

SARVSHEEL MAGO

v.

STATE OF HARYANA & ORS.
(Criminal Appeal No. 545 of 2008)

MARCH 25, 2008

[S.B. SINHA AND V.S. SIRPURKAR, JJ.]

Code of Criminal Procedure, 1973 – s.482 – Inherent powers of High Court – Various litigations between private parties and complainant on account of dispute – Private parties conniving with police officer and trying to falsely implicate complainant for possessing contraband substances – Complainant seeking registration of criminal cases against police officer and private parties as also investigation – Refusal by High Court – On appeal held: Case made out for independent and unbiased investigation into the offence on basis of the Inquiry Report – Officer of the rank of DIG directed to further investigate into the complaint – Referring the matter to CBI for investigation not required – Penal Code, 1860 – ss. 341, 342, 211 and 120-B – Narcotic Drugs and Psychotropic Substances Act, 1985 – s.58.

Appellant's daughter was married with the son of respondent no. 6. There was a dispute among the parties. Appellant also had strained relations with respondent no. 5. Criminal cases were registered against the appellant and his family members however, they all were acquitted. It is alleged that respondent no. 5 and 6 in connivance with respondent no. 4-Police officer tried to falsely implicate the appellant for possessing contraband drugs. Search was carried out on three occasions but nothing incriminating was found. Appellant did not succeed in registering a criminal case against the respondents. Thereafter, appellant filed a petition u/s. 482 Cr.P.C. seeking direction to register criminal case u/ss. 341, 342 and 211

- A IPC read with s.58 of the Narcotic Drugs and Psychotropic Substances Act read with s.120-B IPC against respondent Nos. 4, 5 and 6. The High Court did not issue any directions for registration of the criminal cases against the appellant. The appellant filed SLP before this Court.
- B Notices were issued on SLP and also notices were issued to CBI. This Court passed an order that an officer of the rank of DIG under supervision of DGP would make an independent investigation as to whether any attempt had been made by respondent no. 4 to harass appellant by trying to lodge cases under NDPS Act.
- C

Disposing of the appeal, the Court

- HELD: After going through the Inquiry Report made by the DIG at the instance of the DGP which was in the nature of investigation, it is found that there is a case for investigation into the offence. Therefore, further investigation is directed by the officer of the rank of DIG into the complaint made by the appellant. However, at this stage, there is no necessity of referring the matter to CBI as the DIG has so far conducted unbiased and independent investigation in the matter. An independent and unbiased investigation shall be done on the basis of the complaint against all concerned including respondents as also such others who had any role to play in the incident dated 8.8.2004. Further action, if necessary, shall be taken against all such persons who have been found to have a hand in the harassment of the appellant, whose car was constantly searched on as many as three occasions without anything objectionable being found. The liberty is given to the appellant to approach this Court again in case the need is felt. [Paras 11 and 12] [365-B, C, D, E, F, G; 366-A]
- D
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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 545 of 2008

- H From the final Judgment and order dated 9/9/2005 of the

High Court of Punjab and Haryana at Chandigarh in Crl. Misc. A
No. 44156-M/2004.

Subodh Markandeya, Chitra Markandaya and R. Agrawal
for the Appellant.

Vikas Singh, A.S.G., B.S. Mor, Neeraj Mor, Mahinder Singh B
Dahiya, Rajni Ohri, B.K. Prasad, P. Parmeswaran, Kusum Singh,
R.C. Kaushik, Rajeev Gaur 'Naseem', Rajesh Ranjan and
T.V.George for the Respondents.

