

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

101

**CRM-M-37020-2020
Date of decision: 09.02.2021**

Gurwinder Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : None for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab
for the respondents with
Mr. Harmeet Singh Hundal,
S.P. Investigation, Patiala.

Mr. Ranvir Singh Arya, Addl. A.G. Haryana.

Mr. Abhinav Gupta, Addl. Public Prosecutor
for U.T. Chandigarh with
Inspector Krishan Kumar.

ARUN KUMAR TYAGI, J

1. The petitioner has filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for grant of anticipatory bail in case FIR No.410 dated 14.12.2018 registered under Sections 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 (for short 'the IPC') in Police Station City Rajpura, District Patiala.

2. As per Office Report learned Counsel for the petitioner was informed about the date of hearing fixed. However, none has appeared for the petitioner even today.

3. Additional status report by way of affidavit of Sh. Harmeet Singh Hundal, PPS, Superintendent of Police Investigation (Chariman SIT), District Patiala has been filed in the Court today which is also

taken on record.

4. In the present case, the petitioner is alleged to have cheated seven Banks. Some government/Bank officials are also alleged to be involved in the fraud committed. Admittedly, no efforts were made by the first Investigating Officer of the present case to arrest the petitioner. Brother and father of the petitioner are also alleged to have taken loans from several Banks. Additional status report submitted by Superintendent of Police Investigation (Chairman SIT), Patiala also reflects superficial investigation as relevant aspects as to for which purpose the loan was taken, how the loan was disbursed and utilised, whether any repayment was made, what documents were executed, whether there was any guarantor, how the mortgage deed executed and documents produced in support thereof involved fraud have not been mentioned in the additional status report. A certificate (**Annexure R-2/T**) has been annexed with the additional status report that as per latest Jamabandi for the year 2015-16, in the revenue record, Gurwinder Singh s/o Avtar Singh, Jagdeep Kaur w/o Gurwinder Singh, Avtar Singh s/o Chanan Singh, Nirmal Kaur w/o Avtar Singh, Parwinder Singh s/o Avtar Singh and Sarabjit Kaur w/o Parwinder Singh are not having any land in their name as per revenue record of village Rampur Khurd, Tehsil Rajpura, District Patiala. The petitioner allegedly previously owned land in village Rampur Khurd and allegedly mortgaged the same in favour of the Banks from which he took the loan. There is no mention as to change of entries in the revenue record regarding/disposal of the above-said land. There has to be proper investigation with respect to all material aspects of the case. The Senior

Superintendent of Police, Patiala, who deserves to be appreciated for prompt action taken in the case after the matter came up for hearing before this Court, is directed to supervise/monitor the investigation till filing of the charge-sheet and ensure proper investigation with respect to all material aspects of the case.

5. Learned State Counsel has submitted that during the course of investigation, the petitioner was arrested on 15.01.2021 and the present petition for grant of anticipatory bail to the petitioner has become infructuous.

6. Accordingly, the present petition is disposed of as having become infructuous.

7. Before parting with this case it may be mentioned that the present case revealed before this Court alarming state of affairs regarding investigation of criminal cases adversely affecting the very efficacy and credibility of the administration of criminal justice. This Court had in its order dated 15.01.2021 observed as under:-

“Even though in the present case of a petition filed under Section 438 of the Cr.P.C. this Court is concerned with the question of grant of anticipatory bail to the petitioner but Court intervention in exercise of powers under Section 482 of the Cr.P.C. is essential not only for preventing abuse of process and securing ends of justice but also discharge of its obligation under the Constitution”

8. The relevant part of the order detailing the facts and circumstances constraining this Court to make the above-said observations is reproduced as under:-

“In the present case FIR was registered on 14.12.2018 after making number of enquiries and seeking opinions and despite expiry of two years the investigation is still pending. The police did not make proper investigation as to magnitude and modus operandi of the

fraud.

