

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-19149 of 2014

DATE OF DECISION: 09.02.2015

Baljinder Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspaper may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present:- Mr. PPS Duggal, Advocate
for the petitioner.

Ms. Ritu Punj, Addl. A.G., Punjab.

DAYA CHAUDHARY, J.

The case of the petitioner is that his father-in-law, namely, Baz Singh was residing with him and was at the last stage of his life. He committed suicide after consuming poison on 14.6.2013. The deceased was harassed by the accused persons and prior to his death a suicide note duly thumb marked was left by him, which was recovered by the police in presence of the doctor. Said suicide note as well as the report of viscera was sent for chemical examination but same were not considered and cancellation report was submitted.

The present petition has been filed under Section 482 Cr.P.C. by the petitioner for setting aside order dated 26.4.2014 (Annexure P-8),

vide which, cancellation report has been accepted.

Learned counsel for the petitioner contends that the investigation was not conducted properly and without issuing any notice to the petitioner/complainant in the case, cancellation report was accepted. Notice was issued to the investigating officer. Learned counsel further contends that issuance of notice to complainant is mandatory but the cancellation report has been accepted by recording a finding that notice has been issued to investigating officer and he has no objection in accepting the cancellation report. Learned counsel has also relied upon the judgment of Hon'ble the Apex Court in the case of **Vinay Tyagi Vs. Irshad Ali @ Deepak and others** 2013 (2) RCR (Criminal) 197 and of Madras High Court in **R. Sankarasubbu Vs. The Commissioner of Police Egmore Chennai** 2013 (1) MLJ (Criminal) 1, in support of his contentions.

Learned counsel for the respondent-State has not disputed the submissions made by learned counsel for the petitioner.

Heard the arguments advanced by learned counsel for the petitioner as well as State and have also perused the documents available on the file.

Admittedly, deceased-Baz Singh died on 14.6.2013 after consuming poison. A suicide note was also recovered, which was not got compared by the investigating agency. The cancellation report was submitted by the investigating agency after issuing notice to the investigating officer only and the same was accepted. Certain guidelines have been issued for conducting investigation by Hon'ble the Apex Court in the case titled **Manubhai Ratilal Patel Tr. Ushaben Vs. State of Gujarat and others** 2012 (4) RCR (Criminal) 655, which reads as under:-

“C. Criminal Procedure Code, Section 2 (h) Concept of

investigation-Held:-

1. Investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected, there is a case to place the accused before a Magistrate for trial and, if so, taking the necessary steps for the same by filing of a charge-sheet under Section 173. AIR 1955 SC 196, relied.
2. Arrest is a part of the process of investigation intended to secure several purpose. The accused may have to be questioned in details regarding the various facts of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime/2005 (2) RCR (Criminal) 32, relied.
3. Power of police to investigate is independent of any control by the Magistrate.” AIR 1955 SC 196, relied.

It has also been held by Hon'ble the Apex Court that certain provisions are there which are mandatory to be adopted by the investigating agency. Admittedly, in case of unnatural death, the suicide note left by deceased should have been compared from Forensic Science

Laboratory but no such steps were taken in this regard. Viscera was sent for chemical examination and poison was detected in the stomach of the deceased but the investigating agency has not even considered the chemical examiner report and cancellation report was submitted. Every investigation conducted by investigating agency under Chapter XII of the Code should culminate into a final report being submitted to the jurisdictional Magistrate as provided under Section 173 (2) of the Code. In case, such report is filed before the Magistrate, having jurisdiction, he has three options. If the report is negative and not prosecuting any person, then the Magistrate is bound to issue notice to the complainant. Without issuing such notice, the cancellation report cannot be accepted. Thereafter, the complainant is entitled to file petition known as protest petition against the final report by raising valid grounds, meaning, thereby, it is for the Magistrate either to accept the final report submitted by the police or to close the case or to take cognizance of the offence, if sufficient material is available on record or produced along with final report by the police or to issue a direction for further investigation. In case the Magistrate is not satisfied with the investigation as provided under Section 173 (8) of the Code. Such options are available to Magistrate only after filing of the final report as provided under Section 173 (2) of the Code.

In the present case, the final report was submitted before the Magistrate and notice was issued to the investigating officer only and since no objection was received from him, the report was accepted. It is not disputed that neither the police nor the investigating agency has any right to cancel the FIR and giving notice to the investigating agency is contrary to the provisions as notice was necessary to be served upon the complainant but the cancellation report has been accepted without issuing any notice to the complainant.

In view of the facts as well as law position explained above, the impugned order dated 26.4.2014 (Annexure P-8) accepting cancellation report is set aside and the case is remanded to the trial Court to consider the Chemical Examiner Report after issuing notice to the complainant. Both the parties are directed to remain present before the trial Court on 28.2.2015.

February 09, 2015
pooja

(DAYA CHAUDHARY)
JUDGE