The Judgment of the Court was delivered by

V.S. SIRPURKAR, J. 1. Leave granted. C

2. Appellant herein has challenged the order passed by
the High Court, whereby his petition under Section 482 Cr. P.C.
was disposed of with certain directions. In his petition, the
appellant had sought registration of criminal case against D
respondent nos. 4 to 6 for offences under Sections 341, 342,
211 I.P.C. and Section 58 of the Narcotic Drugs & Psychotropic
Substances Act (hereinafter referred to as "NDPS Act") read E
with Section 120-B I.P.C in relation to the incident which took
place on 7.8.2004. The High Court, however, refused to issue
any direction regarding the registration of a criminal case on
the ground that there was no material on record, from which it
could prima facie be found that respondent no. 4 had stopped
the vehicle and conducted the search with mala fide motive.
The High Court viewed it as a part of the duty of respondent no. F
4. The High Court did not also find fault with the alleged role
played by respondent nos. 5 and 6, however, left it open to the
appellant to avail of his alternative remedy on the basis of
allegation that respondent no. 5 and 6 were deliberately and
intentionally implicating him by making false calls to the police. G

3. The factual background of this is that out of respondent
nos. 4, 5 and 6, the 4th respondent is a police officer working as
Assistant Sub-Inspector, Police and posted at Model Town
Police Station of Karnal and is presently posted at Ram Nagar,
Karnal, while respondent nos. 5 and 6 are private individuals. H

A Appellant has a daughter called Nidhi Mago and in the year 1999, her marriage alliance was being discussed with Parshant Arora, son of respondent no. 6 who was then out of India and was scheduled to come to India in the end of May, 1999.

B 4. According to the appellant, Nidhi Mago was kidnapped on 15.5.1999 from Chandigarh. This kidnapping was done at the instance of respondent no. 5 Sanjay Bhardwaj. She was allegedly made to go through the marriage ceremonies. However, on 26.5.1999, she was rescued from Golabanda, C Orissa and on the next day, a crime was registered for offences under Sections 376, 363, 366, 468, 467, 471 and 120-B I.P.C. vide F.I.R. No. 0087/1999 against respondent no. 5, his father and his friend. It is then contended that during the pendency of this FIR, Nidhi Mago was married to Parshant Arora, son of D respondent no. 6 on 1.6.1999 and the marriage was registered. She started cohabiting with Parshant Arora at Karnal. After this, Parshant Arora went back to Canada from where he had come and Nidhi Mago was also sent back to her parents' house with the assurance that she will be sent to Canada as soon as her E Visa is granted. It is, however, alleged that respondent no. 6 took her passport. In June, 1999, allegedly, there was a dispute among the appellant and respondent no. 6 on account of alleged dowry demand. It was on account of this that respondent nos. 5 and 6 colluded with each other and started blackmailing the F appellant. In the month of July, 1999, respondent no. 6 as attorney of Parshant Arora filed a petition for annulment of marriage. On the same day, respondent no. 5 filed a petition for restitution of conjugal rights against Nidhi Mago. These petitions were still pending when respondent no. 5 filed a complaint against the G appellant and his family members for offence under Section 307 I.P.C., which was registered as FIR No. 586/99 in Police Station, Sector-17, Chandigarh. A trial went on the basis of this allegation. So much so, respondent no. 5 had also filed a criminal case under Section 307 I.P.C. against the appellant and the family H members at Nalagarh, Himachal Pradesh. The Sessions Judge,

however, vide his order dated 12.10.2004 was pleased to acquit A
the appellant and family members of all the charges. In the year
2001, Nighi Mago moved an application for maintenance
pendente lite against the son of respondent no. 6 Parshant Arora,
upon which respondent no. 6 withdrew petition that he had filed B
on behalf of his son. It was the petition under the Hindu Marriage
Act. Thereafter, he filed a suit, which is still pending adjudication,
while respondent no. 6 filed a Special Leave Petition being SLP
(C) No. 4708/2002 against the interim stay granted against
respondent no. 6's son in the Civil Revision Petition No. 4321/
2001. According to the appellant, the said revision petition is C
still pending.

