

In the High Court of Punjab and Haryana at Chandigarh

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Date of decision: 12.8.2015

CRM-M No.32998 of 2014 (O&M)

Manjit Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CRM-M No.40124 of 2014 (O&M)

Jagdish @Jaggi

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.P.S.Hundal, Sr. Advocate,
with Mr.Dinesh Trehan, Advocate
for the petitioners.

Mr.Arun Luthra, AAG, Haryana

Mr.K.S.Dhaliwal, Advocate,
for respondent No.4.

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

RAJ MOHAN SINGH, J.

1. By this common order, aforesaid two petitions are being disposed of. Facts are being taken from CRM-M No. 32998 of 2014.

Prayer in this petition is for staying the action on the basis

of report dated 30.7.2014 submitted by Senior Superintendent of Police, Karnal during pendency of trial arising out of FIR No.519 dated 26.12.2013 registered under Section 18 of the N.D.P.S.Act at Police Station Safidon

2. One Resham Singh is accused of aforesaid FIR when 2 kgs of *opium* was recovered. Contents of the FIR are reproduced here as under:-

"Today, myself the PSI Surinder Kumar, along with ASI Baljit Singh No.117, HC Jagdeep No.930 and Constable Kuldeep No.21 were present near Railway Crossing, Hatt Road,Saffidon alongwith Government vehicle No. BR-56-3906 with EASI Rajbir No. 279 as its driver in connection with General Patrol and checking of criminals when a person was seen coming from the side. of Railway Crossings with a p1astic bag in his right hand. When the person came near the police party, he was puzzled and tried to retrace his steps in haste. He was arrested by me with the help of my companions. On inquiry, he disclosed his name as Resham son of Darshan, Caste Jat Sikh, resident of Bahadurpur. I suspected that there was some intoxicant substance in plastic bag held by him and therefore, I gave him notice under Section 50 of NDPS Act for searching the bag. In reply to the notice, he told that he wanted his search before a DSP. Virender Singh HPS, DSP, Saffidon was requested by the PSI from his Mobile phone number 88140-11555 on the mobile of the DSP No. 88140-11505 to reach the spot and after about 20 minutes, the DSP reached the spot in his Government vehicle

alongwith his staff. Be ordered Surinder Kumar PSI to search the bag held by Resham in his presence. On this instruction, PSI Surinder Kumar searched the plastic bag and it was found to contain something wrapped in a polythene paper and on checking it was found to contain opium. Electronic weighing machine, plastic tins were arranged and two samples of 50/50 Gms. each were separated from the opium. The samples were put in two plastic tins and the remaining opium was also weighed which came to be 1 Kg. 900 Gms. It was put into a separate tin. The tins containing samples and bulk opium were made into separate sealed parcels and sealed with the seals of 'SK' and 'VS' and were taken into possession vide recovery memo. Seal after use was handed over to ASI Ba1jit Singh No. 111. Resham has committed an offence under section 18 of the NDPS Act by keeping in his possession 2 Kgs. of opium. A ruqa is being sent to the police station for registration of the case”

3. Police investigated the case and submitted challan against Resham Singh. In due course, he was chargesheeted for the offence under Section 18 of the NDPS Act by Special Judge, Jind on 31.3.2014. Trial commenced thereafter.

4. Learned State counsel states that prosecution witnesses have already been examined and the case is at the stage of defence and arguments. Gazetted Officer, Deputy Superintendent of Police, Virender Singh, before whom recovery of *opium* was effected, has already been examined by the prosecution on 12.8.2014. Accused

Resham Singh faced the trial without there being any murmuring till the prosecution evidence was concluded. After getting bail, said Resham Singh filed numerous applications for inquiry into the matter on the ground that he was falsely involved by the police in connivance with the present petitioner and one Jagdish @ Jaggi. First inquiry was conducted by Deputy Superintendent of Police, Narwana, District Jind, who submitted his inquiry report dated 14.4.2014 to the effect that FIR against Resham Singh was rightly registered. Another application was filed by Resham Singh and on that application, inquiry was also conducted by Deputy Superintendent of Police (Head Quarters), Jind. In this inquiry, it was also found that *opium* was, in fact, recovered from Resham Singh by Investigating Officer, Sub Inspector Surinder Singh in the presence of Virender Singh, Deputy Superintendent of Police, Safidon. Therefore, allegations of Resham Singh were found to be incorrect.

5. Resham Singh was still not satisfied and he filed another complaint. On this complaint also Deputy Superintendent of Police, Safidon on the orders of Senior Superintendent of Police, Jind conducted inquiry and in this inquiry also, allegations of Resham Singh were found to be incorrect. Resham Singh did not stop here. He again filed complaint to Director General of Police, Haryana, who vide letter/ order dated 16.6.2014, directed Superintendent of Police, Karnal to inquire into the matter personally. Superintendent of Police, Karnal, vide report dated 30.7.2014, submitted that 2 kgs of *opium* was given to Manjit Singh (petitioner) by Resham Singh on

25.12.2013 and the same was further handed over by the petitioner to one Jagdish @ Jaggi. Jagdish @ Jaggi was arrested by the police but he was let off and recovery was shown from Resham Singh. Superintendent of Police, Karnal recommended action against the petitioner and Jagdish @ Jaggi. That is how the present petition came to be filed.

