

HARI CHAND

ADVOCATE

ਹਰੀ ਚੰਦ

ਵਕੀਲ

PUNJAB & HARYANA HIGH COURT

ਪੰਜਾਬ ਅਤੇ ਹਰਿਆਣਾ ਹਾਈ ਕੋਰਟ

H. NO. 2299,

SECTOR 44-C, CHANDIGARH-160045

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ਮਕਾਨ ਨੰਬਰ -2299

ਸੈਕਟਰ 44- ਸੀ

ਚੰਡੀਗੜ੍ਹ 160045

DATED: 2.6.2019

TO,

1. Chief Secretary, Government of Punjab, Punjab Civil Secretariat, Chandigarh.
2. Additional Chief Secretary, Department of Home Affairs and Justice, Punjab Civil Secretariat, Chandigarh.
e-mail: acsh@punjab.gov.in cs@punjabmail.gov.in

Subject:- Demand Notice before filing a Public Interest Litigation (PIL), seeking action against the concerned police officials under Section 218 of the Police Act, for grossly neglecting their duty for years together, in relation to filing of cancellation reports under Section 173 Cr.P.C. in the concerned Courts.

By E-mail

Dear Sir,

I hereby served the following notice on you:-

1. That you well kindly appreciate that under Section 173 (2) (i) of Code of Criminal Procedure, 1973, it has been mandated that as soon as investigation is completed, the Officer Incharge of the Police Station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government with particulars as envisaged to be given in the said clause. Thus, it is clear that although no period has been specified for the purpose of completion of investigation, yet there is a definite direction that once the investigation is completed, the Officer Incharge of the Police Station has to forward the report immediately thereafter, without any delay, to the concerned Magistrate. However, the ground reality remains that the Officers Incharge of the concerned Police Stations on finalization of the investigation, prepare cancellation report or non-traced reports, but do not submit in the Court of Magistrate concerned and keep these reports pending with the Police Station itself for years together, for

extraneous reasons. This results into a sword of Damocles hanging on the head of the accused for several years, even after the police has prepared a cancellation report in the FIR filed against him/her. This also breeds corruption as the Officer Incharge of the Police Station can manage re-investigation in all such cases, in case he changes his mind to submit the cancellation report, or the untraced report in the Court of Magistrate concerned. Such action on the part of the Officer Incharge of the Police Station also amounts to gross neglect of lawful duty, as mandated under Section 173 (2) (i) of the Criminal Procedure Code, 1973, which is punishable under the provisions of section 218 of the Police Act. However, since the accused person named in all such FIRs can never dare to initiate any action against the concerned police officer, due to fear of revenge, the concerned police officers are taking everything for granted and they keep sitting on the cancellation reports/untraced reports some times for years together. Such action on their part sometimes causes serious prejudice to the accused person, if he is to apply for some job.

2. That I may also submit that I sought information under Right to Information Act from the offices of Public Information Officers of various Senior Superintendents of Police in the State of Punjab. The information received shows alarming disregard to the provisions of Section 173 (2) (i) of the Criminal Procedure Code, 1973. The following figures of untraced reports/cancellation reports would substantiate my aforesaid averment:-

Sr. No.	Name of Police Station	No. of Untraced Reports pending as on date	No. of Cancellation Reports pending as on date	Remarks
1	Police Station City Moga	21	7	In most of cases, even the consent of senior officer has been obtained
2	Police Station City South, Moga	3	6	In most of cases, even the consent of senior officer has been obtained
3	Police Station Charik	17	9	In most of cases, even the consent of senior officer has been

				obtained
4	Police Stat Sadar Moga	17	16	In most of cases, even the consent of senior officer has been obtained
5	Police Station Bagha Purana	51	8	In most of cases, even the consent of senior officer has been obtained
6	Police Station Samalsar (District Moga)	23	41	In most of cases, even the consent of senior officer has been obtained
7	Police Station Nihal Singh Wala (Moga)	39	42	In most of cases, even the consent of senior officer has been obtained
8	Police Station City Ajitwal (Moga)	7	8	In most of cases, even the consent of senior officer has been obtained
9	Police Station Badani Kalan	32	18	In most of cases, even the consent of senior officer has been obtained
10	Police Station Mahina (District Moga)	---	10	In most of cases, even the consent of senior officer has been obtained
11	Police Station Fatehgarh Panjtoor (Moga)	2	2	In most of cases, even the consent of senior officer has been obtained
12	Police Station Dharamkot	3	8	In most of cases, even the consent of senior officer has been obtained

