

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

(1) CRM No. 2965 of 2022 in/and
CRM-M No. 1304 of 2014 (O&M)
Date of Decision: 10.02.2022

Neera Diwan

..... Petitioner

Versus

State of Haryana and another

..... Respondents

(2) CRM No. 2587 of 2022 in/and
CRM-M No. 5667 of 2014 (O&M)

Tarsem Singh and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

AND

(3) CRM-M No. 51988 of 2021 (O&M)

Harish Bhatia

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. P.K. Ganga, Advocate,
for the petitioner(s) (in CRM-M Nos. 1304 & 5667 of 2014)

Mr. Ankit Bishnoi, Advocate,
for the petitioner (in CRM-M-51988-2021)

Mr. Pradeep Prakash Chahar, Deputy Advocate General, Haryana
for respondent No. 1 / State (in all cases)

Mr. Aditya Sanghi, Advocate, for
Mr. Ashwani Bhardwaj, Advocate, for private respondent No. 2
(in CRM-M Nos. 1304 & 5667 of 2014)

Mr. Sumit Sharma, Advocate
for private respondent No. 2 (in CRM-M-51988-2021)

(Through Video Conferencing)

SURESHWAR THAKUR, J. (ORAL)

CRM-2965-2022 in CRM-M-1304-2014 and
CRM-2587-2022 in CRM-M-5667-2014

1. With the consent of the learned counsel for the parties, the dates of hearing of the main cases are preponed from 19.05.2022, and, they are taken up today itself.

2. Applications are disposed of.

MAIN CASE(S)

1. This order shall dispose of the present three criminal petitions, as they seek the quashing of common FIR No. 175 of 31.10.2004, registered against the petitioner(s), at Police Station Sadar, Sirsa, constituting therein offences, under Sections 420, 467, 468, 471, 120-B of the Indian Penal Code, as also the consequent proceedings, arising therefrom, including the order of 20.11.2013, as, made by the learned ACJM, Sirsa. For the sake of convenience, the facts are being culled out from one of the petitions, bearing CRM-M-1304-2014.

2. The petitioner is an accused in the afore FIR, wherein, the offences (supra) are embodied. A prayer is made for the quashing of order of 20.11.2013, as, made by the learned Magistrate concerned, wherethrough, he, after rejecting the closure report, as became preferred, before him, by the Investigating Officer (IO) concerned, hence in the above year also, proceeded to make summoning orders, upon, the petitioner.

3. The IO concerned, who launched the investigations, in the year 2004-05 into the FIR (supra), proceeded to, on 27.04.2005, make a proposal for instituting a cancellation report *qua* the offences (supra), before the

learned Magistrate concerned. However, the complainant, on 23.01.2006, instituted a petition before the Superintendent of Police, Sirsa, and therein, he asked that a fair and unbiased investigation may be ordered, to be carried by the IO concerned, into the offences (supra), and, that no affirmative recommendation be made by the Superintendent of Police, Sirsa, for the proposed closure report, being submitted, before the learned Magistrate concerned, by the IO concerned. The above petition resulted in the Superintendent of Police, Sirsa, proceeding to, on 06.03.2009, make an order for re-investigations. In the meantime, one of the accused, namely, Neera Diwan, proceeded to institute a Criminal Revision Petition No. 49 of 2009, before the learned Additional Sessions Judge, Sirsa, therein claiming, relief that the above made order of the Superintendent of Police, Sirsa, be quashed and set aside. However, given the reply to the above criminal revision petition, being made by the learned Public Prosecutor concerned, with disclosures therein, that re-investigations into the offences, carried in the FIR (supra), are yet underway, and, that a closure report is likely to be filed, before the learned Magistrate concerned. Consequently, on the request of the aggrieved, one, Neera Diwan, she was permitted to, hence seek an order qua the petition, being disposed of, as, becoming infructuous, on the ground that the cancellation report is to be instituted, by the IO concerned, before the learned Magistrate concerned. Accordingly, the above order was also made.

4. Subsequently, a cancellation report became instituted before the learned Magistrate concerned. However, through an order of 20.11.2013,

the learned Magistrate concerned, remaining completely oblivious to the

above mentioned train of events, and without any tenable reasoning, becoming afforded with respect to the validity of the closure report, and, also with respect to the validity of the protest petition, if any, filed by the aggrieved petitioner against its acceptance by him, proceeded to merely on the ground that since, previously, though an order, as made, on 06.03.2009, directions for re-investigations were made, rather rejected the cancellation report, as became subsequent thereto instituted.

5. The afore made order is recorded in a perfunctory, and, mechanical manner, and, with the completest non-application of judicial mind, by the learned Magistrate concerned.

6. The reason for making the above conclusion, arises from the fact that the order for re-investigation(s), as, made on date (supra), by the learned Court concerned, became complied with by the IO concerned, inasmuch, as his in compliance thereof, proceeded to hold a re-investigation or further investigations, into the FIR (supra), and, whereafter he instituted a cancellation report, before the learned Magistrate concerned. The above factum also resulted in revision bearing CR No. 49 of 2009, as filed by one Neera Diwan, becoming removed from the docket of the learned Additional Sessions Judge, Sirsa. Therefore, the credibility of re-investigations, as were held by the IO concerned, in pursuance to an order made by the learned Magistrate concerned, earlier on 06.03.2009, and, theirs resulting in a closure report, were required to be tested, by the learned Magistrate concerned, through the keenest application of judicial mind to the above train of events. Moreover, the earlier order (supra) did not upon completion

of further investigation by the IO concerned, remain in force, rather it

merged into the requisite compliances, as, made qua thereto, by the IO concerned. Therefore, given hence the completest lack of binding effect, if any, of the earlier order (supra), the learned Magistrate concerned, could not draw or found any valid conclusion yet for proceeding to reject the closure report, as, became instituted before him, after further investigations, being carried into the offences (supra), in pursuance to earlier orders, as, made by the learned Magistrate concerned.

7. Consequently, there is merit in the present petitions, and, the same are allowed.

8. However, in view of the afore lack of valid reasonings, being meted by the learned Magistrate concerned, with respect to the validity of the closure report, it is deemed fit to direct the learned Magistrate concerned, to in accordance with law, and, after hearing all the concerned including the complainant, who may choose to file a protest petition against the acceptance of the cancellation report, to make a fresh decision in accordance with law, both upon the cancellation report, and, upon the protest petition, if one, as, may become filed against its acceptance by the complainant, before the learned Magistrate.

11. Pending miscellaneous application(s), if any, stand(s) disposed of.

February 10, 2022
'dk kamra'

(SURESHWAR THAKUR)
JUDGE

Whether Speaking/reasoned	Yes
Whether Reportable	Yes