

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

**CRM-M-21436 of 2015
Decided on: 23.05.2018**

Tony @ Rajiv And Ors.

.....petitioners

versus

State of Punjab and Anr.

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr.Veneet Sharma, Advocate
for the petitioners.

Mr. Pawan Sharda, Sr. DAG, Punjab.

Mr. Amit Sharma, Advocate
for respondent No.2.

Rajbir Sehrawat, J.(Oral)

The present petition has been filed by Tony and six others seeking quashing of FIR No.130 dated 31st May 2012 under Sections 452, 323, 354, 506, 148, 149 IPC registered at Police Station Cantonment, Amritsar City, District Amritsar, with further prayer of quashing the order dated 14.03.2014 passed by the Ld. JMIC, Amritsar vide which the Magistrate refused to entertain the supplementary challan; which was in the form of cancellation report as well as the order dated 26.05.2015 passed by Ld. Addl. Sessions Judge, Amritsar, whereby the revision against the order

passed by the Magistrate was rejected.

The brief facts of the case are that the above said FIR was registered on the statement of respondent No.2 with the allegations that on 29.05.2012 at about 7.30 P.M. her relatives had come to meet her and when they were about to leave the house of respondent No.2 in their car, it struck against the car of petitioner No.7. On this account an altercation had taken place between the parties and petitioners No.1 to 6, who were also residents of the same street came there and grappled and abused the complainant. On that account the present FIR was registered.

After investigation of the crime, the report under Section 173 was filed by the police. However, Section 452 IPC was deleted by the police.

Thereafter, the police further investigated the matter and found that the allegations levelled by respondent No.2 in the FIR were false. There was a minor altercation between respondent No.2, her relatives and petitioner No.7 on account of the striking of the car with the car of petitioner No.7. However, further allegations levelled by respondent No.2 were found to be false. Accordingly, the supplementary report under Section 173 (8) Cr.P.C. dated 09.05.2013 was filed and presented before the Court of Magistrate. On presentation of the supplementary challan, the Magistrate recorded the statement of respondent No.2 in which she stated that she wanted the accused to be arrested in the crime. She further stated she has an objection to the cancellation report

submitted by the police. Thereafter, the Magistrate has passed the impugned order dated 14.03.2014; wherein he recorded that since the report under Section 173 has already been filed by the prosecution and the Court has taken cognizance of the offence, therefore, without permission of Court the supplementary report under Section 173 (8); with a cancellation report, which has been filed by the police, is not permissible under the law. It was further recorded that since the complainant herself also has registered her objections against the cancellation report, therefore, there is no merit in the cancellation report. The case will be proceeded further, accordingly.

Aggrieved against this order, the petitioners filed revision petition before the learned Additional Sessions Judge, Amritsar. However, the Revisional Court also rejected the argument of the petitioners by adopting the same reasoning. The Revisional Court while relying upon the judgment of this Court rendered in ***“Vikas Gupta Vs. State of Punjab 2002 (2) RCR (Criminal) 12 (P&H)”*** held that once the cognizance has been taken by the Magistrate, thereafter, the police does not have any power to file a supplementary challan by taking up the investigation suo motto and without permission of the Court. Accordingly, the revision was dismissed. Impugning the orders passed by the Courts below, the present petition for quashing of the orders; as well as the FIR; has been filed by the petitioners.

While arguing the case, learned counsel for the

petitioners has relied upon the judgment of the Hon'ble Supreme Court rendered in **2004 (2) RCR (Criminal) 836** titled as “**Zahira Habibulla H. Sheikh and Anr. Vs. State of Gujarat and Ors**”. and another judgment of this Court reported as **2008(2)RCR (Criminal)748** titled as “**Charanjit Singh @ Bittu Vs. State of Punjab**” to contend that under provision of Section 173 (8) there is no embargo upon the powers of the police for further investigation of the case without direction of the Court. It is submitted by the counsel that merely because Court has taken cognizance on the basis of the previous report filed by the police does not preclude the investigating agency from finding out further material, if the same can be helpful or relevant for resolution of the crime.

Learned counsel for respondent No.2 has fairly conceded that the proposition laid down by the Hon'ble Supreme Court in the judgment of **Zahira Habibulla** (supra) and **Charanjit Singh @ Bittu** (supra) governs the field. However, it is submitted by him, that only on the basis of this argument the FIR; for which the petitioners are facing prosecution; cannot be quashed. Still further, it is argued by the learned counsel that at the best, the Magistrate can be asked to apply his mind to the cancellation report and to arrive at the conclusion in accordance with the law regarding the supplementary challan filed by the investigating agency. Even learned State counsel has made his submission on the similar line.

Having heard the learned counsel for the parties, and

perusing the record with their able assistance, this Court is of the considered opinion that the argument raised by the learned counsel for the petitioners deserves to be sustained. The Hon'ble Supreme Court in the case of **Zihira Habibulla** (supra) has held as under:

“Sub-Section (8) of Section 173 of the Code permits further investigation, and even de hors any direction from the Court as such, it is open to the police to conduct proper investigation, even after the Court took cognizance of any offence on the strength of a police report earlier submitted”

This judgment has been followed by this Court in another judgment in case of **Charanjit Singh** (supra). In view of the above, there is no doubt left on the proposition of law that the police has the power to carry out the supplementary investigation even without any specific order of the Magistrate.

Accordingly, the orders passed by the Courts below deserves to be set aside, being based on non-sustainable reasoning.

However, merely because the orders passed by the Courts below, holding the supplementary investigation to be non-maintainable in law; are set aside; would not mean that either the FIR is required to be quashed or the accused would get clean chit ipso facto. In that case, the trial Magistrate would be required to apply his mind to the cancellation report, to arrive at a conclusion regarding that cancellation report after taking into consideration arguments to be pressed, if any, by the complainant, and to proceed further in accordance with law. Hence, the prayer of the petitioners for quashing of the FIR, as such, cannot be accepted and is liable to

be rejected. Accordingly, this petition is dismissed qua the prayer of quashing of the FIR.

In view of the above, the present petition is partly accepted. The order dated 14.03.2014 passed by Judicial Magistrate, 1st Magistrate, Amritsar and the order dated 26.05.2015 passed by Additional Sessions Judge, Amritsar are set aside.

It is further directed that the Magistrate shall proceed with the matter from the stage of filing of the cancellation report, apply his mind and shall proceed further in the matter in accordance with law.

Petition stands disposed of.

23rd May, 2018

Manju

**(RAJBIR SEHRAWAT)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No