5. The appellant then alleged that respondent no. 6 had
filed a private complaint for an offence under Section 420 I.P.C.
against the appellant and his family members on some false D
grounds. However, the High Court vide order dated 30.1.2004
had stayed the proceedings of the same general complaint. On
21.5.2004, the appellant had come to the Court of Additional
Sessions Judge Sh. J.S. Kalar, Chandigarh to attend the hearing
of the said case, which was registered under F.I.R. No. 586/99. E
When he came out of the Court, the officials of the Crime Branch
of Chandigarh Police surrounded him and his car and told the
appellant that they had the telephonic information that the
appellant was carrying a contraband of drugs in his car. The car
was thoroughly checked and nothing incriminating was found
and, therefore, the appellant and his car was released. On this, F
the appellant lodged a complaint against respondent no. 5 with
the S.S.P., Chandigarh. However, the police did not take any
action. Thereafter, appellant and his son were again
apprehended by Panchkula Police. near their house on the
same allegation that police had secret information about the
appellant carrying narcotic drugs. Again the search was taken G
and nothing incriminating was found. The appellant was,
however, released. The appellant again filed a complaint to take
action against respondent no. 5 with S.S.P., Panchkula for which
the F.I.R. was made. However, the police did not take any action. H

A This complaint was made for falsely implicating the appellant.

6. On 7.8.2004 the appellant and his daughter and other family members had come to Delhi to attend the court where annulment petition filed by Nidhi Mago was pending. While coming back from Delhi to Karnal it was seen that respondents B 5 and 6 were following the car and when they were about to reach Karnal, respondents 5 and 6 had gone ahead and the car was stopped at Liberty Chowk, Karnal at the instance of respondents 5 and 6 by respondent no.4. Immediately thereafter respondents 5 and 6 left while the car was searched by the C respondent no.4 and other police officers who were not even wearing the uniform nor were they wearing their name plate. In spite of the protest, the car was searched again and nothing incriminating was found. However, the respondent no.4 started pressurising the appellant to come to the Police Station. On D this the appellant grew suspicious that something may be planted in the car and hence he, instead of going to the Police Station, went to the residence of Superintendent of Police, Karnal where even respondent no.4 followed him. Again the search was taken at the direction of Superintendent of Police at his residence E and nothing incriminating was found. It was, however, further contended that the Superintendent of Police initiated a Departmental Inquiry against the respondent no.4 and the respondent no.4 came to be transferred. The appellant alleges that all this was done at the instance of the respondent no.6 F who was exerting his pressure.

7. The appellant further alleges that he wanted to lodge a complaint in the Police Chowki, Model Town, Karnal, however, since the respondent no.4 was the senior-most officer in the Chowki, he refused to register the complaint. Therefore, he had G to lodge a complaint through post. However, the respondent no.4 refused to accept the complaint and no investigation was carried out on the basis of the complaint made by the appellant. It was, therefore, that the appellant filed an application under Section 156(3) Cr.P.C. in the month of August, 2004 alleging the

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conspiracy between respondents 4, 5 and 6 against the appellant by falsely implicating him for possessing contraband substances. Even before registration of this application, the respondent no.6 appeared along with his counsel before the learned Chief Judicial Magistrate and the Chief Judicial Magistrate instead of ignoring the respondent no.6 directed the appellant to withdraw his application and returned the whole paperbook to him.

8. It was, thereafter, that the appellant filed a petition under Section 482 Cr.P.C. bearing Criminal Misc. No.44156-M of 2004 (O&M) for a direction to register criminal case under Sections 341, 342 and 211 I.P.C. read with Section 58 of the NDPS Act and Section 120-B IPC against respondents 4, 5 and 6. This petition was opposed by respondent no.4 but admitted that during the search at Liberty Chowk, Karnal nothing incriminating was found in the car. He, however, pointed out that he had made the Daily Diary Entry of his action and that nothing was malafide. According to the appellant, very strangely the State had adopted the reply of the respondent no.4 wherein the respondent no.4 had admitted that no investigation had been carried out on the basis of the complaint made by the appellant. In short, the complaint of the appellant is that the respondents 1, 2 and 3 were not doing their statutory duty of looking into the complaint and registering the same under the influence of respondents 4, 5 and 6.

9. During the course of arguments, the appellant supplied a list of various cases pending in between the parties, namely, the appellant on the one hand and respondents 3, 5 and 6 on the other. There are as many as 12 cases in respect of respondent no.6 Col. Sadanand Arora and about 8 cases in respect of respondent no.5 Sanjay Bhardwaj.

