

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Criminal Misc. No. M-26269 of 2015 (O&M)

Date of decision : March 07, 2017

Renuka

..... Petitioner

VERSUS

State of Haryana and others

..... Respondents

**CORAM : HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE A.B. CHAUDHARI**

PRESENT: Mr. Manoj Bajaj, Advocate, for the petitioner.
Mr. Deepak Balya, Deputy Advocate General, Haryana,
for respondents No.1 to 4.
Mr. J.S. Bedi, Sr.Advocate, with
Ms. Diya Sodhi, Advocate, for respondent No.5.

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1. Whether Reporters of local newspapers may be allowed to see the judgment? YES/NO
2. To be referred to the Reporter or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

Per A.B. Chaudhari, J.

By the present petition, petitioner-Renuka has put to challenge the revisional order dated 31.07.2015 (Annexure P-13), passed by the learned Additional Sessions Judge, Karnal, in Criminal Revision No.44 of 2015, by which he declined to interfere with the order made by the learned Chief Judicial Magistrate, Karnal, dated 21.03.2015 (Annexure P-11), by which the Chief Judicial Magistrate had allowed further investigation in

Indian Penal Code and Section 25 of the Arms Act, registered at Police Station Civil Lines, Karnal, as per request application dated 20.03.2015 made by Station House Officer, Police Station Civil Lines, Karnal.

Facts :

This Court had registered CWP No.1100 of 2011 (Court on its own motion versus State of Haryana) and by order dated 18.04.2012, while disposing of the writ petition, a Special Investigating Team (for short 'the SIT') was constituted for making investigation on the representation made by Shri Ranbir Singh, a practising Advocate of Karnal, father of the present petitioner-Renuka. The SIT, accordingly, made some investigation and submitted its report dated 21.11.2014 to this Court. In the said report, the SIT made certain observations in paragraphs (A) (i) to (x), B and C (i) to (iii). After filing of the status report by the SIT, Station House Officer, Police Station Civil Lines, Karnal, filed an application on 10.03.2015 (Annexure P-9). It appears from the reading of the said application that a compliance report was to be submitted in CWP-1100-2011, pursuant to the recommendations made by the SIT, on or before 28.04.2015. After filing of the said application, Station House Officer, Police Station Civil Lines, Karnal, again filed one more application on 20.03.2015 (Annexure P-10), which was styled as application for early hearing of the earlier application. In this application, in para-3, it was stated that the Advocate General, Haryana, Chandigarh under Office Memo No.15573 dated

07.03.2015 had directed him to file a status report as the case was fixed before the High Court and the hearing in the petition was fixed for 28.04.2015 and if something happens, it will be the responsibility of the Station House Officer. It is in this background that he filed the early hearing application on 20.03.2015. On 21.03.2015, the trial Court made the order granting permission under Section 173(8), Code of Criminal Procedure, to conduct further investigation by saying that the application was allowed. Petitioner-Renuka filed an application for setting aside the said order dated 21.03.2015 but the Chief Judicial Magistrate, Karnal, held that in view of the bar under Section 362, Code of Criminal Procedure, there was no power to review the said order dated 21.03.2015 and, therefore, dismissed that application filed by petitioner-Renuka. Petitioner-Renuka, thereafter, filed a revision before the Additional Sessions Judge, Karnal, vide Criminal Revision No.44 of 2015. The revisional Court heard the revision and held that since CWP-1100-2011 was pending consideration for 04.08.2015 before the High Court, and since the SIT constituted by the High Court vide order dated 18.04.2012, had recommended further investigation under Section 173(8), Code of Criminal Procedure, he would not interfere in the revision and also upheld the reason given by the Chief Judicial Magistrate about the bar under Section 362, Code of Criminal Procedure.

CWP-1100-2011 came up before the Division Bench of this Court and it made an order dated 18.11.2015, leaving it

open to the parties to seek their remedies according to law.

In the present petition, challenge is to these two orders; namely, revisional order dated 31.07.2015 as well as the order passed by the Chief Judicial Magistrate, as aforesaid.

