

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
(Heard through VC)**

**CRM-M-45405 of 2018 (O&M)
Date of Decision: September 3, 2021**

Sanjay Patel

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. K.K. Manan, Senior Advocate with
Ms. Shubreet Kaur, Advocate,
for the petitioner.

Mr. Deepak Sabharwal, Additional Advocate Genera, Haryana.

Ms. Manju Goyal, Advocate,
for respondent No. 6—CBI.

JAISHREE THAKUR, J.

1. By way of instant petition, the petitioner seeks quashing of order dated 28.5.2018 passed by Judicial Magistrate Ist Class, Gurgaon (Annexure P/1), by which the learned Magistrate has accepted the untraceable report submitted by the police without issuing any notice to the complainant/petitioner and also seek for transferring the investigation to the C.B.I.

2. The brief facts leading to the controversy involved in the instant petition, as averred, are that on 15.12.2013 a zero FIR under Sections 469, 471, 120-B IPC, Section 67-B of the Information Technology Act, 2000 and Section 13-C of the Protection of Children from Sexual

Offences Act, 2012 came to be lodged against the CEO, Editor-in-Chief of the News Nation, News 24 and India News, including its Executive President, Senior Executive Editor and certain unknown persons at Police Station Palam Vihar, Gurgaon, on the statement of the petitioner. It was alleged therein that on 2.7.2013, Asaram Bapu (*a religious guru*) had visited the petitioner's house and had blessed his family, including his 10 years old niece. On this occasion, one of the devotees had shot a video. However, on 12.12.2013, when the petitioner was present at home, he saw that News Nation Channel was telecasting a video clip showing Asaram's hand moving all over the body of his niece. It was alleged that in fact Asaram, while blessing his niece had placed his hand on her shoulder, but the said video was morphed and tampered in such a way intentionally to bring disgrace to the whole family of the petitioner. It was also alleged that petitioner's wife Shilpi was shown as a mastermind of a sex racket and their faces were not blurred. It was alleged that after telecast of this video, the neighbours and relatives started commenting against the petitioner's whole family, which deeply hurt their religious feelings. Even the students in the school passed comments upon the niece of the petitioner on account of which she suffered extreme mental agony.

3. Since the zero FIR was transferred to Police Station 39, Noida, Uttar Pradesh, therefore, Deepak Chaurasia, Chief Editor of India News and others moved two separate petitions for quashing the FIR before Allahabad High Court, which were dismissed. It is stated that since Noida Police was not taking any action against the accused inspite of dismissal of quashing

petitions, therefore, the petitioner filed a writ petition in the Supreme Court, which was dismissed with liberty to the petitioner to file a fresh complaint against the accused persons. Consequently, the petitioner filed a fresh complaint reiterating the same set of allegations as made in zero FIR, on the basis of which FIR No. 147 dated 19.3.2015 was registered against the accused persons under Sections 469, 471, 120-B IPC read with Section 67-B of the Information Technology Act, 2000 and Section 13-C of the Protection of Children from Sexual Offences Act, 2012.

4. It is alleged that after two years from the registration of the new FIR (No. 147), on 7.4.2017 the Investigating Agency had filed an “*untraceable Report*” stating that they are not able to find/trace the identity of the accused persons. It is further alleged that the police never informed the petitioner about filing of the closure report. However, on the matter being agitated by the petitioner with the help of the NGOs, the FIR was re-opened on 24.7.2017 and a fresh SIT was constituted for conducting investigation into the matter. Still not satisfied with the investigation being done by the SIT, the petitioner filed a petition in this Court for fair investigation of the case in a stipulated time frame, which was disposed of with a direction to the police to take a final view in the matter within four weeks. It is stated that when the investigation was not concluded within the time frame granted by this Court, on a contempt petition being filed, the respondents filed a reply stating that the police had already filed an “*untraceable report*”. This is how the present petition came to be filed with a prayer as stated above.

5. Mr. K.K. Manan, learned Senior Counsel, along with Ms. Shubreet Kaur, Advocate, appearing on behalf of the petitioner, *inter-alia*, would contend that the impugned order is not sustainable in law in view of the judgment of the Supreme Court in **Bhagwant Singh Vs. Commissioner of Police and another (1985) 2 SCC 537**. It is submitted that the police was required to issue a notice to the complainant, in writing and supply a copy of an untraced/cancelled report to the complainant/petitioner against proper receipt before filing the same before the concerned Magistrate, as held in Bhagwant Singh's case (Supra).

6. During the pendency of the instant petition, Commissioner of Police, Gurugram was directed to be present in Court along with complete record of the case, as it had been contended that the police was not taking into consideration the material supplied by the petitioner/complainant, showing the complicity of the accused persons. Pursuant to the said order, Mohd. Akil, IPS, Commissioner of Police, Gurugram, appeared and filed his affidavit stating that on the basis of the additional material supplied by the complainant i.e. petitioner herein, the matter would be re-opened for further investigation. Therefore, this Court by order dated 7.10.2020, directed the State counsel to file a status report vis-a-vis the involvement of Deepak Chaurasia and other accused, in the form an affidavit of a responsible officer. Pursuant to the said order, a status report of Shakuntala, ACP, Gurugram dated 7.11.2020 was filed, relevant extract of which are reproduced hereunder:-

“5. That further investigation was conducted by the above

mentioned SIT. During the course of investigation, the incriminating evidence came forth against the accused persons namely AjitAnjum, Mohd. Sohail @ SahidSohail, Sunil Dutt, Abhinav Raj, ChitraTripathi, Rashid and Lalit Singh Badgujjar and challan against them was submitted in the court on 04.01.2020, after deleting Section 66-B IT Act and adding Section 67-B IT Act and 14(1)/23 POCSO Act. Now, the trial is pending in the court of Ld. ASJ, Gurugram and is fixed for 25.01.2021 for argument on charge.

6. That it also came forth that accused Deepak Chaurasia, Chief Editor, India News was joined in the investigation on 12.11.2019 by the then SHO, P.S. PalamVihar, Gurugram, but he did not cooperate and left the investigation in anger and he did not affix his signatures on the join investigation proforma. Thus, Section 180 IPC was added in the present case and supplementary challan u/s 173(8) Cr.P.C. against him has been prepared on 29.10.2020 for the offence u/s 67(2) IT Act, 13-C/14(1)/23 POCSO Act, 469/471/120-B/180 IPC. The said challan is under checking with the Prosecution Department. The same will be filed in the court after completing formalities.”

On 15.2.2021, the learned State counsel also submitted that a supplementary challan against Deepak Chaurasia has been prepared and would be presented after checking. Thereafter, in continuation of status report dated 7.11.2020, another status report dated 19.3.2021 was filed by way of affidavit of Rajeev Kumar, HPS, Assistant Commissioner of Police, Udyog (Gurugram). In the second status report it was stated that during the course of investigation, incriminating evidence came forth against accused persons, namely, Ajit Anjum, Mohd. Sohail @ Sahid Sohail, Sunil Dutt, Abhinav Raj, Chitra Tripathi, Rashid and Lalit Singh Badgujjar and accordingly

challan was presented against them in Court on 4.1.2020, after deleting Section 66-B of the Information Act and adding Section 67-B of the Information Act and Section 14 (1)/23 of the Protection of Children from Sexual Offences Act, 2012. However, since Deepak Chaurasia, Chief Editor of India News, though joined the investigation but did not cooperate and left the investigation in anger, without affixing his signatures on join investigation proforma, therefore, Section 180 IPC was added in the present case and a supplementary challan under Section 173 (8) of the Code of Criminal Procedure against him was prepared on 29.10.2010 for offences under Section 67 (2) of the Information Act, Section 13-C/14 (1)/23 of the Protection of Children from Sexual Offences Act, 2012 and Sections 469, 471, 120-B, 180 IPC. However, the prosecution department raised some objections in the challan and thereafter, the Commissioner of Police Gurugram, constituted a new SIT under the direct supervision of the deponent—Rajeev Kumar, consisting of (1) Incharge Crime Unit, Sector 17, Gurugram; (2) SHO P.S. Palam Vihar, Gurugram; (3) SHO Women Police Station, West, Gurugram and (4) ASI Satvender. After the status report was filed, a statement was made in Court on 20.7.2021 that a supplementary challan has been presented on 18.7.2021 against Deepak Chaurasia and now the case is fixed for framing of charges on 22.9.2021.

