

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102

CRM-M-22013-2017
Date of Decision : 14.5.2019

State of Haryana

..... Petitioner

Versus

Abdul Shahid and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. Gaurav Bansal, AAG, Haryana
for the petitioner.

None for respondent No.1.

Mr. A.P.S.Deol, Senior Advocate with
Mr. Gautam Dutt, Advocate
Mr. Vishal Lamba, Advocate
Mr. Himat Deol, Advocate
Mr. Keshav Pratap Singh, Advocate and
Mr. Abhilaksh Grover, Advocate
for the respondents No.2 and 3.

AJAY TEWARI, J. (Oral)

This petition has been filed challenging the order dated 6.6.2015 of Additional Sessions Judge, Faridabad declining an application filed by the petitioner-State of Haryana for grant of permission to conduct further investigation under Section 173 (8) Cr.P.C in case FIR No. 169 dated 12.9.2012 under Section 7 of the Prevention of Corruption Act at P.S. Sector 31, Faridabad.

The essential facts are that after the abovementioned FIR was lodged the prosecution filed a cancellation report and ultimately by order dated 6.9.2013 the cancellation report was accepted by the Magistrate on

5.1.2015. The instant application was moved (but this time before the Additional Sessions Judge) praying for permission to conduct further investigation in that FIR. The same having been declined State is before this Court.

The contention of the learned Assistant Advocate General is that the original cancellation report was got accepted by the then police officials by concealing the material facts from the Magistrate and by armed twisting the complainant into giving his consent and therefore, it was in the interest of justice that second application was filed. On the other hand, learned Senior Counsel alongwith other counsel appearing on behalf of respondents No.2 and 3 have argued that Section 173 (8) Cr.P.C talks of a stage where a report under sub-section (2) 'has been forwarded to the Magistrate'. As per them, as long as the report stands forwarded the police may further investigate the matter but the situation entirely changes when the report under Section 173 (8) Cr.P.C. is finally accepted. At that stage, the case comes to an end and thereafter no fresh application could be filed by the police for further investigation, and that too before a different Court. Moreover, in the present case the application was filed after about 1 ½ years ago and that too before a different Court.

Learned Assistant Advocate General has defended this action by saying that the original cancellation report was filed before a wrong Court and therefore fresh application could definitely lie before a right Court.

In my opinion, it cannot be taken to be as simple as that. If after the order of the Magistrate the Prosecution had come to the conclusion that that Magistrate did not have the power to deal with the

matter it could file a revision against the order but could not file an application for further investigation before the Court to whom the final report had never been forwarded under Section 173 (8) of Cr.P.C and as if no previous application was filed at all.

Apart therefrom, even if the argument of the learned Assistant Advocate General is accepted that the filing of the report before the Magistrate was non-est yet a perusal of the order reveals that Additional Sessions Judge in paragraph No.9 has considered the matter on merits also and held that there was no new material before the investigating agency to justify further investigation.

From a conspectus of the facts and circumstances of the case as well as the prevailing law, I see no reason to allow this petition. Consequently, the petition stands dismissed.

Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

14.5.2019
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No