

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

**1. CRM-M No.35767 of 2019 (O&M)
Date of Decision: 12.02.2020**

**Subhash ChanderPetitioner
Vs
State of Haryana and anotherRespondents**

2. CRM-M No.24228 of 2018 (O&M)

**Hujafa and others
.....Petitioners
Vs
State of Haryana and anotherRespondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. J.S. Bedi, Senior Advocate with
Mr. Himanshu Arora, Advocate
for the petitioner in CRM-M No.35767 of 2019.

Mr. Sunil Sihag, Advocate
for the petitioners in CRM-M No.24228 of 2018.

Mr. Surender Singh, A.A.G., Haryana.

None for the complainant.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CRM-M No.35767 of 2019 and
CRM-M No.24228 of 2018 are being decided.

[2]. In CRM-M No.35767 of 2019, petitioner has assailed
the impugned proceedings arising out of FIR No.46 dated
03.11.2015 registered under Section 13(1)(d) of the Prevention

of Corruption Act, 1988 and under Sections 406, 409, 420, 120-B, 467, 468, 471 IPC, Police Station State Vigilance Bureau, Gurugram qua the petitioner. In CRM-M No.24228 of 2018, petitioners seek appropriate directions to the respondents to transfer the investigation of the aforesaid case to some independent Agency at Central level or by the Special Investigation Team.

Since both the petitions have arisen out of same FIR, therefore, for brevity the facts are being culled out from CRM-M No.35767 of 2019.

[3]. Petitioner-Subhash Chander is working as District Horticulture Officer in the State of Haryana. Micro Irrigation Scheme was launched and the same was implemented under National Mission on Micro Irrigation. For availing assistance to the beneficiaries, a defined procedure was prescribed for availing the assistance. As per departmental guidelines, District Horticulture Officer is bound to release the subsidy on the basis of recommendation of Horticulture Development Officer. In the year 2011-12, petitioner was posted as District Horticulture Officer, Gurugram with an additional charge of Mewat. A complaint was received in respect of Micro Irrigation System implemented by the Horticulture Department, Haryana. The complaint was marked by Horticulture Administrative

Department of the State of Haryana to the State Vigilance Bureau for investigation. The Vigilance Bureau after thorough investigation submitted a report dated 25.08.2015 recommending departmental proceedings to be initiated against the petitioner. State Vigilance Bureau also recommended registration of a criminal case against two officers namely Khalil Ahmed, Horticulture Development Officer and Satpal Raghav, APO and dealer Shamim Ahmed.

[4]. As per Scheme under National Mission on Micro Irrigation and the guidelines framed thereunder, role of the petitioner was of supervisory nature as he was required to carry out 20% of the total number of units installed. Vigilance report dated 25.08.2015 found that Shamim Ahmed son of Jafar Khan, owner of firm Dehana Enterprises authorized dealer of Harval Agwa India Private Limited in connivance with Khalil Ahmed District Horticulture Development officer, Ferozepur Jhirka, Satpal Raghav Assistant Planning Officer on the basis of fictitious documents have misappropriated an amount of Rs.1,04,20,736/- by misusing their official position. The case was recommended against them. The inquiry report also found that in accordance with the guidelines, the District Horticulture Officer shall check 20 units. In the inquiry report, it was also found that petitioner-Subhash Chander was District Horticulture

Officer at the relevant time and by not checking the required units in accordance with the guidelines, he had committed negligence towards his duty, therefore, it was suggested to initiate action as per Rule 7 of the Haryana Civil Services Rules, 1987 (Punishment and Appeal) against Subhash Chand, District Horticulture Officer at that time.

[5]. The aforesaid recommendations were implemented. FIR was registered against the persons so found guilty in the report of investigation and departmental proceedings were initiated against the petitioner under Rule 7 of the Haryana Civil Services Rules 1987 (Punishment and Appeal). The report of the Vigilance i.e. Director General, State Vigilance Bureau, Haryana dated 25.08.2015 was approved by the Government i.e. Chief Minister through Chief Secretary, Haryana Government, Vigilance Department vide letter dated 07.10.2015. Consequently, the petitioner was chargesheeted under Rule 7 of the Rules 1987 vide memo dated 08.04.2015.

