

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

112

(Through Video Conferencing)

CRR-283-2022

Date of decision: 11.02.2022

Ankita

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Surjeet Singh Sodhi, Advocate
for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner has approached this Court under Section 401 Cr.P.C. for setting aside the order dated 04.01.2022 passed by the learned trial Court vide which an application filed by the petitioner (complainant) seeking further investigation under Section 173(8) Cr.P.C. and also for re-investigation of the said case by a gazetted police officer (as notified by the State Government), was dismissed in case FIR No.35 dated 18.03.2021 for offences under Sections 376 and 354 IPC, Section 67A of the IT Act and Sections 3(1) and 3(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, “the SC/ST Act”) registered at Police Station Mukerian, District Hoshiarpur.

Learned counsel for the petitioner *inter alia* contends that the investigation carried out by the police was tainted as it had failed to even preserve the material which had been posted on the social media by the accused. It was also submitted that in view of the tainted

investigation and the subsequent addition of offences under SC/ST Act, since the case was required to be investigated by a notified gazetted police officer and not by a Sub Inspector, the trial Court ought to have directed reinvestigation in the instant case FIR, by a gazetted police officer.

I have heard learned counsel for the petitioner and perused the material on record including the impugned order.

At the outset, in the wake of the prayer made, it needs to be observed that the powers of this Court to exercise its revisional jurisdiction under Section 401 Cr.P.C. are limited only to the extent of examining the legality or otherwise of an order passed by a lower Court.

Adverting to the case in hand, the trial Court could not have directed further investigation under Section 173(8) Cr.P.C. when the case was at the stage of prosecution evidence in the wake of the ratio laid down by the Hon'ble Supreme Court in ***Vinubhai Haribhai Malaviya Vs. State of Gujarat : 2020(1) RCR (Criminal) 1*** that the power of Magistrate to direct further investigation would extend only till the stage of framing of charges and not thereafter.

Still further, the trial Court cannot be faulted with, for declining the prayer of the petitioner for reinvestigation as the trial Court has no such powers under the Code of Criminal Procedure, 1973. The Hon'ble Supreme Court in ***Vinay Tyagi Vs. Irshad Ali @ Deepak and others : 2013(2) RCR (Criminal) 197*** has held as under:-

“18. Next question that comes up for consideration of this Court is whether the empowered Magistrate has the jurisdiction to direct ‘further investigation’ or ‘fresh investigation’. As far as the latter is concerned, the law

declared by this Court consistently is that the learned Magistrate has no jurisdiction to direct ‘fresh’ or ‘de novo’ investigation. However, once the report is filed, the Magistrate has jurisdiction to accept the report or reject the same right at the threshold. Even after accepting the report, it has the jurisdiction to discharge the accused or frame the charge and put him to trial. But there are no provisions in the Code which empower the Magistrate to disturb the status of an accused pending investigation or when report is, filed to wipe out the report and its effects in law. Reference in this regard can be made to K. Chandrasekhar v. State of Kerala [(1998) 5 SCC 223]; Ramachandran v. R. Udhayakumar [(2008) 5 SCC 413], Nirmal Singh Kahlon v State of Punjab & Ors. [(2009) 1 SCC 441]; Mithabhai Pashabhai Patel & Ors. v. State of Gujarat [(2009) 6 SCC 332]; and Babubhai v. State of Gujarat [(2010) 12 SCC 254].”

In the circumstances as enumerated hereinabove, this Court does not find any perversity much less any illegality in the impugned order passed by the learned trial Court which would persuade this Court to invoke its revisional jurisdiction under Section 401 Cr.P.C.

Dismissed.

11.02.2022

(MANJARI NEHRU KAUL)
JUDGE

Vinay

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