

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr.No.113

CRM-M-44629-2017
Date of Decision:11.12.2018

Sucha Singh

....petitioner

Versus

State of Punjab and another

.....respondents

CORAM: HON'BLE MR.JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Sanjay Gupta, Advocate
for the petitioner

Mr.J.P.Ratra, DAG Punjab

Mr.Kamaldeep Singh Sodhi, Advocate
for respondent No.2

ARVIND SINGH SANGWAN, J. :

Prayer in this petition is for quashing of the order dated 25.04.2017 (Annexure P-7) passed by the Judicial Magistrate First Class, Garhshankar, and for issuance of direction to the trial Court to pass appropriate order on the cancellation report (Annexure P-8) moved by the police for the 4th time in FIR No.11 dated 29.01.2013 under Sections 302, 506, 34 IPC (Section 302 IPC was deleted and Section 304 A IPC was added), registered at Police Station Mehilpur, District Hoshiarpur.

Learned counsel for the petitioner submits that after registration of the FIR, the police submitted a cancellation report (Annexure P2) by recording a finding that no one was found at fault, in the accident resulting into death of one Gurpreet Singh.

Thereafter, the trial Court, vide order dated 02.09.2015 (Annexure P3), after recording the statement of the complainant that he is not in agreement with the cancellation report, directed further investigation in the case.

The police again investigated the case and submitted a second cancellation report on 15.01.2016 (Annexure P4) observing that the deceased Gurpreet Singh was under the influence of liquor, while driving the motorcycle struck it against an under construction culvert and fell on the bricks and received multiple injuries on his body including the head and it being a cold night he died at the spot and nobody was responsible for the same.

Thereafter, the trial Court, again, vide order dated 02.05.2016 (Annexure P5), after recording the statement of the complainant Sukhdeep Singh, returned the cancellation report for second time and directed the investigating officer for further investigation.

The police again investigated the case and on the basis of an inquiry conducted by SP(Detective) came to a similar conclusion vide a detailed report dated 20.08.2016 (Annexure P6) that the place of occurrence was a passage on which culvert was under construction and the road was closed and therefore, no vehicle of the resident of the village was passing through the road at that time and deceased Gurpreet Singh, under the influence of liquor had struck his motorcycle on the culvert and received multiple injuries and later on died.

The trial Court again recorded the statement of the complainant-Sukhdeep Singh that he was not in agreement with the

cancellation report and for the third time directed further investigation, vide impugned order dated 25.04.2017(Annexure P7). In the meantime, the police again in compliance thereof has submitted yet another cancellation report fourth time on 05.07.2017 (Annexure P8).

Learned counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court in the case of “***State through CBI vs. Raj Kumar Jain***”, 1998(3) RCR (Criminal) 656, to submit that when the prosecution agency has submitted a report under Section 173 Cr.P.C. requesting to close the case, the Court has power to direct further investigation but by passing a reasoned order, which prompted the Court to direct further investigation. The operative part of the judgement reads as under:

5. *From a plain reading of the above Section it is evidently clear that a Court cannot take cognisance of the offence mentioned therein without sanction of the appropriate authority. In enacting the above Section the legislature thought of proving a reasonable protection to public servants in the discharge of their official functions so that they may perform their duties and obligations undeterred by vexatious and unnecessary prosecutions. Viewed in that context, the C.B.I. was under no obligation to place the materials collected during investigation before the sanctioning authority, when they found that no case was made out against the respondent. To put it differently, if the C.B.I. had found on investigation that a prima facie case was made out against the respondent to place him on trial and accordingly prepared a charge sheet (challan) against him, then only the question of obtaining sanction of the authority under Section 6(1) of the Act would have arisen for without that the Court*

would not be competent to take cognisance of the charge sheet. It must, therefore, be said that both the Special Judge and the High Court were patently wrong in observing that the C.B.I. was required to obtain sanction from the prosecuting authority before approaching the Court for accepting the report under Section 173(2) Criminal Procedure Code for discharge of the respondent.

6. As regards the direction for further investigation, it is, of course, true that the Special Judge has power to so direct if he finds, on consideration of the police report, that the opinion formed by the Investigating Officer seeking discharge of the respondent is not based on full and complete investigation, as observed by this Court in **Abhinandan Jha v. Dinesh Mishra, A.I.R 1968 SC 117**. Unfortunately, however, in issuing the above direction the Special Judge has not given any reason whatsoever which prompted him to direct further investigation nor does it appear that he has gone through the police report and its accompaniments.

