

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

Date of decision : 23.02.2016

(i) CRM M-28929 of 2015

Neetu Dheer & anr.

....Petitioners

V/s

State of Haryana & anr.

....Respondents

(ii) CRM M-4876 of 2013

Venus Singla @ Vicky

....Petitioners

V/s

State of Haryana & anr.

....Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Bipan Ghai, Sr. Advocate with
Mr. Mandeep Kaushik, Advocate for the petitioners
(in CRM M-28929 of 2015).
Mr. J.S. Bedi, Sr. Advocate with
Mr. S.S. Brar, Advocate for the petitioner
(in CRM M-4876 of 2013)

Mr. Sushil Gautam, DAG Haryana.

RAJAN GUPTA J.

This order will dispose of aforesaid two petitions wherein prayer has been made for quashing of supplementary challan submitted by the police under section 173(8) Cr.P.C., Annexure P-9 under sections 324, 332, 353, 307, 333, 34 IPC and section 25, 54, 59 of the Arms Act and charge framed pursuant thereto, Annexure P-10.

Learned counsel for the petitioner(s) have primarily posed a challenge to supplementary challan and charge on the

ground that reinvestigation was undertaken by the investigating agency itself on its own initiative. After conducting the same, it included offences under section 307 & 333 IPC. Reinvestigation was undertaken without permission of the court despite the fact that an application was moved before the concerned court seeking permission for reinvestigation. Investigating agency did not wait for the orders and presented supplementary challan. On presentation of supplementary challan case has to be committed to the court of Sessions being a sessions trial. On 02.02.2013, Sessions court framed charges under sections 307 & 333 IPC. According to counsel, proceedings are totally vitiated.

Learned State counsel has opposed the plea. He submits that investigating agency was fully entitled to investigate further in view of new material which came to light. According to him, as further investigation revealed commission of offences under sections 307 & 333 IPC, supplementary report was submitted accordingly.

I have heard learned counsel for the parties.

FIR No. 892 dated 07.10.2011 was registered at police station City, Karnal on secret information received by the police. The informer told the police that in old Anaj Mandi, Karnal, certain persons including a lady was present who could commit any criminal activity. Even lethal weapons could be recovered from them. These persons had come in one swift car and a red motorcycle. Finding the information plausible, police officials reached the spot. As the police reached the spot, one of the accused namely Neetu Dhir exhorted co-accused to attack the

police officials. Allegedly she also gave a dagger blow on the neck of one police official namely Jai Bhagwan. The other police official, however, overpowered the lady. Another injury was also given by said lady. Thereafter, co-accused namely Venus and Raghav Dhir picked up constable Anil and threw him down from the roof with intention to kill him. After committing this act, the accused fled from the scene. Pursuant to FIR, investigation ensued. Investigating agency submitted its report on 16.11.2011 under sections 353, 332, 324 IPC & 25 of the Arms Act. Charges were framed under the same sections on 17.01.2012, Annexure P-3. on 25.02.2012, an order was passed by the IGP, Karnal stating that further investigation was required as some new facts had come to light. For this purpose, permission of the court be sought, if required. On 27.03.2012, Dy.S.P. moved an application before the court of Chief Judicial Magistrate, Karnal praying that the investigating agency be allowed to reinvestigate the matter. Before any order could be passed by the court, investigating agency completed its investigation and submitted a supplementary challan on 25.09.2012, Annexure P-9. This report included offence under sections 333 & 307 IPC. Resultantly, the case was committed to the court of Sessions. It came up for consideration of charge before the Additional Sessions Judge, Karnal on 02.02.2013. The court framed charges under sections 307 & 333 as well.

In my considered view, proceedings by the investigating agency subsequent to the framing of charge under sections 353, 332, 324 IPC & section 25 of the Arms Act are vitiated. It is evident that investigating agency did not feel the necessity to wait for the

orders of the court on the application moved by it seeking to further investigate the matter. On the other hand, on the orders of a superior officer it took up a de novo investigation and submitted a supplementary challan. The investigating agency had already conducted a thorough probe and submitted its final report. Even charges were framed on the basis of same on 17.01.2012. It was subsequent to framing of charges that further investigation was taken up. On 27.03.2012, an application was moved before the court for re-investigation of the matter. Once such an application had been moved, it was incumbent upon the investigating agency to wait for the outcome thereof. Investigating agency is expected to act in a responsible manner and in consonance with the procedure laid down by law. Normally, it would not start re-investigation on its own when trial has made some headway. It cannot be allowed to add and/or delete offences during progress of trial and convert a magisterial trial into sessions trial or vice versa. If any new fact or clue comes to its notice, it is always at liberty to bring it to the notice of the court and seek permission to conduct further investigation. In the instant case it did move one such application but did not wait for its decision. Apparently the procedure followed by the police is not sustainable in the eyes of law. Thus, supplementary challan dated 25.09.2012 (Annexure P-9) and charges framed pursuant thereto are hereby quashed.

Petition is allowed in these terms.

February 23, 2016

Ajay

(RAJAN GUPTA)
JUDGE

Referred to reporter : Yes