

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

CRM-M-20388 of 2017(O&M)

Date of Decision: 25.10.2017

Meenu Sharma

... Petitioner

Versus

Narender Kumar & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE LISA GILL

Present: Mr. Ashit Malik, Advocate,
for the petitioner.

LISA GILL, J.(Oral)

This petition has been filed for setting aside the order dated 08.05.2017(Annexure P-4), whereby the application of the petitioner/complainant for re-investigation/further investigation of the case has been dismissed.

Brief facts necessary for the adjudication of the present petition are that FIR No.1195, dated 08.12.2013 under Sections 323/498-A/406/34 IPC was registered at the instance of the complainant/petitioner. Final report under Section 173 Cr.P.C. was presented on 10.11.2016 against respondents No.1 to 3. An application, Annexure P-2 was moved by the petitioner/complainant seeking re-investigation/further investigation of the case on the ground that the investigating officer has not faithfully recorded her statement as well as of her father under Section 161 Cr.P.C. Moreover, it was averred that the complainant's statement under Section 161 Cr.P.C did not bear her signatures. It is further averred in the application that the investigating officer did not effect the recovery of the articles i.e. Streedhan of the complainant/petitioner. Consequently, the unfair investigation conducted by the police has prejudiced the case of the prosecution.

Therefore, further and proper investigation was required in this case.

The said application was dismissed by the learned Judicial Magistrate, 1st Class, Karnal, vide impugned order dated 08.05.2017 (Annexure P-4). It is observed therein that a request for re-investigation of the matter can be moved only by the investigating agency and not by the complainant. Moreover, there is no requirement of a statement under Section 161 Cr.P.C to be signed by the complainant or her father. Aggrieved therefrom, the present petition has been filed.

Learned counsel for the petitioner submits that serious prejudice would be caused to the petitioner in case, the proper statements of the petitioner i.e. complainant and her father giving all the details of the matter are not recorded. It is, thus, submitted that this petition be allowed.

I have heard learned counsel for the petitioner and perused the file with his assistance.

It is not in dispute that final report under Section 173 Cr.P.C in this case has been presented against respondents No.1 to 3. Charge qua the said respondents admittedly stands framed. The Hon'ble Supreme Court in Amrutbhai Shambhubhai Patel Vs Sumanbhai Kantibhai Patel & ors., 2017(4) SCC 177, has specifically held that an application for re-investigation/further investigation at the instance of the complainant is not maintainable and it can only be moved by the investigating agency. It is observed by the Hon'ble Supreme Court as under:-

“49. In contradistinction, Sections 156, 190, 200, 202 and 204 of the Cr.P.C clearly outline the powers of the Magistrate and the courses open for him to chart in the matter of directing investigation, taking of cognizance, framing of

charge, etc. Though the Magistrate has the power to direct investigation under Section 156(3) at the pre-cognizance stage even after a charge-sheet or a closure report is submitted, once cognizance is taken and the accused person appears pursuant thereto, he would be bereft of any competence to direct further investigation either suo motu or acting on the request or prayer of the complainant/informant. The direction for investigation by the Magistrate under Section 202, while dealing with a complaint, though is at a post-cognizance stage, it is in the nature of an inquiry to derive satisfaction as to whether the proceedings initiated ought to be furthered or not. Such a direction for investigation is not in the nature of further investigation, as contemplated under Section 173(8) of the Code. If the power of the Magistrate, in such a scheme envisaged by the Cr.P.C to order further investigation even after the cognizance is taken, accused persons appear and charge is framed, is acknowledged or approved, the same would be discordant with the state of law, as enunciated by this Court and also the relevant layout of the Cr.P.C. Adumbrated hereinabove. Additionally had it been the intention of the legislature to invest such a power, in our estimate, Section 173(8) of the Cr.P.C would have been worded accordingly to accommodate and ordain the same having regard to the backdrop of the incorporation thereof. In a way, in view of the three options open to the Magistrate, after a report is submitted by the police on completion of the investigation, as has been amongst authoritatively

enumerated in Bhagwant Singh (supra), the Magistrate, in both the contingencies, namely; when he takes cognizance of the offence or discharges the accused, would be committed to a course, whereafter though the investigating agency may for good reasons inform him and seek his permission to conduct further investigation, he suo motu cannot embark upon such a step or take that initiative on the request or prayer made by the complainant/informant. Not only such power to the Magistrate to direct further investigation suo motu or on the request or prayer of the complainant/informant after cognizance is taken and the accused person appears, pursuant to the process, issued or is discharged is incompatible with the statutory design and dispensation, it would even otherwise render the provisions of Sections 311 and 319 Cr.P.C., whereunder any witness can be summoned by a Court and a person can be issued notice to stand trial at any stage, in a way redundant. Axiomatically, thus the impugned decision annulling the direction of the learned Magistrate for further investigation is unexceptional and does not merit any interference. Even otherwise on facts, having regard to the progression of the developments in the trial, and more particularly, the delay on the part of the informant in making the request for further investigation, it was otherwise not entertainable as has been rightly held by the High Court.”

Learned counsel for the petitioner is unable to point out any illegality and infirmity in the impugned order, which calls for interference by this Court in exercise of jurisdiction under Section 482 Cr.P.C. Needless to

say, the petitioner can raise all pleas available to her before the learned trial court at the appropriate stage.

Consequently, this petition is dismissed.

25.10.2017
monika

Whether speaking/reasoned
Whether reportable

(LISA GILL)
JUDGE
Yes/No
Yes/No