

PETITIONER:
ARVINDERVIR SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB & ANR.

DATE OF JUDGMENT: 05/08/1998

BENCH:
G.T. NANAVALI, S.P. KURDUKAR, SYED SHAH MOHAMMED QUADRI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Nanavati, J.

Leave granted.

Heard learned counsel for the parties.

This appeal is directed against the judgment and order passed by the High Court of Punjab and Haryana in Criminal Misc. No. 21068 of 1997. The appellant had filed that application under Section 482 of the Code of Criminal Procedure, for getting quashed the criminal proceedings initiated pursuant to R.C. No. 33 of 1993 dated 8.10.93 filed by the C.B.I and the report made under Section 173 Cr. p.c. to the Designated Court, on the ground that the said complaint and the report do not disclose commission of any offence and that initiation of the said proceedings amounts to an abuse of the process of the Court. The High Court by its order dated 24.9.97 dismissed that application on the ground that the intention of the appellant was to delay the proceedings and that no formal complaint under Section 195(1) (b) was required for issuing the process and that it will be open to the appellant to take all the pleas including the plea that the complaint does not disclose any offence, at the time of framing of the charge.

The proceedings against the appellant have come to be initiated under the following circumstances. On 8.2.93 a criminal offence was registered at Ropar Police Station against one Harpreet Singh alias Lucky, on the basis of a 'Ruqua' sent by the appellant who was S.H.O. of Ropar Police Station. It was alleged that Harpreet Singh alias Lucky and one Surjeet Singh had abducted advocate Kulwant Singh, his wife and his child with an intention to murder them. During interrogation Harpreet Singh was stated to have disclosed that he and Surjeet Singh had already committed murders of those three persons. On the basis of that information the police had raided a shop wherein Surjit Singh and Rulda Singh were present. Both of them consumed cyanide before they could be apprehended by the police. During investigation of that offence, on 12.2.93, Harpreet Singh was stated to have made an extra judicial confession before Avatar Singh, who was a Lambardar, that he and co-accused Surjeet Singh had abducted those three persons, committed

their murder and the dead bodies were thrown in Bhakara Canal near Sirhind Floating Restaurant and that their car was also thrown in that canal. Pursuant to that information the police had recovered the car from the canal on 12.2.93. On 11.3.93 an application was given by Harpreet Singh to the learned Sessions Judge, stating therein that he wanted to make a confession and along with that application he had also submitted a confessional statement which he wanted to make. At this stage of the investigation, the Punjab and Haryana Bar Association filed a writ petition in the High Court praying that the investigation which was made by the police in the said case registered against Harpreet Singh was not fair and that an inquiry by C.B.I. may be ordered. That writ petition was dismissed by the High Court. The Bar Association had thereafter filed an appeal before this Court. Allowing that appeal this Court directed the C.B.I. to investigate the said case and also to submit a report to this Court. The C.B.I. registered the case as R.C. No. 33 of 1993 and after investigation submitted the final report to this Court on 7.3.1996 wherein following actions were recommended:-

" (i) Harpreet Singh @ Lucky s/o Gurmit Singh Saini, r/o Village Bahadurpur, who is presently facing trial in case FIR No. 10/93 of PS Sadar, Ropar in the Designated Court, Nabha has been falsely implicated in the case.

(ii) SI Avindervir Singh, ASI Darsahan Singh, Inspector Balwant Singh and DSP Jaspal Singh are prima facie responsible for the false implication of Harpreet Singh @ Lucky in the aforesaid case and are liable for prosecution for offences under Sections 193, 194, 211 and 218 IPC.

(iii) The State Government of Punjab is to be requested for taking suitable action against Shri Sanjiv Gupta, DIG, Punjab Police for his lack of supervision."

In the final report the CBI had also suggested that the concerned Designated Court be directed to file a complaint as required by Section 195 Cr.P. C. for prosecuting the appellant and A.S.I. Darshan Singh, Inspector Balwant Singh and D.S.P. Jaspal Singh under Sections 193, 194, 211 and 218 IPC. Allowing the appeal on 10.5.96, this Court directed that Harpreet Singh @ Lucky be released from jail forthwith, transferred the trial from the Designated Court at Nabha to the Designated Court at Chandigarh and directed the C.B.I. to file necessary challan in accordance with the Code of Criminal Procedure, before trial court at Chandigarh. A consequential order was also passed by the Designated Court for the release of Harpreet Singh on 16.5.96.

In view of the said directions a chargesheet was filed by the C.B.I. in the Designated Court, Chandigarh, which after receiving papers from the Designated Court at Nabha issued process pursuant to which the accused came to be arrested and confined in custody.

