



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

204

CRM-M-44554-2023

Date of Decision: 22.04.2025

MANWINDER SINGH

...Petitioner(s)

Versus

STATE OF PUNJAB AND ANOTHER

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. T. S. Chauhan, Advocate and
Mr. Abhijit Partap Singh, Advocate
for the petitioner.

Mr. Satjot Singh Chahal, AAG, Punjab.

TRIBHUVAN DAHIYA, J. (Oral)

The instant petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR No.70 dated 16.05.2019, registered under Section 123(3) of the Representation of People Act, 1950 (for short, 'the RP Act, 1950') at Police Station Fatehgarh Sahib, District Fatehgarh Sahib, and all consequential proceedings arising therefrom.

2. The facts relevant to decide the case are, the petitioner is a Member of Legislative Assembly (MLA) from Payal Constituency in the State of Punjab. Prior thereto, he had contested election to the Parliament from Fatehgarh Sahib constituency in 2019. On 29.04.2019, during the Model Code of Conduct being in force, the second respondent filed a one line complaint against the petitioner to the Chief Election Commissioner, Punjab, Annexure P-1, stating "*that on 29.04.2019 the followers of Gyaspura candidate from Fatehgarh Sahib Consti. hanged so many political flags in the premises of Gurdwara Fatehgarh Sahib. (images attached) For your actions*



please.” The complaint was vague, as neither anyone was named nor the date, place or time of mounting the flags were mentioned therein, still a show cause notice was issued to the petitioner by the Returning Officer, dated 05.05.2019, Annexure P-2, calling for his explanation within twenty-four hours. He submitted the same vide letter dated 06.05.2019, Annexure P-3, clarifying *“that someone might have installed the flags by mistake at Gurdwara Shri Fatehgarh Sahib Ji on 29.04.2019. After your notice, the flags have been removed following the rules. In future, special care will be taken and election rules will be followed.”*

2.1. District Election Officer, however, recommended action against the petitioner by lodging an FIR under Section 123(3) of RP Act, 1950, vide letter dated 07.05.2019, Annexure P-4, which is as under:

This time a letter number Elections-2019/Complaints/386 dated 07.05.2019 has been received from District Election Officer, Fatehgarh Sahib by hand through HC Jagtar Singh 1038/FGS. The subject of which is like this “To, Assistant Returning Officer-cum-Sub Divisional Magistrate, Fatehgarh Sahib No: Election-2019/Complaints/386 Dated 07.05.2019 Subject: Regarding registration of case for violation of Model Election Code by installing flags in Gurdwara Sahib Fatehgarh Sahib Reference: Letter No:SAS Nagar (Complaints)/2670 Dated 04.05.2019 of Chief Electoral Officer, Punjab. In relation to the above referred letter in the above mentioned subject, according to the complaint received from Mr. Narinder Bhatia, representatives of Mr. Manwinder Singh Giaspura, candidate Lok Sabha Constituency-08, Fatehgarh Sahib have installed party flags in Gurdwara Fatehgarh Sahib. Regarding this matter, the Sub Divisional Magistrate-cum-Assistant Returning Officer, Fatehgarh Sahib issued a show-cause notice to S. Manwinder Singh Giaspura candidate. The candidate replied that some



people had installed flags in Gurdwara Fatehgarh Sahib by mistake, which has now been removed. An action needs to be taken FIR under Section 123(3) of RP Act is required for installation of flags in religious place. In this regard, the undersigned should be informed by taking action. SD/- District Election Officer, Fatehgarh Sahib who sent his letter for action to Sub Divisional Magistrate, Fatehgarh Sahib who vide letter Number:1914 dated 12.05.2019 sent in writing that while sending in original to Deputy Superintendent of Police, Fatehgarh Sahib it is written that after taking action in view of the above letter undersigned should be immediately informed. Sd/- Sanjiv Kumar, Sub Divisional Magistrate, Fatehgarh Sahib. The Deputy Superintendent of Police, Fatehgarh Sahib vide letter Number:1137/5A dated 13.05.2019 written on the letter that After taking action in view of above, the report be sent. Sd/- Deputy Superintendent of Police, Fatehgarh Sahib. Today after having received the letter, action started to register the case against the unknown people has been completed. Copies of FIR are being sent to Illaqa Magistrate and officers. Incharge Control Room Fatehgarh Sahib has been informed via wireless message. The case is handed over to ASI Balveer Singh 143/FGS for investigation.

2.2. The petitioner remained unsuccessful in the election, and no action was taken on the FIR. However, just about a year before the State Assembly Elections-2022, the police started investigation of the case and concluded that no offence under Section 123(3) of the RP Act, 1950 was made out against the petitioner. Accordingly, on 19.04.2021 final report/challan under Section 173 Cr.P.C. was filed against him under Sections 171C and 171F IPC after moving an application before the Magistrate for extension of time to submit the same.



3. In this factual background, learned counsel for the petitioner has contended that the FIR is politically motivated and has been lodged with *mala fide* intention. The allegations are false, and do not constitute any offence against the petitioner. The ingredients of the alleged offences are not made out from the final report/challan also. Besides, Section 171F is non-cognizable, and as per provisions of Section 155 Cr.P.C. no police officer can investigate such an offence without an order by the Magistrate who has the power to try/commit such a case. But no such order was ever issued by the Magistrate in this case. Therefore, the FIR becomes unsustainable and deserves to be quashed.

4. Learned State counsel, on the contrary, contends that allegations against the petitioner have been *prima facie* established resulting in filing of the final report against him. He, however, is not in a position to dispute that the procedure prescribed under Section 155 Cr.P.C. to investigate a non-cognizable offence/171F IPC has not been followed.

5. Submissions made by learned counsel for the parties have been considered.

6. To decide the matter, it is appropriate to refer to the provisions of Sections 171C and 171F IPC, which are as under:

171C. Undue influence at elections. (1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever-

(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or



(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

171F. Punishment for undue influence or personation at an election.- Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both.

Perusal of the FIR in question as well as the final report shows that there is no allegation against the petitioner that he has threatened any candidate or voter or any person in whom a candidate or voter is interested with injury of any kind. Nor is it alleged that he ever induced or attempted to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object or divine displeasure or of spiritual censure. Therefore, the allegations on the face of it do not constitute any of the offences alleged against the petitioner, nor is there any material on record to indicate that he interfered or attempted to interfere with free exercise of electoral rights by any voter or candidate.

6.1. Secondly, the offences under Sections 171C and 171F IPC indisputably are non-cognizable, and as per procedure prescribed under Section 155 Cr.P.C. whenever information regarding such an offence is given to a police officer, he/she is required to refer the informant to the Magistrate.



Sub-section (2) to Section 155 specifically provides that “*no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial*”. Accordingly, the requirement of an order by the Magistrate before commencement of investigation into a non-cognizable offence affords jurisdiction to investigate the case. It remains uncontested that the second respondent/complainant/informant was not referred to the Magistrate, nor was any order from the Magistrate obtained prior to investigating the case against the petitioner. Not following the mandatory procedure prior to registration of the case against him has rendered lodging of the FIR as also the investigation, without jurisdiction. The petitioner cannot be prosecuted in violation of the procedure established by law.

7. Consequently, this petition is allowed. FIR No.70 dated 16.05.2019, registered under Section 123(3) of the Representation of People Act, 1950 (for short, ‘the RP Act, 1950’), at Police Station Fatehgarh Sahib, District Fatehgarh Sahib, and all consequential proceedings arising therefrom are hereby quashed *qua* the petitioner.

(TRIBHUVAN DAHIYA)
JUDGE

22.04.2025

Ad

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>