7. Learned Senior counsel for the petitioner is aggrieved against the presentation of the supplementary challan on 18.7.2021 as Section 13-C/14 (1) of the Protection of Children from Sexual Offences Act, 2012 have not been invoked against Deepak Chaurasia, considering the fact that in the

status report already filed in the Court on 7.11.2020, it was stated that a supplementary challan would be presented against the Deepak Chaurasia, Chief Editor, India News, for the offences under Section 67(2) IT Act, Sections 13-C/14(1)/23 of the POCSO Act and Sections 469/471/120-B/180 IPC. The challan presented against the other accused is on the same set of evidence as would be applicable to Deepak Chaurasia and the new SIT constituted could not have dropped the offence under the POCSO Act, particularly considering the fact that Section 13-C of the POCSO Act clearly specifies that whoever, uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution), for the purposes of sexual gratifications, which includes indecent or obscene representation of a child, shall be guilty of the offence of using a child for pornographic purposes, the punishment therein could be for five years along with fine. It is submitted that this act of the Investigating agency amounts to perjury.

8. Per contra, Mr. Deepak Sabharwal, Additional Advocate General Haryana, learned counsel appearing on behalf of the respondent—State would contend that the investigation has been completed in a fair, transparent and impartial manner and the challan has been presented against different accused as per their *prima facie* roles in the incident complained of. It is also submitted that it is not necessary that an act done by one person in the hierarchy of an organisation would also make the others liable for the

same offence. It is argued that after the investigating agency presented the challan, it has become *functus officio*. It is also submitted that in case the trial court is of the view that some charges have to be added or deleted, the same can be done by the concerned court at any time, even before the judgment is pronounced, in terms of Section 216 of the Code of Criminal Procedure. Lastly, it is submitted that the instant petition has been rendered infructuous as the sole grievance of the petitioner was that Deepak Chaurasia had not been named in the Final Report dated 4.1.2020, which has now been done while filing supplementary challan dated 18.3.2021 against him and therefore grievance of the petitioner stands redressed.

9. I have heard learned counsel for the parties and with their assistance have perused the voluminous paper book along with two status reports filed.

10. Admittedly, the instant petition was filed in the year 2018 with a limited prayer for quashing of the order dated 28.5.2018 passed by Sh. Madhur Bajaj, Judicial Magistrate Ist Class, Gurugram, accepting the untraceable report submitted by the police without issuing notice to the complainant/petitioner and with a prayer for transferring the case to the CBI for fair investigation.

11. It is during these proceedings and on the intervention of the Court, Mohd. Akil, IPS, Commissioner of Police, Gurugram, submitted that further investigation would be done on the basis of the material received from the complainant/petitioner herein, consequent to which statement a SIT was constituted under the supervision of ADCP Crime-1, Gurugram,

consisting of Incharge, Crime Unit, Sector 17, Gurugram, SHO P.S. Palam Vihar, Gurugram, SHO Women Police Station, West, Gurugram and SI Bijender Singh.

12. The investigation conducted in the present case by the first SIT revealed that there was incriminating evidence against the accused persons, namely, Ajit Anjum, Mohd. Sohail @ Sahid Sohail, Sunil Dutt, Abhinav Raj, Chitra Tripathi, Rashid and Lalit Singh Badgujjar. During the said investigation, Deepak Chaurasia, Chief Editor of India News, was asked to join the investigation, but he did not cooperate and left the investigation in anger without affixing his signatures on *join investigation proforma* and, therefore, Section 180 IPC was added in the present case and a supplementary challan was prepared on 29.10.2020 under Section 173 (8) of the Code of Criminal Procedure against him for the offences under Section 67 (2) of the Information Act, Section 13-C/14 (1)/23 of the Protection of Children from Sexual Offences Act, 2012 and Sections 469, 471, 120-B, 180 IPC. However, when the challan was presented in Court, Section 13-C/14 (1) of the Protection of Children from Sexual Offences Act, 2012 stood deleted and the challan was presented on 18.3.2021 only under Sections 469, 471, 120-B, 180 IPC, Section 23 of the Protection of Children from Sexual Offences Act, 2012 and Section 66-B of the Information Act.

13. The grievance of the petitioner that an *untraceable report* could not have been accepted has been redressed, as a SIT was constituted on the assurance given by Mohd. Akil, IPS, Commissioner of Police, Gurugram, where the matter was further investigated and challan was presented against

Ajit Anjum, Mohd. Sohail @ Sahid Sohail, Sunil Dutt, Abhinav Raj, Chitra Tripathi, Rashid and Lalit Singh Badgujjar.

14. The other grievance as raised by the learned Senior Counsel for the petitioner, is that in the light of the matter having been investigated and an affidavit of Ms. Shakuntala, HCS, ADCP Gurugram filed, that a challan would be presented against the Deepak Chaurasia, Chief Editor, India News, for the offence under Section 67(2) IT Act, Sections 13-C/14(1)/23 POCSO Act and Sections 469/471/120-B/180 IPC, a fresh SIT was constituted just to favour of Deepak Chaurasia without seeking either permission of the court to constitute a fresh SIT or informing the court of the same. In fact, a perusal of the record does not reflect any reason as to why the recommendations made by the SIT to invoke Sections 67 (2) IT Act, 13-C/14(1)/23 POCSO Act, 469/471/120-B/180 IPC, were not accepted or why a new SIT had to be constituted. However, in the opinion of the Court, a very limited prayer had been made in the instant petition, to the effect that an *untraced report* could not have been accepted by the Trial Court. It is only on the intervention of the court that the matter was further investigated and SIT constituted. It is also well settled in law that the High Court cannot direct the police to investigate a case from a particular angle and at best if the court comes to a conclusion that there is serious irregularities in the investigation, it may direct further investigation under Section 173 (8) of the Code of Criminal Procedure. In this regard, reference may be made to the judgments of the Supreme Court rendered in **D. Venkatasubramaniam and others Versus M.K. Mohan Krishnamachari**

and another (2009) 4RCR (Criminal) 318 where it has been held:

*“The High Court, in the instant case, did not even advert to the relevant facts. As stated in the order itself, it was more guided by the arguments made across the Bar that the police has not taken any steps to arrest the persons and seize the amounts involved in this case from the appellants though there is no such factual foundation as such laid in the petition. It has altogether ignored the counter filed by the police that the police had already examined ten witnesses within a short span of time after the registration of crime and recorded their statements. **The High Court, without recording any reason whatsoever, directed the police that it is obligatory on their part to record statements from witnesses, arrest, seizure of property and filing of charge sheet. It is difficult to discern as to how such directions resulting in far reaching consequences could have been issued by the High Court in exercise of its jurisdiction under Section 482 of the Code. The High Court interfered with the investigation of crime which is within the exclusive domain of the police by virtually directing the police to investigate the case from a particular angle and take certain steps which the police depending upon the evidence collected and host of other circumstances may or may not have attempted to take any such steps in its discretion. It is not necessary that every investigation should result in arrest, seizure of the property and ultimately in filing of the charge sheet. The police, in exercise of its statutory power coupled with duty, upon investigation of a case, may find that a case is made out requiring it to file charge sheet or may find that no case as such is made out. It needs no reiteration that the jurisdiction under Section 482 of the Code conferred on the High Court has to be exercised sparingly, carefully and with caution only where such exercise is justified by the test laid down in the provision itself.”(emphasis added).***

15. Therefore, even though there is no reason as to why and under what circumstances a new SIT was constituted, the investigation is complete and a challan has been presented in court, with the case now listed for framing of charges, therefore, this court is not inclined to interfere at this stage. However, if the petitioner herein is still aggrieved against the non-invoking of any appropriate section under the Protection of Children from Sexual Offences Act, 2012, there is a remedy available to him as prescribed under Section 216 of the Code of Criminal Procedure.

16. Consequently, no further orders are called for and the petition stands disposed off.

September 3, 2021
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No