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

**CRM-M-16670-2022
DECIDED ON: 30.08.2022**

DARSHANA BHARDWAJ AND ORS. ...PETITIONERS

VERSUS

CBS MEMORIAL SR. SEC SCHOOL AND ANR. ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. S.K. Garg Narwana, Sr. Advocate and
Mr. Nitin Sachdeva, Advocate
for the petitioners.

Mr. Pankaj Maini, Advocate
for respondent No.1.

Mr. Chetan Sharma, AAG, Haryana.

SANDEEP MOUDGIL, J.

1. The present petition seeks quashing of impugned order dated 31.03.2022 (Annexure P-2) passed by learned Chief Judicial Magistrate, Charkhi Dadri, passed in complaint No.HRBHAI-001554 of 2022, CRMP-106 of 2022, dated 22.03.2022 (Annexure P-1), whereby SHO Police Station City Dadri, was directed to register FIR and conduct investigation on the basis of above complaint and also the order dated 12.04.2022 (Annexure P-4), passed by learned Additional Sessions Judge, Charkhi Dadri, whereby the revision petition filed by the petitioners against order dated 31.03.2022 has been dismissed.

2. The prosecution story as put forth in is that on 07.12.2021 at 11:00 a.m., the school bus of respondent No.1 was going to drop the students at Examination Centre situated at SCR School, Charkhi Dadri, which was

stopped by the petitioners alleging that the tax of the said bus has not been paid and respondent No.1 has to pay a fine of Rs.21,000/-, otherwise their bus will be impounded. As the students were sitting in the bus, petitioner No.2 sat on the bus and went to drop the students of SCR School Charkhi Dadri. Thereafter, the bus was taken to RTA office situated at Rawaldhi By-Pass, Charkhi Dadri. The driver of the bus informed Mr. Suresh Kumar, the Principal of respondent No.1-School, about the incident, who sent a representative of the school to RTA office, to show the online history of the school bus reflecting tax being duly paid till 31.12.2021 and requested to release the bus as no dues were pending against the said bus. However, it was only after payment of penalty by way of the challan of Rs.21000/-, the bus was released by petitioner No.2, but the petitioners also went on to grab Rs.300/- as parking charges illegally without any proper receipt and they presented a false/forged receipt of tax of Rs.8820/-, misusing their official powers etc.

3. Learned Senior Counsel for the petitioners submits that the only allegation qua the petitioners is that a receipt dated 07.12.2021 issued by the Transport Department, showing tax as Nil, is, in fact, a forged document. It is further submitted that while passing the impugned order, the Chief Judicial Magistrate, on the one hand, has directed the SHO to register an FIR whereas at the same time, has asked the Investigating Officer to conduct investigation with regard to six points, which read as under:-

> *"(i) Who had paid motor vehicle tax of Rs.8820/- of receipt dated 07.12.2021, 11.18 AM vehicle bearing registration No.HR 84 6761?*
>
> *(ii) Who had prepared or generated receipt dated*

07.12.2021, 11:18 AM pertaining to payment of motor vehicle tax of vehicle bearing registration No.HR 84 6761?

(iii) From whose account payment of 8820/- was made in respect to motor vehicle tax of vehicle bearing registration No.HR 84 6761?

(iv) Who had challaned vehicle bearing registration No.HR 84 6761?

(v) What is role of accused Darshana Bhardwaj, R.T.A., Charkhi Dadri in commission of alleged offences?

(vi) Whether any other person involved in commission of alleged offences?"

4. Learned Senior Counsel has also vehemently pressed that in fact, proper procedure for the Court, at the first instance, was to receive the report from the concerned police station with regard to those six points and if a cognizable offence is found to be made out, only in that eventuality to register an FIR. It is also submitted that the petitioners-accused are public servants and the Chief Judicial Magistrate has not applied its judicious mind, before issuing direction to register an FIR, that prior sanction from competent authority was required. In this regard, he has relied upon two judgments of the Hon'ble Supreme Court in '***Anil Kumar and others Vs. M.K. Aiyappa and another', 2013 (4) RCR (Crl.) 586*** and ***'L. Narayana Swamy Vs. State of Karnataka and others', 2016 (4) RCR (Crl.) 315.***

5. Learned counsel for respondent No.1-School has opposed the prayer for quashing of the impugned order dated 31.03.2022 (Annexure P-2), of the learned Chief Judicial Magistrate, Charkhi Dadri and also the order dated

12.04.2022 (Annexure P-4), passed by learned Additional Sessions Judge, Charkhi Dadri, saying that the order passed by both the Courts below, are just and legal and passed only after examination of cogent evidence on record in accordance with law. He also submits that the acceptance of prayer of the petitioners at this stage would be purely unreasonable being premature. It is further submitted that the petitioners approached this Court just with the intent to stall the investigation process and to evade the clutches of law. He further asserted that both the Courts below have passed the order in the presence of counsel for the petitioners, therefore, ample opportunity was provided for hearing.