10. This Court initially issued a notice on the Special Leave Petition and also issued notice to CBI as the appellant had filed a petition for its impleadment. After hearing the parties this Court passed the following order on 27.7.2007:

A "Keeping in view the facts and circumstances of this case
and having regard to the allegations and counter
allegations made by the parties, we are of the opinion that
an officer of the rank of DIG under the direct supervision
of the DGP should make an independent investigation as
B to whether any attempt had been made by respondent
no.4 herein to harass the petitioner by making endeavours
to lodge cases under the NDPS Act. We are not oblivious
of the fact that the allegations have been made in the
light of the disputes between the private parties.
C Ordinarily, we would not have interfered with the
judgment of the High Court but allegations of such
serious nature, in our opinion, should be thoroughly
inquired into. We would request the DGP of the State of
Haryana to submit a report within three months from the
date of receipt of copy of this order.
D

Put up after three months."

Accordingly a thorough inquiry was got conducted by the
Director General of Police and an affidavit has been filed by
him. In his affidavit, the deponent Shri R.S. Dalal, IPS, Director
E General of Police, Haryana has firstly mentioned about the
incident dated 8.8.2004 regarding the search of the car at Liberty
Chowk, Karnal and has thereafter asserted that he has gone
through the statements made by the complainant, his wife and
his son and also the statements of as many as 12 police officers
F including the respondent no.4 Surinder Malik, ASI as well as
the Superintendent of Police, Karnal. The deponent has
thereafter given his conclusions. In his affidavit it is further
suggested that the versions of the ASI about the secret
information having been conveyed to the Superintendent of
G Police was not supported by SP, Karnal Shri Vikas Arora and
the version of the appellant that ASI Surinder Malik had tried to
take the car to the Police Station but the appellant of his own
rushed to the SP's residence to be correct. It is further suggested
that it transpired from DDR Nos.12 and 13 dated 8.8.2004 that
H the search was not made under the direction of SP, Karnal and

the SP, Karnal had also denied to have given any direction for such search. In his affidavit the DGP has found fault with the behaviour of Shri Surinder Malik, ASI and the local police and that they had acted in a mala fide manner. A

11. A copy of the report of the Inquiry made by Deputy Director General of Police, State Crime Branch, Haryana dated 28.10.2007 has also been filed. We would not go into the details of the report. However, the report suggests that a full and detailed inquiry was made by the DIG at the instance of the DGP which was in the nature of investigation. B

12. We are satisfied after going through the Inquiry Report that there is a case for investigation into the offence. We, therefore, direct the further investigation by the officer of the rank of DIG into the complaint made by the appellant. We, however, at this stage, do not find the necessity of referring the matter to CBI as in our opinion the DIG has so far conducted unbiased and independent investigation in the matter. We expect that an independent and unbiased investigation shall be done on the basis of the complaint against all concerned including respondents herein as also such others who had any role to play in the incident dated 8.8.2004. Such investigation would be conducted and further action, if necessary, shall be taken against all such persons who have been found to have a hand in the harassment of the appellant, whose car was constantly searched on as many as three occasions without anything objectionable being found. The DIG under whose supervision the investigation shall be conducted shall also take into account the previous history of the litigation as also the previous proceedings and an objective investigation shall be conducted therefor. The Inquiry Report does not speak from the angle of part played, if any, by respondents 5 and 6 and others. However, that angle shall also be examined and investigation conducted in that behalf. We are, however, convinced that at the level where the investigation is going on there is nothing suspicious or mala fide and, therefore, we reject the prayer of the appellant to hand over the investigation to CBI. We, however, give liberty to the C D E F G H

- A appellant to approach this Court again in case the need is felt. However, that will be only after the investigation is complete and a report of the investigation is submitted before the competent court. We also expect the investigation to be completed within three months and in case it is not possible, the Investigating Officer shall have the liberty to approach this Court for extension of time.

13. With the above directions we dispose of the present appeal.

- C N.J. Appeal disposed of.