

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

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Crl. Revision No. 3682 of 2014

Date of decision: 26.02.2015

Dilbar Singh

..... Petitioner

Versus

Central Bureau of Investigation

.....Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Mohan Jain, Senior Advocate with
Mr. Arastu Chopra, Advocate
for the petitioner

Mr. Sumeet Goel, Senior Penal Counsel with
Ms Ramandeep Kaur, Advocate
for the CBI,

Mr. Charanjit Singh Bakhshi, Advocate
for the complainant

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

Rekha Mittal, J.

The present petition lays challenge to order dated 21.10.2014 passed by the Special Judge, CBI, Punjab Patiala (in short, 'CBI Court') whereby charges under sections 302, 307, 326, 324, 201 read with Section 34 of the Indian Penal Code (in short, IPC) and Sections 25/27 of the Arms Act have been framed against Kulwant Singh, Dilbar Singh, Jatinder Singh and Amarjit Singh Sidhu in RC No. 9 (S) of 2012 dated 13.12.2012 and the

Court has refused to take cognizance of offence on the basis of report of the local police in the cross version pertaining to FIR No. 56 dated 19.12.2010 registered in Police Station Balongi, District SAS Nagar.

The precise question that calls for determination is '*whether the impugned order in regard to refusal to take into consideration report under Section 173(2) Cr.P.C submitted by the local police in cross version in aforesaid FIR earlier pending before the Court of Additional Sessions Judge, SAS Nagar, Mohali and stands transferred to CBI Court can be allowed to sustain.*'

The facts relevant for disposal of the present petition are that Rattan Singh, father of Harjinder Singh (complainant) was killed due to gun shot injuries. On the statement of Harjinder Singh, FIR No. 56 dated 19.12.2010 for offence punishable under sections 302, 307, 148, 149, 120-B IPC and Sections 25/27 of the Arms Act was registered against Kulwant Singh, Dilbar Singh, Jatinder Singh, Amarjit Singh and Balbir Singh Sidhu. The cross version was recorded in the aforesaid FIR, on the statement of Dilbar Singh son of Labh Singh for offence punishable under Sections 307, 452, 148, 149 IPC and Sections 25/27 of the Arms Act. On completion of investigation in the version and cross version, separate reports under Section 173 (2) Cr.P.C were submitted before the Court at Mohali. Prior to filing of challan in both the cases, Harjinder Singh, complainant filed the petition (CRM M 912 of 2011) seeking protection to his life and liberty and handing over investigation to the Central Bureau of Investigation (in short, 'CBI'). The petition was disposed of by this Court on 15.10.2012, directing the CBI to investigate the matter and file report before the Court of

competent jurisdiction. In pursuance of order dated 15.10.2012, the CBI registered the case - RC No. 9 (S) of 2012, initiated investigation and submitted final report before the CBI Court on 28.12.2013. Subsequent thereto, another petition CRM M 20157 of 2014 titled '*Kulwant Singh v. State of Punjab*' was filed before this Court seeking transfer of the trial pending before the Court of Additional Sessions Judge, Mohali to the CBI Court. By order dated 04.07.2014 passed in aforesaid petition, direction was issued to transfer the case and attach the same with the challan filed by the CBI. A reference was received from the Court of Additional Sessions Judge, Mohali seeking guidance and by order dated 10.07.2014, this Court directed transfer of the case file pending in the Court of Additional Sessions Judge, Mohali to the CBI Court.

Counsel for the petitioner has submitted that on due investigation in cross version lodged by Dilbar Singh, report under Section 173 Cr.P.C was submitted in the Court and Jasbir Singh accused was charged for commission of offence punishable under Sections 307 and 452 IPC and Section 27 of the Arms Act vide order dated 07.01.2012 (Annexure P5). This Court while disposing of CRM M 20157 of 2014, in view of consensus recorded by counsel for the parties passed order dated 04.07.2014 (Annexure P8) directing that the case pending at Mohali be transferred to the Court of Special Judge, CBI, Patiala to be attached with the challan filed by the CBI where the trial Court would proceed further in the matter in accordance with law. Harjinder Singh filed CRM 19730 of 2014 and this Court, by taking into consideration the aforesaid order dated 04.07.2014 and reference received from the Additional Sessions Judge, SAS Nagar Mohali,

