

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRR No.3705 of 2014 (O&M)
Date of decision: June 02, 2015

State of Haryana ...Petitioner

Versus

Somdutt and others ...Respondents

AND

CRR No.2710 of 2014 (O&M)

Som Dutt ...Petitioner

Versus

State of Haryana & another ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr., Kapil Aggarwal, Addl. Advocate General, Haryana.

Mr. R.S. Rai, Senior Advocate with
Mr. Vikram Singh, Advocate for respondent – Som Dutt
(in CRR-3705-2014) and for petitioner (in CRR-2710-2014).

Mr. A.P.S. Deol, Senior Advocate with
Mr. Vishal Rattan Lamba, Advocate for applicant-Jai Bhagwan.

Mr. Sanjiv Gupta, Advocate.

Mr. Rajiv Kawatra, Advocate for accused-Manoj.

Rajan Gupta, J.

This order will dispose of two Criminal Revision Petitions
i.e. *CRR-3705 of 2014* and *CRR-2710 of 2014*, one preferred by State of
Haryana and other by one of the accused namely, Som Dutt.

An FIR under Sections 302/323/148/149/120-B IPC and

Section 25 of the Arms Act was registered on the statement of Jai Bhagwan son of Jagan Nath at Police Station Samalkha, Distt. Panipat. He stated that his youngest brother Neeraj @ Tatu, aged 35 years was working as Sarpanch of village Hathwala. There is political factionalism in the village. The opposite party i.e. family of Sachdev Tyagi was nursing a grudge against them. After Neeraj @ Tatu was elected as Sarpanch, a quarrel took place between two factions. Threats were issued to Neeraj that he would be killed. At 4.00 O'Clock on the fateful day, complainant, his brother Neeraj and Pawan son of Rajpal were travelling in car No.HR-60D-4734. When they reached one kilometer from Gurukul towards Hathwala, one canter No. HR-55H-5340 driven by Rajpal Pandit came from opposite side. Another person namely Bachi son of Kishan Tyagi was also present in the cabin of the canter. Said canter tried to hit the car and dragged it for a distance. From the vehicle, nine named persons alongwith other three/four others alighted and chased Neeraj. Neeraj was encircled and number of injuries with sharp-edged weapons were inflicted upon him. He succumbed to the injuries while being taken to hospital.

After registration of FIR, investigation ensued. Investigating agency found 11 persons guilty and submitted a challan against them on March 27, 2014. Thereafter by order of Director General of Police (Crime), Haryana, dated April 15, 2014, an SIT was constituted. It conducted further investigation and submitted a supplementary challan against another four accused on June 19, 2014. It was also stated therein that further investigation was in progress.

The court considered the challan and supplementary challan. On September 15, 2014, court framed charges against 16 accused. In the interregnum, an application was moved by Deputy Superintendent of Police, State Crime Branch, seeking permission of the court to further investigate the matter. Application was considered by Additional Sessions Judge, Panipat. However, finding no merit in the same, he rejected it vide his order dated August 06, 2014. Aggrieved State as well as accused-Som Dutt, have impugned the order before this court.

Learned State counsel submits that the order is unsustainable. According to him, investigating agency was competent to further investigate the matter in view of certain fresh material which came to light. The court completely erred in declining the prayer of the investigating agency. Mr. Rai, learned Senior counsel for accused Som Dutt, has made submissions on similar lines. He, however, adds that after having declined further investigation, the same court framed charges against five other accused on basis of supplementary report. Thus, the court ignored its own order while framing charges. According to him, there was no ground to decline further investigation.

Mr. A.P.S. Deol, learned Senior counsel, however submits that the order has been passed after considering all the facts and circumstances of the case. Investigation of a case cannot be endless. Once the matter had been investigated by the State police as well as the SIT, it ought to be left to the trial court to decide. The conclusion, if any, can only be drawn on the basis of evidence that comes forth during the trial. He further submits that charges have now been framed. The

question of re-investigation does not arise. As the trial has commenced, the prosecution is at liberty to lead evidence in the manner it deems fit.

Mr. Rajiv Kawatra, learned counsel for accused-Manoj submits that on the one hand, the court has relied upon part of the further investigation conducted by the investigating agency, yet declined continuance thereof. Thus, impugned order needs to be set aside.

I have heard learned counsel for the parties and given careful thought to the facts of the case.

