

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

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CRM-M No. 29226 of 2017
Date of Decision: 07.10.2017

Sanjay Jain

..... Petitioner

Vs.

State of Punjab and others

..... Respondents

CORAM: HON'BLE MRS. JUSTICE JAISHREE THAKUR

Present: Ms. Sheenu Sura, Advocate
for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab.

JAISHREE THAKUR J. (ORAL)

This is a petition under Section 482 of the Code of Criminal Procedure praying for re-investigation of the case registered as FIR No. 25 dated 26.02.2017 at Police Station Phagwara, District Kapurthala (Punjab) under Sections 304-B and 498-A of the Indian Penal Code, through an Independent Agency or by a Senior Police Officer.

In brief, the petitioner has submitted that his daughter-Raviya, was married with one Nakul Kapoor on 02.05.2014. Out of this wedlock, a son was born on 11.05.2015. In October, 2016 the daughter of the claimant-petitioner informed her parents that there was a demand for an amount of Rs. 2 lacs from Nakul Kapoor. Eventually, on account of demand of dowry a dispute arose between the parties, resulting in the death of the daughter of the petitioner. An investigation was conducted by ASI Ram Lal, and he forwarded the challan to the Court of Illaqa Magistrate.

Aggrieved against the hurry in which the challan was

presented, the instant petition has been filed.

Learned Counsel appearing on behalf of the petitioner argues that the investigation has not been carried out fairly and the challan has been filed in a hurried manner. It is further argued that no site plan of the room was prepared. It is also argued that the matter was put up before the District Attorney for vetting who opined that there should be further investigation. However, the challan has been presented without following the opinion of the District Attorney.

Reply has been filed by learned State Counsel-Luvinder Soffat, AAG, Punjab, in the matter and same is taken on record.

Learned counsel for the respondent-State argues that after conducting investigation the challan was prepared on 17.03.2017 and presented before the trial Court on 10.04.2017 after approval from the authorities. It is further argued that the challan was presented after investigation and on the material available before it. It is also argued that after submission of the challan, charges against the petitioner have been framed and the case is under trial and fixed for hearing on 09.10.2017. As such after the presentation of the challan and framing of charges, this Court does not have jurisdiction to entertain the instant matter.

I have heard learned counsel for the parties and have also perused the case pleadings.

Admittedly, the case of death of daughter of the petitioner was investigated by the Investigating Officer and, therefore, challan has been presented in the Court and charges framed.

A short question before this Court would be, whether after the

presentation of challan, a fresh/ re-investigation can be ordered. This matter was dealt with in detail by the Hon'ble Supreme Court in the case of “**Vinay Tyagi Vs. Irshad Ali @ Deepak and Ors. (2013) 5 SCC 762**”, wherein it has been held as under :

15. A very wide power is vested in the investigating agency to conduct further investigation after it has filed the report in terms of Section 173(2). The legislature has specifically used the expression ‘nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Section 173(2) has been forwarded to the Magistrate’, which unambiguously indicates the legislative intent that even after filing of a report before the court of competent jurisdiction, the Investigating Officer can still conduct further investigation and where, upon such investigation, the officer in charge of a police station gets further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the prescribed form. In other words, the investigating agency is competent to file a supplementary report to its primary report in terms of Section 173(8). The supplementary report has to be treated by the Court in continuation of the primary report and the same provisions of law, i.e., sub-section (2) to sub-section (6) of Section 173 shall apply when the Court deals with such report .

35. We may also notice here that in the case of S. Papaiah (supra), the Magistrate had rejected an application for reinvestigation filed by the applicant primarily on the ground that it had no power to review the order passed earlier. This Court held that it was not a case of review of an order, but was a case of further investigation as contemplated under Section 173 of the Code. It permitted further investigation and directed the report to be filed.

The prayer made in this petition is for reinvestigation of the case by another independent agency or another Senior Police Officer which per se is not permissible as per a judgment reported as “**Mithabhai Pashabhai Patel and others Vs. State of Gujarat (2009) 6 SCC 332**”, wherein it has been held that 'further investigation' and 'reinvestigation' stand on a different footing. It has been held as :

“ 13. It is, however, beyond any cavil that 'further investigation' and 'reinvestigation' stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a "State" to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no superior Court would ordinarily issue such a direction. Pasayat, J. in Ramachandran Vs. R.Udhayakumar [(2008)5 SCC 413] opined as under:-

It is, however, beyond any cavil that 'further investigation' and 'reinvestigation' stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a "State" to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no superior Court would ordinarily issue such a direction. “**Pasayat, J. in Ramachandran Vs. R.Udhayakumar [(2008)5 SCC p. 415]**” opined as under:-

"7. At this juncture it would be necessary to take note of **Section 173** of the Code. From a plain reading of the above section it is evident that even after completion of investigation under Sub-Section (2) of **Section 173** of the

Code, the police has right to further investigate under Sub-Section (8), but not fresh investigation or reinvestigation."

A distinction, therefore, exists between a reinvestigation and further investigation." Therefore, it is contended that there is a world of difference between 'further investigation' and 'reinvestigation'."

Therefore, in view of the judicial pronouncement there is no provision for 'reinvestigation' and the recourse would be for further investigation if so warranted.

Petition stands dismissed.

October 7th, 2017
jyoti-IV

(JAISHREE THAKUR)
JUDGE

Whether speaking/ reasoned:	Yes/No
Whether Reportable:	Yes/No