7. After recording the above finding the usual order which we are required to make is to remand the matter to the Special Judge with a direction to look into the report under Section 173(2) Cr.C. P. and the documents referred to therein to decide whether further investigation should be ordered or not. But considering the facts, that since the case was registered more than 10 years have elapsed and that such a direction would further delay the matter we have for ourselves looked into those documents and found that a thorough investigation has been made and the opinion expressed by the C.B.I that no prima facie case was made out against the respondent is just and proper.

8. On the conclusions above, we allow this appeal and set

aside the impugned orders of the Special judge and that of the High Court.

Appeal allowed.

Learned counsel for the petitioner has further relied upon a judgment of this Court in the case of ***“Harinder Pal Singh vs. State of Punjab”, 2004(2) RCR (Criminal) 307***, wherein this Court has held that a Judge could not order re-investigation for the third time and the only recourse that was required for the trial Judge was to take cognizance under Section 190(1)(c) Cr.P.C, if he do not accept the police report. The operative part of the judgment reads as under:

9. *After hearing the arguments of learned counsel for the parties and going through both the cancellation reports submitted by the CBI as well as the orders passed thereon and the judgments, cited by learned counsel for the petitioner, in my opinion, the petition deserves to be allowed.*

10. *In Chapter XIV of the Code of Criminal Procedure (hereinafter referred to as 'the Code'), the Police has been given ample powers for the purpose of registering the case involving a cognizable offence and its investigation. Section 173 of the Code provides for an investigation to be completed without unnecessary delay and also makes it obligatory on the Officer-in-charge of the Police Station to send a report to the Magistrate concerned in the manner indicated therein, containing the various details. If the police submits a report under Section 173 of the Code to the effect that a case is made out for sending the accused for trial, the Magistrate is not bound to accept the opinion of the Police. It is open to the Magistrate to take the view that the facts disclosed in the report do not make out an offence for taking cognizance or he may take the view that there is no sufficient evidence to justify*

and accused being put on trial. On the other hand, if the Magistrate agrees with the report, then he will take cognizance of the offence. In case, the Police submits a report stating therein that no case is made out against the accused for sending him for trial, the Magistrate, agreeing with the report, may accept the final report and close the proceedings, but the Magistrate may also take a view on consideration of the final report that the opinion formed by the Police is not based on full and complete investigation and in such a situation, the Magistrate can order for further investigation. It is always open for the Magistrate to decline to accept the closure report and direct the Police to further investigate the matter, but once the closure report is not accepted by the Magistrate and the matter has been ordered to be re-investigated, then for the second time the Magistrate cannot compel the Police to take a particular view in the matter and submit the challan in the case. If the Magistrate does not agree with the opinion formed by the Police and still suspects that an offence has been committed, he is entitled, notwithstanding the opinion of the police, to take cognizance under Section 190(1)(c) of the Code, but in my opinion, he cannot direct the Police to re-investigate the matter for the third time. The Hon'ble Supreme Court in [Abhinandan Jha v. Dinesh Mishra](#) (1968 Cri LJ 97) (supra) has observed as under :--

"The entire scheme of Chapter XIV clearly indicates that the formation of the opinion, as to whether or not there is a case to place the accused for trial, is that of the Officer-in-charge of the police station and that opinion determines whether the report is to be under [Section 170](#), being a 'charge-sheet', or under [Section 169](#), 'a final report'. It is no doubt open to the Magistrate, as we have already pointed out, to accept or disagree with the opinion of the police, if he disagrees, he is

entitled to adopt any one of the courses indicated by us. But he cannot direct the police to submit a charge-sheet, because the submission of the report depends upon the opinion formed by the police, and not on the opinion of the Magistrate. The Magistrate cannot compel the police to form a particular opinion, on the investigation, and to submit a report, according to such opinion. That will be really encroaching on the sphere of the police and compelling the police to form an opinion so as to accord with the decision of the Magistrate and send a report either under [Section 169](#), or under [Section 170](#), depending upon the nature of the decision. Such a question has been left to the police under the Code.

We have already pointed out that the investigation, under the Code, takes in several aspects, and stages, ending ultimately with the formation of an opinion by the police, as to whether on the material covered and collected a case is made out to place the accused before the Magistrate for trial, and the submission of either a charge-sheet, or a final report is dependent on the nature of the opinion, so formed. The formation of the said opinion, by the police, as pointed out earlier, is the final step in the investigation, and that final step is to be taken only by the police and by no other authority.

