

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

CRM-M-4813-2017

Date of decision: 15.02.2017

Shiv Kumar Singh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Johan Kumar, Advocate,
for the petitioner.

Ritu Bahri, J.

This petition has been filed for quashing of the order dated 30.01.2017 (Annexure P-6) passed by the Additional Sessions Judge, Faridabad, whereby application filed by petitioner-complainant under Section 173 (8) Cr.P.C. for fair and further investigation of case FIR No.248 dated 16.04.2015, under Section 304-B read with Section 34 IPC, registered at Police Station, Saran, District Faridabad, has been dismissed.

In the present case, the challan had been presented on 13.10.2015 and the same was committed to the Court of Sessions on 14.12.2015. Thereafter, charge against the accused was framed and evidence was recorded. During the pendency of trial, an application under Section 319 Cr.P.C. for summoning of Brijesh Yadav, Ajit Yadav, Sunita and Neelam was filed on 02.03.2016, which was declined vide order dated 02.07.2016. Thereafter, an application under Section under Section 173 (8) Cr.P.C. was filed for fair and further investigation of the case, which was also dismissed vide impugned order dated 30.01.2017.

Reeta Nag Vs. State of West Bengal and others, 2009 (9) Supreme Court Cases 129, wherein it has been observed that after framing of charges, the Magistrate does not have the jurisdiction to order reinvestigation of the case. In the present case, the investigating agency had not applied for further investigation. Moreover, an application under Section 319 Cr.P.C. to summon the additional accused had already been dismissed vide order dated 02.07.2016.

Recently, Hon'ble the Supreme Court in **Dharam Pal Vs. State of Haryana and others**, 2016 (1) RCR (Criminal) 926, has observed as under:-

“18. In **Vinay Tyagi v. Irshad Ali**, 2013 (2) RCR (Criminal) 197, wherein a two-judge Bench, after referring to the decision in **Bhagwant Singh v. Commr. Of Police**, 1985 (2) RCR (Criminal) 259 has held thus:-

“However, having given our considered thought to the principles stated in these judgments, we are of the view that the Magistrate before whom a report under Section 173 (2) of the Code is filed, is empowered in law to direct “further investigation” and require the police to submit a further or a supplementary report. A three-Judge Bench of this Court in **Bhagwant Singh** has, in no uncertain terms, stated that principle, as aforenoticed.”

19. In the said case, the question had arisen whether a Magistrate can direct for re-investigation. While dealing with the said issue, the Court has observed:-

“At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct “further investigation”, “fresh” or “de nove” and even “reinvestigation”. “Fresh”, “de novo” and “reinvestigation” are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.”

And again:-

“Whether the Magistrate should direct “further investigation” or not is again a matter which will depend upon the facts of a given case. The

learned Magistrate or the higher court of competent jurisdiction would direct “further investigation” or “reinvestigation” as the case may be (1985) 2 SCC 537 be, on the facts of a given case. Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, reinvestigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation.”

20. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.”

After going through the impugned order and the law laid down by Hon'ble the Supreme Court in the aforesaid authorities, this Court is of the view that the application for further investigation of the case has rightly been dismissed by the trial Court. Moreover, application under Section 319 Cr.P.C. for summoning of additional accused has already been dismissed. At this stage, re-investigation cannot be ordered. No illegality, much less perversity, has been found in the impugned order warranting interference by this Court.

Dismissed.

15.02.2017
ajp

(RITU BAHRI)
JUDGE

Whether peaking/reasoned : Yes/No
Whether reportable : Yes/No