

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

**Criminal Misc. No. M-28030 of 2015
Date of decision: 21.09.2015**

Parshant

..Petitioner

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

Present: Mr. P.S. Sullar, Advocate
for the petitioner.

Mr. Sharad Kumar Yadav, D.A.G., Haryana
for the respondent-State.

Daya Chaudhary, J.

The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.98 dated 09.05.2015 registered under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Naraingarh, District Ambala.

Learned counsel for the petitioner submits that the recovery was effected on the basis of secret information and the petitioner has falsely been implicated in the case whereas nothing

was recovered from him. The recovery was effected from co-accused Sachin @ Sonu. He further submits that there was an altercation between SI Bani Singh and other Police officials at light point and Sachin misbehaved with SI Bani Singh, because of which a false case has been planted upon them.

After hearing arguments of learned counsel for the petitioner, when the Court is not inclined to grant regular bail to the petitioner, learned counsel for the petitioner wants to withdraw this petition at this stage.

Accordingly, the petition is dismissed as withdrawn at this stage.

The issue, necessary to be determined, is as to whether the trial Court can frame the charge on the basis of incomplete challan without having Chemical Examiner's report or the report of the Forensic Science Laboratory or Narco Analysis.

Admittedly, in the present case, incomplete challan was presented without receiving any Chemical Examiner's report and subsequently, charges have also been framed. Even at the time of framing of charges, Chemical Examiner's report was not received.

More or less the same issue was considered in Criminal Misc. No. M-28367 of 2014 wherein certain guidelines were issued to all the Subordinate Courts. Relevant provisions keeping in view the controversy in hand are reproduced as under: -

The term 'police report' has been defined in Clause (r)' of Section 2 of the Cr.P.C., which is as under :-

*“ **Police report** means a report forwarded by a police officer to a Magistrate under Sub-section (2) of Section 173”*

Sub-section (2) of Section 173 provides that as soon as investigation under Chapter XII of the Code 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. Sub-section (2) thus envisages the dual process of the completion of the investigation and the forwarding of the police report to the Magistrate for taking cognizance of the offence.

The investigation has been defined in Section 2(h) of the Code, which is as under :-

*“**Investigation'** includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.”*

Section 173 of the Cr.P.C which is contained in Chapter XII of the Code under the heading “Information to the police and their power to investigate” is as follows “

“173. Report of police officer on completion of investigation.- (1) Every investigation under this Chapter shall be

completed without unnecessary delay.

(2) (i) As soon as it is completed, the officer in charge 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, stating -

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under Section 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any whom the information relating to the commission of the offence was first given.

(3)

(4)

(5)

(6)

(7)

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of Sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under Subsection (2)."

Section 173 Cr.P.C in itself states "Report of police officer on completion of investigation". As per Section 173(1) Cr.P.C., every investigation under this Chapter shall be completed without unnecessary delay. Section 173(2)(1) states that as soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report as prescribed by the State Government. The words "as soon as it is completed" clearly states that the final report is to be submitted before the Magistrate on its completion.

Section 173(i) of the Cr.P.C clearly shows that the investigation is to be completed without any unnecessary delay and as per provisions contained under Section 173(ii) of the Cr.P.C,

the challan is to be filed on completion of investigation only and not prior to that. Thus, it is clear that the trial Court is to accept the challan only on completion of investigation and by considering that all allegations levelled in the FIR have been investigated completely and charge can be framed only after considering the complete investigation report. Meaning thereby, that in case, any report of Forensic Science Laboratory or Narco Analysis or any other document, which is necessary for adjudication and the same has not been received so far, then the Court is to proceed further after receiving said report. One thing is clear that the question of framing charge comes only when the complete investigation report is with the trial Court.”

In case, the charges are framed against the accused without having Chemical Examiner's Report, then in its absence especially in case of NDPS Act, it cannot be said as to whether the substance recovered from the accused was narcotic or not. Moreover, in absence of Chemical Examiner's Report, the charge sheet/challan cannot be said to be complete as it is not accompanied by the requisites contemplated under Section 173(5) of the Code of Criminal Procedure and as such, the Court is not competent to take cognizance of the offence on incomplete charge-sheet.

Undoubtedly, the power of the Magistrate to take cognizance cannot be controlled by the Investigating Agency, whose

duty is only to investigate and to place the facts and evidence before the Magistrate.

As per provisions of Section 211 Cr.P.C., a specific name, nature of offence and other particulars are to be mentioned. It is to be written in the language of the Court. The charge is required to contain particulars of the time, place of alleged offence and the person against whom or the thing of which, it was committed and material also, which is sufficient to be given to the accused to notify the matter with which, the person is charged. Not only the charge is to be described in words but the charge is to be considered in sense of law, vide which the offence is punishable. There is effect of errors also as it has specifically been mentioned under Section 215 of the Code that there should not be any error in stating either the offence or the particulars required to be stated. Even no omission to state the offence or those particulars, shall be regarded at any stage unless the accused has been misled by such error or omission, which has resulted into failure of justice.

No doubt, charge can be altered or added at any time before judgment is pronounced, it is necessary that such alteration or addition is to be read and explained to the accused. No such change or alteration or addition of any charge can be made, which is going to prejudice the interest of the accused. For that, previous sanction is necessary and such proceedings shall not be continued unless the sanction is obtained. Whenever a charge is altered or

added by the Court even after commencement of trial, the prosecutor or the accused shall be allowed to recall the witnesses.

