

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

CRM-M-12348 of 2018.

Decided on:- February 06, 2019.

Fojiya.

.....Petitioner.

Versus

State of Haryana and others

.....Respondents.

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

Present:- Mr. Shiva Khurmi, Advocate
for the petitioner.

Ms. Mahima Yashpal, AAG, Haryana.

Mr. Sandeep Kotla, Advocate
for accused Shahdab.

HARI PAL VERMA, J.

The petitioner has filed present petition under Section 482 Cr.PC for quashing of the order dated 11.12.2017 passed by learned Judicial Magistrate 1st Class, Panipat, whereby the application moved by the petitioner for re-investigation in FIR No.15 dated 15.10.2015 under Sections 376-D, 452 and 506 read with Section 34 IPC and Section 8 of the Protection of Children from Sexual Offences Act, 2012 registered at Women Police Station, Panipat, was dismissed.

Prayer has also been made for issuance of a direction to official respondent No.2 to get the matter further investigated by some independent agency.

Briefly stated, the petitioner-prosecutrix, aged about 18 years and the accused persons are staying in the same locality. Accused Shahdab son of Mehmood and Afsar son of Mohammad are residents of Mohalla Khel Kalan, Tehsil Kariana, District Shamli (U.P.), and presently residing near Sanjay Chowk, Panipat. Accused Shahdab had a bad eye on the prosecutrix and used to tease her when she used to go to school. He also used to threaten her to kidnap and for this reason, the parents of the prosecutrix discontinued her studies. On 15.09.2015, accused Shahdab entered the house of the prosecutrix and tried to molest her. When the prosecutrix made a complaint to her mother, the family members of the accused came to their house and gave an assurance that in future he will not repeat such mistake. On 14.10.2015, the prosecutrix along with her mother had gone to Civil Hospital, Panipat to take medicine and were standing inside the hospital. When the mother of prosecutrix had gone for the prescription slip, at about 12.00 noon, the accused persons came in a Swift Dezire (white colour car) and tried to pull the prosecutrix in the car while pressing her mouth. However, on raising noise by the prosecutrix, people gathered there. The accused left the place, but with a threat to kidnap and to kill her in future. Accordingly, FIR No.15 dated 15.10.2015 under Sections 452 and 506 read with Section 34 IPC and Section 8 of the Protection of Children from Sexual Offences Act, 2012 was registered at Women Police Station, Panipat against accused Shahdab and Afsar. Later on,

on the basis of statement of the prosecutrix under Section 164 Cr.P.C., the offence under Section 376-D was also added in the case.

The translated version of the FIR in question, as mentioned in paragraph No.6 of the present petition reads as under:

“To, the SHO, Women Police Station, Panipat. Subject : For keeping bad eye on the applicant and physically teasing her. Sir, it is requested that I Fojiya daughter of Vakil, aged 15 years, am resident of Mohalla Khel Kalan, Tehsil Kairana, District Shamli, Uttar Pradesh. Against 1. Shahdab son of Mehmood, Afsar son of Mohammad, residents of Mohalla Khel Kalan, Tehsil Kairana, District Shamli Uttar Pradesh at present Imam Sahib, Near Sanjay Chowk, Panipat and other accused persons. Sir, the applicant makes the following prayer that the applicant Fojiya daughter of Vakil, aged 15 years, resident of Mohalla Khel Kalan, Tehsil Kairana, District Shamli Uttar Pradesh, who is law abiding minor girl. The abovesaid accused persons are staying in the neighbourhood of the applicant, who are goons like persons. 2. That accused No.1 is keeping a bad eye on the applicant for the last long time, who was teasing the applicant when she goes and come back from the school and was extending threat to kidnap due to which the family members of the applicant got her study stopped midway and made her sit at home. 3. That on 15.09.2015, accused No.1 forcibly entered in the house of the applicant and started teasing the applicant. When in regard to the above matter, the applicant makes a compliant to her mother, then the family members of the accused came at home and by giving an assurance that in future accused No.1 will not repeated this mistake tendered apology and went away. 4. That on 14.10.2015, the applicant had come to the Civil Hospital, Panipat, alongwith her mother for taking medicine.