in view of consent of the parties that both the cases be heard by one and the same Court i.e. Special Judge, CBI, Punjab, Patiala, directed the Additional Sessions Judge, Mohali to transfer the file pending in his Court to the CBI Court. It is vehemently argued that in the proceedings before this Court, there is no such order made to exclude any of the reports submitted on the basis of investigation conducted by the local police or the CBI, from consideration, therefore, the Special Judge, CBI, Patiala has committed a gross error rather illegality by holding that investigation conducted by the Punjab Police stood wiped or the cross version cannot be ordered to re-enliven as the Court has no jurisdiction to take cognizance of the offence on the basis of report of the local police. It is further argued that the aforestated observations in para 11 of the impugned order cannot be allowed to sustain in the light of judgment passed by Hon'ble the Supreme Court of India ***Vinay Tyagi v. Irshad Ali alias Deepak and others, (2013) 5 Supreme Court Cases 762.*** It is prayed that the order passed by the CBI Court in refusing to consider the report in cross version, transferred to the CBI Court by the order of this Court, be set aside with a direction to consider both the reports submitted by the local police and CBI in respect of cross version and then pass appropriate order in accordance with law.

Counsel for the CBI, Shri Sumeet Goyal assisted by Ms Ramandeep Kaur, Advocate has urged that this Court vide order dated 15.10.2012 transferred investigation to the CBI with a specific direction to investigate version narrated in the FIR as well as cross version. The police authorities of the State of Punjab were directed to hand over all the records of the case to the CBI with further direction to cooperate with the said

agency in investigation. It is further argued that in pursuance of the directions issued by this Court, the CBI conducted investigation in the version and cross version and submitted final report in December 2013 before the CBI Court at Patiala. During investigation, the cross version lodged by Dilbar Singh was found to be false and the report was submitted for initiating action only against Kulwant Singh and others arraigned as accused in FIR No. 56 dated 19.12.2010. It is further argued that as investigation was handed over to the CBI with aforesaid directions to the police authorities of the State of Punjab, the Special Judge, CBI has rightly taken cognizance of the offence only on the basis of report submitted by the CBI. According to learned counsel, Hon'ble the Supreme Court of India while answering question No. 1 formulated in *Viney Tyagi's* case (supra) has laid down certain exceptions, detailed in sub para (a) and (b) of para 53.

Counsel representing Harjinder Singh (complainant) in FIR No. 56 dated 19.12.2010 has supported the order passed by the CBI Court. He further submitted that subsequent to filing of the present petition, the petitioner has filed an application before the CBI Court for the same relief without disclosing the said fact to this Court, therefore, the petitioner has rendered himself disentitled to seek indulgence of this Court.

I have heard counsel for the parties and perused the records.

Before advertng to the rival submissions made by counsel for the parties, it is appropriate to refer to relevant extracts from the orders dated 15.10.2012, 04.07.2014 and 10.07.2014 passed by this Court, quoted thus:-

Order dated 15.10.2012

“In the light of the above settled position of law

and the material referred herein above, I am prima facie satisfied that there is sufficient material to come to a prima facie conclusion that investigation is needed to be conducted by an independent agency. In these circumstances, I deem it fit and appropriate that the investigation of this case be transferred to CBI which will investigate the version narrated in the FIR as well as cross version.

In view of the above discussion, the police authorities of the State of Punjab are directed to hand over all the records of the present case to respondent No.5 – CBI within one week from the date of receipt of a certified copy of this order and CBI shall investigate all aspects of the case relating to the death of Rattan Singh and injuries to the other persons as well as the cross version set up by the Dilbar Singh and file report to the Court concerned having jurisdiction within a period of four months from the date of taking over of the investigation from the police authorities of the State of Punjab. I also direct the police authorities of the State of Punjab to cooperate with the CBI authorities in conducting the investigation. Any observations made in this order is only for the limited purpose of deciding the issue whether investigation is to be handed over to CBI or not and shall not be construed as an expression of opinion on the merits of the case.”

Order dated 04.07.2014

“CRM 19334 of 2014

Reply on behalf of respondent No. 3 is taken on record.

CM allowed.

Main case

Heard.

The present petition has been filed for transfer of the case bearing No. RT 18/29.03.2011/20.02.2014 titled as State v. Kulwant Singh etc. and Sessions case No. 46/16.05.2011/20.02.2014 State v. Jasbir Singh arising out of the FIR No. 56 dated 19.12.2010, registered at P S Balongi, District SAS Nagar, Mohali to the Court of Special Judge, CBI Court Patiala where in the same matter, the case bearing No. 9 (s) 2012 dated 13.12.2012 registered at Police Station, CBI/SCB Chandigarh is pending.