In support of the present petition, learned counsel for the petitioner made the following submissions:-

- i) the learned Chief Judicial Magistrate could not have granted permission, that too without hearing petitioner-Renuka and by making the order upon early hearing application filed by the Station House Officer and, thus, the Chief Judicial Magistrate has made haste in pre-poning the case and making the order;
- ii) in the criminal complaint case filed by petitioner-Renuka, arising out of the same incident which is subject matter of FIR No.182 dated 23.04.2008, the trial Court has already recorded conviction against accused-Ram Kumar under Section 302, Indian Penal Code, on 09.05.2014. He, therefore, submitted that the impugned orders will have to be set aside and the permission granted to further investigate will have to be set aside.

Per contra, Mr. J.S. Bedi, learned Senior Advocate, appearing for the contesting respondent No.5, vehemently opposed this petition and submitted that:

- i) Even if the trial has concluded in the private complaint case filed by petitioner-Renuka, the legal position is that further investigation can still be

made and he cited the judgment rendered in Popular Muthiah vs. State represented by Inspector of Police, 2006(3) RCR (Criminal) 527. Not only that even by remand or in pending appeal (Ram Kumar vs. Renuka), further investigation can be ordered by this Court while deciding the said appeal.

ii) The legal position is that Section 173(8), Code of Criminal Procedure, does not contemplate a permission for further investigation but it is by way of precaution and practice, the police authorities approach the Magistrate placing all the papers before the Magistrate and seek permission for further investigation. It is nothing but a healthy practice but, then, there is no mandate in law that the permission is sine qua non for further investigation.

iii) In the present case, since the investigation was ordered by this Court by constituting a SIT, permission, if any, required (though the same is not necessary) should have been sought from this Court, even if CWP-1100-2011 was disposed of by this Court.

iv) The order made by the Magistrate, indeed, would be of no consequence because Section 173(8), Code of Criminal Procedure, does not contemplate

any such provision for further investigation. Thus, Mr. J.S. Bedi, learned Senior Advocate, prayed for dismissal of the petition.

We have heard learned counsel for the rival parties at length.

It is not necessary for us to refer to the large number of judgments cited by the learned counsel for the rival parties. Upon reading of the various judgments cited by the learned counsel for the rival parties, what we find is that a bare reading of Section 173(8), Code of Criminal Procedure, does not contemplate seeking any permission from the Magistrate but, then, there is a sound and healthy practice adopted by the police authorities in seeking such permission from the Magistrate or from the concerned court, obviously, to get enlightenment during the course of investigation and also to have transparency in the process of further investigation.

Now, leaving the aforesaid legal position as it is, we refer to the relevant facts in this case. This Court on 18.04.2012 made the following effective order in CWP-1100-2011, which we quote hereunder:-

“8. The findings recorded by District and Sessions Judge in his report dated 2.3.2010 stare in the face. The Superintendent of Police, Karnal, in his affidavit has taken a contrary stand in respect of tempering of police file/disappearance of important documents. We have heard learned counsel for the parties and after perusing the paper book we feel that it is a fit case which needs thorough investigation by a Special Investigation Team of high ranking police officers. Accordingly, we direct the respondent State of Haryana through its Director General of

Police to constitute a Special Investigation Team in the overall supervision of Shri V. Kamraja, IPS, Inspector General of Police. The team shall be comprised of Shri Hitesh Yadav, Deputy Superintendent of Police, Faridabad; Shri Ashok Bishnoi, Deputy Superintendent of Police, Crime Branch, Madhuban, Karnal; and Shri Sheetal Jangra, Deputy Superintendent of Police, office of the Director General, Panchkula. The Special Investigation Team shall go into the whole gamut of disappearance of documents from the police file. The needful shall be done within a period of three months from the date of receipt of a copy of this order. The action be taken on the report of the Special Investigation Team in accordance with the findings recorded by it. A copy of the report of the Special Investigation Team shall also be placed on the record of this case.