From the number of cases coming before this Court it appears that the banks are being subjected to fraud in grant of loans against execution of fraudulent mortgage deeds on the basis of fake revenue documents due to connivance on the part of the concerned Revenue Officials/Officers, Bank Officers and other persons including the Valuers/Assessors on the panel of the concerned Bank. Mortgage deeds are being executed in such cases on the basis of forged/wrong revenue documents supplied by the Revenue Officials in which the relevant entries regarding previous encumbrances are not made. Can such frauds be not detected by the Instrumentalities of the State at the time of registration of such mortgage deeds? Are the Instrumentalities of the State not bound to prevent such frauds by taking appropriate action against their employees in case of their involvement in such cases and by issuing appropriate instructions in the matter to be followed by all concerned? Is the Police not bound to promptly register FIR and properly investigate the case in respect to all aspects of the fraud, modus operandi and magnitude of fraud, discovery and arrest of not only the concerned applicant(s)/fraudster(s) but also all other persons including Government Government Officers/Officials, Bank Officers/Officials, Valuers/Assessors on the panel of the concerned Bank? Can the concerned Investigating Officers delay the investigation over not just the months but years altogether when the Parliament while enacting the Cr.P.C. mandated prompt investigation by requiring the Officer in charge of the Police Station under Section 157 of the Cr.P.C. to forthwith send report as to commission of cognizable offence to the concerned Magistrate and to proceed or depute his Sub-ordinate of requisite rank to proceed to the spot, investigate the facts and circumstances of the case and take measures for the discovery and arrest of the offender, and also mandated by legislating under Section 173 read with Section 167(2) of the Cr.P.C. Completion of the investigation within 90 days even in heinous offences? Are not the Superior Police Officers required to supervise/monitor the investigation and take remedial action against inaction, delay or defects in the investigation? These are the questions which are best left over for appropriate answers by the Instrumentalities of State by introspection and remedial action. This Court is cognizant of the fact that in majority of such cases the loan amounts taken from the Bank remain unpaid/unrealized which may be ultimately written off. In the entire process not only the honest tax payers are subjected to financial burden resulting from writing off of such fraudulent loan transactions but also efficacy of the

administration of justice is adversely affected/seriously undermined while serious damage is also caused to the national economy by such socio-economic offences. It is, therefore, of utmost importance that cases of such bank frauds are promptly registered, properly investigated, diligently prosecuted and expeditiously adjudicated upon.”

9. **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.”

10. Accordingly, this Court, while relying upon the above quoted observations made by Hon'ble Supreme Court in the above-referred case, directed the Director General of Police, Punjab to file an affidavit giving the following information:-

- “(i) District wise number of cases involving bank frauds pending for investigation;*
- (ii) Break up of the period for which the investigation is pending in such cases: upto six months, more than six months, one year and more than one year;*
- (iii) What mechanism has been evolved/is proposed to be evolved for monitoring of the investigation of*

- such cases by the Superior Police Officers; and*
- (iv) *Whether any SOP/check list has been prepared/is proposed to be prepared for guidance of the investigating officers in investigation of such cases.”*

11. This Court also observed in its order dated 15.01.2021 that similar cases have also come before this Court from the State of Haryana. In ***CRM-M-25761-2015 titled as 'Vijay Pal Vs. State of Haryana and another' decided on 27.05.2020***, the investigating officer did not obtain the original fraudulent mortgage deeds registered in favour of the Bank and the Public Prosecutor did not insist on the production of original documents before the Court. In some cases of Bank frauds in the State of Haryana also investigation is pending for more than one year without proper investigation and taking of effective steps for discovery and arrest of the offenders. Since similar cases arise/are pending for investigation in the State of Haryana and U.T., Chandigarh, notice was also issued to State of Haryana and U.T., Chandigarh for the limited purpose of evolving suitable mechanism for prompt registration of FIR, proper investigation and supervision/monitoring thereof and the Director General of Police, Haryana and U.T. Chandigarh were also directed to file affidavits furnishing information with respect to the points as mentioned above.

12. In compliance with order dated 15.01.2021 Sh. Dinkar Gupta, Director General of Police, Punjab, Sh. Manoj Yadav, Director General of Police, Haryana and Sh. Sanjay Beniwal, Director General of Police, U.T. Chandigarh have filed their affidavits which are taken on record.

13. A perusal of the affidavits filed by the Director Generals of

Police, Punjab, Haryana and U.T. Chandigarh respectively shows that there is delay in investigation of Bank fraud cases in both the States of Punjab and Haryana as well as U.T. Chandigarh. In the State of Punjab out of 151 cases of Bank frauds, investigation is pending in 67 cases for more than one year. In the State of Haryana out of 223 cases of Bank frauds, investigation is pending in 190 cases for one year or more than one year. In U.T. Chandigarh out of 18 cases of Bank frauds, investigation is pending in 16 cases for more than one year. The relevant details regarding year-wise breakup are not given in respect of cases in the States of Punjab and Haryana where investigation is pending for more than one year but a perusal of relevant information given in respect of such cases in UT Chadigarh shows that investigation is pending in two cases since 2015, in one case since 2016, in six cases since 2017, in five cases since 2018 and in one case since 2019.

14. Delay in investigation of such cases not only enables the offenders to tamper with/destroy the evidence but also adversely affects the credibility and efficacy of the system for administration of criminal justice as the offenders roam free enjoying the fruits of the crime. Lack of prompt and proper investigation warrants Court intervention in investigation to prevent abuse of process and secure the ends of justice.

In *Sakiri Vasu Vs. State of U.P. and others : 2008(1) RCR (Criminal)*

392) Hon'ble Supreme Court observed as under:-

“27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself).....

29. In *Union of India vs. Prakash P. Hinduja and*

another 2003 (6) SCC 195 (vide para 13), it has been observed by this Court that a Magistrate cannot interfere with the investigation by the police. However, in our opinion, the ratio of this decision would only apply when a proper investigation is being done by the police. If the Magistrate on an application under Section 156(3) Cr.P.C. is satisfied that proper investigation has not been done, or is not being done by the officer-in-charge of the concerned police station, he can certainly direct the officer in charge of the police station to make a proper investigation and can further monitor the same (though he should not himself investigate).”

15. In view of observations made in ***Sakiri Vasu Vs. State of U.P. and others : 2008(1) RCR (Criminal) 392*** the Chief Judicial Magistrates of the Districts, where the investigation of Bank Fraud cases is pending for more than one year are directed to monitor the investigation of such cases and pass appropriate orders in accordance with law for proper investigation of the case. Where the Chief Judicial Magistrate monitors the investigation of particular cases, it would be appropriate that such cases are tried by Additional Chief Judicial Magistrate as far as possible.

16. In his affidavit, the Director General of Police, Punjab has stated that a committee has been constituted for drafting SOP for investigation of the Bank fraud cases while the Director General of Police, Haryana has stated that instructions have been issued for investigation of the economic offences and the Director General of Police, U.T. Chandigarh has informed that SOP in respect of investigation of criminal cases has been issued which covers the subject.

17. As per annual report of Reserve Bank of India 2019-20, the total number of frauds involving Rs.1,00,000/- and above reported by

the Banks and financial institution shot up by 28% by volume and 159% by value during 2019-20 despite the RBI tightening the supervision and vigilance. While there were 6799 fraud involving Rs.71,543/- in 2018-19 the number of frauds jumped to 8707 involving Rs.1,85,655 crores in 2019-20. Public Sector Banks topped the list with 4413 cases involving Rs.1,48,400 crores while the Private Banks reported 3066 cases involving Rs.34,211 crores.

18. In ***Mohan Lal Vs. Mohan Singh : 1995(3) PLR 564*** and ***Inder Singh (deceased) Vs. Bhiwani Municipality, Bhiwani : 2017 (5) RCR (Civil) 105*** it was held by this Court that that the Court is the guardian of public property. The above-said observation would hold good in respect of public funds also. There cannot be any charity or laxity by the Banks at the expense of tax payers or investors. It is the common experience that the Banks do not generally waive even a single penny, not to speak of any part of principal or interest, to an honest borrower who makes re-payment as per re-payment schedule but waive substantial amounts under “one time settlement” or “compromise” in Lok Adalats in favour of the defaulters. Many a times the State Governments also waive the loans given by the Banks. The questions of waiver of part or whole of the principal amount or interest are matters of policy for the Reserve Bank of India, the concerned Banks or such State Governments to consider. Yet it needs to be highlighted that waiver of any part or whole of principal of or interest on loan obtained by a fraudster from any Bank would be a fraud on the Constitution and also with the investors and would not be permissible.

