

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR no.2442-2018 (O&M)

Date of Decision: 26.09.2019

Ravinder

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Vijay Kumar Jindal, Senior Advocate, with
Mr. Gopal Soni, Advocate, for the petitioner.
Mr. Surinder Singh, AAG, Haryana and
Mr. Neeraj Poswal, AAG, Haryana.
Mr. J.S. Bedi, Senior Advocate with
Mr. Partap Singh, Advocate, for the complainant.

Amol Rattan Singh, J. (Oral)

By this petition, the petitioner challenges the order of the learned trial court (Additional Sessions Judge, Panipat, dated 22.05.2018), by which the supplementary report submitted under sub-section (8) of Section 173 of the Cr.P.C, has been rejected by that court, the said report in fact having exonerated the petitioner, Ravinder, who earlier had been arraigned as an accused in the report initially submitted under sub-section (2) of the said provision.

The trial court has given two grounds to reject the said report, the first being that no permission was sought from the Magistrate for further investigation of the case; and second, that the petitioner had been specifically named by the complainant in the statement made to the police and thereafter again while he testified as PW-2, to the effect that the

petitioner had fired a shot upon him.

In that context, it has been further held by the trial court that the witnesses “allegedly examined” by the DSP, Headquarters (Panipat), were already available to the police before submission of the report under Section 173(2) of the Cr.P.C., and after thorough investigation and examining the relevant witnesses to the occurrence, that report had been submitted. Thus, as there was an eye witness account and the petitioner had been specifically named by the complainant (injured) and therefore, there was *prima facie* at least sufficient material to chargesheet him for the commission of the offences in question, the said offences being, one, punishable under Section 307 of the IPC read with Section 34 of the IPC, as also Section 25 of the Arms Act.

It has been further observed by that court that since, at the time of the framing of the charge, the court has only to consider as to whether a *prima facie* case is made out against the accused or not, he had accordingly been chargesheeted on 06.06.2017, with two witnesses already examined. Thereafter, there was no reason to accept the said supplementary report submitted under sub-section (8) of Section 173 of the Cr.P.C.

Mr. Jindal, learned Senior Counsel appearing for the petitioner, has firstly drawn attention to what is contained in the provision itself, 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).”

Thereafter, he has referred to a judgment of the Supreme Court in **Vinay Tyagi v. Irshad Ali @ Deepak and others**, 2013 (2) RCR (CrI.) 197 (Law finder Doc Id# 413714), from which he points to what has been held, as follows:-

“31. Having discussed the scope of power of the Magistrate under [Section 173](#) of the Code, now we have to examine the kind of reports that are contemplated under the provisions [of the Code](#) and/or as per the judgments of this Court. The first and the foremost document that reaches the jurisdiction of the Magistrate is the First Information Report. Then, upon completion of the investigation, the police are required to file a report in terms of [Section 173\(2\)](#) of the Code. It will be appropriate to term this report as a primary report, as it is the very foundation of the case of the prosecution before the Court. It is the record of the case and the documents annexed thereto, which are considered by the Court and then the Court of the Magistrate is expected to exercise any of the three options afore-noticed. Out of the stated options with the Court, the jurisdiction it would exercise has to be in strict consonance with the settled principles of law. The power of the magistrate to direct ‘further investigation’ is a significant power which has to be exercised sparingly, in exceptional cases and to achieve the ends of justice. To provide fair, proper and unquestionable investigation is the obligation of the investigating agency and the Court in its supervisory capacity is required to ensure the same. Further investigation conducted under the orders of the Court, including that of the Magistrate or by the police of its own accord and, for valid reasons, would lead to the filing of a supplementary report. Such supplementary report

shall be dealt with as part of the primary report. This is clear from the fact that the provisions of [Sections 173\(3\) to 173\(6\)](#) would be applicable to such reports in terms of [Section 173\(8\)](#) of the Code.”

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40. We have already noticed that there is no specific embargo upon the power of the learned Magistrate to direct ‘further investigation’ on presentation of a report in terms of [Section 173\(2\)](#) of the Code. Any other approach or interpretation would be in contradiction to the very language of [Section 173\(8\)](#) and the scheme of the Code for giving precedence to proper administration of criminal justice. The settled principles of criminal jurisprudence would support such approach, particularly when in terms of [Section 190](#) of the Code, the Magistrate is the competent authority to take cognizance of an offence. It is the Magistrate who has to decide whether on the basis of the record and documents produced, an offence is made out or not, and if made out, what course of law should be adopted in relation to committal of the case to the court of competent jurisdiction or to proceed with the trial himself. In other words, it is the judicial conscience of the Magistrate which has to be satisfied with reference to the record and the documents placed before him by the investigating agency, in coming to the appropriate conclusion in consonance with the principles of law. It will be a travesty of justice, if the court cannot be permitted to direct ‘further investigation’ to clear its doubt and to order the investigating agency to further substantiate its charge sheet. The satisfaction of the learned Magistrate is a condition precedent to commencement of further proceedings before the court of competent jurisdiction. Whether the Magistrate should direct ‘further investigation’ or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct ‘further investigation’ or ‘reinvestigation’ as the case may be, on the facts of a given case. Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, re-investigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation. In this regard, we may refer to the observations made by this court in the case of [Sivanmoorthy and Others v. State](#) represented by Inspector of Police [(2010) 12 SCC 29]. In light of the

above discussion, we answer the questions formulated at the opening of this judgment as follows:

Answer to Question no.1

40.1 The court of competent jurisdiction is duty bound to consider all reports, entire records and documents submitted therewith by the Investigating Agency as its report in terms of [Section 173\(2\)](#) of the Code. This Rule is subject to only the following exceptions;

a) Where a specific order has been passed by the learned Magistrate at the request of the prosecution limited to exclude any document or statement or any part thereof;

b) Where an order is passed by the higher courts in exercise of its extraordinary or inherent jurisdiction directing that any of the reports i.e. primary report, supplementary report or the report submitted on 'fresh investigation' or 're-investigation' or any part of it be excluded, struck off the court record and be treated as non est.

Answer to Question no.2

40.2 No investigating agency is empowered to conduct a 'fresh', 'de novo' or 're-investigation' in relation to the offence for which it has already filed a report in terms of [Section 173\(2\)](#) of the Code. It is only upon the orders of the higher courts empowered to pass such orders that aforesaid investigation can be conducted, in which event the higher courts will have to pass a specific order with regard to the fate of the investigation already conducted and the report so filed before the court of the learned magistrate.”

He next refers to another judgment of the Supreme Court in **Bikash Ranjan Rout v. State through the Secretary (Home), Government of NCT of Delhi, New Delhi**, JT 2019 (4) SC 281, from which he very fairly also points to what is contained in paragraphs 6.2 and 6.3 thereof, including the quotation made by their Lordships from **Vinay Tyagis'** case (supra), the last of which reads as follows:-

“6.3 In the case of Vinay Tyagi (supra), after considering catena of decisions of this Court, including the decisions of this Court in

Bhagwant Singh (supra) and Reeta Nag (supra), ultimately in para 40, this Court concluded as under:-

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..40.6 It has been a procedure of propriety that the police has to seek permission of the Court to continue “further investigation” and file supplementary charge-sheet. This approach has been approved by this Court in a number of judgments. This as such would support the view that we are taking in the present case.”

Of course, he has essentially relied upon what is contained immediately above, in paragraph 40.6.

He therefore submits that further investigation being allowed by the court only being “a procedure of propriety”, with the provision itself (sub-section (8) of Section 173 of the Code), not laying down any fetter on the jurisdiction of the investigating agency to further conduct investigation at any stage, the trial court should not have rejected the said report only because no formal order was passed allowing the investigating agency to conduct further investigation, after the initial report under Section 173 (2) was submitted.

Upon his further contention made that as a matter of fact an application was filed before the trial court for the purpose of seeking its permission, upon a query put to Mr. Surinder Singh, learned AAG, Haryana, he too submits that such an application was filed by the DSP, which is available on the police file, though not on the judicial file, and the said application was in fact returned by the trial court stating that the police has ample power to conduct further investigation (and therefore no prior permission of the court is necessary).

Both the learned counsel also submit that a '*zimni*' recording to that effect is also present in the police file.

Mr. Bedi, learned Senior Counsel appearing for the complainant, on the other hand submits that even as per the judgment in *Vinay Tyagi*, reiterated in *Routs'* case (both supra), very obviously, despite what is contained in the non-obstantive clause of sub-section (8) of Section 173, it is well settled law that permission of the court must be taken prior to further investigation being conducted by the investigating agency (and a report thereafter being submitted under the said provision).

He, other than reiterating what has already been pointed out, very fairly, by Mr. Jindal, points to paragraphs 38 and 39 of **Vinay Tyagis'** case (Law Finder Doc Id# 413714), which reads as under:-

“38. Now, we may examine another significant aspect which is how the provisions of [Section 173\(8\)](#) have been understood and applied by the courts and investigating agencies. It is true that though there is no specific requirement in the provisions of [Section 173\(8\)](#) of the Code to conduct ‘further investigation’ or file supplementary report with the leave of the Court, the investigating agencies have not only understood but also adopted it as a legal practice to seek permission of the courts to conduct ‘further investigation’ and file ‘supplementary report’ with the leave of the court. The courts, in some of the decisions, have also taken a similar view. The requirement of seeking prior leave of the Court to conduct ‘further investigation’ and/or to file a ‘supplementary report’ will have to be read into, and is a necessary implication of the provisions of [Section 173\(8\)](#) of the Code. The doctrine of contemporanea expositio will fully come to the aid of such interpretation as the matters which are understood and implemented for a long time, and such practice that is supported by law should be accepted as part of the interpretative process.

