

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 5.12.2019

(i) CRM-M-4542-2012 (O&M)

Shiv Shambhu Sharma

.....Petitioner

Versus

State of Haryana and others

.....Respondents

Present: Mr. J.S. Bedi, Senior Advocate with
Mr. Sunil Sihag, Advocate, for the petitioner.

Mr. Rahul Mohan, DAG, Haryana,
Assisted by SI Subhash.

(ii) COCP-1439-2013

Shiv Shambhu Sharma

.....Petitioner

Versus

Maha Singh and another

.....Respondents

Present: Mr. J.S. Bedi, Senior Advocate with
Mr. Sunil Sihag, Advocate, for the petitioner.

Mr. Tara Dutt, Advocate, for
Mr. Sunil K. Nehra, Advocate, for respondent No.1.

Mr. Ravinder Malik, Advocate,
For respondent No. 2.

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Harnaresh Singh Gill, J.

This order shall dispose of the above noted two
petitions.

In CRM-M-4542-2012, the petitioner has sought
directions to respondent Nos. 1 to 3 to hand over the

investigation of the case bearing FIR No.142 dated 10.10.2011 under Sections 395, 397, 427, 120-B IPC and Sections 25 of the Arms Act, Police Station Ellenabad, District Sirsa to some other senior IPS Officer of the rank of DIG.

COCP-1439-2013 has been filed by the petitioner alleging violation of the order 16.2.2012 passed by this Court in the aforesaid petition.

The prayer of the petitioner in CRM-M-4542-2012 is for transfer of the investigation alleging therein that the police has converted a case of dacoity into the one attracting Section 325 IPC only. It is averred that on 10.10.2011 when the petitioner was travelling back to his residence along with his brother and one Bansi Lal, a dacoity took place and a sum of Rs.5.00 lacs as well as certain licensed arms belonging to the petitioner were looted from the car of the petitioner. Pursuant thereto, the petitioner got registered the above noted FIR naming two persons namely Satnam Singh and Nishan Singh and further alleging three persons, namely, Hira Singh, Sukhdev Singh and Bali Singh, as conspirators. The said incident was also reported in various newspapers of Haryana. On 12.10.2011 i.e. just two days after the registration of the FIR, Ravinder Kumar, DSP, Ellenabad had conducted an inquiry/investigation regarding the occurrence and found the version recorded in the FIR as correct. When for more than a month, nothing was done to arrest the accused, the petitioner moved the Judicial Magistrate, Ist Class, Ellenabad, by making an application under Section 159 Cr.P.C. for obtaining the investigation report.

It is further averred that another inquiry was conducted by DSP Satyabir Singh Sheoran. However, he vide his report dated 5.12.2011 came to the conclusion that the incident in question was a fight between the petitioner side and Nishan Singh and Satnam Singh and no amount or arms/gold chain was looted from the car of the petitioner nor any firing took place at the spot and therefore, only a case under Section 323 IPC was found to have been made out. The petitioner alleges that the inquiry report dated 5.12.2011 is a managed report and that respondent No.4 had misled the Court of learned Judicial Magistrate, Ist Class, by saying that the investigation in the case was still going on. Thereafter, the petitioner approached various senior authorities of the police for proper investigation of the case requesting therein to obtain the call details of accused Hira Lal so as to demonstrate the conspiracy behind the whole occurrence, but all in vain. Thereafter, the petitioner filed a complaint before the Haryana Police Complaint Authority, leveling allegations of demand of bribe by respondent No.6. Respondent No.4 and 6 in connivance with the accused had given twist to the entire FIR by getting recovered the arms looted from the car of the petitioner on 10.10.2011 i.e. on the date of occurrence from a field of a village Swaran Singh falling under Police Post Jiwan Nagar, P.S. Rania, which is 17 KM away from the place of occurrence. It is further averred that accused Nishan Singh and Satnam Singh were arrested on 20.12.2011 after the conclusion of the inquiry converting the present FIR of dacoity into the one for a lesser offence and that the police

instead of asking for police remand prayed for the judicial custody of the accused which clearly shows that there was a connivance between the police authorities and the accused. Thereafter the accused moved for and were granted regular bail by the trial Court. It is further averred that the police had deleted the offences under sections 395, 397, 120-B of the Indian Penal Code and Section 25 of the Arms Act and only offences under sections 323 and 325 of the Indian penal Code were added in the FIR. It is further averred that thereafter the petitioner had given a written complaint to the Director General of Police, Haryana, narrating the entire sequence of events as also forwarding the same to various higher authorities. It is further averred that the petitioner has now learnt that the investigating officer of the present case, namely, Subhash Chander Yadav (respondent No.8) has since been apprehended by the Vigilance Bureau in FIR No. 6 dated 29.01.2012 under Sections 7 and 13 of the Prevention of Corruption Act which clearly establishes the demand of bribe from the petitioner by the investigating agency.

This Court vide order dated 16.02.2012 while issuing the notice of motion, had directed that the challan be not presented in the meanwhile.

Learned counsel appearing for the petitioner while reiterating the contents of the petition and also referring to the documents annexed therewith states that the investigation conducted in the instant case suffers from illegalities committed by the investigating agency. It is further submitted that it does

not appeal to the common prudence that when barely two days after the registration of the FIR, an enquiry was conducted by DSP Ravinder Kumar, Ellanabad, finding the version recorded in the FIR as correct, what was the necessity for conducting another enquiry by DSP Satyabir Singh on 05.12.2011. Still further the recovery effected by the police from the fields of one Swaran Singh, which is 17 km away from the place of occurrence, is nothing but a manipulated fact so as to give the desired benefit to the accused. Even the representations submitted by the petitioner to the DGP, Haryana and other higher authorities did not yield any result which is why the petitioner is before this Court.

Yet further, it is argued that the petitioner got his hand fractured in the incident in question apart from an amount of Rs.5 lacs having been looted from him besides the licenced arms. However, the police deleted all the relevant sections from the FIR and rather converted the same into the one under sections 323 and 325 of the IPC. On this strength, it is vehemently argued that the investigation conducted by the police is surrounded by suspicious circumstances and a clear cut case of the investigating agency openly conniving with the accused. Thus, a prayer has been made to handover the investigation to some higher police officer of the rank of not below the DIG.

As noticed above, though this Court had stayed the presentation of the challan in the meantime, yet the challan was presented before the trial Court leading to the filing of COCP-

1439-2013. In the said petition notice was issued to the respondents and respondent No.1 filed a reply that he was not aware of the aforesaid order passed by the Hon'ble High Court.

The relevant extract from the reply would read as under:-

“3. That it is worthwhile to mention here that on 16.02.2012, when CRM-M-4542-2012 was fixed in the Hon'ble High Court, on that day notice on behalf of State of Haryana was accepted by Mr. Shivendra Swaroop, the then AAG, Haryana and no police official from Police Station, Ellenabad was present in the Hon'ble High Court on that day. Whenever any notice is received in the office of Superintendent of Police and a DD Number is given and then same is referred for necessary action to concerned police station and again in the police station an entry is made in the concerned register maintained at Police Station.

4. That no case diary of dated 16.02.2012 was made and no police official visited in the Hon'ble High Court on that day. It was never within the knowledge of the police that the Hon'ble Court has ordered not to present the Challan. Even when the challan was presented before the APP, for vetting, the same was checked by APP and was forwarded to the Court. Had it been within the knowledge of the police, then they would not have presented the same before the APP and APP had never forwarded it to Court, even

the concerned Ahlmad of the Court of Ld. Judicial Magistrate never submitted any report that the Hon'ble High Court has ordered not to present the Challan in this very case. Respondent No.1 had joined SHO in P.S. Ellenabad on 01.01.2013 and prior to his joining as an SHO, he was never communicated/informed by the previous investigating officer regarding the stay order passed by this Hon'ble Court. The answering respondent only unknowingly and in a routine manner submitted the Challan in the Court and there was no mala-fide intention behind it. The answering respondent was never having any such intention to disobey the orders of this Hon'ble Court and even the answering respondent was not having any intention to give benefit to any of the party to the FIR and the presentation of the Challan by the answering respondent is nothing but a routine work, in the absence of the knowledge about the stay order.....”

