

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

**CRM-M No. 4491 of 2017
Date of Decision:-27.02.2019**

Sonu

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present:- None for the petitioner.

Mr. Anmol Malik, AAG, Haryana.

Mr. Rohiteshwar Singh, Advocate
for respondent No.2.

MANOJ BAJAJ J.(Oral)

Petitioner Sonu has filed the present petition under Section 482 Cr.P.C. for setting aside the judgment dated 20.10.2016 (Annexure P-2) passed by the Sessions Judge, Rewari, whereby re-investigation of the case FIR No.124 dated 06.12.2012, under Sections 279 and 304-A IPC, registered at Police Station Rohdai, District Rewari has been ordered.

It is pleaded in the petition that after registration of the case, the FIR was investigated and the trial had commenced. After examining the evidence on record, the trial Court proceeded to acquit the petitioner. Aggrieved against that judgment of acquittal, a criminal appeal was

preferred before the Sessions Court, wherein the Court has proceeded to observe as under :-

“.....let this case be re-investigated by a officer not below the rank of Deputy Superintendent of Police, keeping in view the allegations of the appellant-complainant and the observations made above and to see whether the deceased died on account of road side accident only, if so how and by whose fault or whether it is a homicidal death caused as per some conspiracy or motive intentionally and accordingly further action will be initiated by the police. The police is free to ask the area Magistrate to hand over the record of the case to the extent required. The present appeal stands disposed of accordingly with the above directions. Needless to say the observations made in this judgment are limited to decide the issue qua re-investigations and shall not be misconstrued as a final opinion on the controversy, which shall be subject to further investigations, which is expected to be free and fair as per the procedure established by law. However, in the meanwhile the respondent-accused, who is already acquitted stands released subject to further orders as at present no incriminating evidence comes on record against him on the basis of the charge sheet submitted by the police, which is already found to be a exercise in futile, leading to consequential trial as observed above, let a copy of this judgment be sent to Superintendent of Police, Rewari to initiate fresh investigations as ordered above and sent a copy of the said order to this court for records. Let a copy of this judgment along trial court records be remitted back for further compliance and the

appeal file be consigned to record room after due compliance.”

Upon hearing learned counsel for the parties and perusing the case file, this Court is of the opinion that the Appellate Court has exceeded its jurisdiction in ordering re-investigation particularly when Section 386 Cr.P.C. does not confer any power with the Appellate Court to order re-investigation. Hon'ble Supreme Court in **Vinay Tyagi vs. Irshad Ali @ Deepak and others 2013(2) RCR (Criminal) 197** has held as under :-

“xxx xxx xxx

33. At this stage, we may also state another well-settled canon of criminal jurisprudence that the superior courts have the jurisdiction under [Section 482](#) of the Code or even [Article 226](#) of the Constitution of India to direct ‘further investigation’, ‘fresh’ or ‘de novo’ and even ‘reinvestigation’. ‘Fresh’, ‘de novo’, and ‘reinvestigation’ are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.

34. We have deliberated at some length on the issue that the powers of the High Court under [Section 482](#) of the Code do not control or limit, directly or impliedly, the width of the power of Magistrate under [Section 228](#) of the Code. Wherever a charge sheet has been submitted to the Court, even this Court ordinarily would not reopen

the investigation, especially by entrusting the same to a specialised agency. It can safely be stated and concluded that in an appropriate case, when the court feels that the investigation by the police authorities is not in the proper direction and that in order to do complete justice and where the facts of the case demand, it is always open to the Court to hand over the investigation to a specialised agency. These principles have been reiterated with approval in the judgments of this Court in the case of [Disha v. State of Gujarat & Ors.](#) [(2011) 13 SCC 337], [Vineet Narain & Ors. v. Union of India & Anr.](#) [(1998) 1 SCC 226], [Union of India & Ors. v. Sushil Kumar Modi & Ors.](#) [1996 (6) SCC 500] and [Rubabbuddin Sheikh v. State of Gujarat & Ors.](#) [(2010) 2 SCC 200].

35. The power to order/direct ‘reinvestigation’ or ‘de novo’ investigation falls in the domain of higher courts, that too in exceptional cases. If one examines the provisions [of the Code](#), there is no specific provision for cancellation of the reports, except that the investigating agency can file a closure report (where according to the investigating agency, no offence is made out). Even such a report is subject to acceptance by the learned Magistrate who, in his wisdom, may or may not accept such a report. For valid reasons, the Court may, by declining to accept such a report, direct ‘further investigation’, or even on the basis of the record of the case and the documents annexed thereto, summon the accused.”

In view of the aforesaid, the judgment dated 20.10.2016 (Annexure P-2) passed by the Sessions Judge, Rewari, is hereby set aside

and the Appellate Court is directed to decide the appeal afresh on merits.

February 27, 2019
Vijay Asija

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No