13	Police Station Kot Isse Khan	-	13	In most of cases, even the consent of senior officer has been obtained
	TOTAL	215	170	385

3. That from aforesaid figures of only a few Police Stations of one Police District (Moga) only, it is clear that total figure of innocent citizens all over the State, who were implicated in false cases, and have been found to be innocent, must be exceeding ten thousand, if not more.

4. That the petitioner is giving hereunder the particulars of some such cases, where the cancellation reports or untraced reports have not been submitted in the Court, despite lapse of more than 10 years from the date of filing of FIRs, although such untraced/cancellation reports have been prepared on completion of investigation.

Sr. No.	Particulars of Police Station	Particulars of FIR	Untraced Report	Cancellation Report
1.	Police Station Bagha Purana (District Moga)	FIR No. 376/18-1-2017 under Sections 457, 380 IPC	Untraced	
2		FIR No. 387/28-11-2007, under Sections 364, 34 IPC	Untraced	
3		FIR No. 231/26-07-2007, under Sections 304, 279 IPC	Untraced	
4		FIR No. 38/06-02-2008, under Sections 406, 408 IPC	Untraced	
5		FIR No. 297/14-09-2007, under Sections 325, 323, 34 IPC		Cancellation
6		FIR No. 239/12-10-2004, under Sections 382, 506, 148, 149 IPC	Untraced	

7		FIR No. 293/08-09-2007, under Sections 324, 34 IPC	Untraced	
8		FIR No. 112/05-05-2007, under Sections 452, 354, 506, 148, 149 IPC	Untraced	
9		FIR No. 37/19-4-1994 under Section 379 IPC	Untraced	
10		FIR No. 161/1-7-2005, under Sections 376, 506, 34 IPC		Cancellation
11		FIR No. 301/22-9-2007, under Sections 302, 34 IPC	Untraced	
12		FIR No. 87, dated 29.5.2009, under Sections 452, 323, 324, 120-B IPC	Untraced	
13	Police Station Smalsar, District Moga	FIR No. 260/20-08-2007, under Sections 420, 406 IPC		Cancellation
14		FIR No. 127 dated 13-05-2008, under Sections 354, 351 IPC		Cancellation
15	Police Station Dharamkot, District Moga	FIR No. 38/8.3.09, under Sections 323, 324, 34 IPC		Cancellation
16	Police Station Cot Isse Khan, District Moga	FIR No. 141/22.10.07, under Sections 363, 366-A, 120-B IPC		Cancellation
17		FIR No. 142/29.07.06, under Sections 326, 324, 323, 34 IPC		Cancellation

18		FIR No. 144/06.08.06, under Sections 447, 427, 506, 148, 149 IPC		Cancellation
19		FIR No. 76/07.05.08, under Sections 379, 430 IPC		Cancellation
20		FIR No. 94/10.06.08, under Section 394 IPC		Cancellation
21	Police Station City Moga (District Moga)	FIR No. 75 dated 28.04.09, under Sections 279, 337 IPC	Untraced	
22	Police Station City South Moga (District Moga)	FIR No. 256 dated 7-11-2003, under Sections 353, 341, 427, 423, 34 IPC		Cancellation
23	Police Station Chadik (District Moga)	FIR No. 240/31.12.03, under Sections 302, 201 IPC	Untraced	
24		FIR No. 75/30.04.07 under Sections Property Act, 1995 IPC	Untraced	
25		FIR No. 128/30.10.08, under Sections 304-A, 279, 337, 338 IPC	Untraced	
26		FIR No. 43/15.05.09 under Sections 279, 337, 338 IPC	Untraced	
27	Police Station Sadar Moga (District Moga)	FIR No. 73/1-7-07, under Sections 427, 148, 149 IPC	Untraced. (yet to be accepted	
28		FIR No. 58/17-5-08, under Sections 457,	by the Court)	