A fraudster not only needs to be vigilantly prosecuted or sternly

punished for the frauds committed with the Banks but must also be disqualified for taking loan in future from other Banks till re-payment of the loan taken earlier so that such person does not cheat the Banks one after the other. The Reserve Bank of India and the Banks have to take all such steps in this regard as may be required. The tax payer and the investors cannot be made to suffer for lapses on the part of the officers/officials of the concerned instrumentalities of the State or concerned Banks. The officers/officials of the instrumentalities of the State or concerned Banks are legally bound to take steps to prevent frauds and also for realization of the amount taken by the fraudsters by taking possession of and/or attachment and sale of movable or immovable properties of the fraudsters in accordance with law. It would be appropriate that the concerned Banks also depute concerned Branch Manager/Manager Legal for providing requisite information/documents and coordinating with the investigating officer during investigation and the Public Prosecutor during trial of cases involving Bank frauds.

19. The number of Bank frauds in India is substantial and increasing with passage of time. The impact of fraud on the Banks and the economic cost of fraud can be huge in terms of likely disruption in the working of the markets, financial institutions and the payment system. Besides, Bank frauds, if not diligently prevented, promptly detected, properly investigated, vigilantly prosecuted and sternly punished, can have potentially debilitating effect on confidence in the banking system and may damage the integrity and stability of the economy. It may bring down the concerned Bank, undermine the Central Bank's supervisory role and even create social

unrest/discontent. The vulnerability of Banks to fraud has been heightened by technological advancement in recent times. Proper investigation of cases of Bank frauds requires (i) immediate search and seizure of documents including hard disks, pen drive, CD etc. from proper custody with certificate under Section 65B of the Indian Evidence Act, 1872; (ii) recording of statements of witnesses with reference to original documents; (iii) prompt discovery and arrest of the offenders as the delay enables them to tamper with/destroy the evidence; (iv) immediate freezing of accounts of the offenders under Section 102 of the Cr.P.C. to deprive them of the fruits of crime and (v) analysis and examination of documents by FSL as may be required in the facts and circumstances of the case to prove involvement of the offenders.

20. It is, thus, evident that instructions issued with reference to economic offences or SOP issued with respect to investigation in criminal cases in general may not be appropriate for investigation of cases of Bank frauds which require that SOP be prepared with reference to specific requirements of the same. For example in cases of Bank frauds involving taking of loan by execution of fraudulent mortgage deeds the Investigating Officer has also to ascertain the purpose for which the loan was taken, the manner in which the loan was disbursed and utilised and the repayments which were made. The Investigating Officer has to collect the loan application, loan agreement, guarantee deed if any and the mortgage deed executed, revenue documents/title deed submitted to prove title of mortgaged property/land and non-encumbrance certificate/valuation report submitted by the

Advocate/Valuer/Assessor on the Panel of the complainant Bank. Statements of persons witnessing the execution of documents have to be recorded for proving execution of the documents keeping in view the requirements of the Indian Evidence Act, 1872. If offence was committed with the aid of technology, then requisite call details record with tower location, CCTV footage if any, details regarding email accounts, I.P. Address etc., and hard disc, pen drive or CD in original or copied from the source with certificate under Section 65 B of the Indian Evidence Act, 1872 have to be obtained by the Investigating Officer.

21. As mentioned above, the Director General of Police, Punjab has already constituted a Committee for drafting SOP for investigation of cases involving Bank frauds. The Director Generals of Police, Haryana and U.T. Chandigarh are also directed to take appropriate steps for preparation of the SOPs for such cases. The Director Generals of Police, Punjab and Haryana and U.T. Chandigarh are directed to ensure that requisite SOPs are prepared and circulated within three months from the date of receipt of copy of this order.

22. Since substantial number of such cases of Bank frauds in the States of Punjab and Haryana involve execution of mortgage deeds on the basis of forged revenue record or omission/deletion of the relevant entries regarding the earlier encumbrances, the Chief Secretaries, Punjab and Haryana and Home Secretary, U.T. Chandigarh are directed to examine the matter and issue appropriate instructions including instructions regarding production of the original record by the concerned revenue official at the time of registration of the mortgage deed and immediate sanctioning of mutation on the basis of such

mortgage deeds. The requisite instructions be issued with in three months from the date of receipt of a copy of this order.

