

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

CRR No.3581 of 2018 (O&M)
Decided on: 21.11.2018

Arvind Kumar Sharma

.....Petitioner.

Versus

State of Punjab

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. R.S. Cheema, Sr. Advocate with
Mr. Sumanjit Kaur, Advocate
for the petitioner.

Mr. Rana Harjasdeep Singh, DAG, Punjab.

Ms. Isha Goyal, Advocate
for the complainant.

HARI PAL VERMA, J. (Oral)

The petitioner-accused has filed the present revision petition against the judgment dated 10.08.2018 passed by learned Sessions Judge, Kapurthala whereby the application filed by the complainant under Section 309 CrPC was allowed, denying the petitioner-accused to summon two strike defence witnesses cited by the defence, related to the enquiry conducted by the Deputy Superintendent of Police, Kapurthala.

The petitioner is facing trial, pending before learned Sessions Judge, Kapurthala in FIR No.256 dated 06.10.2014 under Section 302 IPC, Police Station City Kapurthala.

Briefly stated, the complainant had filed an application dated 08.01.2018 under Section 309 CrPC before the trial Court that there should be no delay in recording the defence evidence and the trial should not be influenced by tainted investigation and to conclude the trial at the earliest without allowing the defence to lead inadmissible evidence. The enquiry report of Mohinder Singh, Deputy Superintendent of Police should not be allowed to be proved in defence, as it has no legal significance, to which the petitioner has submitted a reply. The said application moved by the complainant has been allowed and the Court has declined to summon two witnesses related to the enquiry report, in defence. Learned trial Court has allowed the said application of the complainant primarily on the ground that the enquiry report conducted by Mohinder Singh, Deputy Superintendent of Police was not accepted by the higher authorities and accordingly, challan was filed against petitioner. It was also held that any findings given in the report under Section 173 CrPC or any other document in the enquiry, cannot form the basis of conviction or acquittal, as the Court has to pass a judgment after evaluating the statements of witnesses and evidence led on record.

Learned senior counsel appearing on behalf of the petitioner has argued that after registration of the FIR, a representation (Annexure P-1) was submitted by the petitioner for fair investigation in the case. The enquiry report though is not *per se* admissible, it can, however, be proved by the police officer who has conducted the enquiry. There is no finding of the Court below that the enquiry was conducted in a manner to help the petitioner or was conducted by a tainted officer. The enquiry was a part of the investigation conducted by an officer of the rank of Deputy Superintendent of

Police. Section 36 CrPC provides that a police officer who is higher in rank to the SHO is competent to exercise all the powers which are vested in SHO and since the enquiry was conducted by a DSP, he was empowered to do so. Moreover, the said enquiry/investigation was conducted by the DSP on the directions of the SSP, Kapurthala and therefore, he was empowered to conduct the investigation under Section 156 CrPC as well. He has further argued that representation (Annexure P-1) was filed by mother of the petitioner after registration of the said FIR for fair investigation and mother of the petitioner is not an accused in the case. So, once an enquiry has been conducted on the representation submitted by the mother of the petitioner, the enquiry conducted by the DSP should have been a part of the record.

On the other hand, learned counsel for the respondent-complainant has argued that in fact the petitioner is bent upon to delay the trial in one way or the other. The complainant is a retired Colonel from the Indian Army and is 74 years of age. His only daughter who was married at Kapurthala was murdered by the accused and the prosecution evidence was concluded on 25.10.2017 and it is thereafter, an application dated 29.11.2017 was moved by the defence for summoning 10 witnesses on their behalf. Out of these witnesses, two witnesses cited at serial Nos.5 and 6 are Mohinder Singh, DSP, Kapurthala along with original enquiry report relating to the case bearing No.256 dated 06.10.2014 under Section 302 IPC, P.S. City Kapurthala and the official concerned from the Record Branch, SSP Office, Kapurthala along with record. The examination of these witnesses is absolutely unwarranted, uncalled for and beyond the precincts of legal domain, as once the challan under Section 173 CrPC has been filed against

the accused, declaring them guilty of committing a heinous offence of murder, proving any report prior to that would be of no relevance.

I have heard learned counsel for the parties.

The trial Court has declined the prayer of the petitioner to summon the witness Mohinder Singh, Deputy Superintendent of Police along with enquiry report regarding case No.256 dated 06.10.2014 under Section 302 IPC, P.S. City Kapurthala and the official concerned of the Record Branch, SSP Office, Kapurthala along with record. The argument put forward by learned counsel appearing for the respondent-complainant is that the enquiry report conducted by Mohinder Singh, Deputy Superintendent of Police in favour of the petitioner-accused is absolutely unwarranted and cannot be accepted, as it is not a part of challan under Section 173 CrPC. Once the representation filed by the mother of the petitioner-accused has been made a part of the record and has been considered by the trial Court, the report submitted by Mohinder Singh, Deputy Superintendent of Police is nothing but a resultant effect of the said representation. Merely because the petitioner is an accused, he cannot be denied his legitimate right to a fair trial. Once the enquiry report has been formed as a part of the challan, this Court finds that the defence is equally competent to adduce the said report prepared by Mohinder Singh, Deputy Superintendent of Police, even if the same has not been accepted by the higher authorities. Considering the fact that it is on the directions of the SSP, Kapurthala that Mohinder Singh, DSP had conducted the enquiry and prepared the report, this Court finds that the petitioner-accused is entitled to prove that report in his defence. The observation of the trial Court that the report was never accepted by the higher officer, is no

ground to decline production of the report prepared by the DSP Mohinder Singh in defence.

Therefore, the present revision petition is allowed and order dated 10.08.2018 passed by learned Sessions Judge, Kapurthala is hereby set aside. The petitioner is hereby held entitled to get Mohinder Singh, DSP and the concerned official of the Record Branch, SSP Office, Kapurthala summoned along with the record and original report.

However, finding weight in the argument raised on behalf of the respondent-complainant that the trial is being delayed, the trial Court is directed to expedite the trial and conclude the same within six months.

November 21, 2018
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No