

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

**Criminal Misc. No.M-29553 of 2021(O&M)
Date of Decision: September 13, 2021**

Hansveer Singh		...Petitioner
	Versus	
State of Haryana		...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.Sitanshu Sharma, Advocate for the petitioner.

Mr.Vishal Malik, DAG, Haryana.

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HARINDER SINGH SIDHU, J.

The petitioner has filed the present petition impugning the order dated 18.05.2018 passed by Ld. Judicial Magistrate Ist Class, Faridabad in Criminal Case No.CHI-5303/2017 dated 01.12.2017, vide which his application for bringing on record his statement and documents in possession of the Investigating Officer, was dismissed. Further challenge is to the order dated 04.07.2018 passed by Ld. Additional Sessions Judge, Faridabad dismissing his revision petition against the aforesaid order.

The petitioner is an accused in case FIR No.46 dated 23.01.2015 under Sections 406/420/506/120-B IPC registered at Police Station Ballabhgarh City, District Faridabad. The FIR was registered on the complaint of one Rajbir Singh, who alleged that after his retirement, he had invested Rs.27,08,700/- with the petitioner, who was running a business of Chit Fund. The petitioner and others had assured the complainant that he would earn huge profits in future. When the complainant became entitled to

receive Rs.33,56,822/- he requested the petitioner and other accused to return the said amount. This was not done.

During investigation the other accused Keshav, Satender and Bhisham were found innocent.

The police submitted charge-sheet in the Court of Ilqa Magistrate against the petitioner. A copy thereof was supplied to him on 01.12.2017. He received the same without raising any objection. On 16.04.2018 the petitioner moved an application that the police had failed to submit the cancellation report forwarded by the Economic Offences Wing, Faridabad. along with the charge sheet. The Ld. Magistrate took on record the cancellation report and disposed of the application.

On 18.05.2018 when the case was fixed for arguments on charge, the petitioner moved application seeking directions to the Investigating Officer to bring on record the statements of the petitioner and the documents which were submitted by him to the Investigating Officer on 18.02.2017, 28.02.2017 and 09.08.2017 during the investigation of the case. It was stated that the statement of the petitioner was also recorded on those dates. But the police had not submitted these documents with the final report under Section 173 Cr.P.C.

The Ld. JMIC after adverting to the provisions of Section 173 Cr.P.C. particularly Section 173(5) dismissed the application by holding that the documents which the petitioner wants to attach with the challan were not the documents which were required to be produced along with the police report under Section 173(5) Cr.P.C. The documents were only the complaints given by the accused in the name of SHO, NIT, Faridabad

against the present complainant. No FIR was registered on the basis of the said complaints. On 18.12.2017 the petitioner had appeared before the Investigating Officer and given a copy of the said complaint with the request that it be treated as his statement u/s 161 Cr.P.C. He had also tendered a copy of the postal receipt dated 27.02.2017 to claim that he had sent it to the higher police officials. The Ld. Magistrate observed that the complaints and statement of the accused were already on the police file for perusal of the Court. Observing that no document on behalf of the accused could be considered at the stage of consideration on charge and that it was open to the petitioner to tender the documents in his defence, the application was dismissed.

The Ld. Additional Sessions Judge, Faridabad affirmed the order of the Ld. Magistrate and dismissed the revision filed by the petitioner. The Ld. Additional Sessions Judge noticed that charges had been framed against the petitioner on 5.7.2018. He had filed revision petition against that order. The order of the Magistrate framing charges against him was upheld and the revision petition dismissed vide order dated 20.09.2018.

Ld. Counsel for the petitioner has argued that both the Courts have erred in rejecting the application of the petitioner. He argued that as per Section 173 (5) Cr.P.C. the Investigating Officer is obliged to forward all the statements recorded by him to the Court along with the police report. And as per the mandate of Section 207 Cr.P.C. it is the duty of the Magistrate to ensure that all the documents annexed with the challan are supplied to the accused.

Section 173 Cr.P.C. in so far as relevant is as under:

“173. Report of police officer on completion of investigation.

—(1) Every investigation under this Chapter shall be completed without unnecessary delay.

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(2)(i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under Section 170;

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under Sections 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB or Section 376-E of the Indian Penal Code (45 of 1860).

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.

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(5) When such report is in respect of a case to which Section 170 applies, the police officer shall forward to the Magistrate along with the report—

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

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Section 207 Cr. P. C. is as under:

“207. Supply to the accused of copy of police report and other documents.—*In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following—*

(i) the police report;

(ii) the first information report recorded under Section 154;

(iii) the statements recorded under sub-section (3) of Section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of Section 173;

(iv) the confessions and statements, if any, recorded under Section 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of Section 173:

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in court.”

On a plain reading of Section 173(5) Cr.P.C. the police officer along with the report is required to forward to the Magistrate (i) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation and (ii) the statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

As per Section 207 Cr. P. C. that Magistrate is required to furnish to the accused, free of cost, a copy of (i) the police report; (ii) the first information report recorded under Section 154; (iii) the statements recorded under sub-section (3) of Section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the

police officer under sub-section (6) of Section 173; (iv) the confessions and statements, if any, recorded under Section 164; (v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of Section 173 Cr.P.C.

The documents which the petitioner is seeking are not the documents which are required to be forwarded to the Magistrate along with the police report. Nor is it the case of the petitioner that these have been forwarded to the Magistrate under Section 173(5) Cr.P.C. Hence, there was no obligation on the Magistrate to supply the same to the petitioner.

The Ld. Additional Sessions Judge in his order has noticed that charges had been framed against the petitioner on 5.7.2018. He filed revision petition against that order. The order of the Magistrate framing charges against him was upheld and the revision petition dismissed vide order dated 20.09.2018.

The Ld. Courts have rightly held that the petitioner has a right to enter upon his defence and prove any document which may be in his possession or by summoning the same.

Accordingly, there is no merit in this petition and the same is dismissed.

September 13, 2021

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No