No doubt in case of incomplete challan, when the documents have not been filed, the charge sheet does not become vitiate in law. Undoubtedly, the Investigating Agency is required to complete the investigation within the reasonable time. In some of the cases, where investigation is not completed within the stipulated period, the same would not be detrimental to accused. On the expiry of such period, the accused would be entitled to apply for bail subject to fulfilling the conditions prescribed therein. Whenever the charge sheet is not filed and the investigation is kept pending, the accused becomes entitled to benefit of proviso appended to Sub-Section (2) of Section 167 of the Code. In case, the charge sheet is filed the said right ceases to exist. Sometime the investigating agency files the incomplete challan and on the basis of said incomplete challan even charges are framed then the accused is deprived of his statutory right as provided under Section 167(2) of the Code.

The Andhra Pradesh High Court in para No.9 of the judgment in **Matchumari China Venkatareddy and others vs. State of Andhra Pradesh, 1994 Cri.L.J. 257** has observed as under: -

“9. Fairness and reasonable procedure is what is contemplated by the expression "procedure established by law" in Article 21 of the Constitution. Section 167(2), Criminal Procedure Code was not there in the old Code. It was

introduced in 1973 amendment. The effect of the new proviso is to entitle an accused person to be released on bail if the investigating agency fails to complete the investigation within 60 days or 90 days as the case may be. An order for release of bail made under proviso to section 167(2) is not defeated by lapse of time, the filing of the charge sheet or by remand to custody under section 309 (2). The order of bail can only be cancelled under section 437(5) or 439(2). The duty of the police is to forward the police report after completion of investigation under Section 173(2) Criminal Procedure Code. The forwarding is done for the purpose of taking the same on record and file of the court and then only, the same is perused by the court to take cognizance of the offence. Mere forwarding without meaning it to be taken on file is not contemplated under law. If the police report is forwarded to the Magistrate for taking it on file, but if the Magistrate finds that the said report is not in consonance with section 173(2) read with Section 173(5) Criminal Procedure Code, he declines to take it on record and that act is only administrative and not judicial. The judicial act commences only when the charge-sheet is in order and the Magistrate proceeds further under Chapter XVI. Unless the charge-sheet is in the official custody of the court together with its accompaniments to be furnished to the accused, it cannot be construed that there is a filing of charge-sheet. Chapter XVI relates to

commencement of proceedings before Magistrates, process to be issued when Magistrate takes cognizance of the offence. The next stage is framing of charges under Chapter XVII. Next stage is trial and the eventual being the judgment. The observations in para (10) of the same judgment are also relevant for the controversy in issue. Those read thus:

.....It is not sufficient for the prosecution to just file some sort of police report not conforming to the provisions of Sections 173(2) and 173(5) Criminal Procedure Code and then play fraud not only on the statute but also on the Constitution. This kind of tactics by the police to water down and nullify the constitutional and statutory guarantees cannot be countenanced and in fact, the courts should keep a strict vigil on this kind of unscrupulous acts of officers to get over the constitutional and statutory mandate of filing a charge-sheet within the stipulated time under the guise of filing defective charge-sheet and then knowing fully well that it will be returned. Until a charge-sheet with all specifications enumerated Section 173(2) Criminal Procedure Code and accompaniments under Section 173(5) Criminal Procedure Code is filed into the court and the court scrutinises it on its administrative side to satisfy that all such documents are in order and unless the court takes it on record and keeps it on its file for examination for taking cognizance or not, it cannot be said that a police report (charge-

sheet) is filed as contemplated under section 173(2) Criminal Procedure Code. Once the police report is filed, it should be capable of examination for the purpose of judicial determination to take cognizance of the offence and to proceed further into Chapter XVI Criminal Procedure Code and any act short of that cannot be construed as 'taking cognizance'."

Similar view was taken by the Bombay High Court in **Sharadchandra Vinayak Dongre and others vs. State of Maharashtra, 1991(1) Mh.L.J. 656** wherein it was observed that incomplete charge sheet cannot be treated as Police report at all as contemplated under Section 173(2) of the Code.

The concept of filing of charge sheet by the Police in the Court must fulfill requirement of Section 173(2) and (5) of the Code and only after such compliance, report which is filed by the Police in the Court, can be considered as complete report under Sections 173 (2) and 173(5) of the Code. Certain documents, which are formal in nature, if not accompanied with the report/charge-sheet, as such, is not going to change the nature of the report, charge sheet particularly when material is sufficient for the Magistrate to take cognizance of the offence as per provisions of the Code. In case, the incomplete charge sheet is filed without having Chemical Examiner's report, the prosecution cannot take advantage of this lapse on the part of the Investigating Agency. This inaction on the part of the Investigating Agency not only deprives the accused from availing his statutory right

but also his fundamental right.

Accordingly, it can be summed up that incomplete charge sheet can be filed but it cannot be considered as complete charge sheet in the eyes of law. It is to be seen by the concerned Court as to why the Investigating Agency was not able to file the complete charge sheet within the prescribed period. In case, the same is going to prejudice the rights of the accused, then the accused becomes entitled to protection as provided under Section 167(2) Cr.P.C.

21.09.2015
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(DAYA CHAUDHARY)
JUDGE