6. Learned counsel for the petitioner has submitted that repeated inquiries conducted by the police are contrary to established principle of law as the same have no evidentiary value vis-à-vis investigation completed by the police and cognizance taken thereof by the Court. The inquiry conducted by Superintendent of Police, Karnal is not based on any application under Section 173 (8) Cr.P.C. nor the inquiry could have been embarked upon by the police after taking cognizance by the Court and even after conclusion of prosecution evidence before the Court. Surprisingly, in the inquiry embarked upon by Superintendent of Police, Karnal, Deputy of Police, Virender Singh, in whose presence the contraband was recovered, was not associated in any manner. Superintendent of Police, Karnal, while conducting the inquiry, did not call upon even Resham Singh to explain as to why he kept mum for so long till conclusion of prosecution evidence before the Court. Even Resham Singh did not file any complaint to higher officers during investigation and at the time of framing of charge.

7. Learned counsel further submits that after submission of report under Section 173 Cr.P.C. the same becomes a complaint by

the State. Court takes cognizance when it applies its mind. Framing of charge is a stage when Court applies its mind in a State case. After taking cognizance by the Court, it was legally incumbent upon the police to seek leave of the Court for the purposes of undertaking any such inquiry or further investigation otherwise it would amount to transgressing in judicial proceedings. There cannot be two parallel proceedings i.e. one by the police in the form of alleged inquiry and second is the judicial process in which after taking cognizance by the Court, trial was in progress. If such inquiry and implementation thereof is allowed to stand, the same amounts to over reaching the judicial process of the Court. In terms of Section 2 (g) Cr.P.C., 'inquiry' means every inquiry, other than a trial, conducted under the Code by a Magistrate or Court. Similarly under Section 2 (h) Cr.P.C. '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.

8. Under Section 2 (o) Cr.P.C. 'officer in charge of police station' includes, when the officer in charge of the police station is absent from police station, the police officer present at the police station, who is next in rank to such officer.

9. Section 154 (1) Cr.P.C prescribes that when an information in respect of commission of cognizable offence is given to an officer in charge of a police station then he shall reduce the same into writing and shall read over to the informant and every such

information, whether given in writing and reduced to writing, shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

10. As per Section 154 (3) Cr.P.C., if any person is aggrieved by the refusal on the part of officer in charge of the police station to record information as referred to in Section 154 (1) Cr.P.C. then he may send the substance of such information in writing and by post to Senior Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the same or direct an investigation to be conducted by an officer subordinate to him. Such officer shall have the power of officer in charge of the police station in relation to that offence.

11. The powers under Section 154 (3) Cr.P.C. in respect of undertaking investigation by himself are in consonance with Section 36 of the Code where police officer superior in rank to an officer in charge of a police station may also exercise the same powers within the limits of the police station. The aforesaid provisions are in relation to the investigation of case and do not contemplate inquiry as defined under Section 2 (g) of the Code.

12. In terms of Section 156 Cr.P.C. any police officer in charge of police station may, without the order of a Magistrate, investigate any cognizable offence which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try the case. No proceedings of a police officer in

any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this Section to investigate. Even the Magistrate empowered under Section 190 Cr.P.C. may order such an investigation as mentioned above. Apparently, officer in charge is empowered to investigate cognizable offence within the local limits of the police station and his power to investigate is unbridled.

13. On receipt of information of such cognizable offence under Section 156 Cr.P.C. the officer in charge of the police station shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person or depute his subordinate as may be prescribed by the competent authority to proceed to the spot to investigate the case. The procedure for such an investigation is prescribed under Section 157 of the Code. Every report sent to the Magistrate under Section 157 Cr.P.C. shall, if the State Government so direct, be submitted through such superior officer of the police as the State Government by general or special order appoints in this behalf. Such superior police officer may give such instructions to the officer in charge of the police station as he thinks fit and shall after recording such instructions on such report, transmit the same without delay to the Magistrate.

14. Apparently, the procedure that originates from Section 157 Cr.P.C. further culminates in sending report to the Magistrate either by officer in charge of the police station or through such

superior officer as may be appointed by the Government by general or special order under Section 158 Cr.P.C. Such senior officer can instruct the officer in charge of the police station in the manner as he may thinks fit. The authorisation given to such senior police officer is in the context of procedure of investigation and in any case the same cannot be termed to be an authorisation in the context of undertaking inquiry after registration of the case.

