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

**CRM-M No.7005 of 2015
Date of Decision: 21.05.2015**

Ashwani Kumar and others

.....Petitioners

Vs

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. R.S. Rai, Senior Advocate with
Mr. D.S. Brar, Advocate and
Mr. Manish Jain, Advocate
for the petitioners.

Mr. Varun Sharma, A.A.G., Punjab.

Mr. M.S. Nain, Advocate
for respondent No.2.

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]. Petitioners have filed the present petition seeking quashing of FIR No.99 dated 05.10.2014, under Sections 304-A, 279, 337, 338, 427 IPC, Police Station Mehna, District Moga, along with entire subsequent proceedings relating to the petitioners.

[2]. It has been alleged by the petitioner that petitioner No.1 is employee of M/s Essel Ludhiana Talwandi Toll Roads Pvt. Ltd., and petitioners No.2 to 4 are employees of M/s SD Infra. Petitioners No.2 to 4 have also claimed that they have no concern with M/s Essel

Ludhiana Talwandi Toll Roads Pvt. Ltd.

[3]. The accident took place on 04.10.2014 between car and bus and four persons died in the said occurrence. On the statement of Raghuraj Singh/respondent No.2 FIR No.99 dated 05.10.2014, under Sections 304-A, 279, 337, 338, 427 IPC came to be registered in Police Station Mehna, District Moga.

[4]. Statement of Raghuraj Singh/respondent No.2 is reproduced hereasunder:-

“Statement of Raghuraj Singh son of Balwant Singh caste Chhimba Sikh resident of Bhai Kartar Singh Sri Muktsar Sahib aged about 54 years, 98780 08613.

It is stated that I am resident of above mentioned address. We are four brothers. Eldest brother is Pritpal Singh, younger to him Gurpreet Singh, younger to him I am and youngest is Jaspal Singh. Our entire family is living a life according to the Sikh Religion Rites and Rituals. On 4.10.14, I alongwith my brother Gurpreet Singh, his wife Gurdeep Kaur, brother Jaspal Singh, his wife Manjit Kaur, son Parteek Singh daughter Gagandeep d/o Satnam Singh resident of Sri Muktsar Sahib had come to pay homage at Nanaksar. Today on 5.10.14, my brother Gurpreet Singh along with his wife Gurdeep Kaur, nephew Parteek Singh, his mother Manjit Kaur daughter Gagandeep Kaur were going ahead in Swift Car No.PB 30K 9732, which was driven by nephew Parteek Singh. I along with my brother Jaspal Singh were coming behind in our vehicle. When our vehicles reached little ahead by crossing PS Mehna at GT Road Ludhiana-Moga at about 6.40 AM then a Roadways

Bus No.PB 5V 9447 came at a high speed from Moga Side and its driver struck the said bus in car of our family bearing No.PB 30K 9732 directly and due to accident the car of our family turned turtle in the rice crop and Bus also turned turtle in rice crop. A hue and cry started at the spot. After parking our vehicle on the side, when we saw then my nephew Parteek Singh, daughter Gagandeep Kaur were breathing, my brother Gurpreet Singh, Bhabhi Gurdeep Kaur, Manjeet Kaur had died due to stuck in car. With the help of people at the spot, Parteek Singh daughter Gagandeep Kaur were taken out of car and my brother Jaspal Singh took them to DMC Ludhiana for treatment. We, with the help of people were taking out the dead bodies of my brother Gurpreet Singh, Bhabhi Gurdeep Kaur, Bhabhi Manjeet Kaur and you came at the spot. Name and address of driver came to be know as Harjinder Singh resident of Mallke Jira. Due to high speed driving of bus by the driver of Bus, accident has taken place in which my brother Gurpreet Singh, Bhabhi Gurdeep Kaur, Bhabhi Manjit Kaur have died and nephew Parteek Singh daughter Gagandeep Kaur have suffered injuries and car has been damaged. I am the claimant, appropriate action may be taken. I identify the dead bodies of my family members. Statement has been got recorded, heard and is correct.

Attested

Sd/Raghuraj Singh”

[5]. Raghuraj Singh-complainant again got his supplementary statement recorded on 05.10.2014 to the extent of incorporating word negligence in the prosecution version.

[6]. During the course of investigation, the Police is alleged to have recorded statement of one Parteek Singh who was also injured

in the aforesaid accident. On the basis of alleged statement of Parteek Singh, names of petitioners were sought to be added in the array of accused though complainant did not allege anything against them. Petitioners were issued notice under Section 160 Cr.P.C., calling upon them to appear before the Investigating Agency. Petitioners at that stage approached this Court by way of filing present petition.

[7]. On 02.03.2015 this Court passed the following order:-

“Learned Senior counsel for the petitioners states that the petitioner No.1 is the employee of M/s Essel Ludhiana Talwani Toll Roads Pvt. Ltd., and petitioners No.2 to 4 are employees of M/s SD Infra.

He further submits that there was an unfortunate road accident took place between car and bus in which four persons died and an FIR was registered at the instance of one Raghuraj Singh for the offence under Sections 304-A, 279, 337, 338 and 427 IPC. According to him there is no incriminating allegation against the petitioners in the said FIR. Further the Report of M/s Louis Berger who has been appointed by the NHAI reveals that there was proper board of 'no overtaking' installed in the vicinity of the spot where the accident took place and other safety measures were also intact. The accident in question was stated to be due to human error of the drivers.

Learned Senior counsel further contends that now despite the aforesaid, Police has issued notice under Section 160 Cr.P.C to the petitioners, naming them to be the accused in the aforesaid FIR and requiring their presence in the office of SHO, P.S. Mehna on 04.03.2015.