On the other hand learned State counsel states that the investigation in the instant case was conducted in a fair and impartial manner. It is further stated that the second enquiry report dated 05.12.2011 clearly states the reasons for differing with the earlier enquiry report conducted on 12.10.2011. It is yet further stated that merely because the investigating officer had been named as an accused in the FIR registered under the Prevention of Corruption Act, is no ground to brush aside the

report dated 05.12.2011 especially when the said enquiry was conducted by an officer of the rank of Deputy Superintendent of Police. Still further it is argued that in this case the challan has already been presented and if the petitioner has any grievance, he is at liberty to raise the same before the trial Court, which is empowered as also competent to grant the prayer of the petitioner for further investigation, if the petitioner is able to make out a case.

I have heard learned counsel for the parties and do not find any merit in the submissions made by learned Senior Counsel for the petitioner.

Very recently, in Vinubhai Haribhai Malaviya and Ors. Vs. The State of Gujarat and Anr., 2019 AIR (SC) 5233, the Hon'ble Supreme Court, while delineating in details the power of the Magistrate under Section 156(3) Cr.P.C., has held that such power of the Magistrate also includes the power to order further investigation after the report is received by him under Section 173(2) Cr.P.C. and such process would also include proceedings by way of further investigation under Section 173(8) of the Cr.P.C. It has been held as under:-

“23. It is thus clear that the Magistrate's power under Section 156(3) of the Cr.P.C. is very wide, for it is this judicial authority that must be satisfied that a proper investigation by the police takes place. To ensure that a “proper investigation” takes place in the sense of a fair and just investigation by the police - which such Magistrate is to supervise - Article 21 of the Constitution of India mandates

that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him under Section 173(2); and which power would continue to enure in such Magistrate at all stages of the criminal proceedings until the trial itself commences. Indeed, even textually, the “investigation” referred to in Section 156(1) of the Cr.P.C. would, as per the definition of “investigation” under Section 2(h), include all proceedings for collection of evidence conducted by a police officer; which would undoubtedly include proceedings by way of further investigation under Section 173(8) of the Cr.P.C.”

Still further, it has been held that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate’s nod under Section 173(8) to further investigate an offence till charges are framed and such power of the Magistrate would be available at all stages of the progress of a criminal case before the trial actually commences. It is further held in appropriate cases this power can be exercised suo-motu by the Magistrate himself, depending on the facts of each case and whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such

discretion on the facts of each case and in accordance with law.

The relevant extracts from the judgment would read as under:-

“38. There is no good reason given by the Court in these decisions as to why a Magistrate’s powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri (supra), Samaj Parivartan Samudaya (supra), Vinay Tyagi (supra), and Hardeep Singh (supra); Hardeep Singh (supra) having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate’s nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the

Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h), and Section 173(8) of the Cr.P.C., as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo-motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in Hasanbhai Valibhai Qureshi (supra). Therefore, to the extent that the judgments in Amrutbhai Shambubhai Patel (supra), Athul Rao (supra) and Bikash Ranjan Rout (supra) have held to the contrary, they stand overruled. Needless to add, Randhir Singh Rana v. State (Delhi Administration), (1997) 1 SCC 361 and Reeta Nag v. State of West Bengal and Ors., (2009) 9 SCC 129, also stand overruled.”

Learned counsel for the petitioner is unable to controvert the aforesaid legal position as laid down by the Hon’ble Supreme Court in Vinubhai Haribhai Malaviya’s case (supra).

In view of the above, I am of the considered opinion that no case is made out for granting the prayer of the petitioner. The petitioner, if so advised, may move the trial Court regarding his grievances and needless to say if he is able to make out a case, the learned trial Court will deal the same in accordance with law. However, granting the prayer of the petitioner will not only prejudice the trial but will also violate the aforesaid legal position as laid down by the Supreme Court. Therefore, the present petition is dismissed, subject of course with the liberty aforesaid.

As in the connected petition, the subject matter of consideration is as to the violation of order dated 16.2.2012 passed by this Court, the same does not survive once the main petition out of which the present contempt petition has arisen, stands dismissed.

In view of the above, both the petitions are dismissed with the liberty aforesaid.

(HARNARESH SINGH GILL)
JUDGE

December 5th, 2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No