		380 IPC		
29		FIR No. 76/26-6-08, under Sections 420, 465, 468, 471 IPC		
30		FIR No. 124/13.11.08, under Sections 379, 323, 149 IPC		
31		FIR No. 32/1-04-09, under Section 379 IPC		
32		FIR No. 36/6-04-09, under Section 382 IPC		
33		FIR No. 128/13-12- 1999, under Sections 440, 457, 506, 148, 149 IPC		
34		FIR No. 62/20-5- 2000, under Sections 323, 324, 34 IPC 25-54-59 Arms Act		
35		FIR No. 120/18.9.2000, under Sections 420, 467, 471, 468 IPC		
36		FIR No. 95/27-7-02, under Section 420 IPC		
37		FIR No. 30/9-4-07, under Section 379 IPC		
38		FIR No. 80/16-7-07, under Section 307, 34 IPC		
39	Police Station Badhni Kalan (District Moga)	FIR No. 53, dated 13.07.2007, under Sections 363, 366/A, 457, 380 IPC		Cancellation

40		FIR No. 54, dated 15.07.07, under Sections 457, 380 IPC	Untraced	
41		FIR No. 114, dated 22.12.08, under Sections 307, 342, 427, 148, 149 IPC	Untraced	
42	Police Station Nihal Singh Wala (District Moga)	FIR No. 72, dated 19.10.2000, under Sections 420, 468 IPC	Untraced	
43		FIR No. 66, dated 15.11.2001, under Sections 457/380 IPC	Untraced	
44		FIR No. 59, dated 06.06.2005, under Section 382 IPC	Untraced	
45		FIR No. 91, dated 06.07.2006, under Sections 307, 34 IPC 25, 27 of Arms Act	Untraced (The approval from Hon'ble SSP has been obtained, yet to be filed in the Court)	
46		FIR No. 40, dated 24.04.2007, under Sections 452, 506, 34 IPC		
47		FIR No. 6, dated 04.02.2008, under Sections 434, 427 IPC		
48		FIR No. 74, dated 24.08.2008, under Section 379		
49		FIR No. 94, dated 27.10.2008, under Sections 326, 324, 323 IPC		
50	FIR No. 102, dated 07.11.2008, under			

		Section 392 IPC		
51		FIR No. 36, dated 02.05.2009, under Section 382 IPC		
52		FIR No. 39, dated 04.05.2009, under Section 382 IPC		
53		FIR No. 52, dated 02.06.2009, under Sections 356, 511 IPC		
54		FIR No. 31, dated 22.05.1994, under Sections 302, 201, 148, 149 IPC		Cancellation
55		FIR No. 1, dated 3.1.98, under Sections 325, 342, 365 IPC		Cancellation
56		FIR No. 71, dated 1.10.99, under Sections 382, 148, 149 IPC		Cancellation
57		FIR No. 19, dated 7.5.2001, under Section 8 of PC Act		Cancellation
58		FIR No. 23, dated 18.5.01, under Sections 336, 148, 149 IPC		Cancellation
59		FIR No. 101, dated 19.10.04, under Sections 365, 342, 323, 506, 34 IPC		Cancellation
60		FIR No. 63, dated 14.6.05, under Sections 353, 332, 186, 506 IPC		Cancellation
61		FIR No. 88, dated 29.8.05, under		Cancellation

		Sections 363, 366-A, 454, 380, 506 IPC		
62		FIR No. 104, dated 07.10.05, under Sections 326, 324, 148, 149 IPC		Cancellation
63		FIR No. 118, dated 26.08.06, under Sections 326, 324, 323, 341 IPC		Cancellation
64		FIR No. 139, dated 7.10.06, under Section 354 IPC		Cancellation
65		FIR No. 162, dated 14.12.06, under Sections 325, 324, 148, 149 IPC		Cancellation
66		FIR No. 11, dated 8.2.07, under Sections 498-A, 406, 120-B IPC		Cancellation
67		FIR No. 44, dated 07.05.07, under Sections 447, 379, 148, 149 IPC		Cancellation
68		FIR No. 72, dated 27.7.07, under Sections 380, 451 IPC		Cancellation
69		FIR No. 82, dated 24.8.07, under Sections 420, 465, 466, 467, 468, 471 IPC		Cancellation
70		FIR No. 98, dated 20.10.07, under Section 302 IPC		Cancellation
71		FIR No. 108, dated 16.11.07, under Sections 325, 323,		Cancellation

