In the High Court of Punjab and Haryana at Chandigarh.

CRM-M-14391 of 2017 (O&M)
Date of Decision:- 10.7.2018

Lalita Prakash .....Petitioner

Versus

State of Haryana and another .....Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present : Mr. Akshay Kumar Jindal, Advocate
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

Mr. Ivneet Singh Pabla, Advocate
for respondent No.2.

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GURVINDER SINGH GILL, J.

1. The petitioner, mother of deceased Ajay Gupta, seeks setting aside of judgement dated 9.3.2017 passed by learned Additional Sessions Judge, Panchkula, whereby a revision petition challenging order dated 12.10.2016 passed by trial Court has been accepted and the order of the trial Court permitting further investigation in terms of Section 173(8) Cr.P.C. has been set aside.

2. Ajay Gupta, a professional cyclist, got killed when he was hit by a car which was allegedly being driven at a high speed and in a negligent manner by accused-respondent No. 2 Sunil Kumar. Ajay Kumar was removed to General Hospital, Sector 6, Panchkula, by the police where he was declared dead.

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3. FIR was registered against the accused for offences under Sections 304-A and 279 of IPC. Upon conclusion of investigation, challan was presented in the Court of JMIC Panchkula on 18.8.2016. However, the petitioner, mother of deceased, appeared before the Deputy Commissioner of Police, Panchkula on 5.10.2016 and submitted an application for further investigation in the matter wherein it was *inter-alia* averred that the deceased was a professional cyclist and had a passion for organising sports as well and had been cycling all over the world and had a good sense of traffic rules and regulations and that since the accused had fled away from the spot after commission of crime though he himself was a doctor, the same was indicative of his malafide intention. It was further submitted therein that CCTV footage of the cameras installed at Hotel Bella Vista and at other places in the vicinity should also be collected so as to establish the manner of accident.

4. Pursuant to the aforesaid application, the SHO, Police Station, Sector 5 Panchkula moved an application before the trial Court on 12.10.2016 seeking permission to further investigate the matter which was accepted by the learned Chief Judicial Magistrate, Panchkula on the same day and police was permitted to further investigate the matter.

5. The aforesaid order dated 12.10.2016 was challenged by the accused by way of filing a revision petition before the Court of Sessions and the learned Additional Sessions Judge, Panchkula, vide impugned judgement dated 9.3.2017 accepted the revision petition and set aside order dated 12.10.2016 *inter-alia* on the ground that the trial Court had permitted further investigation in the matter without issuing any notice to the complainant and

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also while observing therein that no valid reason had been given by the investigating officer warranting further investigation. It was further noticed that during further investigation the prosecution had recorded statements of the mother, wife of deceased, ASI Rakesh Kumar and of Ram Chander but there was nothing to show as to why their statements had not been recorded earlier and that such an act amounted to filling up lacuna in the case of prosecution.

6. Notice of this petition was issued to respondents. Respondent no.1, State of Haryana has filed its reply opposing the same. Respondent no. 2 is also represented by counsel, who also opposes the petition.

7. I have heard learned Counsel for the parties.

8. As per FIR, when the accident had taken place the deceased was alone and no one was accompanying him. However, the FIR was got recorded on the statement of ASI Rakesh Kumar who was present at the spot. The relevant extract from his statement reads as follows:

> "I am posted as Incharge of PCR-5, Sector 5, Panchkula. Today my duty was on Sankhala Chowk. One young man was going from Sector 5 towards Command Area, while cycling. At the same time, one Honda-City car bearing registration number CH-31-T-3977, being driven at a high speed and in grossly negligent manner came from the side of Sector-2 and at the same moment banged his car straight into the young man who was on cycle. That immediately on collision, the cyclist collided with the divider. That in the meanwhile PCR-1 also reached at the spot. The injured person was taken in PCR-1 to General Hospital, Sector 6 and was got admitted. Doctors after examining the injured declared him dead……. ……

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> …… Car driver ran away after leaving his car at the spot, whom I can identify. Legal action be initiated against the car driver whose name and address is not known"

9. One of the grounds which weighed with the Court of learned Additional Sessions Judge for setting aside order dated 12.10.2016 is that the said order had been passed without issuing any notice to the complainant. The said matter is no longer *res-integra* and stands well settled by Hon'ble Supreme Court in *1999(3) RCR (Criminal) 587, Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandadha Maharaj Vs. State of Andhra Pradesh*, wherein it has been held that the matter as regards further investigation is between the Court and the Investigating agency and that the accused is not required to be heard before ordering further investigation. The relevant extract reads as follows:

> "10. Power of the police to conduct further investigation, after laying final report, is recognised under Section 173(8) of the Code of Criminal Procedure. Even after the court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. This has been so stated by this Court in ***Ram Lal Narang v. State (Delhi Admn.), AIR 1979 Supreme Court 1791***. The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the court and seek formal permission to make further investigation.
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> 11. In such a situation the power of the court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would

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> only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As law does not require it, we would not burden the Magistrate with such an obligation."

10. The ratio of the above referred judgement leaves no manner of doubt that the revisional Court fell in error in holding that a notice was required to be issued to the complainant before passing any order for further investigation. Though I do find that the order dated 12.10.2016 is not a very detailed order but the present case is not such where the application for further investigation was filed at a highly belated stage. In fact when the said application was filed even the charges had not been framed and was filed within about a month of presentation of the challan.

11. The only dispute in the present case is as to whether offence under Section 304 IPC should also be added or not. Needless to mention that the Trial Court, at any stage is competent to alter charge. Even if charge for a lesser offence has been framed at an initial stage subsequently an offence triable by a Court of Session is found to have been committed, the trial Court is well within its jurisdiction to commit the matter to the Court of Sessions.

12. In the present case, after passing of impugned order, the prosecution has taken opinion of the Medical Board and has also recorded statements of some witnesses including statement of Sanjay Kumar son of Shankar who is stated to be key witness. Report of a Medical Board is certainly a vital piece of evidence and should not be kept away from the Court. Such opinion would certainly help the trial Court to adjudicate upon the matter effectively and

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reach at a just conclusion. It may here be mentioned that after the trial court had permitted further investigation and before the said order was set aside, the police during the said interregnum had filed a supplementary challan for offence under Section 304 IPC. It was thereafter when the present petition was filed that the proceeding before the trial court were stayed. The trial Court is yet to consider the question regarding framing of charges.

13. Having regard to the above stated facts, more particularly that the trial Court fell in error in holding that a notice was required to be issued to the complainant before permitting further investigation the matter, the impugned order dated 9.3.2017 cannot sustain and is hereby set aside. Since the trial Court is yet to consider the question as regards framing of charges, the trial court is directed to proceed with the matter in accordance with law and to look into both the challans i.e the challan initially filed as well as the supplementary challan so as to consider as to whether the facts constitute an offence triable by a Magistrate or as to whether any offence triable by a Court of Sessions is made out necessitating committing of the case to the Court of Sessions.

14. The petition stands accepted accordingly.

(Gurvinder Singh Gill)
Judge

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No

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