Notice of Motion for 24.03.2015.

Meanwhile petitioner No.1 shall appear before the Investigating Officer on the date fixed and would submit the cause of other petitioners in order to seek exemption from appearance for the date fixed.”

[8]. Thereafter challan was prepared on 06.03.2015 and it was submitted to Court on 31.03.2015. In the concluding part of the challan, it has been recited “*that all the petitioners have been informed through summons to associate in the inquiry. **CRM-M No.7005 of 2015** is pending in the High Court and further action will be taken against the petitioners after the decision of the case.*” In a way the Police seeks to file supplementary challan in respect of complicity of the petitioners by way of further investigation after filing of the challan on 31.03.2015.

[9]. The Police as well as complainant have filed their respective replies. The stand taken by respondent No.1-State is that statement of injured Parteek Singh was recorded under Section 161 Cr.P.C. on 30.12.2014, wherein he categorically alleged incriminating thing against the petitioners. Respondent-State also

tried to cite six more persons namely Malkit Singh, Surinder Pal Singh, Manjit Singh, Satnam Singh, Sukhwinder Singh and Sukhdev Singh.

[10]. It is relevant to mention here that no part of challan shows presence of aforesaid witnesses nor these witnesses have been cited in the list of witnesses so filed along with challan. Even no statement under Section 161 Cr.P.C. were ever recorded in respect of aforesaid six alleged eyewitnesses.

[11]. In the reply filed by complainant, recording of alleged statement of Parteek Singh on 30.12.2014 is denied altogether. In this context reply given by respondent No.2 in paras No.2 and 3 assumes significance. Paras No.2 and 3 of the reply are reproduced hereasunder:-

“2. That the statement of the Parteek Singh, allegedly got recorded by the Police, wherefrom the summon dated 17.02.2015 (Annexed as Annexure P.1 in the petition) emanated, is a statement, which prima-facie appears to be incorrect, false and manipulated. In this regard, it is stated that in the accident, Parteek Singh also got injured and lost conscious there and then itself. He remained in coma for 25 days and gained consciousness only after getting intensive care and treatment at the hospital(s). The answering respondent-complainant is the actual eye witness of the occurrence. There cannot be any better person than the complainant to

incorporate each and everything in the FIR, as it is the near and dear relatives of the complainant, who died in the accident. The car driven by Parteek Singh, which met with an accident was being driven ahead of the car of the complainant-answering respondent.

3. *That the summoning of the petitioners of the present petition is neither at the instance of the answering respondent (complainant) nor any statement of the complainant was got recorded before making the petitioners as accused.”*

[12]. Affidavit of Parteek Singh has also been attached along with the reply filed by respondent No.2, wherein he has categorically deposed that after the accident, he remained in coma for 25 days later on he came to know about the deaths of his relatives. He attributed negligence to the driver of the bus. Para 7 of the affidavit is reproduced hereasunder:--

- “7. *The above has been necessitated as I have been told by my uncle Raghuraj-Complainant the police have apparently recorded my statement attributing to me the allegations against the following people, Pradeep Kumar Goel, Ashwani Kumar, Kaushik Pal and Ashok Aggarwal, who I have never met. In fact I have never even heard of these people and do not even know why they are.”*

[13]. Apparently Parteek Singh has deposed on oath that he never met the petitioners nor ever heard of these persons and the

Police has implicated them in an illegal manner. No such implication was by him in respect of the petitioners.

[14]. The complainant-party has already resorted to petition under Motor Accident Claims Tribunal on the basis of investigation conducted by the Police vis-a-vis site of occurrence and other incriminating material collected during the investigation.

[15]. Now question arises whether prosecution can be allowed to carry out further investigation in the form of arraying petitioners with the process of Section 160 Cr.P.C., by filing supplementary challan?

[16]. The Apex Court in **Vinay Tyagi v. Irshad Ali @ Deepak and others, 2013(2) R.C.R. (Criminal) 197** has authoritatively held that after filing of the challan fresh/further investigation can only be undertaken by the Investigating Agency but only under the orders of the competent court.

[17]. In view of aforesaid the issuance of notice to the petitioners under Section 160 Cr.P.C., in furtherance of further investigation can only be granted with the leave of the competent court, where application under Section 173(8) Cr.P.C., is required to be moved by the Investigating Agency. In order to see bona fide of the Investigating Agency in the context of collecting incriminatory information from them, this Court asked the learned State counsel to submit a list of questions which are proposed to be asked to the proposed newly accused persons. The questions have been

supplied on record.

[18]. At this state, since no permission has been sought by the Police for further investigation, nor any such permission has been accorded by the competent court, therefore, it would be totally academic and pre-mature issue to comment anything upon veracity of proposed action of the Police.

[19]. At this stage, it can safely be held that so far as issuance of notices under Section 160 Cr.P.C., are concerned those are squarely hit by the principles of law, wherein it has been authoritatively held that further investigation cannot be undertaken by the Police except with the leave of the Court. Therefore, issuance of notices under Section 160 Cr.P.C., to the petitioners in furtherance of further investigation seeking their implication as accused are hereby held to be illegal and not sustainable in law.

[19]. Police/Investigating Agency would be at liberty to take recourse to any other proceedings in the form of application under Section 173(8) Cr.P.C., before the competent Court. In the event of such course, this Court believe that the principles enunciated in **Vinay Tyagi's** case (supra) would be strictly followed.

[20]. With the aforesaid observations, this petition is disposed of.

May 21, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE