

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

**CRM-M-28476-2021  
Date of decision: 25.08.2021**

Yadwinder Kaur

.....Petitioner

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Argued by : Mr. K.B.S. Mann, Advocate  
for the petitioner.

Mr. Amit Aggarwal, DAG, Haryana  
for respondents No. 1 to 3

Mr. Rajesh Duhan, Advocate  
for respondents No. 4 and 6.

None for respondent No.5.

Mr. Lokender Singh, SP Kaithal,  
Mr. Shiv Kumar, SI/SHO and  
Mr. Gurdan Mann, ASI, IO  
Police Station City Kaithal, and  
Mr. Surender Singh, Incharge  
IT Cell, SP Office Kaithal.

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**ARUN KUMAR TYAGI, J.0**

(The case has been taken up for hearing through video conferencing).

1. The petitioner has filed the present petition on 19.07.2021 under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for directing respondents No.2 and 3 to conduct fair investigation in case FIR No.397 dated 09.10.2020 registered under Section 379 of the Indian Penal Code, 1860 (for short 'the IPC') at Police Station City Kaithal.

2. Raghbir Malik son of Rameshwar Malik resident of

**Village Nepewala, Tehsil Narwana, District Jind** (respondent No.6)

went to Police Station **City Kaithal** and submitted written complaint to the SHO, Police Station City Kaithal. In the written complaint Raghbir Malik alleged that he is an agriculturist by occupation and also takes up private work. He has good friendship with Rajesh (respondent No.4) resident of Jamawadi, District Hisar and there used to be money transactions between them on necessity. Rajesh had borrowed money from him. Rajesh is having Toyota Fortuner bearing Registration No.HR-26-BF-7171 (hereinafter referred to as 'the car'). About six months back in the month of March he and Rajesh had come to Municipal Council Kaithal for some work. On that day Rajesh had some urgent work and he borrowed his car and went away somewhere for his work. After one or two days he asked Rajesh about his car but Rajesh did not pick up his phone and did not return his car. He went to house of Rajesh number of times for return of his car but Rajesh was never found to be present in his house. On inquiries he has come to know that his car was with Arvindpal Singh (correct name being Arvinder Pal Singh) resident of Muktsar (correct name being Sri Muktsar Sahib), Punjab. He expressed the apprehension that his car might be misused and accordingly requested that the same may be got recovered.

3. In view of the complaint FIR was registered under Section 379 of the IPC but during investigation Section 379 of the IPC was deleted and Sections 406 and 411 of the IPC were added.

4. The police investigated the case, recovered the car from street in front of the house of Arvinderpal Singh, arrested Rajesh,

recorded his disclosure statement and statements of the witnesses. On completion of investigation SHO, Police Station City Kaithal filed police report/challan under Section 173(2) of the Cr.P.C. against respondent No.5-Rajesh on 22.07.2021 after filing of the present petition on 19.07.2021.

5. The petitioner has filed the present petition on the grounds that the car was registered in the name of Randhir Singh-respondent No.4 and was purchased on the name of the petitioner by her brother-Tajinderpal Singh through car dealer Rajesh-respondent No.5 after paying amount of Rs.7,60,000/- and the possession of the car was handed over to the petitioner. The original owner of the car Randhir Singh-respondent No.4 gave his affidavit for sale of the car and also signed sale letter and subsequently also got 'No Objection Certificate' issued from the Registering Authority, Narwana. On the basis of the above-said documents, the petitioner applied to the Registration Authority, Malout, District Sri Muktsar Sahib for registration of the car in her name and paid the requisite fees. Thereafter, information was received from the Office of Registering Authority, Malout that the 'No Objection Certificate' was cancelled by the Registration Authority, Narwana. The said 'No Objection Certificate' issued in the name of the petitioner was got cancelled by respondents No.4 to 6 under conspiracy by preparing false and forged documents. Thereafter, respondent No.4 sold the car to Raghbir Malik-respondent No.6, being his co-villager, causing wrongful loss to the petitioner forfeiting the right of the petitioner as owner of the car which had been purchased after paying the sale consideration amount. No fair and proper investigation has

been conducted by the police regarding role of respondent No.6 who was also the conspiring party in the commission of the offences. The petitioner requested respondent No.3-SHO, Police Station City Kaithal to conduct fair and proper investigation considering the documents regarding the sale of the car to the petitioner and nominate respondent No.6 as co-accused. The petitioner also made representation dated 09.06.2021. No action has been taken on the representation and fair and proper investigation is not being conducted and the investigation has also not been concluded despite expiry of about nine months.

6. The petition has been opposed by the respondent-State in terms of reply filed by way of affidavit of Dalip Singh, HPS, DSP (AEC), Kaithal on behalf of respondents No.1 to 3. In the reply it has been submitted that the police recovered the car from the street near the house of Yadwinder Kaur daughter of Arvindpal Singh. Record of the original owner of the car was obtained from SDM office, Narwana and Raghbir Malik-respondent No.6 was found to be registered owner of the car. Randhir Singh-respondent No.4 was joined in the investigation and his statement under Section 161 of the Cr.P.C. was recorded in which he (Randhir Singh-respondent No.4) stated that he sold the car only to respondent No.6-Raghbir Malik and he had no knowledge regarding issuance of 'No Objection Certificate' in favour of Yadwinder Kaur (the petitioner) daughter of Arvindpal Singh resident of Naka No.7, Patti Tamboo Sahib, Muktsar, Punjab. On 26.03.2021 respondent No.5-Rajesh was also joined in investigation and he made disclosure statement that he had money transactions with respondent No.4-Randhir Singh. He had taken the car from respondent No.4-Randhir

Singh and did not return the car to respondent No.4-Randhir Singh as respondent No.4-Randhir Singh did not return money borrowed from him and thereafter, he (respondent No.5-Rajesh) **sold the car to Harpreet resident of Fatehabad**. In the reply it has been further submitted that on completion of investigation, final report under Section 173(2) of the Cr.P.C. has been submitted in the Court on 22.07.2021.

7. Vide order dated 03.08.2021 copy/scanned copy of the charge-sheet along with documents enclosed therewith was ordered to be requisitioned from the concerned Court and in compliance therewith photostat copies of charge-sheet and documents enclosed with the same have been sent to this Court by learned District and Sessions Judge, Kaithal.

8. I have heard Mr. K.B.S. Mann, learned Counsel for the petitioner, Mr. Amit Aggarwal, learned State Counsel for respondents No.1 to 3 and Mr. Rajesh Duhan, learned Counsel for respondents No.4 and 6 and have gone through the relevant record.

9. Learned Counsel for the petitioner has argued that the police did not conduct fair and proper investigation in the case. The petitioner requested respondent No.3-SHO, Police Station City Kaithal to conduct fair and proper investigation by considering the documents regarding the sale of the car to the petitioner and nominate respondent No.6 as co-accused and the petitioner also made representation dated 09.06.2021 in this regard. The Investigating Officer did not conduct any investigation regarding the documents of sale executed in favour of the petitioner and also regarding the role of respondent No.6 in the

conspiracy being a co-villager of respondent No.4 to wrongfully deprive the petitioner of the car purchased by her after payment of sale consideration Rs.7,60,000/-.

10. Learned Counsel for the petitioner has accordingly submitted that the final report filed by the police may be set aside and re-investigation by some independent agency or specially constituted team may be ordered.

11. On the other hand learned State Counsel for respondents No.1 to 3 and learned Counsel for respondents No.4 and 6 have submitted that fair and proper investigation has been conducted by the police and on completion of investigation final report under Section 173(2) of the Cr.P.C. has been filed against respondent No.5-Rajesh. No ground for interference under Section 482 of the Cr.P.C. is made out.

12. Learned State Counsel and learned Counsel for respondents No.4 and 6 have accordingly submitted that the petition may be dismissed.

13. On consideration of the submissions made by learned Counsel for the petitioner, learned State Counsel and learned Counsel for respondents No.4 and 6 and perusal of the material on record, I am of the considered view that the present petition deserves to be allowed.

14. In ***Shashi Thomas Vs. State and others : (2007) 1 RCR Criminal 695*** proper and fair investigation on the part of the Investigating Officer was held to be the backbone of rule of law.

15. In ***State of A.P. Vs. Sarma Rao and other : (2007) 1 RCR (Criminal) 146*** Hon'ble Supreme Court observed that the investigation

must be fair, transparent and judicious as it is the minimum requirement of rule of law.

16. Hon'ble Supreme Court observed in ***Zahira Habibullah H. Sheikh and another Vs. State of Gujarat and others : 2004 (2) RCR (Criminal) 836*** that justice may become a victim if the investigation is not fair.

17. In ***SLP (Criminal) No.6951 of 2018 titled as 'Amarnath Chaubey Vs. Union of India and others' decided on 14.12.2020*** it was observed by Hon'ble Supreme Court as under:-

*“8. The police has a statutory duty to investigate into any crime in accordance with law as provided in the Code of Criminal Procedure. Investigation is the exclusive privilege and prerogative of the police which cannot be interfered with. But if the police does not perform its statutory duty in accordance with law or is remiss in the performance of its duty, the court cannot abdicate its duties on the precocious plea that investigation is the exclusive prerogative of the police. Once the conscience of the court is satisfied, from the materials on record, that the police has not investigated properly or apparently is remiss in the investigation, the court has a bounden constitutional obligation to ensure that the investigation is conducted in accordance with law. If the court gives any directions for that purpose within the contours of the law, it cannot amount to interference with investigation. A fair investigation is, but a necessary concomitant of Articles 14 and 21 of the Constitution of India and this Court has the bounden obligation to ensure adherence by the police.”*

18. In ***Vinay Tyagi Vs. Irshad Ali @ Deepak and others : 2013(5) SCC 762*** Hon'ble Supreme Court in para No.34 observed as under:-

*“13. Having noticed the provisions and relevant part of the scheme of the Code, now we must examine the powers of the Court to direct investigation. Investigation can be ordered in varied forms and at different stages. Right at the initial stage of receiving the FIR or a complaint, the Court can direct investigation in accordance with the provisions of Section 156(1) in exercise of its powers under Section 156(3) of the Code. Investigation can be of*

*the following kinds :*

- (i) Initial Investigation.*
- (ii) Further Investigation.*
- (iii) Fresh or de novo or re-investigation.*

*14. The initial investigation is the one which the empowered police officer shall conduct in furtherance to registration of an FIR. Such investigation itself can lead to filing of a final report under Section 173(2) of the Code and shall take within its ambit the investigation which the empowered officer shall conduct in furtherance of an order for investigation passed by the court of competent jurisdiction in terms of Section 156(3) of the Code.*

*15. 'Further investigation' is where the Investigating Officer obtains further oral or documentary evidence after the final report has been filed before the Court in terms of Section 173(8). This power is vested with the Executive. It is the continuation of a previous investigation and, therefore, is understood and described as a 'further investigation'. Scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the Court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as 'supplementary report'. 'Supplementary report' would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a 'reinvestigation', 'fresh' or 'de novo' investigation.*

*16. However, in the case of a 'fresh investigation', 'reinvestigation' or 'de novo investigation' there has to be a definite order of the court. The order of the Court unambiguously should state as to whether the previous investigation, for reasons to be recorded, is incapable of being acted upon. Neither the Investigating agency nor the Magistrate has any power to order or conduct 'fresh investigation'. This is primarily for the reason that it would be opposed to the scheme of the Code. It is essential that even an order of 'fresh'/'de novo' investigation passed by the higher judiciary should always be coupled with a specific direction as to the fate of the investigation already conducted. The cases where such direction can be issued are few and far between. This is based upon a fundamental*

*principle of our criminal jurisprudence which is that it is the right of a suspect or an accused to have a just and fair investigation and trial. This principle flows from the constitutional mandate contained in Articles 21 and 22 of the Constitution of India. Where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the courts would set aside such an investigation and direct fresh or de novo investigation and, if necessary, even by another independent investigating agency. As already noticed, this is a power of wide plenitude and, therefore, has to be exercised sparingly. The principle of rarest of rare cases would squarely apply to such cases. Unless the unfairness of the investigation is such that it pricks the judicial conscience of the Court, the Court should be reluctant to interfere in such matters to the extent of quashing an investigation and directing a 'fresh investigation'. In the case of **Sidhartha Vashisht v. State (NCT of Delhi)**, [(2010)6 SCC 1], the Court stated that it is not only the responsibility of the investigating agency, but also that of the courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. An equally enforceable canon of the criminal law is that high responsibility lies upon the investigating agency not to conduct an investigation in a tainted or unfair manner. The investigation should not prima facie be indicative of a biased mind and every effort should be made to bring the guilty to law as nobody stands above law de hors his position and influence in the society. The maxim contra veritatem lex nunquam aliquid permittit applies to exercise of powers by the courts while granting approval or declining to accept the report. In the case of **Gudalure M.J. Cherian & Ors. v. Union of India & Ors.**, [(1992)1 SCC 397], this Court stated the principle that in cases where charge-sheets have been filed after completion of investigation and request is made belatedly to reopen the investigation, such investigation being entrusted to a specialised agency would normally be declined by the court of competent jurisdiction but nevertheless in a given situation to do justice between the parties and to instil confidence in public mind, it may become necessary to pass such orders. Further, in the case of **R.S. Sodhi, Advocate v. State of U.P.**, [1994 SCC Supp. (1) 142], where allegations were made against a police officer, the Court ordered the investigation to be transferred to CBI with an intent to maintain credibility of investigation, public confidence and in the interest of justice. Ordinarily, the courts would not exercise such jurisdiction but the expression 'ordinarily' means normally and it is used where there can be an exception. It means in the large majority of cases but not invariably. 'Ordinarily' excludes extra- ordinary or special circumstances. In other words,*

*if special circumstances exist, the court may exercise its jurisdiction to direct 'fresh investigation' and even transfer cases to courts of higher jurisdiction which may pass such directions."*

19. In the present case FIR was initially registered under Section 379 of the IPC on complaint made by respondent No.6-Raghubir Malik regarding alleged handing over of his car by him to his friend respondent No.5-Rajesh about six months back in the month of March, 2020 in the course of visit to Municipal Council, Kaithal for some work and non return of the same by respondent No.5-Rajesh. Offence under Section 379 of the IPC was not made out by the allegations in the complaint and was rightly deleted in the course of investigation and on the allegations of non return of the car made against respondent No.5-Rajesh offence under Section 406 of the IPC was made out which was rightly added to the FIR subsequently along with Section 411 of the IPC.

20. The police investigated the case and recovered the car from the street near the house of Yadwinder Kaur daughter of Arvinder Pal Singh. Record of the original owner of the car was obtained from SDM office, Narwana and Raghubir Malik-respondent No.6 was found to be registered owner of the car. Randhir Singh-respondent No.4 was joined in the investigation and his statement under Section 161 of the Cr.P.C. was recorded in which he (Randhir Singh-respondent No.4) stated that he sold the car only to respondent No.6 and he had no knowledge about the 'No Objection Certificate' which was issued in the name of Yadwinder Kaur (the petitioner). On 26.03.2021 respondent No.5-Rajesh was also joined in investigation and he made disclosure statement that he had money transactions with respondent No.4-

Randhir Sing. He had taken the car from respondent No.4-Randhir Singh and did not return the same as respondent No.4-Randhir Singh had not returned money borrowed from him (respondent No.5-Rajesh) and thereafter, he (respondent No.5-Rajesh) **sold the car to Harpreet resident of Fatehabad**. On completion of investigation SHO, Police Station City Kaithal filed police report/challan under Section 173(2) of the Cr.P.C. against respondent No.5-Rajesh.

21. However, this case is a glaring example of defective investigation. In the complaint submitted by respondent No.6-Raghubir Malik itself it is mentioned that at the time of filing of the complaint, the car was with '**Arvindpal resident of Muktsar, Punjab**'. Respondent No.6-Raghubir Malik produced Registration Certificate of the car in which he was recorded to be the registered owner of the car. The Registration Certificate was seized by the police vide memo dated 12.10.2020. The Investigating Officer of the case recovered the car on 14.10.2020 from the street near the house of Yadwinder Kaur (the petitioner) daughter of Arvinderpal Singh. On checking the car, the Investigation Officer found its Registration Certificate laying in the car in which Ranghir Singh s/o Rai Singh resident of Nepewala (respondent No.4) was recorded to be registered owner of the car. The car and and Registration Certificate were taken in the possession of Police in the presence of ASI Babita and HC Balbir Singh vide seizure memo dated 14.10.2020. In the very nature of things, the car could not be opened without obtaining keys from Yadwinder Kaur or Arvinder Pal Singh but the Investigating Officer did not mention in the recovery memo anything about obtaining of keys from them and did not join

them in investigation. The petitioner has claimed that the car was purchased on the name of the petitioner by her brother-Tajinderpal Singh through car dealer Rajesh-respondent No.5 after paying amount of Rs.7,60,000/- and the possession of the car was handed over to the petitioner. The original owner of the car Randhir Singh-respondent No.4 gave his affidavit for sale of the car and also signed sale letter and subsequently also got 'No Objection Certificate' issued from the Registering Authority, Narwana. On the basis of the above-said documents, the petitioner applied to the Registration Authority, Malout, District Sri Muktsar Sahib for registration of the car in her name and paid the requisite fees. Thereafter, information was received from the Office of Registering Authority Malout that the 'No Objection Certificate' was cancelled by the Registration Authority, Narwana. The said 'No Objection Certificate' issued in the name of the petitioner was got cancelled by respondents No.4 to 6 under conspiracy by preparing false and forged documents and thereafter, respondent No.4 sold the car to Raghbir Malik-respondent No.6, being his co-villager, causing wrongful loss to the petitioner. The petitioner has also claimed that the petitioner requested respondent No.3-SHO, Police Station City Kaithal to conduct fair and proper investigation considering the documents regarding the sale of the car to the petitioner and nominate respondent No.6 as co-accused and made representation dated 09.06.2021 in this regard. Admittedly, the police did not conduct any investigation regarding the claim made by the petitioner as to purchase of the car by her brother Tajinderpal Singh through respondent No.5-Rajesh for sale consideration of Rs.7,60,000/-, execution of affidavit, sale letter and

