

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

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**CRM-M-37168-2018 (O&M)
Date of decision: 09.11.2022**

DR SUKHBIR SINGH GILL

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Sahil Khunger, Advocate
for the petitioner.

Mr. Tejbir Singh Hundal, AAG Punjab.

AMAN CHAUDHARY. J.

Present petition has been filed for quashing of FIR No.220 dated 21.07.2015 under Section 304-A IPC registered at Police Station Patti, District Tarn Taran (Annexure P-1) and all other consequential proceedings arising therefrom and for quashing the order dated 10.02.2018 (Annexure P-8) passed by Presiding Officer, National Lok Adalat, Patti.

Learned counsel for the petitioner confines his submission with regard to challenging the order dated 10.02.2018 (Annexure P-8) passed by the Presiding Officer, National Lok Adalat regarding jurisdiction of the National Lok Adalat to order further investigation.

Briefly put the facts as narrated in the FIR are as under:-

“It is submitted that my daughter Jaskaran Kaur w/o Sh. Simranjeet Singh, is working as Govt. Teacher and is married at Layalpurian Street near Tara Wala School, Patti, District Tarn Taran. That on 17th August 2014 my daughter's only son

namely Samar Partap Singh age 2 years 3 months was suffering from mild fever and was taken to Dr. Sukhbir Singh, Civil Hospital Khemkaran who was deputed as visiting doctor admitted him at Sandhu Multi Specialty Hospital, Patti at his own level. He started the treatment. But on the second day i.e. 18th August, 2014 while giving treatment at about 11:40, the medicine administered started reacting. That at about 10:00 he left the child and went to Sri Amritsar Sahib. That my son, daughter and son-in-law contacted him on telephone and communicated with him and asked the doctor to come immediately as the medicine administered to their child had reacted and due to this the condition of their child has started deteriorating. That the doctor replied by saying that he is coming within 15-20 minutes and there is nothing to worry. That the owner of Sandhu Hospital Dr. Sukhwinder Singh is having dealings with the Doctor as he used get the children admitted in this private doctors hospital and earn good amount of money. Whereas there is no child specialist doctor has been appointed in this hospital. That he has made relations with the Govt. Dr. Sukhbir Singh. Sir, in spite of contacting the doctor repeatedly on telephone, Dr. Sukhbir Singh, Civil Hospital, Khemrakan reached the hospital on 18th August, 2014 at about 4:30 in the evening when the child was taking his last breath. That after reaching the hospital he kept on standing and called for the ambulance and referred the child to Sri Amritsar Sahib. That the child died on the way. That the child was my only grandson. That in ruining the house of my daughter, the said doctor has played the major role. That being a Govt. servant he has not done his duty properly. Doctor is considered as second to God. But he has shown great negligence on his part, due to which the child has died. That if he had come on the first call made to him on telephone then the child would have survived. So it is humbly requested with folded hand that on the subject

referred above, a case be registered against the doctor so that in future the same story is not repeated with any other child.”

Learned counsel further submits that the petitioner filed a petition under Section 482 CrPC before this Court for quashing of the FIR, wherein the learned State counsel on instructions from ASI Panna Lal submitted that the Police had prepared cancellation report, which had been approved by the SSP Tarn Taran vide order dated 23.09.2016 and is in the process of being submitted before the Illaqa Magistrate, in view of which, the said petition had been rendered infructuous vide order dated 11.11.2016, Annexure P-6. It is his further submission that vide order dated 23.01.2018, Annexure P-7, the application submitted by the APP for the State for taking up the cancellation report by the National Lok Adalat, it was ordered that the file be put up before the National Lok Adalat on 10.02.2018. Learned counsel refers to the impugned order dated 10.02.2018, Annexure P-8, whereby the National Lok Adalat returned the untraced cancellation report to the concerned Police Station with a direction to conduct further investigation. Learned counsel in this regard submitted that firstly, the National Lok Adalat had no jurisdiction to order further investigation, secondly, the said order is also non-speaking as it discloses no reason whatsoever. To buttress the submissions, he relies on the judgment passed by this Court in the case of **Bhupinder Singh Vs. State of Punjab & another**, CRM-M-2696-2022 decided on 03.02.2022 as also **Harleen Singh alias Timsy Vs. State of Punjab**, CRM-M-1114-2018 decided on 11.04.2019, wherein this Court had set aside the order passed by the National Lok Adalat directing re-investigation of the case.

