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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-19679-2017
Date of Decision: 04.08.2022

Prince Sethi

....Petitioner(s)

Versus

State of Haryana and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Atul Lakhanpal, Senior Advocate assisted by
Mr. Arvindpal Singh, Advocate, for the petitioner.

Mr. Ranvir Singh Arya, Addl. Advocate General, Haryana.

Mr. P.K. Ganga, Advocate, for respondents No. 2 to 6.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of order dated 02.04.2016 (Annexure P-1) passed by the learned Chief Judicial Magistrate, Sirsa and also order dated 27.04.2017 (Annexure P-2) passed by learned Sessions Judge, Sirsa.

An application was filed by the State before the learned trial Court for seeking permission to file a supplementary challan but the same was declined by the learned Chief Judicial Magistrate, Sirsa on 02.04.2016 vide Annexure P-1. Thereafter, the petitioner-complainant filed a revision petition before the Court of learned Sessions Judge, Sirsa and vide Annexure

P-2 the revision petition was also dismissed on 27.04.2017.

Mr. Atul Lakhanpal, learned Senior Counsel with Mr. Arvindpal Singh, Advocate appearing on behalf of the petitioner has submitted that both the impugned orders passed by the learned Chief Judicial Magistrate, Sirsa as well as learned Sessions Judge, Sirsa were erroneous and it was a case where the application filed by the State was required to be allowed because on the basis of further investigation it was found that the provision of Section 379-A IPC was required to be added and therefore, supplementary challan should have been permitted by the learned trial Court. He further submitted that under the provision of Section 173(8) of Cr.P.C, there is no bar for further investigation and once a investigation agency seeks to file a supplementary challan, then the same cannot be denied unless there are strong reasons for the same.

On the other hand, Mr. Ranvir Singh Arya, learned Additional Advocate General, Haryana has submitted that a reply has been filed by the State in which factual position has been stated.

Mr. P.K. Ganga, learned counsel appearing on behalf of respondent Nos. 2 to 6 has opposed the prayer made by the petitioner in the present petition. He submitted that the orders passed by the learned Chief Judicial Magistrate, Sirsa as well as the learned Sessions Judge, Sirsa in revisional jurisdiction were perfectly in accordance with law and apart from the same, all the witnesses except the complainant have already been examined and rather the complainant himself has not deposed before the Court despite the fact that repeatedly bailable warrants were issued against him and has also referred to latest order passed by the learned trial Court dated 02.07.2022 whereby it was recorded that since 11.12.2017 PW Prince

(Petitioner) has been avoiding his presence in the Court on the one ground or the other and every time bailable warrants were issued to procure his presence. Similar application seeking exemption from personal appearance has been filed by Prince with an assurance to appear on the next date but till date PW Prince (Petitioner) has never appeared in the Court and therefore, the Court was not inclined to grant exemption to the petitioner. It was directed that the presence of PW Prince (Petitioner) be procured by way of bailable warrants in the sum of Rs. 5,000/- with one surety in the like amount for 05.08.2022. He further submitted that in fact the petitioner instead of coming forward and deposing at the trial is absenting himself from the year 2017 and has rather filed the present petition for the purpose of delaying the trial.

I have heard the learned counsel for the parties.

The State moved an application for presentation of supplementary challan which was declined by the learned trial Court and on revision, the revisional Court dismissed the revision petition filed by the petitioner. The learned trial Court while passing the order dated 02.04.2016 observed that it is a case where the present FIR was registered on the basis of complaint made by complainant Prince (Petitioner) under Sections 323, 341, 506, 147, 149, 365 IPC. Thereafter, investigation was carried out by the SHO as well as DSP, Headquarter Sirsa and offence under Section 365 IPC was not found to be committed and it was deleted. Thereafter, under the directions of some senior officers the investigation was carried out by Inspector Dalip Singh, Incharge of Economic Offences Branch, Fatehabad and also by Deputy Superintendent of Police, Head Office, Fatehabad and offence under Section 379-A IPC was added.

