

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-36598 of 2011

.....

Date of decision:23.2.2015

Vicky Bansal alias Parveen Bansal

.....Petitioner

v.

State of Punjab

.....Respondent

....

Present: Mr. B.S. Bhalla, Advocate for the petitioner.

Mr. Amarinder Singh Klar, Assistant Advocate General, Punjab
for the respondent-State.

.....

Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. for quashing of the impugned order dated 22.11.2011 (Annexure-P.2) passed by Sub Divisional Judicial Magistrate, Phul in FIR No.118 dated 19.7.2009 registered for the offences under Section 420 IPC and Section 15 of the Indian Medical Council Act, 1956 (hereinafter referred to as the Act') at Police Station Rampura, District Bathinda and all other proceedings arising therefrom.

Notice of motion has been issued in this case.

Mr. A.S. Klar, learned Assistant Advocate General, Punjab has put in appearance on behalf of the respondent-State and contested this petition.

I have heard learned counsel for the petitioner and learned

Assistant Advocate General, Punjab appearing for the respondent-State and have gone through the record.

From the record, I find that as per the order dated 15.9.2011 (Annexure-P.1) passed by this Court in Criminal Misc. No.M-1190 of 2010, FIR No.118 dated 19.7.2009 under Section 420 IPC and Section 15 of the Act registered in Police Station Rampura, District Bathinda and subsequent proceedings arising therefrom were ordered to be quashed giving the prosecution liberty to prosecute the petitioner under the Drugs and Cosmetics Act, 1940 or any other law for the time being in force.

After receiving the above order passed by this Court, the learned Sub Divisional Judicial Magistrate, Phul, District Bathinda had passed the impugned order dated 22.11.2011, which is Annexure-P.2. On the basis of this, the learned Sub Divisional Judicial Magistrate had observed that the Police effected recovery of 120 bottles of Rexcof of 100 ml. each from the possession of accused Shinda Singh while accused Vicky Bansal, who was identified at the spot and was named in the FIR managed to escape. He was later arrested. The Police wrongly challaned accused under Section 15 of the Indian Medical Council Act. The accused never posed to be doctors, therefore, they could not have been prosecuted under the Indian Medical Council Act. The Court held that it is clear that offence under the NDPS Act is made out as recovery of 120 bottles of Rexcof was effected at the spot by the Police party. In these circumstances, the Court ordered/called upon the SHO, Police Station Rampura to make appropriate DDR entry regarding the order of the Hon'ble High Court cancelling the

FIR. However, since on the basis of the contents of the FIR, offence under the NDPS Act was made out so, a fresh DDR entry regarding the offence be recorded. The case property, which was sealed by the Investigating Officer, was ordered to be produced in the Court so that one of the bottles of Rexcof recovered from the spot could be taken out of the sealed parcel and dispatched for testing to the Chemical Examiner, Punjab Chandigarh. It was also ordered that after obtaining test report from the office of the Chemical Examiner, Punjab, Chandigarh, supplementary report under Section 173 (8) Cr.P.C. be filed.

In view of the impugned order passed by the learned Sub Divisional Judicial Magistrate, Phul, I find that the Magistrate is to supervise the investigation and even the Magistrate can monitor the investigation as per the law laid down by Hon'ble Supreme Court in Sakiri Vasu v. State of U.P. and others, 2008 (1) RCR (Cr.) 392 (SC), under Section 156(3) Cr.P.C. It is no where the law that the Magistrate is to conduct the investigation himself. The jurisdiction of the investigating agency is separate from the jurisdiction of the Court. It is settled law that the Court cannot interfere in the investigation by telling the investigating agency to conduct the investigation in a specific way. The order of the learned Sub Divisional Judicial Magistrate, Phul, asking for producing the case property by the Police before the Court and then by sending the sample to the Chemical Examiner, Punjab, Chandigarh by the Court etc. amounts to investigation in the case. The Court can only direct for further investigation in the matter. Upto that extent, the impugned order of the learned Sub

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Divisional Judicial Magistrate, Phul, is correct, as prima facie, it looks that the case falls under the NDPS Act. Therefore, the direction of the learned Sub Divisional Judicial Magistrate, Phul for further investigation in the case is correct one.

Accordingly, the direction given by the learned Sub Divisional Judicial Magistrate, Phul, for further investigation is upheld. The State is directed to get the matter further investigated and present the report before the learned Sub Divisional Judicial Magistrate, Phul, expeditiously. The learned Sub Divisional Judicial Magistrate, Phul, can supervise and monitor the investigation, if he so desires.

With these observations, this petition is partly allowed. However, nothing stated above will be construed as any opinion on the merits of the case.

February 23, 2015.

(Inderjit Singh)
Judge

hsp