

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-3186-2016 (O&M)

Date of decision: December 21, 2016.

Jasbir Singh

... **Petitioner**

v.

CBI and others

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Shri Charanjit Singh Bakshi, Advocate for the petitioner(s).

Shri Shailesh Gupta, Additional Advocate General, Punjab.

Shri Sumeet Goel, Advocate for CBI.

Shri P.S. Hundal, Sr. Advocate with
Shri Jashandeep Singh, Advocate for intervenor–Dilbar Singh.

Shri J.S. Bedi, Sr. Advocate with
Shri Harpreet Singh Multani, Advocate
for intervenor-Amarjeet @ Jitti.

A.B. Chaudhari, J. (Oral):

Rule. Heard forthwith with the consent of Learned Counsel for
the parties.

Following is the prayer in the present petition:-

*“In view of the submissions made above, it is respectfully
prayed that the impugned order dated 29.8.2016 passed by the
Special Court C.B.I. Punjab, Patiala in SC No.5T of 2014 titled State
of Punjab v/s Jasbir Singh registered under Section 307, 459, 148,
149 IPC which is a cross version in FIR No.RC0512012(S)/
0009/2012 dated 13.12.2012 under Section 302, 307, 326, 324, 201,
34 IPC and Section 25, 27 Arms Act P.S. CBI/SCB, Chandigarh be
quashed and the trial court be directed to proceed in the light of the*

directions issued by this Hon'ble Court in CRM-M-912 of 2011 titled Harjinder Singh Vs. State of Punjab and others decided on 15.10.2012 (Annexure P-2) that both the version and the cross version in this case is to be investigated by CBI and thereafter a report is to be filed in the Court concerned having jurisdiction and for directing the CBI to conduct the prosecution of this case as presently the public prosecutor of the State of Punjab is prosecuting the present case which is in complete contravention to the aforementioned judgment passed by this Hon'ble Court.”

After hearing Learned Counsel for the rival parties at length, Learned Counsel for the petitioner has raised the following three points:-

- (1) In terms of the judgment of this Court dated 15.10.2012 (Annexure P-2) in CRM-M-912-2011, the trial court ought to have rejected the final report filed by the Punjab Police and, therefore, trial court be directed accordingly;
- (2) the CBI has submitted composite final report before the trial court pursuant to the directions issued by this Court, as above, holding that the respondents have committed offences in question and in so far as the present petitioner is concerned, the version about fire arm injury on the complainant Dilbar Singh in cross version is incorrect and wrong and therefore the trial court ought to have called separate cancellation report from CBI in respect of the petitioner and then decided the same and therefore, CBI should be directed to file supplementary report instead of consolidated report regarding innocence of the petitioner;
- (3) the Public Prosecutor (PP) of Punjab Police cannot conduct

challan filed by the Punjab Police against the petitioner which is the cross case as the proceedings are tried by CBI court and the CBI case is being tried by the CBI prosecutor and, therefore, the impugned order deserves to be quashed and set aside.

Per contra, learned Counsel for the respondents have vehemently opposed the petition and submitted that the third point raised by the petitioner has already been decided by the trial court by its order dated 18.2.2016 and the same remained unchallenged and therefore, the same challenge cannot be considered. Learned Counsel for the respondents including the CBI then argued that this court itself has directed the trial court to consider the final report filed by the Punjab Police in the cross case and the CBI report in the main case filed at the behest of the petitioner in accordance with the decision in the case of Vinay Tyagi v/s Irshad Ali @ Deepak and others, 2013(2) RCR (Crl.) 197 delivered by the Supreme Court and therefore the said condition cannot be accepted. The prayer for directing CBI to file supplementary report as cancellation report in respect of cross version put up by Dilbar Singh separately cannot be accepted since CBI has already filed composite report before the trial court and therefore, it is for the trial court to consider both the versions according to law. Learned Counsel for the respondents therefore, prayed for dismissal of the petition.

CONSIDERATION

This Court by operative order dated 15.10.2012 in CRM-M-912-2011 issued directions as under:-

“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 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 instigation 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.

Accordingly, petition succeeds and is allowed in the above terms.”

Pursuant to the said directions, the CBI took up the investigation and in so far as the cross version is concerned, the following conclusions were drawn by the CBI:-

“In the light of above, it can be concluded that the complainant side was not armed and no firing took place from their side as is evident from the reconstruction of the scene of crime carried out by the experts of CFSL, Chandigarh. Moreover the expert report of CFSL, Chandigarh on wearing apparels of A-2 on reconstruction of scene of crime and expert opinion of AIIMS, New Delhi on the injuries of A-2 established that the injuries of A-2 were self inflicted.”

The CBI accordingly having found substance against Dilbar

Singh and others filed challan while the CBI declared the petitioner as

innocent in the cross case, as stated above. Thus, the report filed by the CBI was composite report in respect of version and cross version.

This Court by order dated 26.2.2015 passed in CRR-3682-2014 and in the light of discussion in para 46, 53, 60, 61 of the Apex Court in the case of Vinay Tyagi (supra), finally held as under:-

“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 record 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.”

The said judgment and order dated 15.2.2015 has become final and conclusive between the parties.

In accordance with the aforesaid judgment recorded by this Court, the trial court held that it was under obligation to consider both the versions, i.e., the report filed by the Punjab Police and the report by the CBI. The submission made by Learned Counsel for the petitioner that the

report filed by the Punjab Police in relation to cross version will have to be ignored or rejected and/or that even it cannot be considered by the trial court, runs counter to the decision of the Apex Court, followed by this Court, as above. The said submission is, therefore, rejected.

The next submission is about filing of separate supplementary report in respect of cancellation report filed by the CBI instead of filing of composite report. The submission is equally misconceived since the CBI in fact has filed a composite report declaring the petitioner innocent and the same would obviously be considered by the trial court in accordance with law. His insistence for filing of supplementary report is wholly misconceived. Therefore, the second submission will have also to be rejected.

His third submission regarding PP by the CBI to conduct trial of the challan filed by the Punjab Police must be rejected outright in view of the order dated 18.2.2016 passed by the trial court which still holds the field and has not been challenged.

In the result, I find that there is no merit in the present revision petition and hence, I make the following order:-

ORDER

(i) CRR-3186-2016 is dismissed.

[A.B. Chaudhari]
Judge

December 21, 2016.
kadyan

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No