Thereafter, on the directions of the senior officers investigation was carried out by the DSP, Headquarter Sirsa and Section 379-A IPC was deleted. Challan under Sections 147, 149, 323, 341, 506 IPC was filed in the Court on 11.02.2016. Thereafter, again investigation was carried out by one Sh. Ganga Ram, Assistant Superintendent of Police, Head Office, Fatehabad and offence under Section 379-A IPC was found to have been committed. Therefore, the investigating agency now wishes to file supplementary challan under Section 379-A IPC. The learned trial Court observed that the aforesaid facts clearly show that investigation has been carried out by the several officers and repeatedly the offence under Section 379-A IPC was added and deleted and it appears that the higher police officers are so keen to investigate the case again and again in order to add the offence of Section 379-A IPC in the present case. However, there is nothing to show that on which ground and on the basis of what evidence available new material has come in the investigation to add Section 379-A IPC and there are only vague averments made in the application that during investigation offence under Section 379-A IPC has been found to be committed. Apart from the same, the FIR in the present case has been registered in Police Station City, Sirsa, District Sirsa whereas the recommendation for addition of Section 379-A IPC was on the basis of some investigation conducted at Fatehabad and Assistant Superintendent of Police, Headquarter, Fatehabad has got no jurisdiction to investigate the offence beyond his jurisdiction. The learned trial Court further observed that the investigation was not a further investigation and was rather a re-investigation for which permission of the Court after filing of the challan was necessary. It further observed that the Court always has a power to amend the charge at any stage before

pronouncing a decision and therefore, dismissed the application filed by the State.

The learned Sessions Court while considering the revision filed by the petitioner observed that the matter was investigated time and again by the Deputy Superintendent of Police, Sirsa and Assistant Superintendent of Police, Fatehabad. So far as the offence under Section 379-A IPC is concerned, the same was added on the basis of the investigation conducted by the DSP, Fatehabad and Incharge, Economic Offences Branch, Fatehabad. Thereafter, it was deleted by DSP, Sirsa and therefore, the challan was presented before the Court under Sections 147, 149, 323, 341, 506 IPC only. It was further observed that there is nothing on the file to show that any formal permission of the Court was sought at any point of time to re-investigate the matter and no material has come in the investigation to add Section 379-A IPC. Apart from the same, there was no record to authorise Fatehabad Police to conduct the investigation and there is nothing on the record to show the same. It further observed that the report under Section 173 Cr.P.C has already been submitted in the Illaqa Magistrate and the charges have already been framed and came to the conclusion that no patent illegality was found in the order dated 02.04.2016 whereby application seeking permission to file supplementary challan has been dismissed and therefore, dismissed the revision petition filed by the petitioner.

A perusal of the impugned orders as well as considering the submissions made by the learned counsel for the parties, it appears that so far as offence pertaining to Section 379-A IPC is concerned, the same was repeatedly got added and deleted. The FIR in the present case was registered

in District Sirsa whereas permission for seeking to present supplementary challan is on the basis of some investigation conducted at Fatehabad. There is neither any justification nor anything on the record to show as to how the police at Fatehabad was authorised to conduct investigation and that too re-investigation for which no permission was sought from any Court. Apart from the same, it has been pointed out by the learned counsel for the parties that now all the witnesses except the complainant have been examined and the trial is at the fag end. So far as the present petitioner is concerned, as per the orders passed by the learned trial Court dated 02.07.2022 the petitioner-complainant has been avoiding his presence in the Court on one ground or the other since 11.12.2017 and even now bailable warrants have been issued by the learned trial Court. It therefore appears that the filing of the application by the State and also the present petition is only for the purpose of delaying the trial. Apart from the same, there is no illegality or perversity in the impugned orders passed by the learned Chief Judicial Magistrate, Sirsa as well as learned Sessions Judge, Sirsa.

In view of the above, no ground is made out for invoking extra ordinary jurisdiction under Section 482 of the Code of Criminal Procedure.

Consequently, the present petition is hereby dismissed.

04.08.2022

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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