

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr.No.117

CRM-M-8118-2018 (O&M)

Reserved on:14.11.2018

Pronounced on:16.11.2018

Prabhdeep Kaur

....petitioner

Versus

State of Punjab & another

....respondents

CORAM: HON'BLE MR.JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sanjiv Gupta, Advocate for
Mr.Vaibhav Sehgal, Advocate
for the petitioner

Mr. Joginder Pal Ratra, DAG Punjab

Dr.Roosy Aulakh in person

ARVIND SINGH SANGWAN, J. :

Prayer in this petition is for quashing of the supplementary challan submitted by the police under Section 173(8) of the Code of Criminal Procedure (for short, 'Cr.P.C.') in FIR No.88 dated 20.07.2016, for offence punishable under Sections 279/337/338/427 of the Indian Penal Code (for short, 'IPC'), registered at Police Station Mataur, District SAS Nagar (Annexure P1) and the subsequent proceedings in pursuance thereof being misuse of process of law.

Brief facts of the case are that respondent No.2-complainant Balwant Singh Aulakh got the aforesaid FIR registered against petitioner-Prabhdeep Kaur with the allegations that on 12.07.2016, when he was going to Chandigarh, at the light point of Phase-VII, Mohali, one car came from the backside and hit his scooter, due to which he fell down on the ground.

Thereafter, the petitioner being the driver of the car stopped but instead of helping the injured/complainant, ran away from the spot. The injured/complainant was admitted in Civil Hospital, Phase VI, Mohali, by some police officials and the FIR was registered.

Learned counsel for the petitioner submitted that after the FIR was registered, the police conducted the investigation and considering the injuries to be grievous in nature, Section 338 IPC was added. On 16.01.2017, the police presented the report under Section 173(2) of Cr.P.C. Learned counsel for the petitioner has further submitted that as per the report submitted under Section 173(2) of Cr.P.C., the police has cited 14 prosecution witnesses along with the documents and medical record.

On 06.02.2017, the trial Court framed the charges under Sections 279/337/338/427 IPC and the prosecution examined six witnesses. Thereafter, the daughter of respondent No.2/complainant, namely Dr.Roosy Aulakh, filed an application under Section 311 of Cr.P.C. for arraying herself as one of the prosecution witnesses. This application was filed by her through her counsel and was not filed through a public prosecutor.

The petitioner filed reply to the said application and contested the same. Both the parties also filed their respective written arguments in support thereof.

Thereafter the trial Court, vide order dated 19.08.2017 (Annexure P7), partly allowed the application filed by daughter of respondent No.2-complainant and she was allowed to place on record the referral card from Civil Hospital, Mohali, copy of X-rays from Government Medical College and Hospital, Sector 32, Chandigarh (GMCH) and three medical certificates and treatment record from the GMCH, Chandigarh. The

trial Court, while allowing this application, further observed that the statement of Dr.Roosy Aulakh, will be limited to the extent qua which application under Section 311 of Cr.P.C. was allowed.

In pursuance to the order dated 19.08.2017, vide which the application was allowed, the complainant thereafter, led his evidence. In the meantime, on a representation given by respondent No.2, the police further conducted the investigation and submitted a supplementary challan under Section 173(8) of Cr.P.C. on 28.10.2017. The petitioner has challenged the said challan on the following grounds:

- (a) That no permission was taken from the trial Court for submitting the supplementary challan under Section 173(8) of Cr.P.C.
- (b) The complainant has already availed his remedy under Section 311 Cr.P.C. to lead the additional evidence and the same was allowed by the trial court and in pursuance thereof the said evidence has already come on record.
- (c) The complainant, in pursuance to the supplementary challan, wants to bring on record additional evidence which was not allowed by the trial Court by moving the application under Section 311 of Cr.P.C and as per the list of witnesses attached with the supplementary challan, some more witnesses are sought to be examined, which will amount to re-trial of the case.
- (d) Learned counsel for the petitioner further submits that at the time when the supplementary challan was presented, the prosecution evidence was already closed and therefore, at

this belated stage, it will prejudice the right of petitioner.