Reply dated 19.11.2020 by way of an affidavit of Kuljinder Singh, PPS, Deputy Superintendent of Police, Sub-Division Patti, District Tarn Taran had been filed. Learned State counsel refers to para 3 of the reply, which reads thus:-

“That during investigation Harpreet Kaur w/o Dr. Sukhbir Singh r/o Sangwan, Tehsil Patti, District Tarn Taran moved application for enquiry into the matter to the Senior Superintendent of Police, Tarn Taran which was marked to Shri Devinder Singh, PPS, Deputy Superintendent of Police, Sub Division Patti, District Tarn Taran who reported that the matter pertains to medical professional and therefore the board of doctor is required to be constituted for bringing out the truth. Thereafter the above said application was forwarded to Senior Medical Officer, Civil Hospital Patti, who constituted a board of doctor comprising of Dr. Paramjit Singh, Dr. Ramandeep Singh and Dr. Dilbag Singh and during enquiry the board of doctors was found that during treatment of child patient the accused/petitioner never committed any negligence. On perusal of enquiry report vide judgment in civil appeal no.3541 of 2002 of the Hon'ble Supreme Court of India it is mentioned at serial no.50 "To fasten liability in criminal proceeding i.g. under section 304-A IPC the degree of negligence has to be higher than the negligence which is enough to fasten liability in civil proceedings, thus for civil liability it may be enough for the complainant with the principles mentioned above, but for convicting a doctor in a criminal case, it must also be proved that this negligence was gross amounting to recklessness. Besides this it is also clearly mentioned in chapter no.8 of INDIAN MEDICAL COUNCIL (PROFESSIONAL CONDUCT ETC) 2002 rule 8.2 PUNISHMENT AND DISCIPLINARY ACTION if any negligence found while medical practice of the doctor and the punishment is to be prescribed by the medical council like the registration of the doctor concerned can be cancelled and no FIR can be registered against him.”

Heard learned counsel for the parties.

Section 156 CrPC reads thus:-

“156. Police officer's power to investigate cognizable case.

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above- mentioned.”

It is apposite to refer to Section 20 and 22 of the Legal Services

Authority Act, 1987 read thus:-

“20. Cognizance of cases by Lok Adalats.—

(1) Where in any case referred to in clause (i) of sub-section (5) of section 19—1[20. Cognizance of cases by Lok Adalats.—

(1) Where in any case referred to in clause (i) of sub-section (5) of section 19—”

(i) (a) the parties thereof agree; or

(b) one of the parties thereof makes an application to the court, for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement; or

(ii) the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat, the court shall refer the case to the Lok Adalat: Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties.

(2) Notwithstanding anything contained in any other law for the time being in force, the Authority or Committee organising the Lok Adalat under sub-section (1) of section 19 may, on

receipt of an application from any one of the parties to any matter referred to in clause (ii) of sub-section (5) of section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination: Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

(3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

(4) Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.

(5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law.

(6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advice the parties to seek remedy in a court.

(7) Where the record of the case is returned under sub-section (5) to the court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (1).]

22. Powers of 1[Lok Adalat or Permanent Lok Adalat].—

(1) The 1[Lok Adalat or Permanent Lok Adalat] shall, for the purposes of holding any determination under this Act, have the

same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—

(a) the summoning and enforcing the attendance of any witness and examining him on oath;

(b) the discovery and production of any document;

(c) the reception of evidence on affidavits;

(d) the requisitioning of any public record or document or copy of such record or document from any court or office; and

(e) such other matters as may be prescribed.

(2) Without prejudice to the generality of the powers contained in sub-section (1), every 1[Lok Adalat or Permanent Lok Adalat] shall have the requisite powers to specify its own procedure for the determination of any dispute coming before it.

(3) All proceedings before a 1[Lok Adalat or Permanent Lok Adalat] shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code (45 of 1860) and every 1[Lok Adalat or Permanent Lok Adalat] shall be deemed to be a civil court for the purpose of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).”

A perusal of the petition reveals that it is on the application filed by the APP that untraced cancellation report was directed to be placed before the National Lok Adalat. There is no reason mentioned for directing further investigation in the matter, even though the National Lok Adalat had no jurisdiction to pass a judicial order of such a nature, it being competent to pass only an order based on compromise arrived at amongst the parties.

In fact, the very order accepting the prayer of the APP for putting up the matter before the National Lok Adalat with regard to untraced cancellation

report is erroneous. There is no such provision of law placing a matter of this nature before the National Lok Adalat. As per the aforesaid provision the cancellation untraced report ought to have been presented before the Illaqa Magistrate for passing appropriate orders in terms of Section 156(3) CrPC.

This Court would not like to express anything as regards the veracity of allegations since the investigation has already concluded.

Hon'ble The Supreme Court in the case of Vinay Tyagi Vs. Irshad Alia @ Deepak and others reported as (2013) 5 SCC 762 held as under:-

“22. ‘Further investigation’ is where the Investigating Officer obtains further oral or documentary evidence after the final report has been filed before the Court in terms of Section 173(8). This power is vested with the Executive. It is the continuation of a previous investigation and, therefore, is understood and described as a ‘further investigation’. Scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the Court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as ‘supplementary report’. ‘Supplementary report’ would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a ‘reinvestigation’, ‘fresh’ or ‘de novo’ investigation.”

In view of the above, the impugned order dated 10.02.2018 suffers from patent illegality and perversity as regards jurisdiction to pass the same is concerned, besides it being totally non-speaking.

Consequently and sequel thereto the said order dated 10.02.2018, Annexure P-8 is set aside. The case is remanded to the Illaqa Magistrate,

concerned to consider the untraced cancellation report afresh for consideration thereof in accordance with law.

Disposed of.

(AMAN CHAUDHARY)
JUDGE

November 09, 2022

S.Sharma(syr)

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