

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34550-2013

Date of Decision: February 4, 2016

Manoj Beri

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Akshay Bhan, Senior Advocate, with
Mr. G.S. Sandhu, Advocate,
for the petitioner.

Mr. K.S. Pannu, DAG, Punjab,
for respondent No. 1.

Mr. Anil Kumar Ahluwalia, Advocate,
for respondent No. 2.

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| 1. | <i>Whether Reporters of local papers may be allowed to see the judgment?</i> | YES |
| 2. | <i>To be referred to the Reporters or not?</i> | YES |
| 3. | <i>Whether the judgment should be reported in the Digest?</i> | YES |

NARESH KUMAR SANGHI, J (Oral)

Present petition has been filed under Section 482, Cr.P.C., for quashing of order dated 5.8.2013 (Annexure P-11), passed by learned Additional Chief Judicial Magistrate, Rupnagar (Duty), whereby the prayer of the prosecution for discharge of the petitioner, Manoj Beri, on the basis of the report

submitted under Section 173(8), Cr.P.C., was declined.

Mr. Akshay Bhan, learned Senior counsel representing the petitioner, submits that the investigating agency was within its jurisdiction to further investigate the matter as per Section 173(8) Cr.P.C. qua the petitioner, who was placed in Column No. 2, while filing the initial charge-sheet (challan) against the co-accused of the petitioner, He, while criticizing the impugned order, submitted that the finding of the learned Court below that the investigating agency had no jurisdiction to further investigate the matter, was absolutely contrary to the judgment passed by Hon'ble the Supreme Court in the matter of “**Rama Chaudhary v. State of Bihar**”, 2009 (2) **R.C.R. (Criminal) 570**. He further submitted that from the first charge sheet (challan) presented against the co-accused of the petitioner and in the supplementary charge-sheet, after further investigation, presented with a prayer to discharge the petitioner, there is not an iota of word connecting him (petitioner) with the offences for which the FIR was registered, in that situation also the learned Magistrate should have discharged the petitioner.

Learned counsel for the State very fairly acceded to the arguments raised by learned counsel for the petitioner that the investigating agency was within its ambit to further investigate the matter as per Section 173(8), Cr.P.C. He further submitted that during investigation, conducted multiple times by the investigating agency, nothing incriminating had emerged against the petitioner.

Learned counsel for respondent No. 2 though supported the view taken by learned Court below, but has not been able substantiate as to why the police could not further investigate the case.

In the matter of **Rama Chaudhary (supra)**, in para Nos. 8 to 10, Hon'ble the Supreme Court has held as under:-

“8. A mere reading of the above provision makes it clear that irrespective of report under sub-section (2) forwarded to the Magistrate, if the officer in-charge of the police station obtains further evidence, it is incumbent on his part to forward the same to the Magistrate with a further report with regard to such evidence in the form prescribed.

9. The above said provision also makes it clear that further investigation is permissible, however,

reinvestigation is prohibited. The law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out a further investigation even after filing of the charge-sheet is a statutory right of the police. Reinvestigation without prior permission is prohibited. On the other hand, further investigation is permissible.

10. From a plain reading of sub-section (2) and sub-section (8) of Section 173, it is evident that even after submission of police report under sub-section (2) on completion of investigation, the police has a right to "further" investigation under sub-section (8) of Section 173 but not "fresh investigation" or "reinvestigation". The meaning of "Further" is additional; more; or supplemental. "Further" investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether. Sub-section (8) of Section 173 clearly envisages that on completion of further investigation, the investigating agency has to forward to the Magistrate a "further" report and not fresh report regarding the "further" evidence obtained during such investigation."

After hearing learned counsel for the parties and going through the law laid down by Hon'ble the Supreme Court in the case of **Rama Chaudhary (supra)**, this Court also holds

that the investigating agency had the jurisdiction to further investigate the matter as per provisions contained in Sub-section (8) of Section 173, Cr.P.C. and present supplementary report before learned Trial Court.

In view of above, the present petition is allowed and the order dated 5.8.2013 (Annexure P-11), passed by learned Trial Court is set aside. The matter is remitted to the said Court for deciding the issue afresh in view of discussion made hereinabove.

The parties to the *lis* shall appear before learned Trial Court on 4.3.2016.

A copy of this order be sent to the learned Trial Court immediately.

(NARESH KUMAR SANGHI)
JUDGE

February 4, 2016
Pkapoor