

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

CRM M-5108 of 2016

Date of decision : 01.06.2016

Baggu Khan

...Petitioner

V/s

State of Punjab & ors.

...Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Vikas Bishnoi, Advocate for the petitioner.

Mr. Shilesh Gupta, Addl. A.G. Punjab.

Mr. S.S. Sandhu, Advocate for the CBI.

RAJAN GUPTA J.

This is a petition under Section 482 Cr.P.C. praying that investigation pursuant to FIR No.109 dated 27.11.2014, registered under section 22/61/85 of Narcotic Drugs & Psychotropic Substances Act, 1985 at Police Station City-2, Abohar, District Fazilka, be handed over to some independent agency like Central Bureau of Investigation.

Petitioner has alleged that on 27.11.2014, while he was sitting at home, some residents of the village namely, Alla Bux and Husain came and asked him to accompany them to Abohar where they had some work. They assured him that they would return in the evening. Petitioner sat alongwith these two persons in a vehicle (Bolero Jeep bearing No.HR-26-AX-5989). As the jeep crossed Rajpura barrier, they were apprehended by a police party. Search of the jeep was conducted. It was found that there were 500 tablets of Caricoma and 95 vials of Rexcof. ASI Pawan Kumar along with H.C. Satnam Singh and HC Hansraj took all the three persons to a

nearby garden. The Station House Officer namely, Sahab Singh came there. He took an amount of Rs.2,40,000/- from Alla Bux and Hussain and left them along with Bolero Jeep. Petitioner alleges that the recovery of 500 tablets of Caricoma and 95 vials of Rexcof was thereafter planted on him and FIR under Section 22/61/85 of the Narcotic Drugs & Psychotropic Substances Act, 1985 was registered. According to him, this all happened despite the fact that petitioner had no such record and never indulged in any criminal activity. On the other hand, Alla Bux and Hussain had number of other cases pending against them, as stated in para No.4 of the petition.

It appears, during pendency of investigation, an application was submitted by father of the petitioner seeking an inquiry into the matter. This inquiry was entrusted to Superintendent of Police, Abohar. After conducting a detailed enquiry, he submitted report Annexure P-3 and arrived at a conclusion that Baggu Khan was innocent. Operative part of the report reads as under:-

“From my open and secret enquiry one thing come to light that on 27.11.14, two persons from the village took Baggu Khan in an allurement of drugs and it take confirmed from the statements of villagers namely Allah Ditta and Mohammad Aslam, who have specifically stated that two boys of village on the pretext of delivery of articles for marriage purpose for alongwith them, Sohan Lal, Birbal and Bhanwar Lal also gave their statements recorded that on 27.11.14 Baggu Khan met them standing on Abohar Bye Pass in the evening and he told them that two boys of village took him at Abohar for delivery of articles for marriage.

From my enquiry, it is clear that Baggu Khan was brought from village by two boys of village by keeping him in dark for supply of Drugs and Baggu Khan was having no

knowledge about keeping by them any Narcotic substance because he was addict of drugs due to this he accompanied them. Although, he is not indulging in any business of selling of drugs.”

On the basis of the report, prosecution moved an application under section 169 Cr.P.C. (Annexure P-4) seeking discharge of Baggu Khan. This application was, however, rejected by the Special Court observing that report of Superintendent of Police, Abohar carried no weight, thus no ground was made out to discharge the accused. Admittedly, State did not choose to challenge the order passed by the Special Court. Stand of the State is that investigation thereafter remained pending. In the month of February, 2016 instant petition was filed by the petitioner seeking transfer of investigation to an independent agency alleging false implication by the police. A copy of the petition was handed over to the State on March 15, 2016. Matter came up again before this court on March 31, 2016 when notice of motion was issued. It appears that on the same day, State submitted the challan against the petitioner before the Special Court at Fazilka.

It is evident that Superintendent of Police while conducting the inquiry, recorded statements of number of residents of the village and examined the documents. Admittedly they made statements in favour of the petitioner. Their names as mentioned in the report are Mohammad Khan, Mohammad Saleem, Allah Ditta, Mohammad Din Sarpanch, Allah Ditta Member Panchayat, Sohan Lal and Bhanur Lal. Investigating agency placed reliance upon the said report and sought discharge of the accused. However, its application under section 169 Cr.P.C. was rejected by the court. In such a situation, investigating agency had the option to challenge the order before a

higher court. Instead it took summersault and decided to present charge-sheet against the petitioner. Stand of the State is that it presented the charge-sheet after thorough investigation. Inquiry by SP cannot be relied upon as investigating officer was never associated with the same. Besides, petitioner has right to defend himself before the trial court and raise all his pleas. No interference by this court in its inherent jurisdiction is necessary.

False implication as alleged in this petition is a serious matter which needs thorough probe. Fair investigation is a prime requisite to instil confidence in the public. Their voice needs to be heard so that the truth comes out. If there are basic faults in the investigation, it may give a reason to this court to direct independent and impartial investigation by another agency. In the instant case, foundation of this issue is based on the fact that Superintendent of Police himself found that petitioner had been falsely implicated and discharge of the accused was sought on this ground. Plea for discharge having been rejected, the police decided to present a challan against him. It is inexplicable why this course of action was adopted. Petitioner alleges that SHO was bribed by Alla Bux and Husain to implicate him in the instant case. Needless to observe false implication of a citizen in a criminal case can ruin him, particularly in a special statute like NDPS Act which contains stringent provisions. Right for a citizen under Article 21 of the Constitution cannot be trampled by a shoddy, improper or biased investigation. Accused can expect a fair trial only if it is preceded by a fair investigation. Though this court does not intend to express any opinion on the merits of the case, further investigation of the case is handed-over to Central Bureau of Investigation which may look into all aspects of the matter including false implication, if any. In case it finds that petitioner has

been falsely implicated it shall be at liberty to initiate action against concerned officials as per law. Entire record be furnished to said agency within ten days from receipt of copy of this order. Petition is allowed in these terms. Till the investigation is finalized by the CBI, trial Judge shall not proceed with the trial. A status report be submitted within six weeks.

June 01, 2016

Rajpal/Ajay

(RAJAN GUPTA)
JUDGE

Referred to Reporter?

Yes