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**(2014) 09 P&H CK 0033**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : C.R.M. No. M-21651 of 2013**

Naresh Kadayn

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

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**Date of Decision :** 10-09-2014

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482  
Information Technology Act, 2000 — Section 66-A  
Penal Code, 1860 (IPC) — Section 120B, 120-B, 295, 295A

**Citation :** (2015) 1 RCR(Criminal) 219

**Hon'ble Judges :** Mehinder Singh Sullar, J

**Bench :** Single Bench

**Advocate :** Ravi Sharma, Advocates for the Appellant; Rajat Mor, D.A.G,  
Advocates for the Respondent

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## Judgement

Mehinder Singh Sullar, J.—The matrix of the facts & material, culminating in the commencement, relevant for deciding the instant petition, to refer the investigation of the case to Central Bureau of Investigation (for brevity "the CBI") and emanating from the complaint of petitioner-complainant Naresh Kadayn son of Om Parkash Kadayn (for short "the complainant"), which formed the basis of F.I.R. (Annexure P1), is as under:-

"Sir, Kindly refer to the eBay India online shopping mall alongwith the California based company ICON for manufacturing a range of shoes with the Lord Buddha's image and these shows with Lord Budha image are promoting by eBay India online shopping mall her in India. Whereas it hurt our scultments (Sic. sentiments) and it is totally against Buddhist sentiment putting Lord Buddha's image on footwear is unethical. It would be pertinent to mention here that being a Gandhian idiologist, Philosopher, social reformer and internationally renowned animal rights activists I feel that these kinds of insulting activists be banned all objections able stock may kindly be seized in India because trading of objectionable footwear can damage social fabric and brotherhood of the country and if can disturb our peace national integrity and harmony, whereas National

integration is the awareness of a common identity amongst the citizens of a country. It means that though we belong to different castes, religions and regions and speak different languages we recognize the fact that we are all one and respect all religion. This kind of integration is very important in the building of a strong and prosperous nation. [http://www.ebay.com/sch/1..hnl?trksid=p5197\\_m570n313\\_&nkw=incon+Budha+shoes\\_&saca=0](http://www.ebay.com/sch/1..hnl?trksid=p5197_m570n313_&nkw=incon+Budha+shoes_&saca=0) hence you are humbly requested to lodge F.I.R. for the violation of the IT Act 2009 section 66-A read with the I.P.C. section 295, 295A, 120B against the eBay India online shopping mall alongwith the ICON shoe manufacturing "Thangka of the Buddha" brand company and ban all relevant website in India alongwith face-book page <http://www.facebook.com/icon-shoesandhanbbags>."

Sequelly, in the background of these allegations and in the wake of complaint of the complainant, the present case was registered against the accused company (respondent No. 2), vide F.I.R. No. 349 dated 1.9.2012 (Annexure P1), on accusation of having committed the offences punishable u/ss 295A, 120-B I.P.C. and section 66-A of The Information Technology Act, 2000 (hereinafter to be referred as "the IT Act") by the police of Police Station Model Town, Rewari.

2. After registration of the case, the private respondent-accused had earlier filed the petition, bearing CRM No. M-30608 of 2012 to quash the impugned F.I.R. (Annexure P1). Thereafter, the matter was transferred and investigated by the State Crime Branch, Panchkula. During the course of investigation, it revealed that hosting of web page in question was created from abroad and not from India. Consequently, the investigating agency came to the definite conclusion that since no pointed offences were committed by the accused company within the territorial jurisdiction of India, so, the cancellation report dated 11.4.2013 (Annexure R1) was submitted by it in the Court. Consequently, in view of the cancellation report, the first petition to quash the impugned F.I.R. was dismissed as having become infructuous, by means of order dated 17.1.2014 by a Coordinate Bench (M. Jeyapaul, J.) of this Court.

3. Having received the cancellation report, the area Magistrate summoned the complainant and ultimately passed the following order on 25.4.2014:-

"Notice issued to complainant Naresh Kadyan received back unserved. It is stated by defence counsel that Hon"ble High Court has given specific directions to the complainant to file objections, if any, in the Trial court despite, that he did not appear. Heard, a perusal of file reveals that in the present matter cancellation report was filed by police on 24.04.2013. Thereafter, several notices have been issued but presence of complainant could not be secured. It appears that complainant is intentionally avoiding the court. Therefore, he be served through bailable warrant in sum of Rs. 5000/- with one surety for 30.05.2014."

4. In pursuance thereof, the complainant appeared and filed the objection petition to the cancellation report. It is not a matter of dispute that now the case (cancellation report) is listed for his evidence in this regard before the trial

Magistrate.

5. At the same time, the petitioner-complainant has preferred the instant petition for re-investigation of the indicated case from CBI, invoking the provisions of section 482 Cr.P.C., inter-alia, reiterating the allegations contained in the F.I.R. and further pleaded that the State Crime Branch did not conduct proper & effective investigation. According to the complainant that although the pointed offences are made out, but still, the investigating agency has submitted the cancellation report (Annexure R1), in order to help the accused-company for extraneous consideration. On the strength of aforesaid grounds, the petitioner-complainant sought the investigation of this case from CBI in the manner depicted herein-above.

6. The State & private respondent contested the claim of complainant and filed their respective replies, inter-alia, pleading certain preliminary objections of, maintainability of the petition, locus standi of petitioner and cause of action. It was claimed that initially, the investigations were conducted in this case by the local police. Thereafter, it was transferred to State Crime Branch, in terms of order of Higher authorities, bearing No. 9358-60/PA-DGP (H) dated 13.12.2012, where detailed investigations were carried out. During the course of investigations, it revealed that indicated hosting of web page was not pasted from India and rather it was uploaded from abroad.