On 2.9.96 the appellant moved an application to the Court at Chandigarh in R.C. No. 33 of 1993 praying that non-bailable warrant issued against him be recalled and all subsequent proceedings initiated and process issued pursuant to the chargesheet filed by the C.B.I. be rescinded in view

of the bar contained in Section 195(1(b))(i) read with Section 340 Cr. P.C. The contention of the appellant before the Court was that until a complaint is filed by the concerned Designated Court, after holding a preliminary inquiry and after recording a finding to the effect that an offence appears to have been committed in or in relation to a proceedings in the court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that court, the Designated Court at Chandigarh cannot take cognizance of the challan filed by the C.B.I. The Designated Court held that in view of the directions given by this Court filing of a complaint by the concerned Designated Court was not necessary; and therefore, it dismissed the said application by an order dated 11.9.97. The appellant thereafter moved Crl. Misc No. 21069 of 1997 to the High Court but it was dismissed as stated above.

Aggrieved by the said orders passed by the Designated Court and the High Court the appellant filed special leave petition in this Court to grant leave to him to file an appeal against those order. That S.L.P. came up for hearing before a Bench consisting of our learned Brothers Mukherjee and Thomas, JJ. It was felt by that Bench that the view expressed by it in the State of Punjab vs. Raj Singh and another (1998 (1) SCALE 130) runs, to some extent, counter to the direction given by a two-Judge Bench of this Court in Punjab and Haryana High Court Bar Association vs. State of Punjab and others (1996 (4) SCC 742) and, therefore, it passed the following order:-

" As the views expressed by us in State of Punjab vs. Raj Singh and another (1998 (1) SCALE 130 runs, to some extent, counter to the direction given by a two Judge Bench in Punjab and Haryana High Court Bar Association vs. State of Punjab and other (1996 (4) SCC 742), pursuant to which the impugned order has been made we deem it fit to refer this petition to a larger Bench. Let this petition be, therefore, placed before Hon. the Chief Justice of India for necessary orders."

Consequently, the S.L.P. was placed before us and after hearing learned counsel for the petitioner we granted leave as stated above.

The learned counsel for the appellant submitted that in view of the bar contained in Section 195(1)(b)(i) no court can take cognizance of any offence punishable under Sections 193-196, 199-200, 205-211 and 228 when such offence is alleged to have been committed in, and in relation to, any proceeding in any court except on the complaint in writing of the Court or of some Court to which that court is subordinate. He also drew our attention to Section 340 of the Criminal Procedure Code which provides the procedure required to be followed in cases mentioned in Section 195. He submitted that what the law requires is that the court has to first hold a preliminary inquiry, then record a finding that an offence referred to in clause (b) of sub-section (1) of Section 195 appears to have been committed in or in relation to a proceeding in that court; make a complaint thereof in writing and then sent it to a Magistrate having jurisdiction to try it. He submitted that in this case the Designated Court, Nabha or its successor court has not held any inquiry or recorded a finding or

filed a complaint as contemplated by Section 340 and, therefore, the Designated Court at Chandigarh could not have taken cognizance of those offences and issued process and issued non-bailable warrant against the appellant.

The answer to the question whether the direction given by this Court in the case of Punjab and Haryana High Court Bar Association (supra) runs counter to the provisions contained in Section 195 and 340 of the Code of Criminal Procedure, as interpreted by this Court in Raj Singh's case (supra), depends upon how the said direction is read and construed. If the said direction is read as a direction to the CBI to file a chargesheet against the appellant and the other three police officers for the offences under Sections 193, 194, 211 and 218 IPC in the Designated Court at Chandigarh and a further direction to the Designated Court to dispose of the trial in respect of those offences then it will have to be held that they are not consistent with the provision of Sections 195 and 340 of the Code and run counter to the view expressed by this Court in Raj Singh's case (supra). It appears that the direction given by this Court was so understood by the CBI and therefore, it filed an additional chargesheet in the Designated Court against the appellant and other three police officers for the said offences. The Designated Court also proceeded on the basis that the direction was to try those accused for those offences and as the direction was given by this Court it was not necessary for it to follow the procedure contained in Section 340 of the Code. As the matter had proceeded like that before the Designated Court, and the contentions were raised regarding legality of taking cognizance and issuing of process for the offences under Sections 193, 194, 211 and 218 IPC the Bench before which the SLP was earlier listed for hearing did not examine what really was the direction given by this Court and rightly felt that the direction was not consistent with the provisions of Sections 194 and 340 as interpreted by that Bench in Raj Singh's case. (supra).

