

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

**CWP No.15976 of 2017
Date of Decision: 02.08.2017**

Simarjit Singh Bains

....Petitioner

Vs.

The State of Punjab and others

....Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.R.S. Rai, Sr. Advocate, with
Mr.Anurag Arora, Advocate,
for the petitioner.

RAKESH KUMAR JAIN, J.

In this petition, the petitioner has made two prayers, namely,
(i) for the issuance of a direction for transferring of Sessions case No.36170 titled as State Versus Kamaljit Singh, pending in the Court of the Additional Sessions Judge, Ludhiana to the CBI Court being the jurisdictional Court and (ii) for quashing the order dated 07.06.2017 passed by the Additional Sessions Judge, Ludhiana by which charges have been framed against the petitioner and others.

Briefly stated, Major Gurjinder Singh Benipal registered an FIR No.113 dated 19.6.2009 under Sections 186/353/332/333/307/394/148/149/120-B of the Indian Penal Code, 1890 and Sections 25/27/54/59 of the Arms Act, 1959 at Police Station Sadar Ludhiana against number of persons including the petitioner. The investigation was conducted in the FIR by Special Investigating Team [SIT] constituted under the officer of the rank of Superintendent of Police.

After the investigation, challan/report under Section 173 of the Cr.P.C.

was filed on 12.9.2009 against nine persons including the petitioner and presented before the Court on 16.9.2009. On 19.10.2009, the Additional Director General of Police, Crime, Punjab constituted another Special Investigating Team [SIT] under a different Superintendent of Police, for conducting further investigation on 8 specific issues/points. The second SIT in the inquiry found that the petitioner and one Kamaljit Singh Karwal were innocent and further offences under Sections 333, 294, 307 and 120-B of the IPC read with Sections of the Arms Act were not found to be committed by them. The complainant-Major Gurjinder Singh Benipal being aggrieved of the report of the second SIT filed Criminal Misc. Petition No.37077 of 2009 alleging that the investigation conducted by the second SIT is not legally permissible. Another Criminal Misc.M.22903 of 2010 was filed by the petitioner and Kamaljit Singh Karwal for quashing of the order of the Additional Chief Judicial Magistrate, Ludhiana for refusing to supply the copies of CD and photographs under Section 207 of the Cr.P.C. to them. Both the aforesaid petitions were disposed of by this Court on 15.2.2012 by holding that the second SIT cannot be termed legally permissible and should not be taken into account for any purpose whatsoever. The petitioner filed SLP (Criminal) No.993 of 2013 (Criminal Appeal No.1414 of 2014) before the Supreme Court of India. The said petition was disposed of on 8.7.2014 with the following order: -

1. Leave granted.

2. This appeal, by special leave, is directed

against the judgment and order passed by the

High Court of Punjab and Haryana at

Chandigarh in Criminal Misc.M.No.37077 of 2009, dated 15.10.2012, whereby and whereunder, the High Court has quashed the order passed by the Additional Director General of Police (for short, "the ADGP"), Crime, Punjab, Chandigarh, dated 19.10.2009. The ADGP, by the said order, has directed to constitute the second Special Investigation Team (for short, "the second SIT") for the purpose of re-investigation of the matter on the 8 short points as noted by him in the said order.

3. The High Court by its impugned judgment and order has come to the conclusion that the ADGP ought not to have directed a Signature Not Verified re-investigation Digitally signed by Ramana Venkata Ganti by constituting the second SIT and therefore, quashed the result of the investigation conducted by the second SIT.

4. Aggrieved by the aforesaid judgment and order passed by the High Court, the appellant is before us in this appeal.

5. We have carefully perused the judgment and order passed by the High Court, the order passed by the ADGP and also

considered the issues raised by the learned counsel for the appellant and the respondent, who is appearing in-person. After going through the records, we are of the considered opinion that the re-investigation on the 8 points as recorded by the ADGP in its order dated 19.10.2009, if conducted by the Central Bureau of Investigation (for short, "the CBI") instead of the second SIT, would not cause any prejudice to any one of the parties.

6. In view of the above, while setting aside the judgment and order passed by the High Court, we now direct the CBI to conduct further investigation in this matter as suggested by the ADGP on the 8 points noticed by him in his order dated 19.10.2009. The CBI shall complete this exercise within three months' time from today and submit its report to the appropriate jurisdictional police authorities.

7. This appeal is disposed of in the aforesaid terms.

Ordered accordingly."

Thereafter, one Criminal Miscellaneous Petition No.4079 of 2015 was filed by the petitioner before the Supreme Court for seeking

modification of the order dated 8.7.2014. The said petition was allowed on 1.7.2015 in which the following order was passed: -

“Prayer sought for in the Criminal Miscellaneous petition is allowed and the order dated 08.07.2017 is modified by substituting the words “Jurisdictional Police Authority” with Jurisdictional Court.”

It is alleged that the CBI in compliance of the order of the Supreme Court registered an RCO512015(s)2007 dated 5.8.2015 under Sections 186, 353, 332, 333, 307, 394, 148, 149 & 120B of the IPC and Sections 25/27/54/59 of the Arms Act, 1959. Thereafter, the CBI conducted the investigation in terms of the order of the Supreme Court on the 8 issues/points and prepared a report dated 22.12.2015. The said report was submitted to the Court wherein the matter was pending much less also the challan was presented. The Additional Sessions Judge, Ludhiana passed the order of framing of charges on 7.6.2017 against the petitioner as well.

Learned counsel for the petitioner has vehemently argued that the jurisdictional Court was the Court of the CBI, therefore, the report by the CBI should have been presented before it or otherwise the direction can be issued by this Court to transfer the Sessions trial from the Court of Additional Sessions Judge, Ludhiana to the CBI Court. It is also submitted that the reinvestigation is not permissible rather further investigation can be conducted and supplementary report under Section 173(8) of the Cr.P.C. can be submitted.

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

The learned senior counsel for the petitioner has fairly conceded that insofar as the validity of the order of framing of charges dated 7.6.2017 is concerned, it can be assailed by way of a revision as the order of framing of charges is revisable. His main emphasis is on the transfer of the case from the Court of Sessions to the CBI Court on the ground that direction has been issued by the Supreme Court to submit the report by the CBI to the jurisdictional Court and for the CBI the jurisdictional Court would be the CBI Court.

After giving my thoughtful consideration to the contentions raised by learned senior counsel for the petitioner, I am of this view that there is no force in his submission because the challan in this case has already been presented before the jurisdictional Court, namely, the Court of Additional Sessions Judge, Ludhiana on 12.09.2009. The controversy started when after submission of the challan, the Additional Director General of Police vide his order dated 19.10.2009 constituted another SIT under a different Superintendent of Police for the purpose of conducting further investigation on eight specific issues and the Supreme Court vide his order dated 8.7.2014 directed the CBI to conduct further investigation only on the eight points noticed by the ADGP, Crime in his order dated 19.10.2009 and directed that after completing the exercise within the prescribed time the report be submitted to the jurisdictional Court. The mere fact that in terms of the order of the Supreme Court, the CBI has conducted the enquiry which would not make it a case triable by the CBI Court because the Supreme Court had issued directions only for further

investigation on eight points by the CBI and not by the SIT which was objected to by the complainant may be because of lack of faith in the local police but in any case, there was no direction by the Supreme Court that the matter has to be tried by the CBI Court. Had it been so, the Supreme Court would have, while passing the order, specifically directed that the matter would be heard by the CBI Court and would not have used the word 'jurisdictional Court' which apparently means that the Court which is already exercising its jurisdiction in the matter to which the challan has already been presented much before the order was passed by the ADGP, Crime for constituting second SIT.

Thus, to my mind, there is hardly any reason for this Court to interfere in this petition and as such the same is hereby dismissed though without any order as to costs.

02.08.2017*Vivek***(RAKESH KUMAR JAIN)
JUDGE***Whether speaking/reasoned* *Yes/No**Whether reportable* *Yes/No*