Learned counsel for the petitioner has relied upon judgment of Hon'ble Supreme Court in **2013(2) RCR (Criminal) 197, Vinay Tyagi vs. Irshad Ali @ Deepak and others**, wherein it has been held as under:

13. Having noticed the provisions and relevant part of the scheme of the Code, now we must examine the powers of the Court to direct investigation. Investigation can be ordered in varied forms and at different stages. Right at the initial stage of receiving the FIR or a complaint, the Court can direct investigation in accordance with the provisions of Section 156(1) in exercise of its powers under Section 156(3) of the Code. Investigation can be of the following kinds :

- (i) Initial Investigation.*
- (ii) Further Investigation.*
- (iii) Fresh or de novo or re-investigation.*

14. The initial investigation is the one which the empowered police officer shall conduct in furtherance to registration of an FIR. Such investigation itself can lead to filing of a final report under Section 173(2) of the Code and shall take within its ambit the investigation which the empowered officer shall conduct in furtherance of an order for investigation passed by the court of competent jurisdiction in terms of Section 156(3) of the Code.

15. 'Further investigation' is where the Investigating Officer obtains further oral or documentary evidence after the final report has been filed before the Court in terms of Section 173(8). This power is vested with the Executive. It is the continuation of a previous investigation and, therefore, is understood and described as a 'further investigation'. Scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the Court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as 'supplementary report'. 'Supplementary report' would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further

investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a 'reinvestigation', 'fresh' or 'de novo' investigation.

16. *However, in the case of a 'fresh investigation', 'reinvestigation' or 'de novo investigation' there has to be a definite order of the court. The order of the Court unambiguously should state as to whether the previous investigation, for reasons to be recorded, is incapable of being acted upon. Neither the Investigating agency nor the Magistrate has any power to order or conduct 'fresh investigation'. This is primarily for the reason that it would be opposed to the scheme of the Code. It is essential that even an order of 'fresh'/'de novo' investigation passed by the higher judiciary should always be coupled with a specific direction as to the fate of the investigation already conducted. The cases where such direction can be issued are few and far between. This is based upon a fundamental principle of our criminal jurisprudence which is that it is the right of a suspect or an accused to have a just and fair investigation and trial. This principle flows from the constitutional mandate contained in Articles 21 and 22 of the Constitution of India. Where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the courts would set aside such an investigation and direct fresh or de novo investigation and, if necessary, even by another independent investigating agency. As already noticed, this is a power of wide plenitude and, therefore, has to be exercised sparingly. The principle of rarest of rare cases would squarely apply to such cases. Unless the unfairness of the investigation is such that it pricks the judicial conscience of the Court, the Court should be reluctant to interfere in such matters to the extent of quashing an investigation and directing a 'fresh investigation'. In the case of Sidhartha Vashisht v.State (NCT of Delhi) [(2010) 6 SCC 1], the Court stated that it is not only the responsibility of the investigating agency, but also that of the*

courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. An equally enforceable canon of the criminal law is that high responsibility lies upon the investigating agency not to conduct an investigation in a tainted or unfair manner. The investigation should not prima facie be indicative of a biased mind and every effort should be made to bring the guilty to law as nobody stands above law de hors his position and influence in the society. The maxim contra veritatem lex nunquam aliquid permittit applies to exercise of powers by the courts while granting approval or declining to accept the report. In the case of Gudalure M.J. Cherian & Ors. v. Union of India & Ors. [(1992) 1 SCC 397], this Court stated the principle that in cases where charge-sheets have been filed after completion of investigation and request is made belatedly to reopen the investigation, such investigation being entrusted to a specialized agency would normally be declined by the court of competent jurisdiction but nevertheless in a given situation to do justice between the parties and to instil confidence in public mind, it may become necessary to pass such orders. Further, in the case of R.S.Sodhi, Advocate v.State of U.P. [1994 SCC Supp. (1) 142], where allegations were made against a police officer, the Court ordered the investigation to be transferred to CBI with an intent to maintain credibility of investigation, public confidence and in the interest of justice. Ordinarily, the courts would not exercise such jurisdiction but the expression 'ordinarily' means normally and it is used where there can be an exception. It means in the large majority of cases but not invariably. 'Ordinarily' excludes extra-ordinary or special circumstances. In other words, if special circumstances exist, the court may exercise its jurisdiction to direct 'fresh investigation' and even transfer cases to courts of higher jurisdiction which may pass such directions.

17. Here, we will also have to examine the kind of reports that can be filed by an investigating agency under the scheme of the Code. Firstly, the FIR which the investigating agency is required to file before the Magistrate right at the threshold and within the time specified. Secondly, it may file a report in furtherance to a direction issued under Section 156(3) of the Code. Thirdly, it can

also file a 'further report', as contemplated under Section 173(8). Finally, the investigating agency is required to file a 'final report' on the basis of which the Court shall proceed further to frame the charge and put the accused to trial or discharge him as envisaged by Section 227 of the Code.

18. *Next question that comes up for consideration of this Court is whether the empowered Magistrate has the jurisdiction to direct 'further investigation' or 'fresh investigation'. As far as the latter is concerned, the law declared by this Court consistently is that the learned Magistrate has no jurisdiction to direct 'fresh' or 'de novo' investigation. However, once the report is filed, the Magistrate has jurisdiction to accept the report or reject the same right at the threshold. Even after accepting the report, it has the jurisdiction to discharge the accused or frame the charge and put him to trial. But there are no provisions in the Code which empower the Magistrate to disturb the status of an accused pending investigation or when report is, filed to wipe out the report and its effects in law. Reference in this regard can be made to K. Chandrasekhar v.State of Kerala [(1998) 5 SCC 223]; Ramachandran v. R.Udhayakumar [(2008) 5 SCC 413] , Nirmal Singh Kahlon v.State of Punjab & Ors. [(2009) 1 SCC 441]; Mithabhai Pashabhai Patel & Ors. v. State of Gujarat [(2009) 6 SCC 332]; and Babubhai v. State of Gujarat [(2010) 12 SCC 254].*

19. *Now, we come to the former question, i.e., whether the Magistrate has jurisdiction under Section 173(8) to direct further investigation.*

20. *The power of the Court to pass an order for further investigation has been a matter of judicial concern for some time now. The courts have taken somewhat divergent but not diametrically opposite views in this regard. Such views can be reconciled and harmoniously applied without violation of the rule of precedence. In the case of State of Punjab v. Central Bureau of Investigation [(2011) 9 SCC 182], the Court noticed the distinction that exists between 'reinvestigation' and 'further investigation'. The Court also noticed the settled principle that the courts subordinate to the High Court do not have the statutory inherent powers as the High Court does under Section 482 of the*

Code and therefore, must exercise their jurisdiction within the four corners of the Code.

21. Referring to the provisions of Section 173 of the Code, the Court observed that the police has the power to conduct further investigation in terms of Section 173(8) of the Code but also opined that even the Trial Court can direct further investigation in contradistinction to fresh investigation, even where the report has been filed. It will be useful to refer to the following paragraphs of the judgment wherein the Court while referring to the case of *Mithabhai Pashabhai Patel v. State of Gujarat* (*supra*) held as under:

“13. It is, however, beyond any cavil that ‘further investigation’ and ‘reinvestigation’ stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a ‘State’ to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no superior court would ordinarily issue such a direction. Pasayat, J. in Ramachandran v. R. Udhayakumar (2008) 5 SCC 513 opined as under: (SCC p. 415, para 7)

‘7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the police has right to further investigate under sub-section (8), but not fresh investigation or reinvestigation.’

A distinction, therefore, exists between a reinvestigation and further investigation.

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15. The investigating agency and/or a court exercise their jurisdiction conferred on them only in terms of the provisions of the Code. The courts subordinate to the High Court even do not have any inherent power under Section 482 of the Code of Criminal Procedure or otherwise. The precognizance jurisdiction to remand vested in the subordinate courts, therefore, must be exercised within the

four corners of the Code.”

The Hon'ble Supreme Court has further held as under:

38. *Now, we may examine another significant aspect which is how the provisions of Section 173(8) have been understood and applied by the courts and investigating agencies. It is true that though there is no specific requirement in the provisions of Section 173(8) of the Code to conduct ‘further investigation’ or file supplementary report with the leave of the Court, the investigating agencies have not only understood but also adopted it as a legal practice to seek permission of the courts to conduct ‘further investigation’ and file ‘supplementary report’ with the leave of the court. The courts, in some of the decisions, have also taken a similar view. The requirement of seeking prior leave of the Court to conduct ‘further investigation’ and/or to file a ‘supplementary report’ will have to be read into, and is a necessary implication of the provisions of Section 173(8) of the Code. The doctrine of contemporanea expositio will fully come to the aid of such interpretation as the matters which are understood and implemented for a long time, and such practice that is supported by law should be accepted as part of the interpretative process.*

39. *Such a view can be supported from two different points of view. Firstly, through the doctrine of precedence, as afore-noticed, since quite often the courts have taken such a view, and, secondly, the investigating agencies which have also so understood and applied the principle. The matters which are understood and implemented as a legal practice and are not opposed to the basic rule of law would be good practice and such interpretation would be permissible with the aid of doctrine of contemporanea expositio . Even otherwise, to seek such leave of the court would meet the ends of justice and also provide adequate safeguard against a suspect/accused.*