[6]. Vide order dated 15.12.2016, the Principal Secretary to Government of Haryana, Agriculture and Farmers Welfare Department passed an order. Para nos.4 and 5 of the order reads as under:-

“4. In view of the facts and circumstances of the case that there is no prima facie evidence of any irregularity in

the preliminary enquiry made by Headquarter officers, disciplinary action taken against Sh. Subhash Chander, District Horticulture Officer under Rule 7, besides placing him under suspension, nothing found against him in the Vigilance Enquiry except irregularity on his part in performance of his duties, for not checking the systems, which would perhaps might have such omissions because of heavy load of work having additional duties and dependence on subordinate staff.

5. *Keeping in view of the facts and circumstances of this matter that there is no prima facie evidence of any irregularity in the preliminary enquiry and Vigilance Enquiry, taking a lenient view, the Governor of Haryana is pleased to order that the Charge-sheet issued to Sh. Subhash Chander, the then District Horticulture Officer, Mewat (Additional Charge) now Panipt under Rule 7 of Haryana Civil Services (Punishment and Appeal) Rule 1987 be converted into Rule 8 and to impose a punishment of 'recorded warning' to him."*

[7]. Evidently, the vigilance inquiry found irregularities only on the part of the petitioner in performance of his duty for not checking the systems. By taking lenient view the Government of Haryana was pleased to order that the chargesheet issued to the petitioner under Rule 7 of the Rules 1987 be converted into Rule 8 and to impose punishment of 'recorded warning' to him. The order dated 15.12.2016 has already attained finality as the same was never assailed by anyone.

[8]. Petitioner was arrested in the criminal case. Petitioner

filed a petition for grant of regular bail before the Additional Sessions Judge, Mewat. The Court *prima facie* found that neither the Vigilance Department nor the Horticulture Department found the commission of offence by the petitioner. Though he was found to be negligent as some irregularities were found on his part. There was no allegation of corruption/embezzlement/misappropriation of funds or cheating against the petitioner. Main allegations were against Shamim Ahmed and Khalil Ahmed and they were already admitted to anticipatory bail by the High Court. Petitioner was granted regular bail vide order dated 31.03.2018.

[9]. Thereafter, Director General, State Vigilance Bureau, Haryana, Panchkula wrote a letter No.6086/SVB(H) dated 04.05.2018 to Additional Chief Secretary to Govt. Haryana, Vigilance Department, Chandigarh in the context of inquiry No.01 dated 20.06.2014/Mewat and case FIR No.46 dated 03.11.2015, PS SVB, Gurugram against the officers/officials of Horticulture Department, Haryana, wherein it was mentioned that the comments of the Investigating Officer, Inspector Om Parkash were obtained and the case file was examined. The Investigating Officer had arrested the petitioner on the ground that he had signed the report of the Committee which has carried out 100% physical verification of the minor irrigation

systems. However, no order regarding composition of the Committee was collected by the Investigating Officer. The report itself contained the words "Committee constituted by DHO", therefore, it was clear that the petitioner himself was not carrying out 100% physical verification, nor he was required to do the same as per departmental guidelines. The arrest of the petitioner was found to be without any sufficient evidence against him. It was observed that the Investigating Officer Inspector Om Parkash has been repatriated to his parent department i.e. Police Headquarter, Haryana vide order dated 01.05.2018.

[10]. Thereafter, Director General, State Vigilance Bureau, Haryana, Panchkula wrote letter No.5505/1-2/SVB(H) dated 25.04.2018 to the Superintendent of Police, State Vigilance Bureau, Gurugram range, Gurugram on the subject of FIR No.46 dated 03.11.2015, PS/SVB/GGM. Number of issues were required to be gone into and vide the aforesaid letter, it was requested that the Investigating Officer of the case be directed to clarify the points mentioned in the said letter.