7. Likewise, private respondent No. 2 has also reiterated the stand taken by the State and further pleaded that the alleged objectionable material was uploaded on eBay.com from USA and as the said objectionable material was immediately removed/withdrawn, therefore, prima facie, no offence under the IT Act was made out, in view of The Intermediaries Guidelines Rules, 2011. The cancellation report (Annexure R1) was stated to have been rightly submitted by the police in this relevant connection. According to the private respondent that although the petitioner-complainant was fully aware that the offence, if any, was committed abroad and respondent-company did not commit any offence here, still, he has lodged the false criminal case against it in India. It was claimed that after thorough investigation, the police has correctly submitted the cancellation report. Instead of reproducing the entire contents of the replies in toto and in order to avoid repetition, suffice it to say that the crux of the replies filed by the respondents was that since no offences in question were committed by the respondent-company within the territorial jurisdiction of India, so, the State Crime Bench has rightly submitted the closure report. However, it will not be out of place to mention here that the respondents have stoutly denied all other allegations contained in the main petition and prayed for its dismissal. That is how I am seized of the matter.

8. Having heard the learned counsel for the parties at quite some length, having gone through the legal provisions & material on record with their valuable assistance and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the present petition in this context.

9. Ex facie the argument of learned counsel for petitioner-complainant that since the indicated offences are clearly made out against the private respondent-accused, so, the matter should be referred to CBI for re-investigation, is not only devoid of merit but misplaced as well and deserves to be repelled for the reasons mentioned here-in-below.

10. What cannot possibly be disputed here is that the law with regard to refer the matter to CBI is no more res integra and is now well settled. The epitome of the ratio of law laid down by a Constitutional Bench of Hon'ble Apex Court in case State of West Bengal v. Committee for Protection of Democratic Rights, 2010 (2) R.C.R. (Criminal) 141 and in cases Sakiri Vasu Vs. State of U.P. and Others, ; Ashok Kumar Todi Vs. Kishwar Jahan and Others, & Prof. K.V. Rajendran Vs. Superintendent of Police, CBCID South Zone, Chennai and Others, is that power of transferring the investigation to the CBI must be exercised in rare and exceptional cases, where the Court finds it necessary in order to do justice between the parties and to instill confidence in the public mind, or where the investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation" and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. At the same time, it was ruled that where the investigation has already been completed and charge sheet has been filed, ordinarily superior courts should not reopen the investigation and it should be left open to the court, where the charge sheet has been filed, to proceed with the matter in accordance with law. Under no circumstances, should the court make any expression of its opinion on merit relating to any accusation against any individual/accused.

11. As is evident from the record that the facts of this case are neither intricate nor much disputed. The petitioner-complainant claimed that hosting of web of Lord Budha in question on the portal, has hurt his religious feelings in India. On the contrary, the respondents have stoutly denied and claimed that no pointed offences were committed in India.

12. Such thus being the legal position and material on record, without going to the merits or otherwise of the allegations contained in the F.I.R., now the short & 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 matter deserves to be referred to CBI or not?

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

14. As indicated here-in-above, initially, the present case was registered by the local police of District Rewari, but subsequently, the investigation was transferred and the matter was duly investigated by the State Crime Branch. The learned counsel for petitioner has miserably failed to point out as to how and in what manner, the investigation was tainted. No material, muchless cogent, even to suggest remotely that the investigation conducted by the State Crime Branch

was, in any way, lacks credibility or unfair or dishonest, is forthcoming on record. Meaning thereby, such cases cannot be referred to CBI in a routine/casual manner, as per the wishes of the complainant, as contrary urged on his behalf. Therefore, once the matter has already been investigated/enquired into and the closure report was submitted by the State Crime Branch, in that eventuality, to my mind, no cogent ground for referring the case to CBI for its re-investigation is made out under the present set of circumstances.

15. Not only that, there is yet another aspect of the matter, which can be viewed entirely from a different angle. The perusal of the record would reveal that having investigated the case, the State Crime Branch has submitted the final cancellation report, in which, the petitioner-complainant has filed objection petition and now the matter is slated for recording his evidence by the trial Magistrate. Thus, the re-investigation cannot legally be ordered. Indeed, this Court should not make any expression of its opinion on merits, relating to any accusation against any individual and it should be left open to the trial Court to proceed with the matter, as per statutory procedure, in view of ratio of law laid down by Hon"ble Supreme Court in case V.P. Patil v. State of Maharashtra through the Chief Secretary, General Administration Department & Ors., 2012 (6) RCR (Criminal) 359 and K.V. Rajendran's case (supra). The aforesaid observations "mutatis mutandis" are applicable to the facts of the present case and are the complete answer to the problem in hand.

16. Thus, seen from any angle and taking into consideration the totality of the peculiar facts and special circumstances of the instant case, oozing out of the record as discussed here-in-above, to me, no ground muchless cogent, to direct the CBI to re-investigate the matter, is made out in the obtaining circumstances of the case.

17. In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of subsequent proceedings/trial, as there is no merit, therefore, the present petition is hereby dismissed as such. Needless to mention that nothing observed, here-in-above, would reflect, in any manner, on the merits of the case, as the same has been so recorded for the limited purpose of deciding the instant petition only in this relevant direction.