
(2003) 05 P&H CK 0105

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 28581-M of 1998

Bal Krishan Mehta

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 08-05-2003

Acts Referred:

Citation : (2003) 3 RCR(Criminal) 772

Hon'ble Judges : Nirmal Singh, J

Advocate : Shri R.K. Handa, Advocate. Shri U.S. Dhaliwal, DAG, Punjab.,
Advocates for appearing Parties

Judgement

Nirmal Singh, J.

1. This is a petition under Section 482 Cr.P.C. for quashing FIR No. 61 dated 23.6.1998 registered under section 13A.3.67 Gambling Act at Police Station Kotwali, Ludhiana and all subsequent proceedings.

2. The prosecution case is that while SI Ramnath alongwith other police officials were present in Rakhi Chowk in connection with patrolling and search of bad persons, he received a secret information that Bal Krishan son of Harbans Lal, resident of House No. J. 3677, Gali No. 11, Mohalla New Shivaji Nagar, Ludhiana who is the partner of Vijay Gupta is doing business of gambling in public place and is asking the people who are coming and going to stake note of Re. 1/ and earn Rs. 80/. If the lucky number comes he gives Rs. 80/ for Re. 1/ and if the number does not come then the staked amount will be forfeited. On this information DDR No. 21 was registered. After investigation, challan was presented before the illaqa magistrate.

3. I have heard the learned counsel for the parties and perused the record.

4. The Apex Court in State of Haryana & others v. Ch. Bhajan Lal, 1991(1) RCR(CrL.) 383 (SC) : AIR 1992 SC 604 has laid down guidelines where High Court can exercise inherent powers under Section 482 Cr.P.C. to prevent the abuse of process of law. However, this should be done sparingly and in rarest of

rare cases. The guidelines are as under :

"1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against then accused.

2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officer under S. 156(1) of the Code except under an order of a Magistrate within the purview of S. 155(2) of the Code.

3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S. 155(2) of the Code.

5) Where the allegation made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

5. The FIR can only be quashed if from the complaint or the FIR, no case is made out or the case has been registered with malafide intention. But in the instant case, no such case is made out for quashing the complaint. Furthermore, in the instant case after investigation the challan has been presented before the illaqua magistrate. From the pleadings of the petitioner itself, it shows that there are disputed facts which can not be decided in a petition under section 482 Cr.P.C. The petitioner has pleaded that on 23.6.1998, he had collected a sum of Rs. 6420/ from different persons who were the customers of the bank. At about 3.00 P.M. he was near Clock Tower, Ludhiana where Mukesh Kumar HC along with ASI Swaran Singh with four un identified persons came in a Fiat Car bearing grey colour and picked up the petitioner at gun point and made him to sit in the Fiat Car. He was told by ASI Swaran Singh that Dy. S.P. Charanjit Singh had called him in his office. The petitioner was taken to police station kotwali where he was locked up. The case of the petitioner is that his Mobile bearing No. 9814054016,

wrist watch, Calculator, Identity Card, Gas Card and list of amounts collected from Collection Cards of the customers have been snatched from him whereas the case of the prosecution is that the petitioner was found asking the people who were coming and going to stake note of Re. 1/ and to earn Rs. 80/. If the lucky number comes he would give Rs. 80/ and if the number does not come, then the staked amount will be forfeited and the petitioner was apprehended with gambling articles. The further case of the prosecution is that the petitioner was apprehended while indulging in gambling. These facts can not be decided in a petition under Section 482 Cr.P.C.

For the reasons mentioned above, there is no merit in this petition and the same is dismissed.