

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

CRM-M-39009-2011 (O&M)
Date of Decision:-28.2.2019

Davinder K. Lubana

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Petitioner in person with
Mr. H.S. Brar, Advocate
with petitioner.

Mr. Randhir Singh Thind, DAG, Punjab.

Mr. V. Karagaraj, Senior Advocate with
Mr. Charanjit Singh Bakshi, Advocate
for respondent No.2.

GURVINDER SINGH GILL, J. (Oral)

1. By way of filing this petition, the petitioner/complainant approached this Court seeking issuance of directions for getting the matter pertaining FIR No.61 dated 27.11.2010 under Sections 302, 201, 120-B IPC, Police Station Mullapur Garibdass, District Mohali investigated from some independent agency such as 'C.B.I.'.
2. The matter pertains to death of one Suresh Kumar whose dead body was found in burnt condition in a car.

3. The FIR was lodged at the instance of Davinder Kumar, wherein it has been alleged that he is a Lawyer by profession and is Sarpanch of the village and that his uncle Mohinder Singh has 4 children out of which Suresh Kumar is unmarried. On 26.11.2010 at about 8:00 p.m. his uncle informed him that Suresh Kumar had left the house while informing him that he is going to watch movie with his friends but has not returned back and that his mobile is also switched off. It is alleged that subsequently they got to know that one car was lying in burnt condition on Siswan-Baddi road. The complainant along with his uncle Mohinder Singh and with 'Taya' Pritam Singh along with Rakesh Kumar i.e. elder brother of Suresh Kumar reached at the spot where they found the debris of the burnt car bearing registration No.CH04-J-3083 i.e. the car of Suresh Kumar and wherein a half burnt dead body was found on the rear seat in burnt condition. The complainant alleged that somebody had murdered Suresh Kumar and had set the car on fire to destroy evidence.
4. Learned counsel for the petitioner has submitted that in the present case, the investigation has been conducted in a slipshod manner whereas the facts of the case clearly pointed out that it is a case of gruesome murder at the instance of Raj Kumar and others who were aggrieved on account of love affair of the deceased with Sajni whose marriage had otherwise been fixed with Raj Kumar. Learned counsel has submitted that in the present case, there is substantial evidence in the shape of call details of Raj Kumar and also of the telephone of Sajni which would be substantive piece of evidence to connect the accused with the murder of Suresh Kumar. The learned counsel has further submitted that in fact 3 phones

had been taken into possession during the course of investigation but the same do not form part of the challan. The learned counsel has further pointed out that one Charanjit Singh at whose instance a fire brigade had been called has not been associated in the investigation by the police. It is further been submitted that in fact there is also “last seen” evidence in the shape of the owner of the Aggarwal Shoe Store who had seen the deceased in the company of the accused but the police has not taken any effective step to collect such evidence.

5. Opposing the petition, learned State counsel assisted by learned counsel for respondent No.2 has submitted that in the present case investigation has already been completed and challan had already been presented against 4 accused namely Mohinder Pal, Raj Kumar, Gurvinder Singh and Kamal Kumar on 14.12.2015 and in fact substantial number of PWs had also been examined but now subsequently on account of surrender of absconder Harjinder Singh, a ‘*de novo*’ trial has started consequent upon framing of fresh charges on 7.1.2019.
6. I have considered rival submissions addressed before this Court. In the present case out of cited 34 PWs, 13 PWs had already been examined and 5 had been given up pursuant to the charges which had initially been framed on 13.1.2016. However, since charges have now been framed afresh, a ‘*de novo*’ trial has commenced and one PW has been examined. During the course of investigation, the police has not only recorded the disclosure statement of the accused but has also taken steps to get Narco Analysis test conducted on the accused Raj Kumar which is stated to have yielded positive results. Though there could be some omissions on

the part of the Investigating Officer, but every such omissions would not justify further investigation. In any case, since the challan already stands filed, the prayer made in the petition is virtually rendered redundant. As far as oral prayer of petitioner for conducting further investigation is concerned, such a direction cannot be issued ordinarily unless there are some exceptional circumstances justifying such recourse. Hon'ble the Supreme Court in 2017(4) SCC 177, Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel & others, held as follows:-

“49. 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 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.”

7. In the present case, in the absence of direct evidence the task of police was challenging but now having resort to scientific evidence and Narco Analysis test, the investigating agency has ultimately presented the challan against accused. In these circumstances, there is no case for even ordering further investigating in the matter. The petition, as such is dismissed. However, in case the police during investigation has collected some call details but the same are not part of the challan, it shall be open to the prosecution to move an appropriate application to place such call details on record by way of additional documents with the permission of the Court.

(GURVINDER SINGH GILL)
JUDGE

28.2.2019
Gaurav Sorot

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No