
Before T.P.S. Mann, J.

TARSEM SINGH—*Petitioner*

versus

STATE OF HARYANA—*Respondents*

CRIMINAL MISC. NO. 39421/M OF 2006

28th August, 2006

Code of Criminal Procedure, 1973—S. 173—Allegations against petitioner that he had managed his recruitment in Police Department Haryana as a Constable about 20 years earlier by submitting a forged matriculation certificate and also got recruited his relatives on the basis of matriculation certificates—Registration of case under various sections of IPC—Police after investigation submitting cancellation report—Trial Court issuing notice to complainant—Request for withdrawal of cancellation report by the Police—Whether cancellation report submitted by the police before the Court of competent jurisdiction could be withdrawn—Held, no—Thorough investigation of entire matter done by the police before submitting the cancellation report—Once police report forwarded the police could not ask for return of the final report—However, the police could make an appropriate application for seeking permission for further investigation—Petition allowed—Order of Trial Court allowing the withdrawal of cancellation report set aside.

Held, that the police had thoroughly investigated the entire matter and then submitted the cancellation report. In the F.I.R. itself, there were allegations that the petitioner, his nephew Ranjit Singh and his brother Kulwant Singh got employment in police department by producing forged certificates. It was not the case of the prosecution that the factum of the nephew and brother of petitioner getting employment on the basis of forged certificates cropped up after the submission of the cancellation report. The stand of the State to the extent that the petitioners got two more enrolments done by producing fictitious certificates, was thus patently wrong. The allegations regarding the other two enrolments got done by the petitioner, were very much contained in the F.I.R. and it could not be said that these allegations were not investigated by the police. The police did not

make any appropriate application for seeking permission for further investigation. The police simply requested for withdrawal of the cancellation report which could not be permitted.

(Paras 6 & 8)

S. S. Dinarpur, Advocate, *for the petitioner.*

Kartar Singh, A.A.G., Haryana, *for the respondent.*

JUDGEMENT

T.P.S. MANN, J.

(1) F.I.R. No. 248 dated 18th August, 2004 was registered at Police Station Baldev Nagar under Sections 420, 466, 467 and 471 I.P.C. against the petitioner with the allegations that the petitioner had managed his recruitment in Police Department, Haryana as a Constable about 20 years earlier and that, he had submitted a forged matriculation certificate. It was also alleged that the petitioner also got his nephew Ranjit Singh recruited in Haryana Police as Constable on the basis of forged matriculation certificate. Similarly, Kulwant Singh, brother of the petitioner was found to have got himself posted similarly as a constable.

(2) After the completion of the investigation, the police submitted a cancellation report before Chief Judicial Magistrate, Ambala on 14th March, 2005. Before the said report was submitted, opinion of Deputy District Attorney was also obtained. As per his opinion, it was a fit case for submitting the cancellation report.

(3) After the presentation of the cancellation report, Chief Judicial Magistrate, Ambala issued a notice to the complainant and adjourned the case to 14th October, 2006. In the meantime, the police moved an application in the said Court that it be allowed to withdraw the cancellation report for the purposes of carrying out the re-investigation into the case. The application of the police was allowed by the Court on 8th May, 2006 by permitting the police to withdraw the cancellation report. The said order is impugned in the present petition.

(4) Learned counsel for the petitioner has submitted that the impugned order passed by Chief Judicial Magistrate, Ambala while allowing the withdrawal of cancellation report was manifestly and inherently illegal, unjust, arbitrary and erroneous as the Magistrate was not competent to pass such an order. Once the cancellation report

was submitted by the police before the court of competent jurisdiction, the same could not be withdrawn by the police. Learned counsel for the petitioner has relied upon "**Jeevan Singh versus State of Rajasthan (1)**, wherein it was held that the final report once submitted by the police, could not be returned by the Magistrate to the Investigating Officer on the ground that it was required for perusal of a higher authority.

(5) Learned Counsel for the State, while supporting the impugned order passed by Chief Judicial Magistrate, Ambala, has submitted that as the petitioner got two more enrollments done by producing fictitious certificates, it was necessary to challan him and accordingly, an application was moved for permission to withdraw the cancellation report for the purposes of re-investigation.

(6) The police had thoroughly investigated the entire matter and then submitted the cancellation report. In the F.I.R. itself, there were allegations that the petitioner, his nephew Ranjit Singh and his brother, Kulwant Singh got employment in Police department by producing forged certificates. It was not the case of the prosecution that the factum of the nephew and brother of the petitioner getting employment on the basis of forged certificates cropped up after the submission of the cancellation report. The stand of the State to the extent that the petitioner got two more enrollments done by producing fictitious certificates, was thus patently wrong. The allegations regarding the other two enrollments got done by the petitioner, were very much contained in the F.I.R. and it could not be said that these allegations were not investigated by the police.

(7) In **Jeevan Singh's case (supra)**, the court did not find any justification in the order of the Magistrate in returning the final report to the police on its asking for production before the Superintendent of Police. It was held that once the police report had been forwarded, the matter could not be further investigated and the police could not ask for return of the final report. At the most, the police could make an appropriate application and seek permission for further investigation. It was held as under :

"I find substance in the contention raised by the learned counsel. It is well settled position of law that even after the conclusion of the investigation pursuant to filing of

FIR and submission of report under Section 173(2), Cr. P.C., the officer in-charge of the police station comes across any further information pertaining to same incident, he can make further investigation with the leave of the Court and forward further evidence, if any collected, further report or report under Section 178(8), Cr. P.C. I am fortified in my view by the decision reported in **T.T. Antony versus State of Kerala, 2001(3) RCR (Cri.) 436 (SC) : 2001 SCC (Cri.) 1048**. Thus, to my mind, the learned Magistrate has committed gross illegality in returning the final report to the SHO, Police Station, Surajpole on his just asking for production before the Superintendent of Police. It is not the rule that once a police report has been forwarded, the matter cannot be further investigated and police can ask for return of the final report. The police can make an appropriate application and seek permission for further investigation, which may include directions with regard to investigation by the higher police authorities. The final report once submitted in the Court cannot be returned on an application submitted by the S.H.O. in a cavalier manner, as has been done in the instant case.”

(8) In the present case also, the police did not make any appropriate application for seeking permission for further investigation. The police simply requested for withdrawal of the cancellation report which, as held above, could not be permitted.

(9) In view of the above, the present petition is allowed and the order passed by Chief Judicial Magistrate, Ambala on 8th May, 2006 while allowing the withdrawal of the cancellation report, is set aside. The said court is directed to proceed with the consideration of the cancellation report.

R.N.R.