Both the counsel are ad idem on that the cases pending at Mohali as well as Patiala, arise out of the same matter, which was later on referred to CBI and the CBI had filed challan at Patiala.

Counsel for the petitioner and respondent have no objection if the case pending at Mohali be transferred to the Court of Special Judge, Patiala to be attached with the challan filed by the CBI where the trial Court will proceed further in the matter in accordance with law.

Ordered accordingly.”

Order dated 10.07.2014

“With the consent of parties, a coordinate Bench of this Court has passed the following order in CRM No.19334 of 2014 on 04.07.2014:

“Heard.

The present petition has been filed for transfer of the case bearing No.RT-18/29.3.2011/20.2.2014 titled as State Vs. Kulwant Singh etc. and Sessions Case No.46/16.5.2011/20.2.2014 State Vs. Jasbir Singh arising out of the FIR No.56 dated 19.12.2010,registered at PS Balongi, District SAS Nagar, Mohali to the Court of Special Judge, CBI Court, Patiala where in the same matter, the case bearing No.9(s)2012 dated

13.12.2012 registered at Police Station, CBI/SCB, Chandigarh is pending.

Both the counsel are ad idem on that the cases pending at Mohali as well as at Patiala, arise out of the same matter, which was later on referred to CBI and the CBI had filed challan at Patiala.

Counsel for the petitioner and respondent have no objection if the case pending at Mohali be transferred to the Court of Special Judge, Patiala, to be attached with the Challan filed by the CBI where the Trial Court will proceed further in the matter in accordance with law.

Ordered accordingly.”

Reference has been received from Additional District & Sessions Judge, SAS Nagar, Mohali seeking directions from this Court as to whether he may proceed further with the case or both the cases may be tried by one Court i.e. Additional Sessions Judge-cum-Special Judge, CBI, Punjab, Patiala.

Counsel for the parties state that they have no objection if the case pending at Mohali be transferred to the Special Judge, CBI, Punjab, Patiala.

In view of consent of the parties, both the cases be heard by one and same court i.e. Special Judge, CBI, Punjab, Patiala.

Additional District & Sessions Judge, SAS Nagar, Mohali is directed to transfer the file pending in his court to the Court of Special Judge, CBI, Punjab, Patiala.

Disposed of.”

The Court in order dated 15.10.2012 has noted certain points indicating that investigation was not fair and impartial, detailed in sub paras

1 to 11 of an unnumbered para. In sub paras 3 and 7, there is reference to

presentation of challan against Dilbar Singh and Kulwant Singh (pertains to FIR No. 56 dated 19.12.2010) and cross version having been relied upon by the police in favour of the accused party.

I have gone through the records of aforesaid petition (CRM M 912 of 2011) and perusal thereof would make it evident that there is no order passed by the Court excluding any of the reports submitted by the local police on the basis of investigation in the version and cross version. In the orders dated 04.07.2014 and 10.07.2014, the files pending before the Court at Mohali were ordered to be transferred to the Court of Special Judge, CBI at Patiala to be attached with the challan filed by the CBI with a direction that Court will proceed further in the matter in accordance with law. In this view of the matter, I have no hesitation to hold that this Court despite handing over investigation in the version and cross version pertaining to FIR No. 56 dated 19.12.2010 to the CBI never ordered exclusion of the reports submitted by the local police (Punjab Police).

This brings the Court to the judgment in *Vinay Tyagi's* case (supra) relied upon by learned counsel for the petitioner. In *Vinay Tyagi's* case (supra), the Court formulated following two questions for consideration:-

“Question No.1 : *Whether in exercise of its powers under Section 173 of the Code of Criminal Procedure, 1973 (for short, ‘the Code’), the Trial Court has the jurisdiction to ignore any one of the reports, where there are two reports by the same or different investigating agencies in furtherance of the orders of a Court? If so, to what effect?*

Question No.2 : *Whether the Central Bureau of Investigation (for short the CBI) is empowered to conduct ‘fresh’/‘re-investigation’ when the cognizance has already been taken by the Court of competent jurisdiction on the basis of a police report under Section 173 of the Code?”*

It is pertinent to note that in the case at hand, we are concerned with question No.1 only. A relevant extract from Para Nos. 46, 53, 60 and 61 of the afore-referred judgment is usefully quoted hereunder:-

