
(1997) 10 P&H CK 0048
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 960 of 1997

Uma Rani

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 10-10-1997

Acts Referred:

Citation : (1998) 1 RCR(Criminal) 225

Hon'ble Judges : R.L.Anand, J

Advocate : S.K. Arora, Advocates for appearing Parties

Judgement

R.L. Anand, J.

1. The cases are daily confronting this court where the learned Magistrates do not adopt the recognised and the legal procedure before passing orders on the cancellation reports submitted by the police from time to time. The correct procedure has already been highlighted by the Hon'ble Supreme Court in Bhagwant Singh v. Commissioner of Police and another, 1985(2) Recent C.R. 259 , and it was laid down by their Lordships that when the Magistrate is not inclined to take cognizance of the offence and issue process, in such like cases, the informant must be given an opportunity of hearing so that he could make his submissions to persuade the Magistrate to take the cognizance of the offence and issue process. Further, it was observed by their Lordships that if the Police Officer of the Police Station does not take up investigation, he has to notify this fact to the informant. The Police Officer is obliged to communicate to the informant the action taken by him and the report forwarded by him to the Magistrate. These directions have been given to highlight the object that the informant must have the access to the investigation and he must not be kept in dark by the investigating agency regarding the progress of the investigation. On the completion of the investigation of the case, under the Criminal Procedure Code, the investigating agency is bound to submit a report under section 173. Cases can come where the investigating agency comes to the conclusion that no offence appears to have been committed, and submits cancellation or discharge

reports before the learned Magistrate. Learned Magistrate, before acting on such cancellation or discharge reports, has to give hearing to the complainant so that his rights are not jeopardised. Complainant can even highlight to the learned Magistrate that the investigating agency was not honest or faithful in the conclusion of the inquiry. Evidence could also be provided by the complainant or his witnesses in support of his allegations. The law courts are supposed to hear such complainants, but unfortunately, this recognised procedure is not being adopted by the learned Magistrates as a result of which serious prejudice is caused to the complainants.

2. In the present case also, the impugned order dated 3.9.1997 indicates that the learned Sub Divisional Judicial Magistrate, Malout, has not heard the complainant and has stated as follows :

"No eye witness is there of the occurrence. The FIR has been got registered on mere suspicion. In these circumstances the above said accused namely Rajinder Kumar and his wife Kamlesh are discharged in this case and application for this purpose has been filed by the SHO P.S. City Malout and has been forwarded by Dy. Supdt. of Police and APP. Necessary robcar be issued to the Jail authorities."

The above order would show that at no point of time, the complainant was heard. Such orders are against the recognised principles of law as I have just stated above. Resultantly, order dated 3.9.1997 is hereby quashed and directions are given to the learned Magistrate that without taking any action on the report under section 173, Criminal Procedure Code, the complainant must be heard.

Copy dasti.

3. A copy of this order should be sent to all the learned District and Sessions Judges of the States of Punjab and Haryana and the Union Territory, Chandigarh, so that they may inform about this order of the correct position of law as pointed out by Hon''ble Supreme Court in Bhagwant Singh's case (supra), to the learned Magistrates, if they are ignorant about this decision. I would also like to impress upon the District and Sessions Judges of the States of Punjab and Haryana and the Union Territory, Chandigarh, that in their monthly meetings they should guide the subordinate Magistrates of some important proposition of law which is adjudicated or decided by the Hon''ble Supreme Court or by the High Court.

A copy of this order be sent to all concerned.