39. Such a view can be supported from two different points

of view. Firstly, through the doctrine of precedence, as afore-noticed, since quite often the courts have taken such a view, and, secondly, the investigating agencies which have also so understood and applied the principle. The matters which are understood and implemented as a legal practice and are not opposed to the basic rule of law would be good practice and such interpretation would be permissible with the aid of doctrine of *contemporanea expositio*. Even otherwise, to seek such leave of the court would meet the ends of justice and also provide adequate safeguard against a suspect/accused.”

Other than that, Mr. Bedi submits that admittedly there is no order on record on the judicial file allowing such further investigation, and consequently the learned trial court did not err in holding that there was no such permission granted and therefore the report could not be considered.

Yet further, he has submitted that even on merits, the charge already having been framed against the petitioner and two prosecution witnesses already having been examined, the police thereafter submitting a supplementary report completely exonerating him, thereby taking a *volte face* on its earlier recommendation (in the report submitted under Section 173 (2) of the Cr.P.C.), it was obviously on completely *de novo* investigation conducted, which in any case is not permissible as per the law settled in the aforesaid judgment, with any order for *de novo* investigation, in the particular circumstances of a case, to be taken only from a higher Court.

Consequently, learned Senior counsel submits that the impugned order does not need to be interfered with.

Having considered the matter, even looking at what Mr. Surinder Singh, learned AAG, Haryana, has pointed out from the report

submitted under sub-section (8) of Section 173 of the Cr.P.C., to the effect that it has been stated therein that permission has been taken from the court, firstly it is to be noticed that no such order has been produced before this Court, despite repeated queries, by which the trial court had actually granted permission for further investigation.

As regards the allegation that the trial court returned the application filed by the DSP/SHO (seeking permission of that court), it not having been pointed out to being available on the courts' file, that contention alone, simply because such an application is present in the police file, cannot be accepted by this court.

It needs specific mention here that it is shown from the vernacular version of the report under Section 173 (8) of the Cr.P.C. (from the police file), that it was stated therein that permission had been taken from the court for further investigation; however, as already observed hereinabove, no such order has been shown to this court.

If at all such a situation had occurred, that the trial court had not passed an order on any such application made (as contended), it was the duty of the prosecution to have approached this Court by way of an appropriate petition, to submit that despite it seeking permission of the trial court for further investigation, it was not being granted such permission on record, as no order was being passed by it on the said application.

Consequently, that not having been done, this Court cannot

accept the contention made by the learned State counsel to the effect that such an application was moved and was 'orally' returned by the trial court. The fact actually remains that no such permission was ordered by the trial court to conduct any further investigation; and therefore the supplementary report under sub-section (8) of Section 173 of the Cr.P.C., (especially after the charge had already been framed, with that order also not having been challenged as has been pointed by the learned Senior Counsel appearing for the complainant, either by the accused or the prosecution), has been correctly rejected by the trial court, in my opinion.

It also needs to be noticed that Mr. Bedi, learned senior counsel appearing for the complainant, had referred to the material stated to have been gathered by the investigating officer before filing of the supplementary report, such material being statements recorded of different persons in the neighbourhood etc. (in favour of the petitioner), stating to the effect that he had not committed the crime, with learned senior counsels' contention being that they being neighbours, relatives etc. of the petitioner, such statements could not be relied upon.

Nothing on the merits thereof is being observed by this court, either qua the statements recorded, or qua the said persons being relatives/neighbours etc. of the petitioner (or not), that aspect naturally being a question of evidence to be led before the trial court.

However, it was still considered necessary to refer to the argument made, in view of the fact that Mr. Jindal had earlier also submitted

that the trial court was duty bound to look at the material on the basis of which the supplementary report was submitted to that court.

Though that would, normally, otherwise be true, (that a reference to the material submitted with the supplementary report be made by the trial court in its order accepting or rejecting the report), however, it is seen that the trial court has actually referred to the fact that certain witnesses were allegedly examined by the DSP, but that they were already available to the police even before the report under sub-section (2) of Section 173 of the Cr.P.C. was submitted to it.

It needs also specific mention here that Mr. Jindal, learned counsel for the petitioner, eventually had submitted to this court that this argument may not be specifically noticed by this court as it may prejudice the petitioners' defence. Yet, it is being considered necessary to notice it, because his specific argument otherwise had been that the trial court had not considered the material submitted to it alongwith the supplementary report, (and therefore the impugned order is not sustainable).

Thus, having noticed the above, it is again reiterated that any observation made on the aforesaid contentions, or otherwise, by this court in orders passed in this petition, shall not be taken by the trial court as any observation on the merits of the case, but only in the context of whether or not the impugned order, rejecting the supplementary report, is legally valid or not.

Naturally, if the petitioner wishes to lead any such evidence in

his defence, that would be considered wholly on its own merit.

In view of the discussion above, this petition is dismissed, with the aforemade observation.

(AMOL RATTAN SINGH)
JUDGE

26.09.2019

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Whether reasoned/speaking: Yes
Whether reportable: Yes