

In the High Court of Punjab and Haryana at Chandigarh

**CRM-M No. 25991 of 2020
Date of Decision: 03.9.2020**

Apoorva Singh and others

.....Petitioners

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. K.K.Tiwari, Advocate
for the petitioners.

HARNARESH SINGH GILL, J. (ORAL)

Case is taken up for hearing through video conferencing.

This is a petition under Section 482 Cr.P.C. for quashing of FIR No. 128 dated 04.3.2020 registered under Sections 323, 328, 354-A, 377, 498-A, 406, 506, 34 IPC, Police Station Palla, District Faridabad (Annexure P-1) and all the consequent proceedings arising therefrom.

Learned counsel for the petitioners submits that the allegations levelled in the FIR by respondent No. 2 are totally vague. He further submits that on the alleged date i.e. 10.4.2018, petitioner No. 1 could not have given any beating to the complainant as he had been appearing in the examination conducted by the UPSC on 8.4.2018 and thereafter he remained out upto 14.4.2018. It is further submitted that the allegations against petitioner No. 3 of his having molested the complainant are falsified from the very fact that on 8.4.2018, the complainant had been responding to the whatsapp chat of petitioner No. 3 with smiling emojis. It is yet further contended that all other petitioners have been dragged in by the complainant being close family members of her husband i.e. petitioner No. 1.

Notice of motion to the State-respondent No. 1 only.

On the asking of the Court, Mr. Ramesh Kumar Ambavta, AAG, Haryana, accepts notice on behalf of the State.

The prayer made by the petitioners is for quashing of the FIR and all consequential proceedings.

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 a fair and proper investigation at the pre cognizance stage and even after a charge sheet or a closure report is submitted. It was 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.”

In view of the aforesaid judgment of the Hon'ble Apex Court, this Court is not inclined to grant the prayer of the petitioners made in the present petition.

Faced with such a situation, learned counsel for the petitioners

submits that he would be satisfied if the petitioners are granted liberty to approach the Magistrate concerned and move an appropriate application by raising all the pleas, as raised in the present petition. He however prays that owing to the medical condition of petitioner No. 3, who has very recently undergone a bypass surgery and petitioner No. 4-Priya Singh @ Monika Singh, who too has undergone a cesarean operation, their personal presence before the trial Court may be exempted.

Keeping in view the above, this petition is disposed of with a liberty to the petitioners to approach the Magistrate concerned and move an application by raising all the pleas, as raised in the present petition. On their doing so, the Magistrate concerned will decide such application after taking into consideration the pleas raised therein by the petitioners, in accordance with law.

As far as the prayer for exemption from personal appearance of petitioners No. 3 and 4 is concerned, they are directed to move an application for exemption before the Magistrate concerned and the same shall be decided by the Magistrate within a week from the date of filing of such application.

The petition stands disposed in the above terms.

(HARNARESH SINGH GILL)
JUDGE

September 03, 2020
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No