6. Learned counsel for the State-respondent No.2 has submitted that in para 3 of the preliminary submissions of the reply dated 22.08.2022, filed by the State, the gist of the outcome of inquiry has been mentioned, which reads as under:-

> *"3. That in compliance of the above mentioned orders passed by this Hon'ble Court, a detailed enquiry was conducted by the answering deponent in the matter and during the course of enquiry, relevant record was obtained and statements were also recorded. During enquiry it has been found that on 07.12.2021, driver of school bus bearing No.HR84-6761 relating to CBS Memorial Senior Secondary School, Mouri was travelling to SCR School, Charkhi Dadri to drop the students of the school for their appearance in examination. While the school bus reached on fly-over at Loharu Chowk, Charkhi Dadri, the same was stopped by*

> *the petitioner Darshana Bhardwaj, RTA, Charkhi Dadri along with staff. When the RTA staff checked the road tax of the said bus online on official vahan portal, the tax of the bus was shown as pending only paid up to 31.03.2020. Accordingly, screen shot of the above detail was taken and requisite bus/vehicle documents were sought from the driver by the RTO staff. However, the driver failed to produce any documents and thus petitioner Darshana Bhardwaj exercising the powers vested upon her as RTA, Charkhi Dadri, issued an e-challan amounting Rs. 21,000/- vide challan No. HR46961211207102806 at 10.28 AM in accordance with Haryana Motor Vehicle Taxation Act, 2016 and the bus was impounded. Since, the children were to appear in examination, the petitioner showing humanitarian gesture directed the bus driver to drop the students at examination centre at SCR School, Charkhi Dadri, accompanied by one of the RTO staff namely Deepak and thereafter, the bus was impounded at the designated place for impounded vehicles near Rawaldhi By-pass, Charkhi Dadri."*

7. So far the argument raised by the learned Senior on behalf of the petitioners relates to the issuance of receipt dated 07.12.2021, showing tax as Nil, alleged to be a forged document is concerned. There is no doubt that this Court can peruse the same, even before the commencement of trial but only inter alia in the circumstances like:-

(i) To satisfy its conscience as to whether the investigation is proceeding in the right direction;

(ii) To satisfy itself that the investigation has been conducted without misuse or abuse of process;

(iii) Whether regular or anticipatory bail is to be granted to the accused or not?

(iv) Whether any further custody of the accused is required for the prosecution;

(v) To satisfy itself as to the correctness of the decision of the trial Court which is under challenge.

The above instances are only illustrative and not exhaustive as there is no iota of any question to say that ultimately there can be no better custodian or guardian of the interest of justice then the Court trying the case.

8. This Court is also conscious of the fact that in the initial stages of investigation, it may not extract or verbatim refer to the materials which the Court has perused and make observations which might cause serious prejudice during trial and other proceedings, resulting in miscarriage of justice.

9. In the case '***P. Chidambram vs. Directorate of Enforcement***', the Supreme Court of India while adjudicating criminal appeal No.1340 of 2019, observed as under:-

"59. Interrogation of the accused and the answers elicited from the accused and the opinion whether the answers given by the accused are "satisfactory" or "evasive", is purely within the domain of the investigating agency and the court cannot substitute its views by

conducting mini trial at various stages of the investigation.

60. The investigation of a cognizable offence and the various stages thereon including the interrogation of the accused is exclusively reserved for the investigating agency whose powers are unfettered so long as the investigating officer exercises his investigating powers well within the provisions of the law and the legal bounds. In exercise of its inherent power under Section 482 Cr.P.C., 1973 the court can interfere and issue appropriate direction only when the court is convinced that the power of the investigating officer is exercised mala fide or where there is abuse of power and non-compliance of the provisions of Code of Criminal Procedure. However, this power of invoking inherent jurisdiction to issue direction and interfering with the investigation is exercised only in rare cases where there is abuse of process or non-compliance of the provisions of Criminal Procedure Code.

61. In King-Emperor v. Khwaja Nazir Ahmad AIR 1945 Privy Council 18: 1944 SCC Online PC 29, it was held as under:-

"....it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry.

> *In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under Section 491 of the Crl. P.C....." [underlining added]."*

10. In another judgment by the Apex Court in '***State of Bihar and Anr. vs. JAC Saldanha and Ors.', (1980) 1 SCC 554,*** it was quoted that the investigation of the offence is the field exclusively reserved for the executive through the Police Department and the Superintendence over which vests in the State Government. This Court would not shy of saying that the executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent commissioning of offence and if so committed, it is bound to investigate into such offence and bring the offender to book.

11. Investigation into crimes is the prerogative of the Police and judiciary should keep out all the areas of investigation for the simple reason that the Investigation Officer is an arm of the law, who plays a vital role in the

dispensation of criminal justice and maintenance of law and order.

12. There is vide power with the prosecution in the area of investigation process and granting them the Court latitude to exercise its discretionary power to make a successful investigation.

13. This Court has no hesitation in observing that it is not the function of the Court to monitor investigation process so long, as such investigation does not transgress any provision of law. It must be left to the investigation agency to adopt the course of investigation in its own manner.

14. Coming back to the instant petition, wherein order dated 31.03.2022 (AnnexureP-2), passed by the Chief Judicial Magistrate, Charki Dadri has been sought to be quashed, a direction was issued to register an FIR in complaint No.HRBHAI-001554 of 2022, CRMP-106 of 2022, dated 22.03.2022 (Annexure P-1) and to conduct investigation on the allegations made therein, it has been argued that the Court below ought to have called for the report from the concerned Police Station on the following six points:-

> *"(i) Who had paid motor vehicle tax of Rs.8820/- of receipt dated 07.12.2021, 11.18 AM vehicle bearing registration No.HR 84 6761?*
>
> *(ii) Who had prepared or generated receipt dated 07.12.2021, 11:18 AM pertaining to payment of motor vehicle tax of vehicle bearing registration No.HR 84 6761?*
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> *(iii) From whose account payment of 8820/- was made in respect to motor vehicle tax of vehicle bearing registration No.HR 84 6761?*
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> *(iv) Who had challaned vehicle bearing registration*

No.HR 84 6761?

(v) What is role of accused Darshana Bhardwaj, R.T.A., Charkhi Dadri in commission of alleged offences?

(vi) Whether any other person involved in commission of alleged offences?"

The learned Senior Counsel made a valiant attempt to impress this Court with the proposition that firstly the Magistrate exercising powers in a complaint under Section156(3) of the Criminal Procedure Code, should have examined as to whether the cognizable offence is made out and only thereafter, should have got the FIR registered.

15. Considering the submissions of learned Senior Advocate as discussed above, it is inferred that the petitioner is trying to say that the Magistrate must have conducted the inquiry/investigation to ascertain the commissioning of cognizable offence or not before passing the impugned orders, which has no merit in fact.

16. This Court derives strength to its observation from the judgment in '***Sakiri Vasu vs. State of U.P.', 2008 (2) SCC 409,*** wherein the issue was set at rest holding that the Magistrate has the power under Section 156(3) Criminal Procedure Code, to order police to register FIR, who can also ensure proper investigation, if the police after registering the case is not conducting proper investigation with monitoring the same.

17. In the light of discussion made hereinabove and after considering the submissions made on behalf of the parties, I am considered view that the present petition at this stage is absolutely premature primarily because the receipt regarding payment of tax till 31.12.2021 is yet to be verified by the Investigating Agency. Further learned Senior counsel for the petitioners has

not uttered any word whatsoever to controvert the stand taken by the respondent in the reply.

18. Accordingly, this Court convincingly hold that the impugned orders dated 31.03.2022 (Annexure P-2), passed by learned Chief Judicial Magistrate, Charkhi Dadri and dated 12.04.2022 (Annexure P-4), passed by learned Additional Sessions Judge, Charkhi Dadri, do not suffer from any infirmity and perversity, wherein the Chief Judicial Magistrate, Charkhi Dadri, has exercised the jurisdiction very cautiously and very judiciously as vested under Section 156(3) of the Criminal Procedure Code having power to direct the registration of FIR, to monitor the same and also for conducting proper investigation in case, he is so satisfied as envisaged under Section 154, 156(3) and 173(8) of the Criminal Procedure Code.

19. Hence the present petition being devoid of any merits, stands dismissed.

(SANDEEP MOUDGIL)
JUDGE

30.08.2022
Poonam Negi

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