forms No.28, 29 and 30 by respondent No.4-Randhir Singh, issuance of NOC in her favour by Registering Authority, Narwana and also regarding reasons for cancellation of the NOC issued by Registering Authority, Narwana. The Investigating Officer merely recorded statement of respondent No.4-Randhir Singh that he had sold the car only to respondent No.6-Raghubir Malik and that he did not have any knowledge regarding the NOC. If affidavit, sale letter and forms No.28, 29 and 30 were executed by respondent No.4-Randhir Singh in favour of petitioner Yadwinder Kaur, then respondent No.4-Randhir Singh could not sell the car to respondent No.6-Raghubir Malik. In such an eventuality the allegations as to **whether respondent No.6-Raghubir Malik was cheated by respondent No.4-Randhir Singh by fraudulently executing the documents in question leading to transfer of registration of the car in favour of respondent 6-Raghubir Malik** or the allegations as to **whether respondent No.4-Randhir Singh conspired with respondent No.5-Rajesh and respondent No.6-Raghubir Malik for fraudulent transfer of registration of the car in favour of respondent No.6-Raghubir Malik to wrongfully deprive the petitioner of the car purchased for sale consideration of Rs.7,60,000/-** were required to be investigated upon by the police. If affidavit, sale letter and forms No.28, 29 and 30 in favour of petitioner-Yadwinder Kaur were found not to have been executed by respondent No.4-Randhir Singh, then the only inference arising therefrom was that the above-said documents had been forged and offences punishable under Sections 420, 467, 468 and 471 of the IPC were also made out in the case. In that eventuality allegations of

either petitioner-Yadwinder Kaur having been cheated by respondent No.5-Rajesh and his accomplices or Yadwinder Kaur along with respondent No.5 Rajesh and their accomplices having cheated respondent No.4-Randhir Singh and respondent No.6-Raghubir Malik were required to be investigated. The police did not make any investigation into these material aspects of the case. In the reply filed on behalf of the respondent No.1 to 3 it has been submitted that the petitioner neither disclosed these facts nor made representation dated 09.06.2021 but the facts regarding issuance of NOC in favour of Yadwinder Kuar (the petitioner) were appearing in statement of respondent No.4-Randhir Singh recorded under Section 161 of the Cr.P.C. by the police. The relevant facts in this regard were also mentioned in the application for sapurdari filed by Yadwinder Kaur (the petitioner). The facts and circumstances of the case unmistakably lead to only one inevitable conclusion that there was deliberate default on the part of the Investigating Officer in conducting fair and proper investigation into the material aspects of the case. SHO, Police Station City Kaithal has filed police report/challan filed under Section 173(2) of the Cr.P.C. on the basis of tainted investigation based on statement under Section 161 of the Cr.P.C. made by respondent No.4-Randhir Singh and disclosure statement made by respondent No.5-Rajesh without proper investigation, without obtaining the original record of Registering Authority, Narwana, and without recording any findings regarding genuineness or otherwise of the claim regarding execution of affidavit, sale letter and forms No.28, 29 and 30 by respondent No.4-Randhir Singh in favour of petitioner Yadwinder Kaur. The defect in

investigation goes to the very root of the matter and vitiates the police report/challan filed under Section 173(2) of the Cr.P.C. by SHO, Police Station City Kaithal. The facts and circumstances of the case warrant issuance of appropriate directions by this Court in exercise of jurisdiction under Section 482 of the Cr.P.C. to prevent abuse of process and to secure the ends of justice, for re-investigation of the case by some independent agency/specially constituted team.

22. In view of the above discussion, the petition is allowed, police report/challan filed under Section 173(2) of the Cr.P.C. by SHO Police Station City Kaithal is set aside and re-investigation of the case is ordered. The Superintendent of Police, Kaithal is directed to constitute special investigation team headed by officer not below the rank of Inspector and comprising other Police Officers all from the District Headquarter or some other Police Station. The special investigation team so constituted shall conduct proper investigation into all the relevant material aspects of the case including the question of territorial jurisdiction and thereupon file final report under Section 173(2) of the Cr.P.C. within two months from the date of receipt of copy of this order. The Superintendent of Police, Kaithal is also directed to take appropriate disciplinary action against the Investigating Officer of the case for defective investigation conducted by him by deliberately ignoring investigation into material aspects of the case as referred to above.

25.08.2021

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(ARUN KUMAR TYAGI)  
JUDGE

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