.

Accordingly, the impugned order passed by the Special Judge, Rupnagar cannot be sustained. The order, whereby the Special Judge has issued direction for obtaining/granting of sanction for prosecution of the petitioner and also direction for filing of a challan are hereby quashed. The case is remanded back to the court of Special Judge, Rupnagar to pass the order afresh keeping in view the law, as above referred.

January 31, 2007  
ramesh

( RANJIT SINGH )  
JUDGE