On going through the decision of this Court in the case of Punjab and Haryana High Court Bar Association (supra) we find that this Court had not directed the CBI to file a challan against the appellant and other three police officers for the offences under Sections 193, 194, 211 and 218 IPC in the Designated Court, Chandigarh. This Court had also not directed that Designated Court to proceed with the trial against those police officers for the said offences. The direction given by this Court should have been read and understood in the context of the facts of that case. An offence was registered as FIR No. 10/93 in respect of murder of Kulwant Singh and his wife and their two year old child. After investigation the police had filed a chargesheet against Harpreet Singh @ Lucky in the Designated Court, Nabha. After the trial had commenced in that Court the Punjab and Haryana High Court Bar Association had moved the High Court with a petition to direct CBI to conduct further investigation as it felt that the police had filed a false case against Harpreet Singh. The High Court having dismissed that writ petition an appeal was filed in this Court. Feeling the necessity of further investigation by the CBI this Court passed an order to that effect and after submission of final report by the CBI and consideration thereof this Court disposed of the appeal by giving certain directions. As Harpreet Singh was found to have been involved in the offence of murder falsely he was directed to be acquitted and the Government was directed to pay compensation to him. The Government was also directed to pay compensation to the parents of Kulwant Singh. This Court

then ordered transfer of the trial from Designated Court at Nabha to the Designated Court at Chandigarh. It may be recalled that the trial which was pending in the Designated Court at Nabha was in respect of murder of Kulwant Singh and his family members. Even though Harpreet Singh was ordered to be acquitted this Court did not want that trial to be treated as concluded and, therefore, it was transferred from the Designated Court at Nabha to the Designated Court at Chandigarh. The reason why this Court did not want the said trial to be treated as over and transferred it from the Designated Court at Nabha to the Designated Court at Chandigarh is to be found in the last part of Paragraph 1 of the judgment. Even though the CBI had reported that the investigation made by it did not reveal any evidence to show who had caused the murder of Kulwant Singh and his family members and that there was no evidence against the suspected police officers to connect them with kidnapping and killing of Kulwant Singh and his family members, this Court took the view that whether the circumstances were sufficient to prosecute them or not is a matter for the Court to consider. This Court then observed that it would be open to the Punjab and Haryana High Court Bar Association and the Prosecutor to argue before the trial court that the material collected by the CBI shows that the police officers are prima facie responsible for the abduction and murder of Kulwant Singh and his family and are liable for prosecution for offences under the relevant provisions of Indian Penal Code. Since this Court did not accept the suggestion of the CBI not to proceed against the police officers for the abduction and murder of Kulwant Singh and his family members it ordered transfer of the trial from the Designated Court at nabha to the Designated Court at Chandigarh and directed the CBI to file the necessary challan before that Court. obviously, the challan which was directed to be filed against the police officers was in the trial which was transferred from the Designated Court at Nabha to the Designated Court at Chandigarh and that trial was for the offence of abduction and murder of Kulwant Singh and his family members. The direction was not to file a challan against those police officers for the offences punishable under Sections 193, 194, 211 and 218 IPC. It was in respect of trial for the offence of abduction and murder that the State Government was directed to grant sanction under Section 197 of the Criminal Procedure Code. The trial court was directed to conclude that trial expeditiously. What we have stated above becomes clear if the observations made in the last part of Paragraph 1 of the judgment are read with the directions given in Paragraph 4 of that judgment.

It was the CBI which misunderstood the direction and instead of filing a chargesheet against the police officers for the offence of abduction and murder of Kulwant Singh and his family members filed it for the offences punishable under Sections 193, 194, 211 and 218 IPC. Obviously, this court was not unaware of the provisions contained in Sections 195 and 340 Cr. PC and, therefore, could not have directed the CBI to file a challan for the offences under Sections 193, 194, 211 and 218 IPC in the Designated Court at Chandigarh and directed that court to try those offences.

It was, therefore, not proper and legal for the Designated Court at Chandigarh to take cognizance of the offences under Sections 193, 194, 211 and 218 IPC and to proceed with the trial of those offences against the appellant and the other three police officers. However, the process issued by the Designated Court against them need not be set aside as inquiry contemplated by Section 340(I) of

the Code has already been held by this Court and a finding has been recorded that they appear to have committed these offences in relations to the proceeding which was pending in the Designated Court at Nabha. In view of sub-section (2) of Section 340 it was competent for this Court to exercise the power of the trial court under Section 340(1) and hold an inquiry. As the appellant and the three police officers prima facie appear to have committed the said offences it was open to the Designated court at Chandigarh, now that the case has been transferred to that court, to have issued process under clause (d) to take security for their appearance before the Magistrate having jurisdiction to try those offences.

We, therefore, partly allow this appeal, quash the taking of cognizance by the Designated Court of the offences under Sections 193, 194, 211 and 218 IPC and direct that court to make a complaint in writing to a magistrate having jurisdiction in respect of those offences. The CBI is also directed to file an additional challan against the appellant and the other three police officers as directed by this Court by its judgment in the case of Punjab and Haryana High Court Bar Association (supra). The State government is also directed to comply with the direction given in that case and as clarified by us. The Designated Court at Chandigarh will then complete the trial as expeditiously as possible.

IN THE MATTER OF