40. *We have already noticed that there is no specific embargo upon the power of the learned Magistrate to direct ‘further investigation’ on presentation of a report in terms of Section 173 (2) of the Code. Any other approach or interpretation would be in contradiction to the very language of Section 173(8) and the*

scheme of the Code for giving precedence to proper administration of criminal justice. The settled principles of criminal jurisprudence would support such approach, particularly when in terms of Section 190 of the Code, the Magistrate is the competent authority to take cognizance of an offence. It is the Magistrate who has to decide whether on the basis of the record and documents produced, an offence is made out or not, and if made out, what course of law should be adopted in relation to committal of the case to the court of competent jurisdiction or to proceed with the trial himself. In other words, it is the judicial conscience of the Magistrate which has to be satisfied with reference to the record and the documents placed before him by the investigating agency, in coming to the appropriate conclusion in consonance with the principles of law. It will be a travesty of justice, if the court cannot be permitted to direct 'further investigation' to clear its doubt and to order the investigating agency to further substantiate its charge sheet. The satisfaction of the learned Magistrate is a condition precedent to commencement of further proceedings before the court of competent jurisdiction. Whether the Magistrate should direct 'further investigation' or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct 'further investigation' or 'reinvestigation' as the case may be, on the facts of a given case. Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, re-investigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation. In this regard, we may refer to the observations made by this court in the case of Sivanmoorthy and Others v. State represented by Inspector of Police [(2010) 12 SCC 29]. In light of the above discussion, we answer the questions formulated at the opening of this judgment as follows:

Answer to Question No. 1

40.1 The court of competent jurisdiction is duty bound to consider all reports, entire records and documents submitted therewith by the Investigating Agency as its report in terms of

Section 173(2) of the Code. This Rule is subject to only the following exceptions;

(a) Where a specific order has been passed by the learned Magistrate at the request of the prosecution limited to exclude any document or statement or any part thereof;

(b) Where an order is passed by the higher courts in exercise of its extra-ordinary or inherent jurisdiction directing that any of the reports i.e. primary report, supplementary report or the report submitted on 'fresh investigation' or 're-investigation' or any part of it be excluded, struck off the court record and be treated as non est.

Answer to Question No. 2

40.2 No investigating agency is empowered to conduct a 'fresh', 'de novo' or 're-investigation' in relation to the offence for which it has already filed a report in terms of Section 173(2) of the Code. It is only upon the orders of the higher courts empowered to pass such orders that aforesaid investigation can be conducted, in which event the higher courts will have to pass a specific order with regard to the fate of the investigation already conducted and the report so filed before the court of the learned magistrate.

It is, thus, submitted by learned counsel for the petitioner that without permission of the Court, the supplementary report under Section 173(3) of Cr.P.C. submitted by the police is liable to be quashed.

In reply, learned State counsel and Dr.Roosy Aulakh, daughter of respondent No.2-complainant, who appeared in person, has however opposed the prayer of the petitioner. It is submitted that the petitioner/accused being related to a senior Punjab Police official, who is serving as DSP City-1, SAS Nagar, has used illegitimate influence, firstly for getting the FIR registered and then hampering the investigation. It is submitted that the victim was made to sit in the Police Station Mataur,

District SAS Nagar, from 12.00 noon to 11.00 PM and only thereafter the

FIR was registered. It is further stated that the investigation was not done properly as the documents obtained from the GMCH, Sector 32, Chandigarh, regarding the treatment of the victim were not made part of the report submitted under Section 173(2) of Cr.P.C. and therefore, the application under Section 311 of Cr.P.C. was filed on 17.07.2017 by the victim. It is further argued that despite persuasion, the public prosecutor did not move the application and it was filed through a private counsel. It is further argued that on the complaint given by the victim to the Director General of Police, Punjab, regarding the gross, deliberate discrepancies in the first report submitted under Section 173(2) of Cr.P.C., in which vital evidence evidence was withheld by the investigating officer, like not mentioning the name of the concerned doctor who first treated the victim and referred him to GMCH, Sector 32, Chandigarh, not including the medio legal summaries, by not examining the vehicle of the victim from an expert, by not including the photograph of the scene. The said complaint was marked to Senior Superintendent of Police, Mohali, for further inquiry and SP Industrial Security, SAS Nagar, conducted the inquiry and the investigating officer was removed. He was suspended and a departmental inquiry was initiated against him. Thereafter, further investigation was carried out by ASI Ashwani and based on the said inquiry, after collecting the medical records including the MLR, along with the list of witnesses, the report under Section 173(8) of Cr.P.C. was submitted. It is further submitted that after submission of the report, neither the public prosecutor nor the complainant has sought for any alteration in the charge and two prosecution witnesses have already been examined and their cross examination has been conducted by the defence counsel, without raising any objection.