23. The Public Prosecutor has also to be vigilant in conducting the prosecution in such cases. In view of the provisions of Section 294 of the Cr.P.C. the Public Prosecutor must apply to the Court at the appropriate stage after framing of the charges for directing admission or denial of the documents by the accused. The Public Prosecutor has to apply to the Court for issuance of process for securing presence of the prosecution witnesses and ensuring production of original documents and also to ensure examination of prosecution witnesses with reference to original documents to prove execution thereof in accordance with the provisions of the Indian Evidence Act, 1872.

24. It is also pertinent to observe here that the defects in investigation by the Police and lapses by the Public Prosecutor in conduct of prosecution result in large scale acquittal of the accused which prompted Hon'ble Supreme Court in ***State of Gujarat Vs. Kishanbhai Etc. : 2014(1) R.C.R.(Criminal) 549*** to intervene and observe as under:-

“20. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore, essential that every State should put in place a procedural mechanism, which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State, to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A standing committee of senior officers of the police and prosecution departments, should be vested with aforesaid responsibility. The consideration at the hands of the above

committee, should be utilised for crystalizing mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution officials course- content drawn from the above consideration. The same should also constitute course-content of refresher training programmes, for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials, should be vested in the same committee of senior officers referred to above. Judgments like the one in hand (depicting more than 10 glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course content will be reviewed by the above committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of Courts, and on the basis of experiences gained by the standing committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence, when they are made liable to suffer departmental action, for their lapses.

21. On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the concerned official may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly we direct, the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant

direction shall also be given effect to within 6 months.”

25. The Court cannot be silent spectator to defective investigation by the Investigating Officer or material lapses by the Public Prosecutor in the conduct of prosecution and has to take requisite action for fair trial. The Court has been conferred very wide powers under Section 311 of the Cr.P.C. to summon and examine or recall and re-examine any witness. Section 311 of the Cr.P.C. reads as under:-

“311. Power to summon material witness, or examine person present. -- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case”.

26. In ***Godrej Pacific Tech. Ltd. Vs. Computer Joint India Ltd. : 2008 (4) Criminal Court Cases 162 (Supreme Court)*** Hon'ble Supreme Court while analyzing the provisions of Section 311 of the Cr.P.C. observed as under :-

"7. The section is manifestly in two parts. Whereas the word used in the first part is "may", the second part uses "shall". In consequence, the first part gives purely discretionary authority to a criminal court and enables it at any stage of an enquiry, trial or proceeding under the Code (a) to summon anyone as a witness, or (b) to examine any person present in the court, or (c) to recall and re-examine any person whose evidence has already been recorded. On the other hand, the second part is mandatory and compels the court to take any of the aforementioned steps if the new evidence appears to it essential to the just decision of the case. This is a supplementary provision enabling, and in certain circumstances imposing on the court the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the court

should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the court to arrive at the truth by all lawful means and one of such means is the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts.”
(Emphasis supplied)

27. In *Zahira Habibullah Sheikh Vs. State of Gujarat, (SC) : 2006(2) R.C.R.(Criminal) 448* Hon'ble Supreme Court observed as under:-

“36. A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the 27 of 46 prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny”
(Emphasis supplied)

28. The Judge is required to discover the truth and for this purpose the Judge is also conferred very wide powers by Section 165 of the Indian Evidence Act, 1872 to put questions or order production. Section 165 of the Indian Evidence Act, 1872 reads as under:-

“165. Judge’s power to put questions or order production. — *The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any*

witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted."

29. In State of **Rajasthan Vs. Ani @ Hanif and others** :
1997(2) R.C.R.(Criminal) 211 Hon'ble Supreme Court observed as under:-

"11. Section 165 of the Evidence Act confers vast and unrestricted powers on the trial court to put "any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant" in order to discover relevant facts. The said section was framed by lavishly studding it with the word "any" which could only have been inspired by the legislative intent to confer unbridled power on the trial court to use the power whenever he deems it necessary to elicit truth. Even if any such question crosses into irrelevancy the same would not transgress beyond the contours of powers of the court. This is clear from the words "relevant or irrelevant" in Section 165. Neither of the parties has any right to raise objection to any such question."

