

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

CRM-M-4446 of 2015.
Decided on:-28.04.2016.

Rajbir Singh.

.....Petitioner.

Versus

State of Punjab and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. Abhinav Gupta, Advocate
for the petitioner.

Mr. Gurinderjit Singh, DAG, Punjab.

Mr. Sandeep K. Sharma, Advocate
for respondent No.5.

HARI PAL VERMA, J. (ORAL)

Petitioner Rajbir Singh son of Jagdev Singh, resident of village Pholdiwal, District Jalandhar has filed the present petition under Section 482 Cr.PC for quashing FIR No.337 dated 20.11.2013 under Sections 447, 427 and 511 read with Section 34 IPC registered at Police Station Sadar, Jalandhar City and all further proceedings including order dated 20.12.2014 (Annexure P-3) passed by learned Additional Chief Judicial Magistrate,

Jalandhar.

Vide order dated 20.12.2014 (Annexure P-3), learned Magistrate on perusing the cancellation report, has ordered reinvestigation into the matter and returned the cancellation report with a direction to reinvestigate the matter.

Learned counsel for the petitioner states that the impugned order passed by learned Magistrate is a cryptic and mechanical order and does not meet the parameters of law laid down by Hon'ble Supreme Court in the case of ***Vinay Tyagi Versus Irshad Ali @ Deepak and others 2013(2) RCR (Criminal) 197***. While drawing attention of this Court to para Nos.30 and 31 of said judgment, learned counsel for the petitioner states that the power of Magistrate to direct further investigation is a significant power which has to be exercised sparingly, in exceptional cases and to achieve the ends of justice. The Magistrate has no power to direct reinvestigation in any case and as such, the observations made by learned Magistrate in the impugned order are beyond his purview.

On the other hand, learned counsel for the respondent No.5-complainant submits that the impugned order has been passed in consonance with the powers vested with the Magistrate. Learned Magistrate has perused the cancellation report and it is after perusing the same, reinvestigation has been ordered. He further submits that there is a flaw in the order to the extent that instead of the word "reinvestigation", the Magistrate should have

ordered for “further investigation” and, therefore, the word “reinvestigation” be read as synonym of “further investigation”. Learned counsel further states that even at the stage of consideration of the report, the Magistrate cannot opine on the merits of the case as it would seriously prejudice the case of the complainant.

I have heard learned counsel for the parties and perused the impugned order passed by learned Magistrate.

The impugned order dated 20.12.2014 passed by learned Additional Chief Judicial Magistrate, Jalandhar reads as under:

“Untraced report filed today. It be registered. Complainant is present and suffered a statement that she is not agree with the cancellation report submitted by the investigation agency and fresh investigation into the matter be ordered if the court deems appropriate.

Heard. Cancellation report perused. From the perusal of file it transpires that there is scope for reinvestigation into the matter to address concerns and apprehension of the complainant. Accordingly, the cancellation report is hereby returned with the direction to reinvestigate the matter. Cancellation report be returned along with the copy of the order of this court. Judicial papers be separated and consigned to Judicial Record Room.”

Further, the observations made by Hon'ble Supreme Court in para Nos.30 and 31 in **Vinay Tyagi's case (supra)** read as under:

“30. Having analysed the provisions of the Code and the

various judgments as afore-indicated, we would state the following conclusions in regard to the powers of a magistrate in terms of Section 173(2) read with Section 173(8) and Section 156(3) of the Code:

- 1. The Magistrate has no power to direct 'reinvestigation' or 'fresh investigation' (de novo) in the case initiated on the basis of a police report.*
- 2. A Magistrate has the power to direct 'further investigation' after filing of a police report in terms of Section 173(6) of the Code.*
- 3. The view expressed in (2) above is in conformity with the principle of law stated in **Bhagwant Singh v. Commissioner of Police and another** 1985(2) RCR (Criminal) 259 : (1985) 2 SCC 537 by a three Judge Bench and thus in conformity with the doctrine of precedence.*
- 4. Neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of Section 173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of Section 156(3) and the language of Section 173(8) itself. In fact, such power would have to be read into the language of Section 173(8).*
- 5. The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after*

filing a report, but intended to curtail the power of the Court to the extent that even where the facts of the case and the ends of justice demand, the Court can still not direct the investigating agency to conduct further investigation which it could do on its own.

6. It has been a procedure of propriety that the police has to seek permission of the Court to continue 'further investigation' and file supplementary charge sheet. This approach has been approved by this Court in a number of judgments. This as such would support the view that we are taking in the present case.

31. Having discussed the scope of power of the Magistrate under Section 173 of the Code, now we have to examine the kind of reports that are contemplated under the provisions of the Code and/or as per the judgments of this Court. The first and the foremost document that reaches the jurisdiction of the Magistrate is the First Information Report. Then, upon completion of the investigation, the police are required to file a report in terms of Section 173(2) of the Code. It will be appropriate to term this report as a primary report, as it is the very foundation of the case of the prosecution before the Court. It is the record of the case and the documents annexed thereto, which are considered by the Court and then the Court of the Magistrate is expected to exercise any of the three options afore-noticed. Out of the stated options with the Court, the jurisdiction it would exercise has to be in strict consonance with the settled principles of law. The power of the magistrate to direct 'further investigation' is a significant power which has to be exercised sparingly, in exceptional cases and to achieve

the ends of justice. To provide fair, proper and unquestionable investigation is the obligation of the investigating agency and the Court in its supervisory capacity is required to ensure the same. Further investigation conducted under the orders of the Court, including that of the Magistrate or by the police of its own accord and, for valid reasons, would lead to the filing of a supplementary report. Such supplementary report shall be dealt with as part of the primary report. This is clear from the fact that the provisions of Sections 173(3) to 173(6) would be applicable to such reports in terms of Section 173(8) of the Code.

In view of the above, it is apparent that the impugned order has been passed by learned Magistrate in a cryptic and mechanical manner and without giving any details mentioned in the cancellation report. Thus, having recourse to the judgment of Hon'ble Supreme Court in **Vinay Tyagi's case (supra)**, this Court finds that the impugned order passed by learned Magistrate is not sustainable in the eyes of law.

Accordingly, the present petition is disposed of and the order dated 20.12.2014 passed by learned Magistrate is set aside. The case is remanded back to the learned Magistrate to pass a fresh speaking order while perusing the report under Section 173 Cr.P.C.

April 28, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE