

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

CRM-M-20003 of 2013 (O&M)
Date of decision: August 24, 2017

Sukhpreet Kaur

.....Petitioner

Versus

State of Punjab and others

.....Respondents

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

Present: Mr. Vikram Chaudhari, Senior Advocate with
Ms. Isha Goyal, Advocate for the petitioner.

Mr. Abhishek Chautala, AAG Punjab.

Mr. Sumeet Goel, Retainer Counsel with
Mr. Sangram Singh, Advocate for the CBI.

A.B. CHAUDHARI, J (Oral)

CRM No.39785 of 2016 IN
CRM-M-20003 of 2013

Heard.

Application is allowed as prayed for. Counsel for the
petitioner is directed to carry out necessary amendment at the relevant
places.

CRM-M-20003 of 2013

The present petition has been filed by Sukhpreet Kaur wife
of Surajpal Singh, resident of Sandra, Tehsil Patti, District Tarn Taran
with the following prayers:-

“It is, therefore, respectfully prayed that the present petition may kindly be allowed and this Hon'ble Court may be pleased to issue appropriate directions ensuring the safety and security of the petitioner as well as her two minor children viz. a daughter aged 12 years and a son aged 7 years respectively in view of the grave and alarming threat perception to their life and liberty as the petitioner is in possession of concrete proof in the nature of audio recording, wherein, police officials have admitted to have foisted a false case upon the petitioner and her husband in FIR No.170 dated 28.09.2012, registered under Sections 21, 61, 85 of Narcotic Drugs and Psychotropic Substance Act, 1985 and 3, 4, 5 of Official Secrets Act, at Police Station Bhikhiwind as also beseeching this Hon'ble Court to take on record the said Audio CDs.

It is also prayed that this Hon'ble Court may be pleased to issue appropriate directions restraining the respondents from harassing, humiliating and subjecting the petitioner to persecution by implicating her in any false case as the delinquent police officials who have admitted to have indulged in abuse and misuse of their uniform are openly proclaiming to teach a lesson to the petitioner for tape recording their admissions/confessions supra.

In the peculiar facts and circumstances, the petitioner is beseeching this Hon'ble Court to restrain the respondents from arresting and calling her to the Police Station either as a witness, suspect or accused in any other case as she has a bonafide apprehension to her life, liberty and dignity.

It is still further prayed that this Hon'ble Court may be pleased to issue appropriate direction to entrust the investigations into the entire origin and genesis as well as all aspects relating to FIR No.170 supra to an independent agency so as to ensure transparent and fair investigation to bring out the truth and enable this Hon'ble Court to take strict action against delinquent officials who have indulged in wanton abuse of their power and authority.

Any other order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, may kindly be passed in favour of the petitioner.”

During the course of hearing of this petition, a separate application, i.e. CRM No.39785 of 2016 has been filed by the petitioner. On the instance of learned Senior counsel for the petitioner having heard him, this Court having been convinced, allowed the said application. The prayer in the said application is as under:-

“It is, therefore, respectfully prayed that the instant application may kindly be allowed and this Hon'ble Court may be pleased to set aside and quash the supplementary report under Section 173(8) Cr. P.C. (Annexure P-8) filed by the Central Bureau of Investigation against the petitioner in the Court of learned Special Judicial Magistrate, CBI, Punjab, Patiala as well as the order dated 03.09.2015 passed by the learned trial Court (Annexure P-9), whereby, the cognizance has been taken, inter alia, against the petitioner in the interest of justice, equity and fair play.

It is further prayed that all further proceedings before the learned trial Court may kindly be stayed.

It is further prayed that the petitioner may kindly be exempted from filing of certified/original copies of Annexures P-8 to P-10 and filing of true typed copy of Annexures P-8 to P-9 may kindly be exempted and permission may kindly be granted to place on record the photocopies of the same in the interest of justice and fair play.”

It is thus, clear that in the main petition, i.e. CRM-M-20003 of 2013, present petitioner-Sukhpreet Kaur sought investigation etc. as stated in the various prayers quoted above and thereafter, has sought quashment of supplementary report under Section 173(8) of Code of Criminal Procedure, 1973 (for short ‘Cr. P.C.’) (Annexure P-8) as well as order dated 03.09.2015 (Annexure P-9) passed by the learned trial Court. The learned trial Court vide said order dated 03.09.2015 issued accused summons to petitioner-Sukhpreet Kaur and her husband, returnable on 18.09.2015. for offences under Section 120-B of Indian Penal Code, 1860 (for short ‘IPC’) and Section 5 of Official Secrets Act, 1923 (for short ‘Act’), which is also under challenge by way of amendment as aforesaid.

During the pendency of above petition, Surajpal Singh son of Pargat Singh, husband of the petitioner-Sukhpreet Kaur, expired.

In support of the petition/amended petition, learned Senior

counsel for the petitioner, namely Mr. Virkam Chaudhari vehemently argued that this Court had made an order on 03.09.2013 asking CBI to take up the investigation and conclude it, with a direction to submit investigation report before this Court. He submits that in breach of the said direction to submit investigation report before this Court, the investigating agency, appointed by this Court, filed their supplementary report under Section 173 (8) of Cr. P.C. before the competent Court without even bothering to take permission from this Court after submitting report to this Court. This, in his submission, amounts to interference in the administration of justice and CBI has thus, committed contempt of this Court. He, then submitted that in the supplementary report submitted by the CBI before the trial Court, of which cognizance has been taken vide aforesaid order dated 03.09.2015 (Annexure P-9), the investigating agency has exonerated respondent No.7-Inspector Sukhdev Singh, Station House Officer, from all the allegations leveled against him despite the fact that sufficient and ample material was available before the investigating agency, who, according to him, in order to save respondent No.7, has undertaken exercise to exonerate him from the crime committed by respondent No.7, who had tormented the petitioner woman. Learned Senior counsel made several submissions on facts to point out how the investigating agency ignored the evidence that was produced by the petitioner in respect of respondent No.7's culpability. With his assistance, I have gone through the entire material which he has pointed out to me from record. Then he made a submission that fresh

investigation should again be ordered by this Court qua respondent No.7 and the criminal action against respondent No.7 be taken as he is required to be brought to book, he having committed serious and immoral activities qua the petitioner.

Taking the first issue propounded by the learned Senior counsel for the petitioner as to the culpability of respondent No.7 not having been found by the investigating agency, I have given my careful thought to the entire matter. Learned Senior counsel has mainly relied on conversation between Harpreet Kaur and Sukhpreet Kaur-petitioner so also respondent No.7, which has been duly considered by the investigating agency. In that context, the investigating agency has given following findings, which are in the investigation report:-

“16.10 Investigation revealed that Sukhpreet Kaur recorded her conversation with Sukhdev Singh, the then SHO and the L/C Kuldeep Kaur and Harpreet Kaur in a clandestine manner after registration of aforesaid case. She produced said recordings in two CDs which were taken into police possession and were sent to CFSL, New Delhi who identified voice in the recordings as that of Sukhpreet Kaur, Sukhdev Singh, the then SHO and the L/C Kuldeep Kaur and Harpreet Kaur. The aforesaid persons were also examined in respect of their conversation with Sukhpreet Kaur, however, allegation of amorous/immoral favour demanded by the then SHO Shri Sukhdev Singh from Sukhpreet Kaur are not substantiated.

16.11 It was alleged by Smt. Sukhpreet Kaur, the petitioner that Shri Sukhdev Singh, SHO took 3 cheques which were encashed by her mother Smt. Charanjit Kaur and the amount Rs.2,49,000/- was handed over to SHO Sukhdev Singh. Investigation revealed that Smt. Sukhpreet Kaur had saving account No.31741087490 in State Bank of India, Rani-ka-Bagh, Amritsar Cantt. She had issued cheque No.938426 dated 27.09.2012 for Rs.49,000/-, Cheque No.938427 dated 27.09.2012 for Rs.1 lac and Cheque No.938429 dated 24.09.2012 for Rs.1 lac. The payment of Cheque No.938426 dated 27.09.2012 was taken by Smt. Charanjit Kaur from the bank on 01.10.2012 and the payment of Cheque No.938429

dated 24.09.2012 was taken by one Shri Kuldip Singh on 01.10.2012. It has further revealed, as per statement of Charanjit Kaur, that Shri Kuldip Singh had handed over the payment to Smt. Charanjit Kaur who in turn gave to SHO Sukhdev Singh. Shri Kuldeep Singh had signed on the reverse of the cheque No.938429. Efforts were made to trace out Kuldip Singh, however, he could not be traced. Allegations of bribe are not substantiated against the SHO Shri Sukhdev Singh.”

The findings recorded above by the investigating officer, after making investigation, cannot be said to be contrary to record or to the evidence available before him. It is not possible for this Court to go on repeating the investigation as sought when this Court is satisfied from the aforesaid investigation report in Paras 16.10 and 16.11 that CBI has taken sufficient care to make investigation as to the culpability of respondent No.7 as alleged by the petitioner. There is no reason for this Court, again and again to order re-investigation or fresh investigation as this Court does not want to multiply the investigation after investigation. The prayer made by learned Senior counsel, therefore, will have to be rejected in that context, namely, qua respondent No.7-Sukhdev Singh, which I do.

Learned Senior counsel for the petitioner, then contended that this Court should proceed to take action against investigating agency for filing supplementary report before the trial Court without permission from this Court or without rather placing the report as per order of this Court before it, first.

The order made by this Court appointing CBI as investigating agency, on 03.09.2013, reads thus:-

“The present petition has been filed under Section 482 Cr.P.C for

issuance of directions to protect the petitioner as well as her two minor children on the ground that there is an alarming threat perception to their lives and liberty at the instance of police party.

An FIR No. 170 dated 28.09.2012 was registered against the petitioner, her husband and her brother under Sections 21, 61 and 85 of the Narcotic and Psychotropic Substances Act, 1985 and Sections 3, 4 and 5 of the Official Secret Act at Police Station Bhikhiwind. However, investigation of the case was conducted. During the course of investigation, mobile phones of the petitioner as well as her husband and other documents like passport and photocopies of some documents were taken into possession by the Investigating Agency. As per case of the prosecution, the husband of the petitioner suffered a disclosure statement under Section 27 of the Evidence Act and got recovered few maps as well as 10 gms of heroine which was received by him from one Rana, who is smuggler of Pakistan. The call details of the mobile number of the petitioner and her husband were obtained for the period w.e.f. 01.05.2012 to 30.09.2012, from which, it was found that the petitioner had made calls and spoken to someone in Pakistan 38 times and her husband had talked about 30 times. The case of the petitioner is that some of her family friends are there in Pakistan and she has not disputed regarding making calls and speaking to some persons in Pakistan during the said period. The petitioner had also visited Pakistan on three occasions which has also not been disputed. It is also the case of the prosecution that the petitioner is having close anti national nexus in Pakistan and hiding her nexus by stating that her family is on friendly terms with other family residing in Pakistan.

Notice of motion was issued on 18.06.2013 and thereafter, reply was filed by the State as well as respondent No.7, who is the Investigating Officer.

During the pendency of this petition, learned counsel for the petitioner has placed on record the Compact Disc (hereinafter referred to as 'the C.D'), wherein, the conversation with the police officials has been recorded. The allegations against the police officials are that they have blackmailed the petitioner as well as her family members and she was compelled to withdraw an amount of Rs.2,49,000/- through her mother from her account and that money was received by the Investigating Officer. Certain allegations for seeking immoral favours by the police officials are also there.

Learned counsel for the petitioner, learned State counsel as well as learned counsel for the complainant have been heard at length.

Learned counsel for the petitioner has prayed that if investigation

of the case is handed over to some independent agency, the truth would come out. Learned counsel further submitted that the petitioner and her family members have been implicated in a false case with an ulterior motive by the police just to grab money or for other favours from the petitioner and ultimately, she was left with no option then to file this petition.

Learned counsel for the State submits that the C.D has been planted by the petitioner just to create an evidence and to save herself, whereas, certain incriminating documents such as secret maps of the Indian Army, Harike Bridge, Goindwal Bridge, Beas Bridge, Dera Baba Nanak Bridge and Amritsar Cantt. have been recovered from the petitioner and her husband. The frequent visits of the petitioner and her continuous talk with someone residing in Pakistan, in itself, creates doubt. Learned State counsel also submits that the allegation of withdrawal of amount was of the period when the petitioner was in custody on 01.10.2012 and she remained silent for a period of about eight months and no complaint was made by her. The allegations against the police officials have been alleged to prevent and to discourage them in deposing against the accused. Learned State counsel further submits that the conduct of the petitioner and her family members is such which is anti-national and appears to be against safety and interest of the Country.

Learned State counsel further submits that now the challan has been presented and the petitioner is at liberty to raise all pleas before the trial Court, whereas, learned counsel for the petitioner submits that all these documents have been procured after presentation of challan and it was neither the stand in the investigation nor in the challan presented before the trial Court.

Similarly, learned counsel for respondent No.7 has vehemently argued that the petitioner has tried to create bias in the mind of the Court just to hoodwink the process of law. The petitioner is involved in anti-national activities and now the case is fixed for framing of charge. Learned counsel also submits that the petitioner is involved in supplying secret information of the Country to one Rana Smuggler of Pakistan. The documents recovered from the petitioner were sent to Army Headquarters for analysis. Those documents relate to defence matters of the Country and can be utilized by terrorists to target the infrastructure and army installations for causing damage to them. Learned counsel also submits that the allegations raised subsequently were not brought to the notice of the higher authorities at any point of time and the same has been made with mala fide intention to pressurize the witnesses not to depose against

her.

*It is also well known that when allegations are against police officials of the State who are alleged to be involved in the crime and in fact they are investigating the case, it would be proper and interest of justice would be better served if the investigation is directed to be carried out by the CBI Authorities, as in such situations CBI authorities would be an appropriate authority to investigate the case. In **Ramesh Kumari vs. State (NCT Delhi) & Ors.** 2006 (2) SCC 677], Hon'ble the Apex Court at Paragraph 8 observed :*

“.....We are also of the view that since there is allegation against the police personnel, the interest of justice would be better served if the case is registered and investigated by an independent agency like CBI.”

*In **Kashmeri Devi vs. Delhi Administration & Anr., 1988(2) RCR (CrL) 44**, Hon'ble the Supreme Court held that in a case where the police had not acted fairly and in fact acted in partisan manner to shield real culprits, it would be proper and interest of justice will be served if such investigation is handed over to the CBI authorities or an independent agency for proper investigation of the case. In this case, taking into consideration the grave allegations made against the high police officials of the State in respect of which some of them have already been in custody, we feel it proper and appropriate and in the interest of justice even at this stage, that is, when the charge sheet has already been submitted, the investigation shall be transferred to the CBI Authorities for proper and thorough investigation of the case. In **Kashmeri Devi** (supra), Hon'ble the Supreme Court also observed as follows : -*

“Since according to the respondent charge-sheet has already been submitted to the Magistrate we direct the trial court before whom the charge sheet has been submitted to exercise his powers under Section 173(8) Cr. P.C. to direct the Central Bureau of Investigation for proper and thorough investigation of the case. On issue of such direction the Central Bureau of Investigation will investigate the case in an independent and objective manner and it will further submit additional charge sheet, if any, in accordance with law.”

*In **Gudalure M.J.Cherian & Ors. v. Union of India 1992(1) SCC 397**, the charge sheet was submitted but inspite of that, in view of the peculiar facts of that case, the investigation was transferred from the file of the Sessions Judge, Moradabad to Sessions Judge, Delhi. Inspite of such fact that the charge sheet was filed in that case, Hon'ble the Apex Court directed the CBI to hold further investigation inspite of the offences*

committed. In this case at Page 400 Hon'ble the Apex Court observed :

“.....The investigation having been completed by the police and the charge sheet submitted to the court, it is not for this court ordinarily to reopen the investigation specially by entrusting the same to a specialized agency like CBI. We are also conscious that of late the demand for CBI investigation even in police cases is on the increase. Nevertheless – in a given situation, to do justice between the parties and to instill confidence in the public mind – it may become necessary to ask the CBI to investigate a crime. It only shows the efficiency and the independence of the agency.”

Keeping in view the nature of allegations against the petitioner and her family members and also the allegations levelled against the Investigating Officer and other police officials and also the prayer of the present petitioner and having no objection from the other side, the investigation of the case is handed over to Central Bureau of Investigation to investigate whether the documents recovered from the petitioner and her family members are relating to defence or security of the Country. The C.D conversation, wherein, talks with the investigating officer is there is relating to demand of money or with having some other ulterior motive. All documents relied upon by the petitioner as well as State and the Investigating Officer be considered while concluding investigation.

Registry is directed to supply the complete paper book including petition, reply and other documents filed subsequently to counsel for C.B.I-Mr. Sumeet Goel within a period of ten days.

The Investigating Agency is directed to conclude the investigation of the case within a period of six months from the date of receipt of certified copy of this Order. However, in case, still any document is required from the petitioner or her family member, the Investigating Officer is at liberty to call for the same.

We expect that the police authorities shall co-operate with the CBI authorities in conducting the investigation properly and in an appropriate manner.

Adjourned to 10.03.2014.

The report after conducting investigation be placed before this Court on the next date of hearing.”

True it is that report of investigation was directly filed before the trial Court. But then it is not necessary that the High Court should go on initiating contempt proceedings for the reasons stated by

learned Senior counsel for the petitioner. I do not, therefore, think it necessary to take any action against CBI for not placing supplementary report before this Court first before filing the same before the competent Court. Hence, the said prayer is also rejected.

The next contention of the learned Senior counsel is that Surajpal Singh, husband of the petitioner having expired, the offences alleged against him by the prosecution do not survive. The submission is accepted. He, then contended that the supplementary report (Annexure P-8) as well as order (Annexure P-9) taking cognizance and issuing summons to the present petitioner is also required to be quashed as allegations against the petitioner are about the offences under Section of 120-B IPC and Section 5 of the Act as there is no evidence at all.

Learned Senior counsel for the petitioner has taken me through the supplementary report. I have also gone through the original report that was submitted by the Punjab police as well as supplementary report submitted by CBI. He, contended there is absolutely no evidence against present petitioner-Sukhpreet Kaur for the offences for which the trial Court has taken cognizance against her. Learned Senior counsel has taken me through the entire record including the investigation papers transcripts of all the conversation etc. He contended that there is neither any evidence about criminal conspiracy contemplated by Section 120-B of IPC nor there is any even remote evidence about Section 5 of the Act atleast qua petitioner-Sukhpreet Kaur. He submitted that in the absence of even a single

piece of evidence against the petitioner, of which cognizance has been taken by the trial Court vide order dated 03.09.2015 (Annexure P-9), the proceedings before the trial Court, on the basis of supplementary report, are without any basis or material and it would amount to abuse of process of law to continue the proceedings. The submission has been opposed.

In the wake of the fact that this Court wanted to have supplementary investigation report before this Court first rather than CBI filing the same before the competent Court, this Court is entitled to go through the entire supplementary report and find out whether the supplementary report discloses any offence against the petitioner and whether order dated 03.09.2015 (Annexure P-9) taking cognizance is legal or illegal. The reason is that the CBI violated the direction made by this Court to submit the investigation report to it first. But the agony filed the same directly with the trial Court who also erred in taking the cognizance.

Per contra, learned counsel for the CBI has vehemently opposed the petition and argued that since the trial Court has already taken cognizance vide order dated 03.09.2015 (Annexure P-9), there is no reason why this Court should interfere, at this stage. According to him, the trial Court should be allowed to go ahead with the trial. He submitted that if petitioner is really not guilty for any of the offences charged against her, she will be acquitted by the trial Court, but it would not be legal and proper to review supplementary report filed by the CBI. He, therefore, prayed for dismissal of the petition.

I have considered the submissions made by learned counsel for the rival parties carefully. With the assistance of the learned counsel for the rival parties on number of hearings, I have gone through the entire record including the conversations and the evidence collected by Punjab police, which was filed the first report so also with supplementary report filed by the CBI. At the outset, I am not inclined to accept the submissions made by the learned counsel for CBI that this Court should not interdict with the supplementary report or the original report and the order taking cognizance. The reason is that under order dated 03.09.2013, this Court had not permitted the CBI to file supplementary report directly before the trial Court. The obvious object behind the passing of said order was that this Court wanted to go through the entire papers of the investigation by the investigation agency appointed by it. To accept the submission made by learned counsel for the CBI that this Court should not interfere with the trial Court's order would be putting premium on the action of the CBI in violating this Court's order dated 03.09.2013. It is for this reason, this Court is entitled to go through the entire supplementary report filed by the CBI and the evidence collected by it and then to find out whether cognizance should have been taken by the trial Court as per Annexure P-9 or not. It is in that context, I have carefully gone through the papers and investigation and the conversation recorded by the police incorporated by the CBI in its supplementary report.

Apropos the prosecution allegations in the supplementary

report, particularly, against the petitioner, it would be appropriate to

quote some of the paragraphs from supplementary report itself, which I quote hereunder:-

“16.6 Investigation has revealed that Smt. Sukhpreet Kaur wife of Suraj Pal Singh r/o village Sandhra, Tehsil Patti, District Tarn Taran was working as an Assistant in the office of Asst. Commissioner, Punjab Excise & Taxation Department, at Amritsar during the relevant period of 2011-12. Her husband Suraj Pal Singh is an agriculturist in Village Sandra in police district Tarn Taran. Similarly, Sh. Harbhagwant Singh @ Harje s/o Sh. Kripal Singh r/o Village Wantara Singh, PS Patti, Police District Tarn Taran, is an agriculturist owning about 10-12 Killa of land at Village Wantara Singh situated at the border with Pakistan. Sh. Harbhagwant Singh @ Harje is real brother of accused Smt. Sukhpreet Kaur.

16.7 Investigation has further reveals that a police team headed by SHO Sukhdev Singh, PS Bhikhiwind, District Tarn Taran departed from the said police Station on 28.09.2012 at 4:00 AM in official vehicle for conducting raids at the residences of the accused persons at Village Wantara Singh and Sandra. Since the house of accused Harbhagwant Singh @ Harje was found locked in village Wantara Singh, therefore, the raiding party visited village Sandra in order to conduct raid at the house of Surajpal Singh and Smt. Sukhpreet Kaur and recovered certain documents after the disclosure made by them. The said documents were sent to Army Hqrs. Delhi. The Army expert opined that the documents forwarded are related to Army installation and certain important bridges and head works in Punjab and can be classified as of restricted nature. The information contained in these documents does not have strategic/operational value but if disclosed to unauthorised persons can be prejudicial to safety, security and interest of the State. The information has limited utility for any present or potential enemy, but can be utilized by terrorists/saboteurs to target vulnerable infrastructure and any installation. The information is both directly and indirectly connected with the defence matters of country.

16.8 Investigation further revealed that the accused Surajpal Singh and Sukhpreet Kaur had came in contact with Rana Mohd in Pakistan in April, 2012 at Wagha border during a religious trip. Thereafter, they were in contact with each other over mobile phones. The state police after getting permission of the concerned authority had recorded their conversation during the period August, 2012 to September, 2012 which also revealed their connection with said Rana of Pakistan. Conversation

also revealed that they were involved in sending information/documents related to defence and important places of India to Rana of Pakistan.

.....

16.13 In view of above facts and circumstances this supplementary charge sheet is being filed against Shri Surajpal Singh s/o Shri Pargat Singh and Smt. Sukhpreet Kaur w/o Shri Surajpal Singh r/o village Sandra, Tehsil Patti, District Tarn Taran for the offences committed by them u/s 120-B IPC r/w section 5 Official Secret Act.”

Alongwith supplementary report, the CBI vide reply dated 12.11.2015 has filed report and in relation to the offence under Section 5 of the Act, following portion from the report would be relevant, which I quote hereunder:-

“5. During the course of investigation, documents alleged to have been recovered from the house of Surajpal Singh on his disclosures were taken on record. These documents are on CD, one page with four google addresses, one page having diagram of Appendix 'M' and Appendix 'N', one page depicting Army badges, one page depicting organisation armed Div SIG Regt (AREN), 6 pages of precis (Restricted), 36 photographs and one book (Restricted). The witnesses of recovery viz SI Baldev Singh and ASI Charanjit Singh of PS Bhikhiwind have stated that the said documents were recovered in their presence from a box in the residence of Surajpal Singh at Sandra on his disclosure. However, no witness from the public/locality of recovery was taken by the police of PS Bhikhiwind. Scrutiny of the said documents revealed that 2 documents/ books are Restricted in nature and pertains to Army/defence. Out of 36 photographs, 16 photographs are original, 18 are photocopy and 2 are photocopy of maps and pertains to some electricity project, dams and bridges of Harike, Beas Hargobindpur etc. Expert opinion on said documents was taken by the State Police earlier as well as by the CBI during investigation of the case from the Army HQ. The expert has opined that the documents are related to Army installations and certain important bridges and head work in Punjab and can be classified as “Restricted”. The expert has further opined that the information contained in these documents does not have strategic/operational value but if disclosed to unauthorised persons can be prejudicial to safety, security and interest of the state. The expert has also opined that information has no utility for any present or potential enemy, but can be

utilized by terrorists/saboteurs to target vulnerable infrastructure and army installation for causing damage to these. The expert further opined that the information is both directly and indirectly connected with the defence matters of the country.”

Alongwith the aforesaid report filed by the CBI, there are conversations placed on record, which are briefly stated as under:-

On 16.08.2012 time 12:47 AM – conversation between Rana and Suraj regarding revolver.

This conversation relates to the husband of the petitioner and since the husband of the petitioner has expired, there is no incriminating conversation qua the petitioner, it is not necessary to quote any portion therefrom.

On 24.08.2012 time 9:34 PM AND 27.08.2012 at 12:17 AM - Rana (Pakistan) talking to Suraj regarding above discussion. Voice of Rana is not clear/audible. Conversation between Sukhpreet Kaur and Suraj having going to Lahoul Spiti.

I do not find a single incriminating stand against the petitioner qua any of the offence under Section 120-B IPC and Section 5 of the Act.

On 28.08.2012 time 8:34 AM - Conversation of Rana with Suraj about opening of pillar No.149 & 147 and delivery of 100 grams of powder.

I do not find a single incriminating stand against the petitioner qua any of the offence under Section 120-B IPC and Section 5 of the Act.

On 29.08.2012 time 11:56 PM - Conversation of Seema @ Sukhpreet Kaur with the travel agent about Air ticket of Lahaul Spiti.

Having gone through the conversation, there is no remote connection with the offences in question.

On 06.09.2012 time 5:45 PM - Rana talking to Suraj about Indian SIM and its recharge and to keep the secret things.

The conversation is not between the petitioner and Rana (Pakistan), but it is between Suraj and Rana.

Beyond this, there are no other conversations collected by the CBI during investigation against Surajpal Singh and petitioner-Sukhpreet Kaur. This is all and all about the alleged material against the petitioner and her husband. From the above, at the most, it could be said that there is some material against petitioner's husband Surajpal Singh. But in so far as the petitioner is concerned, there is absolutely no material against her. In so far as the recovery of the documents or sensitive documents are concerned as referred in Para 5 above of supplementary report, the same were recovered from Surajpal Singh and there is not even a *iota* of allegation or evidence that petitioner-Sukhpreet Kaur had any role. It is not the case of the CBI or police that the petitioner had recovered the documents or that she had knowledge thereof. But the prosecution case is that Surajpal Singh had recovered those documents. That apart, the Army Headquarters opined that information contained in the documents does not have strategic/operational value but if disclosed to unauthorised persons can be prejudicial to safety, security and interest of the state. The expert has also opined that information has no utility for any present or potential enemy, but can be utilized by terrorists/saboteurs to target vulnerable infrastructure and army installation for causing damage to these. The expert further opined that the information is both directly

and indirectly connected with the defence matters of the country.

Now in the entire conversations, produced by the prosecution which I have seen, there is no discussion with Rana (Pakistan) nor there is any whisper about any information being conveyed about those documents to him or anybody. At the most, the prosecution case itself is that information was conveyed to Rana by Surajpal Singh and it is not the case of the prosecution that any information was conveyed by petitioner-Sukhrpeet Kaur. This is all about the evidence collected by the CBI, which has been filed in the supplementary report.

Having gone through the report filed by the Punjab police initially and reply by way of affidavit dated 23.07.2013 of Deputy Superintendent of Police, Sub Division Valtaha Camp at Bhikhiwind, District Tarn Taran, I find that whatever has been stated by the CBI in the supplementary report seems to be repetition of what was stated in the investigation made by the Punjab police, but for some further investigation.

Section 5 of the Act reads thus:-

“5. Wrongful communication, etc., of information

(1) If any person having in his possession or control any secret official code or password or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, 18[or which is likely to assist, directly or indirectly, an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States or which has been made or obtained in contravention of this Act,] or which has been entrusted in confidence to him by any person holding office under Government, or which he has obtained or to which he has had

access owing to his position as a person who holds or has held office under Government, or as person who holds or has held a contract made on behalf of Government, or as a person who is or has been employed under a person who holds or has held such an office or contract-

(a) willfully communicates the code or password, sketch, plan, model, article, note, document or information to any person other than a person to whom he is authorized to communicate it or a Court of Justice or a person to whom it is, in the interests of the State, his duty to communicate it; or

(b) uses, the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety of the State; or

(c) retains the sketch, plan, model, article, note or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it, or willfully fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or

(d) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the sketch, plan, model, article, note, document, secret official code or password or information;

he shall be guilty of an offence under this section.

(2) If any person voluntarily receives any secret official code or password or any sketch, plan, model, article, note, document or information knowing or having reasonable ground to believe, at the time when he receives it, that the code, password, sketch, plan, model, article, note, document or information is communicated in contravention of this Act, he shall be guilty of an offence under this section.

(3) If any person having in his possession or control any sketch, plan, model, article, note, document or information, which relates to munitions of war communicates it, directly or indirectly, to any foreign power or in any other manner prejudicial to the safety or interests of the State, he shall be guilty of an offence under this section.

19[(4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.]”

In accordance with the discussion made by me above and looking to the scheme of Section 5 of the Act, I find there is absolutely no material even remotely connecting the petitioner with the alleged

crime. In so far as the offence under Section 120-B IPC is concerned, again, there is not even a single allegation about conspiracy made by the petitioner to commit offence under Section 5 of the Act. I, therefore, hold that there is no material whatsoever in the original charge-sheet or the supplementary report by the CBI against petitioner-Sukhpreet Kaur to take cognizance for the offences under Section 120-B IPC and Section 5 of the Act.

Now coming to order dated 03.09.2015 (Annexure P-9) taking cognizance. I find that the trial Court has recorded the following reasons for taking cognizance as under:-

“4. The investigation has further revealed that accused Surajpal Singh and Sukhrpreet Kaur came in contact with one Rana Mohammad of Pakistan in April 2012 at Wagha Border during a religious trip and thereafter, they remained in contact with each other telephonically. The State police after getting permission of the concerned authority recorded their conversation during the period August 2012 to September 2012 which also revealed their connection with said Rana of Pakistan. The conversation also revealed that they were involved in sending information/documents relating to defence and important places of India to Rana of Pakistan. The investigation has further revealed that accused Harbhagwant Singh @ Harji was arrested by the State police on 04.12.2012. However, no evidence emerged against him regarding his connection with Rana of Pakistan. No incriminating documents/ Narcotics were recovered from him by the State Police.

8. It has also been found during investigation that Surajpal Singh and Sukhpreet were in contact with one Rana Mohammad of Pakistan telephonically and when their conversation was recorded by the State Police, it was revealed that they were involved in sending information/documents related to defence and important places of India to Rana of Pakistan. So, the contention of learned Assistant Public Prosecutor for the CBI to the effect that there are sufficient grounds for taking cognizance of offence under Section 120-B of Indian Penal Code and Section 5 of Official Secrets Act against accused Sukhpreet Kaur and Surajpal Singh is well founded and is liable to be sustained in view of the

fact that investigation clearly shows that some secret documents, which could be prejudicial to the safety and interest of the State if disclosed to some unauthorised persons, were recovered from the possession of accused Surajpal Singh and they were having contacts with one Rana of Pakistan and were supplying information to him telephonically relating to the defence and important places of India.

9. *Accordingly, cognizance of offences under Section 120-B of the Indian Penal Code and Section 5 of the Official Secrets Act of the Indian Penal Code is hereby taken against accused Sukhpreet Kaur and Surajpal Singh.”*

In order to find out the correctness of above vague reasons given by the trial Court in impugned order dated 03.09.2015 (Annexure P-9), I have gone through the entire record and I find that the trial Court has merely made general observations without indicating any specific incriminating material against the petitioner, though, there appears to be some material against Surajpal Singh in the form of conversation, but then since after his death nothing further can be done. To my mind, the above reasons given by the trial Court taking cognizance of the petitioner cannot stand the test of scrutiny by this Court. In the result, I find that the supplementary report (Annexure P-8) filed by the CBI and impugned order dated 03.09.2015 (Annexure P-9) passed by the learned trial Court taking cognizance deserve to be quashed and set aside. As stated earlier, the other prayers made by the petitioner will have to be rejected for the reasons given by me above. In the result, I make the following order:-

ORDER

- (i) CRM-M-20003 of 2013 is partly allowed;
- (ii) Prayer to direct reinvestigation qua respondent No.7 and for taking action against CBI for contempt of Court is

rejected.

(iii) Rule is made absolute in terms of amended prayer in CRM No.39785 of 2016, which is reproduced below:-

“It is, therefore, respectfully prayed that the instant application may kindly be allowed and this Hon'ble Court may be pleased to set aside and quash the supplementary report under Section 173(8) Cr. P.C. (Annexure P-8) filed by the Central Bureau of Investigation against the petitioner in the Court of learned Special Judicial Magistrate, CBI, Punjab, Patiala as well as the order dated 03.09.2015 passed by the learned trial Court (Annexure P-9), whereby, the cognizance has been taken, inter alia, against the petitioner in the interest of justice, equity and fair play.

It is further prayed that all further proceedings before the learned trial Court may kindly be stayed.

It is further prayed that the petitioner may kindly be exempted from filing of certified/original copies of Annexures P-8 to P-10 and filing of true typed copy of Annexures P-8 to P-10 may kindly be exempted and permission may kindly be granted to place on record the photocopies of the same in the interest of justice and fair play.”

(iv) Supplementary report (Annexure P-8) as well as order dated 03.09.2015 (Annexure P-9) are quashed;

(v) No order as to costs.

(A.B. CHAUDHARI)
JUDGE

August 24, 2017

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No