The question can also be considered from another point of view. Supposing the police send a report, viz. a charge-sheet under Section 170 of the Code. As we have already pointed out the Magistrate is not bound to accept that report, when he considers the matter judicially. But can he differ from the police and call upon them to submit a final report, under [Section 169](#) ?. In our opinion, the Magistrate has no such power. He has no such power, in law, it also follows that the Magistrate has no power to direct the police to submit a charge-sheet, when the police have submitted a final report that no case is made out for sending the accused for trial. The

functions of the Magistracy and the police, are entirely different, and though, in the circumstances mentioned earlier, the Magistrate may or may not accept the report, and take a suitable action, according to law, he cannot certainly infringe (sic. impinge?) upon the jurisdiction of the police, by compelling them to change their opinion, so as to accord with his view.

11. Similarly, in State through [CBI v. Raj Kumar Jain](#) (1998 Cri LJ 4051) (supra), the Hon'ble Supreme Court, while dealing with a question as to whether the CBI is required to first obtain sanction from the sanctioning authority in a corruption case before approaching the Court for accepting the report under Section 173(2) of the Code for discharge of the accused, observed that the Special Judge can only direct for further investigation, if it is found on consideration of the police report that the opinion framed by the Investigating Officer seeking discharge of the accused is not based on full and complete investigation.

12. [In R. Sarala v. T.S. Velu](#) (2000 Cri LJ 2453) (supra), the Hon'ble Supreme Court, while considering the question regarding giving of direction by the Court to the Investigating Officer to take opinion of the Public Prosecutor for filing the charge-sheet, has observed as under :--

".....The formation of the opinion, whether or not there is a case to place the accused on trial, should be that of the Officer-in-charge of the police station and none else. There Is no stage during which the Investigating Officer is legally obliged to take the opinion of a Public Prosecutor or any authority, except the superior Police Officer in the rank as envisaged in Section 36 of the Code. A Public Prosecutor is appointed as indicated in [Section 24](#), Cr. P.C. for conducting any prosecution, appeal or other proceedings in the Court. He has also the power to withdraw any case from the prosecution

with the consent of the Court. He is the officer of the Court. Thus the Public Prosecutor is to deal with a different field in the administration of Justice and he is not involved in investigation. It is not in the scheme of the Code for supporting or sponsoring any combined operation between the Investigating Officer and the Public Prosecutor for filing the report in the Court.

13. Thus, from the aforesaid judgments, it is clear that the Policy is the master of the investigation and formation of opinion as to whether, on the material collected, a case is made out to place the accused for trial is the exclusive function of the officer-in-charge of the Police Station and/or his superior officers. The Magistrate, while accepting or rejecting the report, cannot compel the investigating agency to change its opinion and to form a particular opinion or to submit the challan. The formation of the said opinion by the Police Is the final step in the investigation and that final step is to be taken only by the Police and not by other authority.

14. In the light of the aforesaid legal position, I have examined the impugned order. In my opinion, the Special Judge, while not accepting the closure report for the second time and order re-investigation in the matter for the third time, has not given valid reasons. On the first occasion when the cancellation report was not accepted and direction was issued for further investigation, it was mentioned that Jump (er) Slip in question was not taken into possession by the investigating agency. During the re-investigation, after taking all the relevant documents including the Jump(er) Slip into possession, the CBI again came to the conclusion that in view of the fact Jump(er) Slip was Issued by the petitioner on 1-6-2000, there was no reason and motive for him to demand and accept bribe on 6-6-2000. After going through the contents of the cancellation report submitted by the CBI for the second

time, in my opinion, there was no reason for issuing direction to further reinvestigate the matter. The Special Judge could not reject the cancellation report submitted for the second time on the same ground and again order for further investigation. If at all he was not satisfied with the closure report submitted by the CBI for the second time and was of the opinion that report was not based on full and complete investigation, he could have taken cognizance of the offence under Section 190(1)(c) of the Code, but could not order for re-investigation of the matter for the third time. Further, in my opinion, the Special Judge has not fully applied his mind in the case, especially when he has not taken into consideration the statement made by the complainant made before him to the effect that he did not object to cancellation of the case against the petitioner. In view of this, the fate of the prosecution case was imminent and it would be futile exercise to get the matter re-investigated,

15. In view of the aforesaid discussion, this petition is allowed and the order dated 29-1-2003 (Annexure P-6) is set aside.

Similar view has been taken by this Court in the case of ***“Prithvi Raj Sehgal vs. State of Punjab and others”, 2007(3) RCR (Criminal) 438.***

Reply by way of affidavit of Deputy Superintendent of Police, Sub Division Garshankar, District Hoshiarpur, is on record.

With regard to the averments made by learned counsel for the petitioner in para No.12 of the preliminary objections, it is stated as under:

The investigation of the case was conducted by SI Naresh SI Incharge Investigation Wing PS Mahilpur and it was found in the investigation that the deceased

died on account of being in drunken condition and striking his motorcycle by himself against the small bridge under construction and fall on bricks and suffering multiple injuries upon his person and by lying in the cold while suffering injuries at Village Majara Dingrian Distt Hoshiarpur and nobody was found at fault in the accident of deceased Gurpreet Singh in the investigation. The viscera report of the deceased was received from the chemical laboratory Kharar and opinion from the doctor Civil Hospital Garshankar who conducted post mortem on the body of deceased Gurpreet Singh was obtained regarding the fact that whether the injury No.1 shown in the post mortem report can be suffered in the accident by fall from the motorcycle and he gave in writing that regarding the cause of death in case of Gurpreet Singh son of Hargopal Singh r/o Ahrana Jattan whose post mortem conducted by us vide PMR NO.GS/01/2013 Board dated 30.01.2013 under Section 302/506/34 IPC PS Mahilur, the possibility of injury No.1 as per MLR on the person with a side accident can be ruled out. On this cancellation report was prepared and was present in the Court of Ld.Area Magistrate Garshankar on 02.09.2015 and the complainant did agreed with the cancellation report and as such the Ld.Area Magistrate did not accept the cancellation report and the same was returned for reinvestigation. After reinvestigation the cancellation report was prepared and was present in the Court of Ld.Area Magistrate Garshankar on 02.05.2016 and the complainant did agreed with the cancellation report and as such the Ld.Area Magistrate did not accept the cancellation report and the same was returned for reinvestigation. After reinvestigation the cancellation report was again prepared and was presented in the Court

of Ld.Area Magistrate Garshankaer on 25.04.20107 and the complainant did agreed with the cancellation report and as such the Ld.Area Magistrate did not accept the cancellation report and the same was returned for reinvestigation. After reinvestigation the cancellation report was again prepared and was present in the Court of Ld.Area Magistrate Garshankar on 30.11.2017 and the complainant did agreed with the cancellation report and as such the Ld.Area Magistrate did not accept the cancellation report and the same was returned for reinvestigation. After reinvestigation the cancellation report was again prepared and was present in the Court of Ld.Area Magistrate Garshankar on 20.02.2018 and the same is pending consideration in the Court of Damandeep Kamal Heera JMIC Garshankar. The cancellation report is annexed as Annexure R-1/T.

No reply has been filed on behalf of respondent No.2/complainant.

Learned State counsel, assisted by learned counsel for the complainant could not dispute the factual position as argued by learned counsel for the petitioner regarding the four cancellation reports submitted by the police as well as three orders passed by the trial Court directing re-investigation of the case.

After hearing learned counsel for the parties, I find merit in the present petition.

Admittedly, the police has submitted the cancellation report three times and every time the trial Court recorded the statement of the

complainant Sukhdeep Singh, who stated that he is not in agreement with the police and the trial Court has directed further investigation without recording any reason or without taking any document/evidence from the complainant on the basis of which it could be said that he is seeking further investigation of the case.

In view of the judgment of the Hon'ble Supreme Court in *Raj Kumar Jain'* case and judgment of this Court in *Harinder Pal'* case (*supra*), it is apparent that the trial Court while not accepting the closer report for the second time as well as for the third time and directing further investigation has not secured any valid reason. The trial Court in such circumstance could not have passed the impugned order dated 25.04.2017 (Annexure P7) directing further investigation for the third time as the only recourse available with the trial Court was, to take cognisance of the offence under Section 190(1)(c) Cr.P.C. instead of ordering further investigation for the third time.

Even otherwise, a perusal of the impugned order dated 25.04.2017 further shows that there is no application of judicial mind, except the reasoning given that the complainant is not agreeing with the cancellation report and therefore, the police was directed to conduct further investigation and admittedly even a fourth closure report is already submitted.

In view of the above, the present petition is allowed and the impugned order dated 25.04.2017 is set aside. The trial Court is directed to

pass an appropriate order on the cancellation report (Annexure P8), in accordance with law.

(ARVIND SINGH SANGWAN)
JUDGE

11.12.2018

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Whether speaking/reasoned
Whether reportable-

Yes/No.
Yes/No