30. The Court, being duty bound to summon and examine the witnesses whose examination is essential for just decision of the case, cannot close the prosecution or defence evidence without taking effective steps for securing presence of the witnesses. In **CRM-M-25761-2015 titled as 'Vijay Pal Vs. State of Haryana and another'** **decided on 27.05.2020** this Court observed as under:-

"39. It may be observed here that the complainant, the Police Officer, the Prosecutor and the accused do not have any power/authority under the Cr.P.C. or any other

enactment to grab a witness and drag him to the witness box for his examination in support of their case or production of the documents or other thing relied upon by them and are wholly dependent either on willingness of the witnesses to appear in the Court or assistance of the Court for securing their presence in the Court. Even where the witness to be examined is a police officer/official or government servant or employee of any agency or instrumentality of the State the Administrative Superior has no power/authority under the Cr.P.C. or under any other enactment to issue any coercive process or take any coercive action to compel his appearance before the Court and may, at best, initiate appropriate disciplinary action against him for his non appearance in the Court which may take sufficiently long time and may not have the immediate effect of causing his appearance before the Court. Therefore, the complainant, the prosecution or the accused can not be saddled with the responsibility to produce their witnesses on own responsibility and the Court can not decline its assistance in securing presence of the Witnesses. In the administration of criminal justice a duty is also cast upon the court to arrive at the truth by all lawful means. If the prosecution or the accused by its/his negligence or otherwise fails to discharge its/his responsibility in producing witnesses, the court cannot absolve itself of its responsibility to summon and examine all witnesses whose evidence appears to it to be essential for just decision of the case. The Court has to exercise its powers to ensure that all material witnesses whose examination is essential to just decision of the case are brought before it and the question of guilt or innocence of the accused is decided on merits by discovering the truth. If the trial Court is under statutory duty to compel the attendance of prosecution and defence witnesses, the Court can not close the prosecution or defence evidence on the ground of failure of the prosecution or the accused to produce the same without making genuine and sincere efforts to secure the attendance of the prosecution or defence witnesses whose evidence is essential for just decision of the case. Even in such cases prosecution evidence can be closed where there is gross neglect, deliberate delay or remissness/misconduct frustrating the Court process on the part of the prosecution so that prolonged trial will amount to complete denial of fundamental right of speedy trial to the accused. Similarly, the defence evidence can be closed where there is deliberate delay to prolong the trial and assistance of the Court for summoning of defence witnesses can be declined only where the application for such assistance is made for the purpose of vexation or delay or for defeating the ends of justice.”

31. No convict can be allowed to retain or reap the fruits of his crime and the victim of crime needs to be adequately compensated. For this purpose the Court is empowered by Section 357 of the Cr.P.C. to award compensation. Section 357 of the Cr.P.C. reads as under:-

“357. Order to pay compensation.—

(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

(a) in defraying the expenses of properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session

when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.”

32. In the eventuality of conviction, the Court is under an obligation to consider the question of award of costs to the State and compensation to the Victim. In ***Ankush Shivaji Gaikwad Vs. State of Maharashtra : 2013(2) RCR (Criminal) 1036*** Hon'ble Supreme Court observed as under :-

“62. To sum up: While the award or refusal of compensation in a particular case may be within the Court's discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357Cr.P.C. would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.”

33. The District and Sessions Judges in the States of Punjab, Haryana and U.T. Chandigarh have to ensure that the judicial officers working under them comply with these statutory provisions and fundamental principles of criminal jurisprudence and constitutional morality.

34. A copy of this order be sent to the Chief Secretaries,

Punjab and Haryana and Home Secretary, U.T. Chandigarh, the Director Generals of Police, Punjab, Haryana and U.T. Chandigarh, Regional Director, Reserve Bank of India, Chandigarh and all the District and Sessions Judges in the States of Punjab, Haryana and U.T. Chandigarh for information/requisite compliance.

35. The Chief Secretaries, Punjab and Haryana and Home Secretary, U.T. Chandigarh and the Director Generals of Police, Punjab, Haryana and U.T. Chandigarh are also directed to send compliance report to this Court immediately on expiry of the period of the three months along with copies of the instructions issued and SOPs prepared which shall be placed before this Court on judicial side for such appropriate orders as may be required.

09.02.2021

Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

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