9. The petition stands disposed of.”

After constitution of the SIT under the said order, the SIT submitted its report in the above disposed of petition on 21.11.2014. The relevant portion of the report of the SIT is quoted below for reference:-

A) During the course of enquiry we also observed the following lapses in the investigation of case FIR No. 182 of 2008 P.S. Civil Lines, Karnal, for which further investigation u/s 173 (8), of the CrPC is required :-

- (i) Zimnis were written in a single day using the same pen. The inference drawn from the above is that the investigation has not been done in a natural course of action and hence, it creates lot of doubts regarding the tampering of records.
- (ii) Even though the PCR team reached the scene of occurrence within no time, followed by the other senior officers including the FSL team, surprisingly, the scene of crime had not been photographed or videographed, as in other cases of the similar nature.

- (iii) It is also glaringly evident that the FSL team failed to conduct the Nitrate test immediately, to ascertain; whether Mr. Ram Kumar Kalyan was involved in the firing incident or not.
- (iv) Strangely, this test (Nitrate Test) was done subsequently on the second day of the incident and thereby losing the evidence which could have proved very crucial to the police as to whether Mr. Ram Kumar was involved or not. This is totally uncommon the conduct the test while he was very much present at the scene of crime. This act of police team is not above board.
- (v) As per the FSL report the two gun shots, fired at Sharamveer were fatal, if the first shot is assumed to be fatal, then the question comes here is, as to who had fired the second shot? This question is not answered either by the investigation officer or by the FSL officer.
- (vi) If Sharamveer had not killed himself who could have killed him. This question has also not been discussed in the investigation.
- (vii) From the above, it is clear that someone other than the deceased is involved in this case. Who that someone is; is a question that investigation has not clearly answered.
- (viii) It is also observed during the course of enquiry that the supervisory officers at the level of DSP and SP had not paid sufficient attention.
- (ix) The licensed weapon of Mr. Ram Kumar Kalyan was deposited in the gun house. It defies logic because the very purpose for which the license was obtained (for his personal safety) is defeated by depositing the weapon in the gun house. If there is no need for the weapon; why did he take the trouble to apply for a license & purchase the weapon in the first place.
- (x) That the investigating officer had not visited the house of Ranbir Singh, to ascertain whether the weapon was actually taken by Sharamveer without the knowledge of Ranbir Singh or whether his Almirah was broken into,

as reported by State Crime Branch in their investigation. This is something that should be done within no time of the happening of any incident.

B) That from the perusal of the file we observe that affidavits of Ram Kumar, Omlata Kalyan and Renuka were taken into possession by Sh. Harbans Lal and Ishwar Sharma, SI during investigation of this case and were removed from the police file. The relevant zimmies and statements of witnesses recorded under section 161 Cr.P.C. on the lines of above affidavits were also removed from the police files.

C) In order to ascertain the reasons mentioned in the enquiry report as above the SIT recommends,

- i) Further investigation under section 173 (8) of CrPC of case FIR No. 182/2008 PS Civil Lines, Karnal.
- ii) Registration of a criminal case under relevant provisions of law for the disappearance of documents from Police file and investigate.
- iii) Suitable departmental action against the erring Police officers who have failed to perform their duties as expected of them.”

After submission of the said report by the SIT, the petition came up before this court and this Court made the following order dated 18.11.2015, which is quoted hereunder:-

“This Court passed an order on 18.04.2012 constituting a Special Investigation Team to go into the whole gamut of disappearance of documents from the police file. The needful was to be done within a period of three months. Thereafter, action on the report of Special Investigation Team was ordered to be taken in accordance with the findings recorded by it. Admittedly, Special Investigation Team has submitted its report.

Mr. K.S. Sidhu, Senior Advocate, learned counsel for the complainant, disputes the jurisdiction of the Special Investigation Team to go into the issues other than removal of

the documents from the police file. However, the said aspect does not fall within the jurisdiction of this Court as the writ petition has been finally decided. The only direction was for the Special Investigation Team to submit its report.

Since report has been filed, no further action is called for in the present writ petition.

It shall be open to the parties to seek their remedies against any action taken in pursuance of the report of the Special Investigation Team in accordance with law.”