15. Section 173 (2) Cr.P.C. prescribes that 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 of investigation in the prescribed manner. The investigation of a case involving cognizable offence is to be conducted by officer in charge of police station or any superior officer appointed in that behalf by the competent authority. This power of investigation cannot be correlated with the power of inquiry in any manner. Inquiry and investigation are two distinct terms having distinct meanings in criminal jurisprudence.

16. In the present case, three consecutive inquiries conducted by different Deputy Superintendents of Police, Narwana, Jind and Safidon, concurrently found that Resham Singh was involved in the case. Here, the Court is not embarking upon the competence of those police officers, undertaking inquiries despite taking cognizance by the Court, but the fourth inquiry undertaken by Superintendent of Police, Karnal on first principle is akin to the competence of those previous officers who undertook to inquire

despite taking cognizance by the Court after investigation by the competent officer. The fourth inquiry in second principle has to be tested on the touchstone of its evidentiary value and sustainability in law. The officer competent to investigate in terms of Section 154 (1), 154 (3) and 156 Cr.P.C. has already submitted report of investigation in terms of Section 173 (2) Cr.P.C. The Court, while acting on such report of investigation, took cognizance and framed charges against the accused. Thereafter, Court proceeded to examine all the prosecution witnesses in due course of law. Now question arises whether fourth inquiry report, which runs contrary to the three previous inquiries conducted by different Deputy Superintendents of Police, can be termed as report of further investigation particularly when no such application was moved by Resham Singh before taking cognizance by the Court, when the Court framed charges against the accused.

17. Learned counsel for the petitioner relies upon the decision of the Apex Court in **Vinay Tyagi vs. Irshad Ali @ Deepak and others 2013 (2) RCR (Cri.) 197** to contend that at the time of taking cognizance by the Court, Court is obliged to see the material produced before it and Court cannot ignore the contradictory reports of different investigating agencies produced before it at the time of taking cognizance. Magistrate is empowered in law to direct further investigation and require the police to submit supplementary report. This is significant power vested in Court which has to be exercised sparingly, in exceptional circumstances in order to achieve ends of

justice. Further investigation would lead to filing of supplementary report/ challan. After filing of the challan, Magistrate has powers to order further investigation and it is a procedure of propriety that police should seek permission of the Court to continue further investigation and to file supplementary challan.

18. After analysing the provisions of the Code and various precedents on the issue, the Hon'ble Apex Court concluded the import of Sections 173 (2), 173 (8) and 156 (3) Cr.P.C. in the following manner:-

“1. The Magistrate has no power to direct ‘reinvestigation’ or ‘fresh investigation’ (de novo) in the case initiated on the basis of a police report.

2. A Magistrate has the power to direct ‘further investigation’ after filing of a police report in terms of [Section 173\(8\)](#) of the Code.

3. The view expressed in (2) above is in conformity with the principle of law stated in Bhagwant Singh’s case (supra) by a three Judge Bench and thus in conformity with the doctrine of precedence.

4. Neither the scheme of [the Code](#) nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of [Section 173\(2\)](#) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of [Section 156\(3\)](#) and the language of [Section 173](#)

(8) itself. In fact, such power would have to be read into the language of [Section 173\(8\)](#).

5. The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the Court to the extent that even where the facts of the case and the ends of justice demand, the Court can still not direct the investigating agency to conduct further investigation which it could do on its own.

6. It has been a procedure of propriety that the police has to seek permission of the Court to continue 'further investigation' and file supplementary chargesheet. This approach has been approved by this Court in a number of judgments. This as such would support the view that we are taking in the present case."

19. If all the three previous reports as well as the fourth report submitted by the Superintendent of Police, Karnal are appreciated in the context of filing challan, taking cognizance by the Court and completion of prosecution evidence, the same would be found to be an effort to re-investigate the case, thereby replacing new accused in place of original accused and would amount to give new dimension to the case which is all altogether different than the one on which

cognizance was taken by the Court and Court proceeded to conclude the prosecution evidence. At this juncture such an approach would definitely amount to opening de novo investigation that too by way of embarking upon an inquiry. According to this Court, such a mechanism is not legally sustainable.

20. In view of facts and circumstances of the case, procedural propriety required that the police should have taken permission from the Court for conducting further investigation. The alleged inquiry should not have been labelled as a further investigation which is altogether different. The guidelines as framed in para 30 of the judgment in **Vinay Tyagi's case (supra)** do not permit such a course to be allowed for over reaching the process of the Court.

21. Consequently, these petitions are allowed. The implementation of inquiry report dated 30.7.2014 conducted by Superintendent of Police, Karnal cannot be given effect in the context of pending case, arising out of FIR No.519 dated 26.12.2013 registered under Section 18 of the N.D.P.S.Act at Police Station Safdidon, before the Special Judge, Jind.

(RAJ MOHAN SINGH)
JUDGE

August 12, 2015
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