[11]. The Police filed challan under Section 173 Cr.P.C. in FIR No.46 dated 03.11.2015 under Sections 406, 409, 420, 120-B, 467, 471 IPC and Section 13(1)(d) of the Prevention of Corruption Act, Police Station State Vigilance Bureau,

Gurugram. No complicity of the petitioner was found in the report dated 23.05.2018 prepared under Section 173 Cr.P.C. It has been observed that departmental proceedings were suggested against the petitioner. No evidence was found against the petitioner, therefore, there was no justification to arrest the petitioner. Separate application was filed in the Court at Nuh. Petitioner was exonerated in the challan. Detailed application for discharge of the petitioner was filed in the Court on 30.05.2018 with a request to discharge the petitioner (the then District Horticulture Officer, Nuh). No order has been passed by the Court in this application.

[12]. Inspector Om Parkash was subjected to inquiry by the Additional Chief Secretary, Haryana Government Vigilance Department. A letter was issued by the Additional Chief Secretary, Haryana Government Vigilance Department to the Additional Chief Secretary, Government of Haryana Home Department, wherein issue of arresting the petitioner by Inspector Om Parkash, State Vigilance Bureau without permission of the Administrative Department and without informing the senior officers was highlighted and the act and conduct of Inspector Om Parkash Investigating Officer was found to be *mala fide*. Strict departmental action was proposed to be initiated against Inspector Om Parkash in accordance with

the Rules vide letter dated 10.07.2018.

[13]. In the application under Section 193 Cr.P.C. filed by the complainant, the State of Haryana filed reply to the said application. The State took the stand in favour of the petitioner. The findings of the challan were highlighted in the following manner:-

- “a. On each application for the subsidy there is hand written verification of the Horticulture Development Officer, regarding (i) the land being complete as per land record, (ii) no subsidy during last five years and (iii) the set having being checked and found working at the spot. This report was forwarded to the DHO for sanctioning of the amount.*
- b. In the departmental guidelines for the scheme it was clearly mentioned that the HDO would verify correctness of the documents before forwarding the same to the DHO. So far any defects/forgery in the documents the DHO could not be held criminally liable.*
- c. Similarly, the bills submitted by the firm were also bearing verification of the HDO.*

In view of these facts no FIR was recommended/registered and he was not challaned.

[14]. The State took the stand that no FIR was recommended against the petitioner and the State also found that three accused were challaned and the petitioner was not held criminally liable for any lapse or crime committed by his subordinates. He was wrongly arrested by Inspector Om Parkash. Ultimately prayer was made that the application filed by the complainant be dismissed being not maintainable and devoid of merits and the same was termed as a step to create hurdle in adjudication of discharge application moved by the Investigating Agency for discharging the petitioner.

[15]. Thereafter, Director General, State Vigilance Bureau, Haryana, Panchkula wrote a letter No.1-2/SVB(H) dated 06.03.2019 to the Additional Chief Secretary to Govt. Haryana Vigilance Department, Chandigarh on the subject of inquiry No.1/2014/Mewat in case FIR No.46 dated 03.11.2015 P.S. SVB, Gurugram against officers of Agricultural Department. In this detailed letter, all the issues had been dealt. Pros and cons of the scheme, implementation thereof, procedure from the very inception and other attending features were highlighted and report was submitted. Para No.2 of the report reads as under:-

“2. The comments on the sub-points mentioned regarding subsidy file of beneficiary Usman S/o Pratap, R/o Dhana, District Nuh are as under:-

(i) *Application form:- It was found during Enquiry as well as investigation that as per the scheme guidelines the applications and others documents were received in the office of District Horticulture Officer through the Horticulture Development Officer, hence the DHO could not be held criminal liable for any defect in the documents submitted to him after verification by his subordinates.*

(ii) *Roaster register:- It was found during investigation that no roaster register was prepared in this case however the verification and site survey reports of the HDO/APO are available in the file of each of the beneficiaries and mere absence of roaster register was not sufficient to hold DHO criminally liable.*

(iii) *Check list form:- As the DHO was required to verify the genuineness of the documents attached with the application and he was required to physically verify the system installed at the site and on the basis of his report the approval was granted by the DHO.*