When the applicant was standing in the Civil Hospital and the mother of the applicant had gone inside for getting the slip issued, then at the same time at about 12 noon, the abovesaid accused persons came while sitting in a white swift car and on coming, by gagging the mouth of the applicant, started forcibly pushing her in their vehicle. On lodging protest and raising noise by the applicant, few people gathered nearby and on hearing the noise, mother of the applicant also came on the spot. Thereafter, abovesaid accused persons ran away from the spot by extending threat of kidnapping her and killing her in future on getting appropriate chance. Sir, the accused persons, who are goon type of persons, can give shape to any incident against the applicant at any time. Therefore, your goodself is requested that while keeping the abovesaid facts in mind, strict legal action be taken against accused No.1 for teasing applicant and against the accused persons for making an attempt to kidnap the applicant and for extending threat to the applicant to kill, by registering a case. I shall be thankful.”

The petitioner has further stated that under the pressure and intervention of the brotherhood, Panchayat and respectables, the matter between the parties was settled and an affidavit of the petitioner was taken and handed over to the police. Accordingly, proceedings in the said FIR were stopped and Nikah between the petitioner and accused Shahdab was performed on 26.10.2015. At that time, even a specific affidavit was given by accused Shahdab that since the petitioner was minor at that time, she would continue to stay with her parents and the moment, she will attain majority, it will be obligatory on him to keep her as a wife with him. Thereafter, on 03.08.2017, accused Shahdab and his family members have taken the

petitioner to her matrimonial home. On 09.08.2017, the accused persons with common intention gave beatings to the petitioner and also administered poison to her so as to kill her. In this regard, a complaint was given by the petitioner to the police on the basis of which FIR No.752 dated 12.08.2017 under Sections 328 and 498-A read with Section 34 IPC was registered at Police Station Chandni Bagh, Panipat. The petitioner was told by the accused persons that they have got performed Nikah of accused Shahdab under a conspiracy so as to get the case of rape dismissed and now they have achieved their goal and the petitioner cannot do anything against them.

The petitioner along with her family members and respectables approached the local police with a request to take action against the accused persons, but no action was taken against them. The petitioner has also made a representation dated 01.09.2017 to respondent No.2 i.e. Director General of Police, Haryana, but of no use. Another FIR No.1161/2017 under Sections 148, 149, 354, 506 IPC etc. was got registered against Rehna etc. Thereafter, the petitioner moved an application before learned Judicial Magistrate 1st Class, Panipat seeking re-investigation of the case, but the same was dismissed vide impugned order dated 11.12.2017. Aggrieved against this order dated 11.12.2017, petitioner has filed the present petition with the prayer mentioned in paragraph No.1 above.

Learned counsel for the petitioner has argued that the petitioner and her family members as well as respectable persons of the locality approached the local police with a request to take action against the accused persons, but no action is taken against the accused. Rather, pressure is being

put on her to settle the issue as the accused are influential persons. The accused, in spite of committing heinous crime, are roaming freely and, rather, threatening the petitioner and her family members to kill them in case the matter is not sorted out. Since the police has not conducted fair investigation, the petitioner moved an application for re-investigation of the case, but the same was dismissed by learned Judicial Magistrate 1st Class, Panipat vide impugned order dated 11.12.2017. In case the matter is not re-investigated by the police, the petitioner would suffer adversely. The accused persons have spoiled the life of the petitioner and they are roaming freely and extending threat to her.

Mr. Sandeep Kotla, Advocate appearing for accused Shahdab has argued that the bare perusal of the FIR in question reflects that there is no allegation of rape, if any, committed upon the prosecutrix. The police has duly investigated the matter and prepared a cancellation report as the allegations were not found substantiated by any evidence. Still, vide impugned order dated 11.12.2017 passed by learned Magistrate, liberty has been granted to the petitioner to file private complaint or protest petition in this case if aggrieved with the police report i.e. cancellation report. He has produced the certified copy of judgment dated 04.07.2018 passed by learned Additional Chief Judicial Magistrate, Panipat, whereby accused Shadab has been acquitted of the charge framed against him in case bearing FIR No.752 dated 12.08.2017 under Sections 323 and 498-A IPC registered at Police Station Chandni Bagh, Panipat, which is taken on record.