		342, 506, 34 IPC		
72		FIR No. 2, dated 21.1.08, under Section 302 IPC		Cancellation
73		FIR No. 45, dated 18.6.08, under Sections 324, 120-B, 34 IPC		Cancellation
74		FIR No. 101 dated 6.11.08, under Sections 324, 323, 34 IPC		Cancellation
75		FIR No. 11, dated 2.2.09, under Sections 325, 323, 34 IPC		Cancellation
76		FIR No. 21, dated 23.2.09, under Sections 452, 427, 34 IPC		Cancellation

5. That from a perusal of the aforesaid data given in preceding paragraph No. 4 of the instant Demand Notice, it is clear that there are a large number of FIRs registered more than 10 years ago, where the untraced reports/cancellation reports have been prepared by the Officer Incharge of the concerned Police Station and in most of the cases, the approval of the senior and competent officer has also been obtained, but those untraced reports/cancellation reports have not been produced before the concerned Magistrate, with the result that the criminal proceedings against the concerned persons, who have been proved to be innocent are deemed to be still pending against such persons and the investigation can be re-started at any stage of time at the whims and fancies of the Officer Incharge of concerned Police Station, or at the instance of senior officers/politicians, or for any other extraneous considerations. Thus, these untraced reports/cancellation reports, which have not been produced before the concerned Magistrate for accepting the same, are potential source of breeding corruption. Thus, for most unjustified reasons, the sword of Damocles keeps on hanging on the heads of the persons named in the FIR. Such situation can hardly be conceived in view of the provisions of Articles 14/21 of the Constitution of India, more so because under Section 173 (2) of the Criminal Procedure Code, 1973, such untraced

reports/cancellation reports have to be produced before the concerned Magistrate as soon as the investigation is over. That means that once such untraced report/cancellation report has been prepared at the conclusion of the investigation, the Officer Incharge of the concerned Police Station is under mandatory obligation to produce such untraced report/cancellation report or challan before the concerned Magistrate without any further loss of time. The conduct of various Officers Incharge of the concerned Police Stations, in keeping the untraced reports/cancellation reports with them, and not producing the same before the concerned Magistrate for years together, amounts to gross negligence of their duty for which they are liable to be punished under Section 218 of the Police Act. A perusal of the figures given in the preceding paragraph No. 4 of the instant Demand Notice shows that in Moga Police District alone, there are atleast 76 FIRs which were registered more than 10 years ago, and in which after investigation, the concerned accused persons have been found to be innocent or the allegations levelled in the FIRs have been found to be false, but those cancellations reports/untraced reports have not been produced before the concerned Magistrate for acceptance/approval. Such Officers Incharge of all such Police Stations are liable to be proceeded under Section 218 of the Police Act for gross neglect of their duty as enjoined upon them under Section 173 (2) of the Criminal Procedure Code, 1973. It is also pertinent to submit at this stage that the aforesaid data pertains only to one Police District namely, Moga District. If, figure of the entire State is calculated at the aforesaid rate, there would atleast be minimum 2,000 such FIRs, where the investigation is complete, and untraced reports/cancellation reports have already been prepared and got approved from the senior/competent police officers, but not produced before the concerned Magistrate. Thus, the position in this regard is alarming, and if the remedial measures are not taken at earliest, the situation will go beyond control.

I would therefore, call upon you to issue immediate instructions to all the Senior Superintendents of Police in the State of Punjab, through the Secretary, Department of Home Affairs and Justice, directing them to produce all the untraced reports/cancellation reports before the concerned Magistrates, without any further loss of time, and in any case within a period of one month from the date of receipt of this Demand Notice by you, failing which I shall be left with no other alternative except to approach the Hon'ble High Court of Punjab and Haryana at Chandigarh, through Public Interest Litigation (PIL) for seeking redressal of my legitimate grievance mentioned above, and also for initiating action under Section 218 of the Police Act against the concerned

SSPs/DSPs/Officers Incharge of the concerned Police Stations, who acted in gross neglect of their duty, and against public interest.

Meanwhile, please acknowledge receipt of this Demand Notice.

Thanking you.

Yours sincerely,

(HARI CHAND)
ADVOCATE