Thereafter, the prosecution evidence was closed on 02.02.2018. It is further submitted that thereafter, the defence counsel had taken four adjournments to present the defence evidence and only thereafter the present petition has been filed in this Court. It is further argued that since the trial Court has already accepted the report under Section 173(8) Cr.P.C. and has acted upon the same and even two additional prosecution witnesses have been examined, who proved the medical record of the victim, the supplementary challan has not changed the nature of investigation and only the evidence which was withheld by the previous investigating officer, who was changed during the further investigation, was produced before the trial Court.

Learned counsel for the respondent has relied upon the judgment of Hon'ble Supreme Court in the case of ***“Rama Chaudhary versus State of Bihar, 2009(6) SCC 346”*** and held that the law does not mandate taking prior permission from the Magistrate for further investigation as it is settled law that carrying out further investigation even after filing of the charge sheet is authority of the police.

Learned counsel for the respondent further relied upon ***2017(1) RCR (Crl.) 1030, Amrutbhai Shambhubhai Patel vs. Sumanbhai Kantibhai Patel and others***, wherein the Hon'ble Supreme Court while relying upon *Vinay Tyagi's case (supra)* has held as under:

“On an overall 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 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.

The un-amended and the amended sub-Section (8) of Section 173 of the Code if read in juxtaposition, would overwhelmingly attest that by the latter, the investigating agency/officer alone has been authorized to conduct further investigation without limiting the stage of the proceedings relatable thereto. This power qua the investigating agency/officer is thus legislatively intended to be available at any stage of the proceedings. The recommendation of the Law Commission in its 41st Report which manifesting heralded the amendment, significantly had limited its proposal to the empowerment of the investigating agency alone.

It is thus submitted that the report under Section 173(8) Cr.P.C. is in continuation of earlier report and will enable the Court to come to a just and proper decision in trial.

After hearing learned counsel for the parties, I find no merit in the present petition for the following reasons:

- (i) A perusal of two reports submitted under Section 173
- (2) Cr.P.C. on the basis of which the charges were framed against the petitioner under Sections 279/337/338/427 IPC and the evidence was led by the

prosecution and the supplementary report under Section 173(8) of Cr.P.C. shows that in the supplementary challan the only medical evidence which was not part of the original challan has been brought on record, which is necessary for the trial Court to come to a just and proper decision in the case.

(ii) The petitioner, at the stage, when the report under Section 173(8) of Cr.P.C. was submitted before the trial Court on 28.10.2017, never raised any objection and even two prosecution witnesses in pursuance thereof have already been examined and their cross examination has been conducted by the defence counsel without raising any objection. Therefore, the objection raised by the petitioner/accused that before submitting the supplementary challan, prior permission of the Court was not taken, loses significance as once the trial Court has accepted the report and two of the prosecution witnesses were examined, in pursuance to the supplementary challan and the prosecution closed its evidence on 02.02.2018.

(iii) It is not disputed that after the prosecution evidence was closed, in pursuance to the supplementary challan, the petitioner has sought time for leading the defence evidence and only thereafter, the present petition has been filed. Since the case is now fixed for leading the defence evidence, it will be open for the petitioner to

lead her entire defence evidence.

(iv)The police, in report under Section 173(8) of Cr.P.C.has not made out a new case and has only brought on record the medical record which was taken from the GMCH, Sector 32, Chandigarh, by the previous investigating officer but was not made a part of the first report under Section 173(2) of Cr.P.C. Therefore, further investigation conducted by the police was limited to the extent of bringing the entire evidence on record which was omitted by the previous investigating officer and finding a lapse on his part, the competent authority has already initiated departmental proceedings against him.

In view of the *Amutbhai's case (supra)*, since the investigating agency itself has submitted the report under Section 173(8) Cr.P.C. which is neither on an application filed by complainant before trial Court nor in exercise of suo motu power, by the trial Court, therefore, the investigating agency has authority to do so. Hence, there is no merit in the petition.

In view of the aforesaid, the present petition stands dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

16.11.2018

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Whether speaking/reasoned
Whether reportable-

Yes/No.
Yes/No