The controversy involved has already been narrated in the foregoing paragraphs. Only question which arises for consideration is whether investigating agency can be permitted to carry on further investigation after the trial has commenced. It is evident that initially investigating agency found 11 persons guilty for murder of deceased Neeraj Tyagi. A Special Investigation Team was thereafter constituted, which conducted further investigation. It found that another four persons had participated in the crime. It, thus, filed supplementary challan against them. After considering report submitted in challan/supplementary challan, trial court framed charges against 16 accused vide order dated 15.9.2014. It appears that another application dated 6.5.2014 moved by the investigating agency praying that it be allowed to conduct further investigation, was pending. Accused had filed their reply to the application and submitted that they had no objection to further investigation of the matter. Same was rejected by the trial court vide order dated 6.8.2014. On a revision petition being preferred before this court, a coordinate bench directed the trial court to adjourn the matter

beyond the next date fixed before this court. In the meanwhile, replies were filed by the respondents. The State has taken the stand that matter needs to be further probed as there are some lacunae in the investigation. Accused have taken a stand on the similar lines. Learned counsel for the complainant, however, vehemently contended that once the trial has commenced, investigating cannot be allowed to continue. The evidence collected is already before the court which can be analyzed during the course of trial. On due consideration of the matter, I am of the view that no fault can be found with the order passed by Additional Sessions Judge, Panipat. After committal of the case to the Sessions Court, charges were framed against 16 accused. Trial of the case having commenced, a parallel investigation cannot be allowed to continue. A perusal of the order passed by the trial court shows that the court felt that investigating agency wanted to reopen the investigation in respect of 11 accused challaned earlier and conduct fresh investigation qua them. It came to this conclusion on the basis of reply filed by the accused, wherein they stated that they had no objection if further investigation was allowed to be conducted in the matter. It appears that apprehension of the trial court is justified. In the eventuality application is allowed, an anomalous situation is likely to be created. Already court is seized of two reports filed under section 173 Cr.P.C. In case investigating agency conducts further probe and exonerates some of the accused or implicates additional accused, the proceedings would be never ending. Besides, it would be against law laid down by Hon'ble Supreme Court in judgment reported as

Vinay Tyagi vs. Irshad Ali @ Deepak and others, 2013 (2) R.C.R.

(Criminal) 197. Relevant para whereof reads as follows:-

16. However, in the case of a ‘fresh investigation’, ‘reinvestigation’ or ‘de novo investigation’ there has to be a definite order of the court. The order of the Court unambiguously should state as to whether the previous investigation, for reasons to be recorded, is incapable of being acted upon. Neither the Investigating agency nor the Magistrate has any power to order or conduct ‘fresh investigation’. This is primarily for the reason that it would be opposed to the scheme of the Code. It is essential that even an order of ‘fresh’/‘de novo’ investigation passed by the higher judiciary should always be coupled with a specific direction as to the fate of the investigation already conducted. The cases where such direction can be issued are few and far between. This is based upon a fundamental principle of our criminal jurisprudence which is that it is the right of a suspect or an accused to have a just and fair investigation and trial. This principle flows from the constitutional mandate contained in Articles 21 and 22 of the Constitution of India. Where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the courts would set aside such an investigation and direct fresh or de novo investigation and, if necessary, even by another independent investigating agency. As already noticed, this is a power of wide plenitude and, therefore, has to be exercised sparingly. The principle of rarest of rare cases would squarely apply to such cases. Unless the unfairness of the investigation is such that it pricks the judicial conscience of the Court, the Court should be reluctant to interfere in such matters to the extent of quashing an investigation and directing a ‘fresh investigation’.”

In the facts and circumstances of the case, I find no ground to set-aside order dated 6.8.2014, passed by Additional Sessions Judge, Panipat. The investigating agency cannot be allowed to conduct a de-novo investigation into the matter. Though the application is couched in a manner that it appears that investigating agency only intends to

conduct 'further investigation', consent given by the accused for further investigation leaves no room for doubt that there is an effort to reopen the case. This would be against the provisions of the Criminal Procedure Code. The petition is, thus, without any merit and is hereby dismissed.

Trial court is directed to conduct the trial expeditiously in view of provisions of Section 309 Cr.P.C.

(RAJAN GUPTA)
JUDGE

June 02, 2015
'Rajpal'

Whether to be referred to reporter? Yes / No