It is true that, in the meanwhile, the private criminal complaint case was decided, resulting into conviction of Ram Kumar for murder vide Criminal Complaint No.SC/0600010/2010 decided on 09.05.2014 and the appeal against conviction and sentence is pending in this Court and has been finally heard by this Court. We are unable to accept the contentions raised by Mr. Bajaj that merely because conviction was recorded by the Sessions Court against Ram Kumar, the application filed by the Station House Officer for further investigation could not have been entertained. The reason is that the said trial related to the alleged role of Ram Kumar and his wife in the alleged murder case, whilst FIR No. 182 dated 23.04.2008 was filed by Ram Kumar about the incident of 22.04.2008 and further application made by him on 28.04.2008 to the police in continuation of FIR No.182 dated 23.04.2008.

We have already noted the legal position, as aforesaid, that Section 173(8), Code of Criminal Procedure, does not contemplate seeking any permission from the Magistrate for further investigation and, therefore, according to us, the order

made by the Chief Judicial Magistrate granting permission is of no consequence and is merely superfluous.

It is not in dispute that this Court, vide order dated 18.04.2012, had directed constitution of a SIT and the compliance report was to be submitted before this Court by the SIT, which was accordingly filed on 21.11.2014. Order dated 18.11.2015 was made by this Court in CWP-1100-2011, as aforesaid, leaving the parties to adopt their remedies. A careful perusal of the recommendations and observations made by the SIT, quoted by us above, shows that the SIT had, inter alia, recommended registration of a criminal case for disappearance of documents from the police file and investigation. It appears that a criminal case had been registered pursuant to the said report against some police officers. It is for the concerned investigating agency, now, to decide the course of action after registration of a criminal case relating to disappearance of documents and we cannot say anything further. The other recommendation is for taking suitable departmental action against the erring police officers who, according to the SIT, had failed to perform their duties. Equally, the job is left to the police department and this Court would not make any comment as to the course of action to be adopted by the department in the matter of departmental action. The first recommendation is for further investigation into FIR No. 182 dated 23.04.2008. The same is based on the observations made in para (A) (i) to (x). The observations in paras A(i) and (viii) relate to the flaw in

maintaining the police case diaries upon writing of the ziminies by the same pen on a single day and supervision by higher officers. As to para A(ix), the same is wholly irrelevant.

We do not think that the above observations would have any relevance for further investigation in FIR No. 182 dated 23.04.2008.

Insofar as paras (A) (ii), (iii), (iv), (v), (vi), (vii) and (x) are concerned, the observations therein were clearly the subject matter of appreciation of evidence by the trial Court in the murder trial which ultimately recorded the order of conviction and as well as this Court which has heard CRA-D No.922-DB of 2014, filed by Ram Kumar against his conviction. Now this Court has decided the said criminal appeal and recorded its findings on all the points, in detail. In the light of those findings, according to us, the question of making any further investigation does not arise. Nor there is any question of remand for the reasons recorded in the said judgment. The perusal of FIR No. 182 dated 23.04.2008 would clearly reveal that Ram Kumar had given the first information about the incident that had taken place in the night of 22.04.2008. The trial that was held in Sessions Case No.838 of 2013 was only about the same incident dated 22.04.2008 though projected in a different manner by Renuka. The judgment of this Court in CRA-D No.922-DB of 2014 would, thus, obviously achieve finality qua the incident dated 22.04.2008 and its investigation and trial even in relation to FIR No. 182 dated 23.04.2008. As to the

application dated 28.04.2008 given by Ram Kumar the same is supplementary and did not form the part of the said investigation, trial and the appellate proceedings.

In the light of the above discussion, further investigation in question in FIR No. 182 dated 23.04.2008 will not be necessary. In the result, following order is inevitable:-

ORDER :

- i) Criminal Misc. No. M-26269 of 2015 is allowed;
- ii) Order dated 21.03.2015 (Annexure P-11) passed by the Chief Judicial Magistrate, Karnal, and the revisional order dated 31.07.2015 (Annexure P-13), passed by the learned Additional Sessions Judge, Karnal, are quashed and set aside; and
- iii) the prayer for further investigation sought by Station House Officer, Police Station Civil Lines, Karnal, by application dated 20.03.2015, is rejected. Consequently, the said application is dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(A.B. CHAUDHARI)
JUDGE

March 07, 2017
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