He has also produced photocopies of the affidavits dated 28.10.2015 furnished by the petitioner and her mother Rani stating therein that they do not want to proceed further in the FIR No.15 dated 15.10.2015 under Sections 376-D, 452 and 506 read with Section 34 IPC and Section 8 of the Protection of Children from Sexual Offences Act, 2012 registered at Women Police Station, Panipat and no rape was committed with the prosecutrix, which are taken on record.

Learned State counsel has argued that in FIR No.15 dated 15.10.2015 under Sections 376-D, 452 and 506 read with Section 34 IPC and Section 8 of the Protection of Children from Sexual Offences Act, 2012 registered at Women Police Station, Panipat, the police has filed cancellation report in the case as the prosecutrix has stated that rape has not been committed upon her and she does not want to proceed further in this case.

I have heard learned counsel for the parties.

It is not disputed that FIR No.15 dated 15.10.2015 under Sections 376-D, 452 and 506 read with Section 34 IPC and Section 8 of the Protection of Children from Sexual Offences Act, 2012 was registered at Women Police Station, Panipat at the instance of the petitioner. The said FIR was investigated by the police and a cancellation report was filed. However, the petitioner being complainant moved an application to learned Magistrate seeking re-investigation in the case, which was dismissed vide impugned order dated 11.12.2017, which is subject matter of challenge in the present petition.

Perusal of the certified copy of judgment dated 04.07.2018 passed by learned Additional Chief Judicial Magistrate, Panipat, shows that accused Shadab has been acquitted of the charges framed against him in case bearing FIR No.752 dated 12.08.2017 under Sections 323 and 498-A IPC registered at Police Station Chandni Bagh, Panipat. The said FIR was registered at the instance of the petitioner, but the accused was acquitted for the reason that the petitioner being the complainant while appearing in the witness box as PW1 did not support the prosecution case and was, rather, declared hostile. Similarly, her mother Farzane @ Rani as PW2 also did not support the prosecution case and was declared hostile.

In the present FIR No.15 dated 15.10.2015, which was registered at the behest of the petitioner, no allegation of rape was made by the petitioner, and as such, the FIR was registered under Sections 452 and 506 read with Section 34 IPC and Section 8 of the Protection of Children from Sexual Offences Act, 2012 at Women Police Station, Panipat. However, it is the case of the petitioner that later on, Section 376-D was added in the case on the basis of statement of the prosecutrix under Section 164 Cr.P.C.

Perusal of the copy of affidavit dated 28.10.2015 furnished by mother of the petitioner shows that she has mentioned in the said affidavit that the aforesaid FIR was registered by the petitioner as she was misguided by someone and the deponent (mother of the prosecutrix) and the prosecutrix are fully satisfied and they do not want any further action in the case. She has no objection if the FIR is cancelled. Similar affidavit has also been furnished by the petitioner. Thus, the police has prepared a cancellation report against

which the petitioner has an appropriate remedy to invoke, including to file a protest petition. However, instead of filing a protest petition, she moved an application for re-investigation of the case, which has been declined by learned Magistrate vide order dated 11.12.2017.

In ***Rama Chaudhary Versus State of Bihar 2009(2) RCR (Criminal) 570***, it has been held by Hon'ble Supreme Court that further investigation is the continuation of the earlier investigation and not a fresh investigation or re-investigation has to be started *ab initio* wiping out the earlier investigation altogether. The Apex Court has also held that though further investigation is permissible, but re-investigation is prohibited. The relevant observations as mentioned in paragraphs No.7 to 13 of the said judgment are reproduced as under:

“7. Sub-section (1) of Section 173 of Criminal Procedure Code makes it clear that every investigation shall be completed without unnecessary delay. Sub-section (2) mandates that as soon as the investigation is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government mentioning the name of the parties, nature of information, name of the persons who appear to be acquainted with the circumstances of the case and further particulars such as the name of the offences that have been committed, arrest of the accused and details about his release with or without sureties. Among other sub-sections, we are very much concerned about sub- section (8) which reads as under:

"(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

8. *A mere reading of the above provision makes it clear that irrespective of report under sub-section (2) forwarded to the Magistrate, if the officer in-charge of the police station obtains further evidence, it is incumbent on his part to forward the same to the Magistrate with a further report with regard to such evidence in the form prescribed.*

9. *The above said provision also makes it clear that further investigation is permissible, however, reinvestigation is prohibited. The law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out a further investigation even after filing of the charge-sheet is a statutory right of the police. Reinvestigation without prior permission is prohibited. On the other hand, further investigation is permissible.*

10. *From a plain reading of sub-section (2) and sub-section (8) of Section 173, it is evident that even after submission of police report under sub-section (2) on completion of investigation, the police has a right to "further" investigation under sub-section (8) of Section 173 but not "fresh investigation"*

or "reinvestigation". The meaning of "Further" is additional; more; or supplemental. "Further" investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started *ab initio* wiping out the earlier investigation altogether. Sub- section (8) of Section 173 clearly envisages that on completion of further investigation, the investigating agency has to forward to the Magistrate a "further" report and not fresh report regarding the "further" evidence obtained during such investigation.

11. As observed in **Hasanbhai Valibhai Qureshi vs. State of Gujarat and Others, (2004) 5 SCC 347**, the prime consideration for further investigation is to arrive at the truth and do real and substantial justice. The hands of investigating agency for further investigation should not be tied down on the ground of mere delay. In other words, the mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice.

12. If we consider the above legal principles, the order dated 19.02.2008 of the trial Court summoning the witnesses named in the supplementary charge-sheet cannot be faulted with. It is true that after enquiry and investigation charges were framed on 11.03.2004 and thereafter in the course of trial about 21 witnesses were examined. In the meantime, Police submitted supplementary charge-sheet with certain new materials and on the basis of supplementary charge- sheet, the prosecution filed an application on 12.01.2008 in a pending Sessions Trial No. 63 of 2004 to the trial Court for summoning the persons named in the charge-sheet for their examination as prosecution witnesses. On a careful perusal of the application, the trial Court, by order

dated 19.02.2008, allowed the same and has summoned those witnesses named in the supplementary charge-sheet.

*13. The law does not mandate taking prior permission from the Magistrate for further investigation. It is settled law that carrying out further investigation even after filing of the charge-sheet is a statutory right of the Police. [vide **K. Chandrasekhar vs. State of Kerala and Others, (1998) 5 SCC 223.**] The material collected in further investigation cannot be rejected only because it has been filed at the stage of trial. The facts and circumstances show that the trial Court is fully justified to summon witnesses examined in the course of further investigation. It is also clear from Section 231 of the Criminal Procedure Code that the prosecution is entitled to produce any person as witness even though such person is not named in the earlier charge-sheet. All those relevant aspects have been taken note of by the learned Magistrate while summoning the witnesses based on supplementary charge-sheet. This was correctly appreciated by the High Court by rightly rejecting the revision. We fully agree with the said conclusion.”*

Therefore, having regard to the law laid down in **Rama Chaudhary’s case** (*supra*) and considering the fact that in FIR No.15 dated 15.10.2015, there is no allegation of rape coupled with the fact that in another FIR No.752 dated 12.08.2017, the prosecutrix and her mother had not supported their own case, rather, they were declared hostile as well as the fact that the prosecutrix and her mother have furnished their affidavits dated 28.10.2015 that they do not want to proceed further in FIR No.15 dated 15.10.2015 as no rape was ever committed by the accused, which resulted into cancellation of the said FIR, this Court finds that there is no illegality in

the impugned order dated 11.12.2017 passed by learned Judicial Magistrate
1st Class, Panipat.

Accordingly, the present petition, being devoid of any merit, is
dismissed. However, still it is made clear that the petitioner shall be at liberty
to avail their remedy as available under law including the liberty granted by
the learned trial Court in order dated 11.12.2017.

February 06, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No