(iv) *Sanction order: As per the investigation the sanction order was issued by the DHO on the basis of verification report given by the HDO.*

(v) *Implementation:- The fact that HDO did not get photographed the site and bills of M/s Harvel Auga were signed by him as a token of verification of the same and were used to get released the subsidy have been taken into account and he has arrested and challaned in this case. However, the DHO who was exercising powers of DDO, could not be held criminally liable on this count.*

(vi) *Field Inspection Form:- The HDO and APO have*

been arrested and challaned in this case as they gave the wrong field inspection report and did not get photographed the site. However, the DHO could not be held criminally liable for the lapse of his subordinates and appropriate departmental action had already been recommended against him for negligence on his part.

(vii) Release of subsidy:- The DHO released the subsidy to the dealer on the basis of verification report, satisfaction certificates and other documents duly forwarded and submitted to him by his subordinates hence he could not be held criminally liable for the same.

(viii) Monitoring:-The DHO could not be held criminally liable for his failure to physically verify the site after release of subsidy. Appropriate departmental action had already been recommended against him for negligence on his part.”

[16]. The investigation of the case was also conducted by Special Investigation Team headed by an officer of the rank of DSP and thereafter due to transfer of DSP, the investigation was later on conducted by different Inspectors. It was found that Inspector Om Parkash did not collect any evidence against the petitioner and all the points narrated hereinabove were already available in the documents collected during inquiry and investigation by the Investigating Officer, still Inspector Om Parkash arrested the petitioner on 27.03.2018 without any new facts. The Government took a serious view of the matter and vide order dated 25.04.2018, it was directed to repatriate the

Inspector to his parent department. After repatriation of Inspector Om Parkash, Inspector Dibagh Singh was posted in DVB Unit Nuh and he was assigned the investigation of the case. After investigation of the case, challan was presented against three accused and application for discharge of the petitioner was moved as he was wrongly arrested by the Inspector Om Parkash. Two of the officers challaned in the case stood retired from the Government Service, therefore, no sanction was required. Petitioner was held to be innocent. The detailed inquiry was conducted by State Vigilance Bureau and after investigation of the said case, it was found that the petitioner was innocent and after filing of the challan, the matter is sub-judice before the Court, therefore, there was no justification for conducting any re-inquiry in the matter.

[17]. The aforesaid report dated 26.02.2019 submitted by the Director General, State Vigilance Bureau, Haryana Panchkula was approved by the Government. Letter dated 19.04.2019 sent by the Addl. Chief Secretary Haryana Government, Vigilance Department to the Addl. Chief Secretary, Haryana Government, Agriculture and Agriculturist Welfare Department is suggestive of the fact that report submitted by the Director General, State Vigilance Bureau was approved by the Chief Minister, Haryana. In the endorsement of the letter, the approval was recorded in

the context of inquiry dated 26.02.2019 by the Director General, State Vigilance Bureau, Haryana, Panchkula.

[18]. In the second case i.e. CRM-M No.24228 of 2018 filed by the complainant(s), a reply was filed by Dharamvir, HPS, Deputy Superintendent of Police, State Vigilance Bureau, Gurugram Range, Gurugram wherein also the petitioner was shown to be innocent and was exonerated by the State in the said case. It was also pleaded that it was the duty of the Horticulture Development Officer and Assistant Project Officer to check the documents of farmers and visit the spot, after physical verification, submit the report to District Horticulture officer, who shall verify 20% out of 100% installations of equipments.

[19]. Thereafter, an application for withdrawal of the discharge application was moved by the DSP Ved Parkash, State Vigilance Bureau, Gurugram Range, Gurugram on 18.04.2019. Para No.2 of the application was pleaded on wrong facts. No investigation was pending in view of the averments made in the discharge application. In para No.5 of the application also, some conjectural pleadings were made that now higher officials of the Investigating Agency are of the view that the case be further investigated and discharge application was withdrawn in the interest of justice. This application was in utter disregard to the approved report of investigation by

Director General, State Vigilance Bureau, Haryana Panchkula which was circulated by the office of Addl. Chief Secretary Haryana Government, Vigilance Department to the Addl. Chief Secretary, Haryana Government, Agriculture and Agriculturist Welfare Department.

