

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-98 of 2016

DATE OF DECISION: MARCH 13, 2018

TIRATH RAM

...PETITIONER

VERSUS

STATE OF PUNJAB & ORS.

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU.

PRESENT: MR. MANMEET S. RANA, ADVOCATE FOR THE PETITIONER.

MR. HARBIR SANDHU, AAG, PUNJAB
ASSISTED BY INSPECTOR VIJAY KANWAR,
P.S. DIVISION NO.8, JALANDHAR.

MR. RAJIV JOSHI, ADVOCATE FOR RESPONDENTS NO.2 & 3.

MAHABIR SINGH SINDHU, J.

The present criminal revision petition has been filed against the impugned order dated 4.9.2015, passed by learned Judicial Magistrate 1st Class, Phillaur whereby application of the petitioner praying for conducting further investigation under Section 173(8) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') in the FIR No.88 dated 16.9.2013 under Sections 66(c) & 66(e) of Information and Technology Act and Section 506 IPC at Police Station Nur Mahal, District Jalandhar, lodged by him has been declined.

It is the contention of the petitioner that the police has not investigated the matter in a proper way and has left lot of material evidence which were relevant for the just decision of the trial, prejudicing the right of the petitioner to led cogent evidence against the accused-respondents. It has

further been contended that the police failed to elicit as to on whose name SIM Card 84271-78782 was issued and the device/computer for making fake I.D. of the daughter of the complainant has not been recovered. No memory card allegedly carrying photographs of the daughter of the complainant was recovered. It has also been argued that the police has hand in glove with the accused and tried to weaken the case by leaving certain loopholes in the investigation and as such, has tried to make out a case of acquittal of the accused.

Notice of the petition was issued to the respondents. Reply of by way of affidavit of Dr. Mukesh Kumar (PPS), Deputy Superintendent of Police, Sub-Division Nakodar, Jalandhar on behalf of the State was filed.

Learned counsel for respondents No.2 and 3 vehemently submitted that the present petition deserves to be dismissed on the ground that the investigation in the present case has already been completed and the case is at stage of prosecution evidence. No fresh evidence is there to be brought on record by the prosecution. Learned counsel for respondents No.2 & 3 relied on the decision of Hon'ble Supreme Court in *Amrutbhai Shambhubhai Patel vs. Sumanbhai Kantibhai Patel & Ors., 2017 AIR (SC) 774* to contend that such a request can be entertained only if the same is made by the investigating agency on detection of fresh facts having bearing on the case and necessitating further exploration thereof in the interest of complete and fair trial.

Heard learned counsel for the parties.

Original record of the case perused and the same transpires that charges in this case were framed by learned trial Court way back on

31.1.2014 and thereafter the case was adjourned on more than 20 occasions, generally on the request of learned APP for the State. Even bailable/non-bailable warrants had to be issued to secure the presence of the prosecution witnesses.

On 30.7.2014, 2 separate applications were moved for further investigation and for obtaining handwriting of the accused. It is necessary to mention here that learned trial Court vide order dated 31.8.2014 allowed the application for handwriting expert and adjourned the case for 4.9.2015 for consideration of application for further investigation and on that day the application was rejected while passing the impugned order. The record further reveals that again an application for permission to examine handwriting for comparison of both the accused was moved by the prosecution on 24.9.2015 and no objection was raised on behalf of the accused and consequently, the same was also allowed by learned trial Court vide order dated 3.10.2015. The record further reveals that the material prosecution witnesses, i.e. PW1 complainant; PW2 HC Kashmir Chand who is the witness to the recovery of computerized print and photograph from the facebook account as well as disclosure statement of the accused and recovery of mobile phone, photographs and memory card; PW3 Vinod Kumar and PW4 SI Prithvi Raj, I.O. have already been examined and two applications for comparison of handwriting expert moved by the prosecution have been allowed by the learned trial Court and matter is unnecessarily being delayed by the prosecution.

Even the perusal of the report under Section 173 Cr.P.C. also reveals that the complaint made by the complainant contained only mobile

phone numbers and no one is named as accused. It is only after thorough investigation by the police that the accused-respondents have been apprehended and material evidences were brought on record. It has also been averred by the petitioner in his petition that respondent No.2 is the son of an ASI in the Police Department and therefore, there was no proper investigation by the police. This Court feels that there appears to be no such intention of the prosecution to weaken the case as necessary steps have been taken while apprehending the respondents. This Court finds that the investigation has been done in a fair manner and no fresh facts have been detected and brought on record by the prosecution which are pre-requisite under Section 173(8) of Cr.P.C. in view of the judgement of Hon'ble Supreme Court in Amrutbhai Shambhubhai Patel's case (supra) and para No.49 reads as under:-

“On an over all survey of the pronouncements of this Court on the scope and purport of Section 173(8) of the Code and the consistent trend of explication thereof, we are thus disposed to hold that though the investigating agency concerned has been invested with the power to undertake further investigation desirably after informing the Court thereof, before which it had submitted its report and obtaining its approval, no such power is available therefor to the learned Magistrate after cognizance has been taken on the basis of the earlier report, process has been issued and accused has entered appearance in response thereto. At that stage, neither the learned Magistrate suo motu nor on an application filed by the complainant/informant can

direct further investigation. Such a course would be open only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial, the life purpose of the adjudication in hand.”

Since in the present case, no material evidence has been detected by the prosecution for warranting further investigation under Section 173(8) Cr.P.C.

In view of the above, this Court does not find any merit in the present petition and accordingly, the same is dismissed.

Nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case.

The record of the trial Court be remitted back. The trial Court is directed to expedite the trial and conclude the same as early as possible, preferably within 6 months.

March 13, 2018
Gulati

(MAHABIR SINGH SINDHU)
JUDGE

Whether Reportable : Yes
Whether Speaking/Reasoned : Yes