“46. The Code does not contain any provision which deals with the court competent to direct ‘fresh investigation’, the situation in which such investigation can be conducted, if at all, and finally the manner in which the report so obtained shall be dealt with. The superior courts can direct conduct of a ‘fresh’/‘de novo’ investigation, but unless it specifically directs that the report already prepared or the investigation so far conducted will not form part of the record of the case, such report would be deemed to be part of the record. Once it is part of the record, the learned Magistrate has no jurisdiction to exclude the same from the record of the case. In other words, but for a specific order by the superior court, the reports, whether a primary report or a report upon ‘further investigation’ or a report upon ‘fresh investigation’, shall have to be construed and read conjointly. Where there is a specific order made by the court for reasons like the investigation being entirely unfair, tainted, undesirable or being based upon no truth, the

court would have to specifically direct that the investigation or proceedings so conducted shall stand cancelled and will not form part of the record for consideration by the Court of competent jurisdiction.

53. The court of competent jurisdiction is duty bound to consider all reports, entire records and documents submitted therewith by the Investigating Agency as its report in terms of Section 173(2) of the Code. This Rule is subject to only the following exceptions;

a) Where a specific order has been passed by the learned Magistrate at the request of the prosecution limited to exclude any document or statement or any part thereof;

b) Where an order is passed by the higher courts in exercise of its extra-ordinary or inherent jurisdiction directing that any of the reports i.e. primary report, supplementary report or the report submitted on 'fresh investigation' or 're-investigation' or any part of it be excluded, struck off the court record and be treated as non est.

60. Once a Report under Section 173(2) of the Code has been filed, it can only be cancelled, proceeded further or case closed by the court of competent jurisdiction and that too in accordance with law. Neither the Police nor a specialised investigating agency has any right to cancel the said Report. Furthermore, in the present case, the High Court had passed no order or direction staying further investigation by the

Delhi Police or proceedings before the court of competent jurisdiction. On the contrary, the court had noticed explicitly in its order that it was a case of supplementary or further investigation and filing of a 'supplementary report'. Once the Court has taken this view, there is no question of treating the first report as being withdrawn, cancelled or capable of being excluded from the records by the implication. In fact, except by a specific order of a higher court competent to make said orders, the previous as well as supplementary report shall form part of the record which the trial court is expected to consider for arriving at any appropriate conclusion, in accordance with law. It is also interesting to note that the CBI itself understood the order of the court and conducted only 'further investigation' as is evident from the status report filed by the CBI before the High Court on 28th November, 2007.

61. In our considered view, the trial court has to consider the entire record, including both the Delhi Police Report filed under Section 173(2) of the Code as well as the Closure Report filed by the CBI and the documents filed along with these reports. It appears, the trial court may have three options, firstly, it may accept the application of accused for discharge. Secondly, it may direct that the trial may proceed further in accordance with law and thirdly, if it is dissatisfied on any important aspect of investigation already conducted and in its considered opinion, it is just, proper and necessary in the interest of justice to

direct 'further investigation', it may do so.

A careful reading of answer to question No. 1 given in para 53 and relevant extracts from other paras makes it crystal clear that the Court is duty bound to consider all reports, entire records and documents submitted therewith by the investigating agency as its report in terms of Section 173 (2) Cr.P.C unless the case falls within the exceptions carved out in clauses (a) and (b) of para 53.

Counsels for the respondents are not in a position to make out a case that report under Section 173 (2) Cr.P.C submitted by the Punjab police in cross version is liable to be excluded out of consideration, when analyzed in the light of facts and circumstances of the present case and ratio laid down in *Vinay Tyagi's* case (supra).

As has been mentioned hereinbefore but for the sake of repetition, a conjoint reading of orders dated 15.10.2012, 04.07.2014 and 10.07.2014 passed by this Court does not exclude the said report in cross version and as such, the impugned order passed by the CBI Court that report submitted by the local police in the cross version either stood wiped out or cannot be taken into consideration in view of its observations in para 11 of the order impugned cannot be allowed to sustain.

In view of what has been discussed here-in-above, the impugned order is modified by holding that the CBI Court shall consider the entire records i.e. the report under section 173(2) Cr.P.C filed by the Punjab Police and the one filed by the CBI in regard to cross version put forth by Dilbar Singh and then to proceed with the matter in accordance with law. However, nothing stated in this order shall be taken as an

expression of opinion in respect of merits of the aforesaid reports.

For the reasons aforesaid, the petition is allowed in the aforesaid terms.

(Rekha Mittal)
Judge

26.02.2015
mohan