[20]. Vide the impugned order dated 16.05.2019, the Court has allowed the application for withdrawal of the discharge application. There was no application under Section 173(8) Cr.P.C. for further investigation filed by the State or the complainant. Once the report of investigation submitted by the Director General, State Vigilance Bureau was approved by the Chief Minister/State, there was no further evidence collected by the investigating Agency after approval of the report on 19.04.2019. The consistent stand of the State throughout was that the petitioner was innocent.

[21]. Even in the reply filed to the application under Section 193 Cr.P.C. filed by the complainant, the consistent stand of the State was that the petitioner is innocent and was wrongly implicated by the Inspector Om Parkash. In the report dated 26.02.2019 submitted by Director General, State Vigilance Bureau Haryana all the issues were dealt in pith and substance. The report was accepted by the State i.e. Chief Minister in *toto*. No further investigation was pending, nor the same could have

been ordered without leave of the Court in view of the ratio of **Vinay Tyagi vs. Irshad Ali @ Deepak and others, 2013(2) R.C.R. (Criminal) 197.** In **Vinubhai Haribhai Malaviya and Ors., vs. State of Gujarat and Anr., 2019 AIR (SC 5233)**, the ratio of **Amrutbhai Shambubhai Patel vs. Samunbhai Kantibai Patel, (2017) 4 SCC 177** has been explained by the Hon'ble Apex Court. The question of law which came to be considered in the aforesaid case was whether after chargesheet is filed by the Police, the Magistrate has power to order further investigation and if so, upto what stage of the criminal proceedings. The Hon'ble Apex Court after discussing the case laws and even ratio of **Vinay Tyagi's** case (supra) approved the observations of the Court in **Vinay Tyagi's** case (supra). The Court after examining the provisions of Section 173(8) Cr.P.C. observed that there is no specific requirement in the provisions of Section 173(8) Cr.P.C. to conduct further investigation and file supplementary report with the leave of the Court. The Investigating Agency have not only understood, but also adopted it as a legal practice to seek permission of the Court to conduct further investigation and to file supplementary report with the leave of the Court. The Court 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 to file

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 exposito* will fully come to the aid of the such interpretation as the matters which are understood and implemented for a long time and such practice i.e. supported by law should be accepted as part of interpretative process. It would be relevant to reproduce para No.38 of this judgment:-

“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.”

[22]. Evidently, 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) Cr.P.C. 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 travesty of justice. Ratio of **Vijay Tyagi's** case (supra) was approved and it was held that it would 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 not be ordered is within the discretion of the Magistrate. To that extent judgment of **Amrutbhai Shambubhai Patel's** case (supra) was held to be contrary and the same was over ruled by the Hon'ble Apex Court.

[23]. In the present case firstly, there was no further investigation pending at the time when approval was accorded on 19.04.2019 to the report of investigation dated 26.02.2019. Filing of application for withdrawal of discharge application appears to be an act of *mala fide* and against the consistent stand taken by the State in the earlier proceedings till date. No further investigation was in offing at any point of time, nor the same was recorded in the report under Section 173 Cr.P.C. No new facts came after approval dated 19.04.2019 granted by the State/Chief Minister of Haryana. The withdrawal of application

for discharge is patently without jurisdiction. The withdrawal of the application for discharge of the petitioner has virtually allowed further investigation and the same is against ratio of **Vinay Tyagi's** and **Vinubhai Haribhai Malaviya and others'** cases (supra).

[24]. For the reasons recorded hereinabove, I find that the impugned order dated 16.05.2019 passed by the Addl. Sessions Judge, Mewat is without jurisdiction and the same is set aside. The trial Court is directed to decide the application for discharge of the petitioner in the light of observations made hereinabove. Consequently, the petition i.e. CRM-M No.35767 of 2019 is allowed and petition preferred by the complainant(s) i.e. CRM-M No.24228 of 2018 (O&M) is hereby dismissed.

February 12, 2020

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No