

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

CRM M-21953 of 2015

Date of decision : 14.09.2015

Fateh Singh & ors.

....Petitioners

V/s

State of Haryana & ors.

....Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. K.S. Dhaliwal, Advocate for the petitioners.

Mr. Gaurav Dhir, DAG Haryana.

Mr. I.P. Goyat, Advocate for the complainant.

RAJAN GUPTA J.

Petitioners have sought direction to respondents to submit report under section 173(8) Cr.P.C. pursuant to inquiry conducted by respondent no. 3.

On 05.11.2014 Raj Kumar s/o Ramswaroop made a statement before the police that he had three sons namely Surjit, Narender and Harikangan. On 04.11.2014 he was informed by son Narender that Fateh Singh alongwith his two sons and Raghbir had forcibly sown wheat in their fields. On 05.11.2014 his son Narender while on his way to the fields of Ladhawala, was accosted by accused persons who were exhorting that he should not escape. Thereafter, they poured fuel on him and set him ablaze. On raising alarm, all the accused persons fled from the scene of occurrence. His son succumbed to his injuries. After registration of case, investigation ensued. Accused were arrested on 5/6 November, 2014. Superintendent of Police, Jind passed an order dated 10.12.2014 directing investigation be carried out by Deputy

Superintendent of Police, Narwana. After completion of investigation, final report was submitted by the investigating agency on 22.01.2015. However, after filing of final report, application dated 30.01.2015 preferred by Mansa Ram, an eye witness of the incident, was entertained by Superintendent of Police, Jind. He directed re-inquiry into the matter. Said official submitted the inquiry report. In the inquiry report, Deputy Superintendent of Police, Safidon gave the findings that accused Fateh Singh, Anup and Anuj were guilty of offence under section 306 IPC whereas Raghbir, Kuldeep and Ram Phal were innocent. On the basis of same, application dated 08.05.2015 was moved before the trial court seeking permission for re-investigation of the case. Vide order dated 14.05.2015, this application was dismissed by Sessions Judge, Jind. In view of same, it was decided by Superintendent of Police, Jind not to present supplementary challan in the case. Operative part of the order passed by said officer reads as under:-

"I have gone through the comments dated 15.06.2015 of Deputy District Attorney, Jind and case file. From the perusal of the comments and I am agree with the views of DDA to the effect that filing of two contradictory reports in one FIR will certainly affect the case of prosecution adversely. At this stage when the case is fixed for prosecution evidence, if the report under section 173 (8) Cr.P.C. under checking, if filed/forwarded to the learned court then it will put adverse affect on the fate of the case. Even, there is material contradiction in the report which has been prepared with out prior permission of the learned court. It is worth mentioning here that the learned Sessions Judge, Jind vide order dated 14.05.2015 has also

dismissed the application of the prosecution for seeking permission to re-investigate the matter. In view of the facts and circumstances explained above it would be appropriate not to forward the supplementary challan of the case in the learned court and the same is hereby with held/filed."

Plea of the petitioner is that investigating agency ought to have submitted report under section 173(8) Cr.P.C. whereby three accused had been exonerated and three were held guilty under section 306 IPC. I am not convinced with the plea. It is inexplicable how re-investigation of the case was undertaken by the police after final report was submitted under section 302 IPC. It sought to convert the offence to section 306 IPC against some of the accused and exonerate the rest. There was clear cut attempt on part of the investigating agency to supersede the trial court and exonerate the accused before trial even proceeded further. Admittedly, no permission was sought from the court for reinvestigation of the matter. This throws serious doubts about the role of the investigation agency. Though learned counsel have relied upon various judgments in support of their respective contention, I do not find it any necessity to refer to same in view of recent judgment reported as ***Vinay Tyagi vs. Irshad Ali @ Deepak & ors. 2013(2) RCR (Criminal) 197.*** Relevant portion thereof reads as under:-

"16. However, in the case of a 'fresh investigation', 'reinvestigation' or 'de novo investigation' there has to be a definite order of the court. The order of the Court unambiguously should state as to whether the previous investigation, for reasons to be recorded, is incapable of being acted upon. Neither the Investigating

agency nor the Magistrate has any power to order or conduct 'fresh investigation'. This is primarily for the reason that it would be opposed to the scheme of the Code. It is essential that even an order of 'fresh'/'de novo' investigation passed by the higher judiciary should always be coupled with a specific direction as to the fate of the investigation already conducted. The cases where such direction can be issued are few and far between. This is based upon a fundamental principle of our criminal jurisprudence which is that it is the right of a suspect or an accused to have a just and fair investigation and trial. This principle flows from the constitutional mandate contained in Articles 21 and 22 of the Constitution of India. Where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the courts would set aside such an investigation and direct fresh or de novo investigation and, if necessary, even by another independent investigating agency. As already noticed, this is a power of wide plenitude and, therefore, has to be exercised sparingly. The principle of rarest of rare cases would squarely apply to such cases. Unless the unfairness of the investigation is such that it pricks the judicial conscience of the Court, the Court should be reluctant to interfere in such matters to the extent of quashing an investigation and directing a 'fresh investigation'....."

In view of facts and circumstances of the case and judgment in *Vinay Tyagi's* case (supra), I am of the considered view that prayer of the petitioner to direct investigating agency to submit a particular report before the trial court is wholly mis-conceived. Petition is, thus, without any merit or substance and is hereby dismissed.

September 14, 2015

(RAJAN GUPTA)

Ajay

JUDGE