

CRM-M-2863 of 2022

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

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CRM-M-2863 of 2022

Date of decision:21.02.2022

Om Parkash and others

... Petitioners

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. P.S.Jammu, Advocate
for the petitioners.

Ms. Mahima Yashpal, DAG, Haryana.

Mr. D.P.S.Jaura, Advocate
for the complainant/respondent No.2.

SUVIR SEHGAL J.

Challenge in the instant petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for short “the Code”) is to the order dated 14.12.2021 (Annexure P-3) passed by the learned Judicial Magistrate Ist Class, Ellenabad in case FIR No.295 dated 30.07.2021 registered for offences under Sections 306, 328 of the Indian Penal Code, 1860 at P.S.Rania, District Sirsa, vide which an application filed under Section 173 (8) of the Code by the complainant-respondent No.2 seeking further investigation, has been allowed.

Facts, in brief, leading to the filing of the petition are that on the statement made by Sandeep Kumar, above-mentioned FIR has been registered on the allegation that his elder sister, Rajni was married to Vipin-petitioner No.3, in the year 2014 and two children, son aged 06 years and

daughter aged 04 years, were born out of the wedlock. Om Parkash, petitioner No.1 and Savitri, petitioner No.2, in-laws of his sister as well as her husband have been quarrelling with her and harassing her. She left her matrimonial home a number of times and on persuasion went back to stay with her husband and his family. About 3-4 days earlier, Rajni called him up on phone and told her that she is under a lot of stress because her in-laws have made life hell for her and asked him to come to her matrimonial home on coming Saturday. The complainant called up his brother-in-law and asked him the reason but he denied any unpleasant incident. The complainant suspected that his brother-in-law is in an extra marital affair. On 30.07.2021, when the complainant was going for duty in the morning, he received a phone call from his brother-in-law informing him that Rajni had consumed some pesticide and has been hospitalized. He reached her matrimonial home and found Rajni lying dead in the courtyard. Suspecting her husband and in-laws of mentally harassing his sister, the complainant lodged an FIR against them. During the course of investigation, in-laws of the deceased were found to be innocent. Final report, Annexure P-1, under Section 173 of the Code has been submitted against Vipin Kumar, husband of the deceased, on the basis of enquiry conducted by DSP, Ellenabad. Dissatisfied with the investigation, complainant-respondent No.2 submitted an application for further investigation, Annexure P-2, which has been accepted by the Magistrate, vide impugned order, wherein, it has been directed that both the children of the deceased be examined and their statements be recorded under Section 164 of the Code as also call records be

retrieved, in order to find out as to whether the main accused has an extra marital affair.

Assailing the impugned order, the main thrust of argument of counsel for the petitioner is that petitioners No.1 and 2, who have been found to be innocent, were not heard prior to passing of the order under challenge. He has argued that the application by the complainant seeking further investigation is not maintainable as it was required to be moved by the Investigating Officer or the Public Prosecutor, more so as both petitioners No.1 and 2 were found to be innocent after an enquiry having been conducted by an officer of rank of DSP.

Counsel representing the respondents have opposed the petition by referring to Section 173(8) of the Code and submitted that the application, Annexure P-2, filed by the complainant has been instituted through the Public Prosecutor and the main accused was duly represented before the Magistrate when the application was heard. It has been further submitted that though the application has been filed under Section 306 IPC, but it is a case, where Section 302 IPC deserves to be invoked as the deceased has been killed by the accused-petitioners. It has been further submitted that pursuant to the impugned order, statements of both the children have been recorded.

I have considered the rival submissions of counsel for the parties and perused the impugned order as well as paper book with their able assistance.

Sub-section (8) of Section 178 of the Code deserves to be

noticed and is reproduced as under:-

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

(1) to (7) x x x x x x x

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).”

In terms of Section 173(8) of the Code, it is open to the Investigating Agency or for the Court to direct, further investigation even after the filing of final report, till the charge is framed. Reliance in this regard is placed upon the judgment of the Supreme Court in **Vinubhai Haribhai Malaviya Vs. The State of Gujarat (2019) 17 SCC 1**. The power of the police to conduct further investigation after final report is filed, is no longer *res integra*. The Court is not required to hear the accused while dealing with the request for further investigation under Section 173(8), *ibid*. It is a settled law that accused has no right to have any say as regards the mode, manner or method of investigation as has been held by the Supreme Court in **Union of India Vs. W.N.Chadha 1993 Suppl.(4)**

SCC 260. It has been held by the Apex Court in Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj Vs. State of Andhra Pradesh and others (1999) 5 SCC 740, as under:-

“10. Power of the police to conduct further investigation, after laying final report, is recognised under Section 173(8) of the Code of Criminal Procedure. Even after the court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. This has been so stated by this Court in Ram Lal Narang v. State (Delhi Admn.) (AIR 1979 SC 1791). The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the court and seek formal permission to make further investigation.

11. In such a situation the power of the court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As law does not require it, we would not burden the Magistrate with such an obligation.”

The said view has been followed in the subsequent judgments delivered by the Apex Court in Narendra G.Goel Vs. State of

Maharashtra and another (2009) 6 SCC 65 and Satishkumar Nyalchand Shah Vs. State of Gujarat and others (2020) 4 SCC 22. Therefore, an accused cannot have any right of hearing when a petition under Section 173(8) of the Code seeking further investigation is taken up for consideration by the learned Magistrate.

The object of investigation in criminal law is to unravel the truth, identify the offender and proceed him for trial. Section 173(8) of the Code, provides for further investigation, therefore, if the Magistrate, comes to the conclusion that the investigation has been done in a manner with an object of helping a particular party, the Court may direct further investigation when it is brought to the notice of the Magistrate that further investigation is needed on a particular aspect or when notice is drawn to some material which inspires confidence and which in all probability is in existence, the Magistrate in such a situation is justified in ordering further investigation on the lines indicated by it.

The minor children of the deceased are natural witnesses to the incidents that may have taken place within the four walls of the matrimonial home. Their examination, therefore, is very material to extract the truth and to ascertain the veracity of the allegations. They are a vital and an important link to complete the chain of events and recording of their statements in this situation is a must. Similarly, the direction by the Magistrate to collect the call details of the main accused to find out the person, who he has been in regular contact is also imperative, in view of the allegations levelled in the FIR. Both these angles have not been examined by the Investigating Agency

in the final report (Annexure P-1) presented by it before the competent Court. In such perspective of the matter, the impugned order passed by the Magistrate does not call for any interference and deserves to be confirmed.

In view of the above discussion, this petition is dismissed being devoid of any merit.

(SUVIR SEHGAL)
JUDGE

February 21, 2022
savita

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes