

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-6273-2022

Reserved on: 16.08.2023

Pronounced on: 21.08.2023

Pawan Kumar

. . . . Petitioner

Vs.

State of Haryana

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr.P.K. Hooda, Advocate, for the petitioner.

Mr. Vipul Sherwal, AAG, Haryana.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 Cr.P.C., petitioner prays for quashing the impugned order dated 12.06.2020 (Annexure P2) passed by Id. JMIC, Panipat, whereby investigating agency was allowed to withdraw the cancellation report dated 10.02.2020, with further direction to investigate the matter afresh, in case FIR No.144 dated 14.10.2019 registered at Police Station Industrial Area, Sector 29, Panipat under Section 309 IPC; and wherein, the police after re-investigation presented final report under Section 306 IPC and Section 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [for short 'the SC/ST Act'] and deleted Section 309 IPC.

2. It is contended by Id. counsel that one Inder Singh set himself ablaze on 13.10.2019 and on the basis of his statement recorded under section 164 Cr.P.C. by Id. JMIC, Rohtak, present FIR was registered under Section 309 IPC. Police investigated the matter and presented cancellation

report before Id. Area Magistrate on 10.02.2020. However, later on, the application of the investigating agency to withdraw the said untraced/cancellation report was allowed with permission to reinvestigate the matter, by way of the impugned order.

3. Ld. counsel contends that cancellation report has been prepared on the basis of the report of the Special Investigation Team, which was constituted on the direction of Inspector General of Police and in that report statement under section 164 Cr.P.C. of the deceased Inder Singh was specifically reproduced. It is further submitted that as per prosecution version, petitioner Pawan Kumar had arranged a 45 sq. yard land for deceased Inder Singh, a driver under him. It had been alleged that petitioner later on sold that plot to somebody else and created pressure upon the deceased to vacate plot and also threatened him and his family members. It was also alleged that on 11.10.2019 petitioner Pawan Kumar and Surender came to his house and the deceased put himself on fire after pouring kerosene.

4. Ld. counsel contends that thorough investigation was conducted and the allegations were found to be false. Petitioner has also given details of the statements recorded by the police during investigation and contends that police could not be allowed to carry out re-investigation, after filing of the closure report. Ld. counsel contends that there is a distinction between the terms 'fresh investigation', 'reinvestigation' and 'further investigation', as has been explained by Hon'ble Supreme Court in various authorities. It is contended that though further investigation could

have been ordered but not the reinvestigation or fresh investigation and therefore, impugned order passed by Id. Magistrate is illegal.

5. Ld. counsel has referred to decisions of the Hon'ble Supreme Court rendered in *Neetu Kumar Nagaich Vs. the State of Rajasthan and others*, 2020(4) RCR (Criminal) 289, *Ramachandran Vs. R. Udhyakumar and others*, 2008(3) RCR (Criminal) 47 and *Vinay Tyagi Vs. Irshad Ali @ Deepak and others*, 2013(2) RCR (Criminal) 197.

6. In the reply filed on behalf of the respondent State, it is submitted that on 11.10.2019, a medical rukka was received at Control Room, Panipat regarding admission of Inder Singh in General Hospital, Panipat after suffering burn injuries and that he had been taken to PGIMS, Rohtak. After collecting the MLR from General Hospital, Panipat, ASI Subhash proceeded to PGIMS, Rohtak, where the medical officer declared the injured victim to be unfit for making the statement. On 13.10.2019, after declaring the victim as fit for making statement by the medical officer, his statement under Section 164 Cr.P.C. was recorded by Id. Duty/Judicial Magistrate Ist Class, Rohtak, which is as under: -

“Q1: - What do you want to say?

Ans. I had been doing job with Pawan in the year 2013.

Q2: - How you have been put in fire?

Ans. I put myself in fire.

Q3. Why you have put yourself in fire?

Ans. If I do not put myself in fire, then Pawan kills me.

Q.4: - Why Pawan kills you?

Ans. I had purchased the plot from him and filled it with earth and now he is saying to vacate it.

Q.5: - Have you any document of the plot?

Ans. No.

Q.6: - From which you have got burn?

Ans. Petrol, which I had purchased for motorcycle.”

7. Ld. State counsel submits that on the basis of aforesaid statement of victim Inder Singh, DDR No.18 dated 13.10.2019 was recorded and then formal FIR under Section 309 IPC was registered on verification of the allegations. On 15.10.2019, Inder Singh expired. Proceedings under Section 174 Cr.P.C. were conducted. Cause of death, as per postmortem report, was opined to be burn injuries as described and its complications. On 18.10.2019, Parveen s/o deceased Inder Singh appeared before the investigating officer along with various other persons and made statement that deceased Inder Singh was working as a driver with petitioner Pawan Kumar on monthly salary of ₹15,000/-. Petitioner had got purchased a property measuring 45 sq. yards for Inder Singh, for which petitioner was deducting money from the salary of Inder Singh for the last about 6 years, so that petitioner transfers that piece of land in the name of Inder Singh. Deceased was getting only ₹2000/- per month and his remaining salary was being deducted for payment for his plot. Later on, petitioner sold that plot to some other person and he was forcing the deceased to vacate the house. On his refusal, deceased was threatened to be killed. On 11.10.2019, petitioner and Surender @ Bhura had come to the house of the deceased Inder Singh and had threatened him to vacate the house by putting him in fear and it is because of this harassment that Inder Singh inflicted burn injuries upon himself.

8. Ld. State counsel submits that it is on the basis of aforesaid statement that Section 309 IPC was deleted and case was altered into Section 306 and 506/34 IPC. Later on, petitioner with various persons

appeared before Inspector Vikrant, the then SHO, PS, Sector 29, Panipat. Further investigation was entrusted to DSP, Panipat. None of the legal heirs of the deceased produced any agreement or sale deed pertaining to the plot in favour of Inder Singh. After conducting further enquiries from various persons, no truth was found in the allegations leveled against the petitioner and Surrender and so, Section 306 & 506/34 IPC were deleted and Section 309 IPC was added. Report under Section 173 Cr.P.C. was accordingly prepared and an untraced report was presented in the Court of Id. Area Magistrate on 10.02.2020.

9. Ld. State counsel submits that Parveen son of Inder Singh, then approached the higher authorities, whereupon Inspector General of Police, Karnal Range, Karnal, issued directions to the Superintendent of Police to get the case investigated on certain specific points. A Special Investigation Team was constituted headed by Rajesh Kumar, DSP Crime, Panipat. Matter was enquired into, during which statement was made by Sonia w/o Phool Singh, who disclosed about her presence at the house of her uncle-deceased Inder Singh on 11.10.2019 and that petitioner accompanied by other persons had come to the house and had threatened the deceased by using caste related words, to vacate the house. It was noticed that similar allegations were also made by deceased Inder Singh in his statement under Section 164 Cr.P.C. against the petitioner. Petitioner Pawan was then arrested on 17.06.2020 and on interrogation, he suffered disclosure statement on the same lines and admitted the crime. It was disclosed by him that he had purchased the plot in the name of his wife Savita and had constructed a residential house over the same. Said house was provided for

the residence of the deceased on payment of ₹5 lakh in installments. Later on, he (petitioner) sold the house for ₹5,80,000/- to Vijay Singh. Said Vijay Singh put pressure upon him (petitioner) to give possession of the house and that he (petitioner) put pressure upon Inder Singh to vacate the house. Petitioner also admitted in his disclosure statement regarding visiting the house of the deceased on 11.10.2019 to put pressure upon him to vacate the house by using caste related words and by threatening him.

10. Ld. State counsel submits that after completion of the investigation, final report under Section 173 Cr.P.C. was prepared on 04.07.2020 and the same was submitted before the Court to prosecute the accused Pawan Kumar under Section 306 IPC and under Section 3(2)(v) of the SC/ST Act. Case is now fixed before the Court for arguments on charge.

11. Ld. State counsel submits further that request for re-investigation of the case was made before the ld. Judicial magistrate on bringing of the further evidence on the file by the office of Inspector General of Police, Karnal. It is also submitted that departmental proceedings were also initiated against the faulty police officials. Ld. State counsel has defended the impugned order passed by the ld. JudicialMagistrate to be legal and valid and prayed for dismissal of this petition.

12. I have considered submissions of both sides and have appraised record.

13. In the case of *Vinay Tyagi (Supra)*, it has been held by Hon'ble Supreme Court that Magistrate has no jurisdiction to direct 'fresh' or 'de novo' investigation and that once the report under Section 173

Cr.P.C. is filed, Magistrate has jurisdiction to accept the same or reject the same right at the threshold. Explaining the distinction between ‘fresh’ or ‘de novo’ investigation and reinvestigation, it was 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].”

“30.Having analysed the provisions of the Code and the various judgments as afore-indicated, we would state the following conclusions in regard to the powers of a magistrate in terms of Section 173(2) read with Section 173(8) and Section 156(3) of the Code :

- 1. The Magistrate has no power to direct ‘reinvestigation’ or ‘fresh investigation’ (de novo) in the case initiated on the basis of a police report.*
- 2. A Magistrate has the power to direct ‘further investigation’ after filing of a police report in terms of Section 173(6) of the Code.*
- 3. The view expressed in (2) above is in conformity with the principle of law stated in Bhagwant Singh’s case (supra) by a three Judge Bench and thus in conformity with the doctrine of precedence.*

4. *Neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of Section 173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of Section 156(3) and the language of Section 173(8) itself. In fact, such power would have to be read into the language of Section 173(8).*

5. *The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the Court to the extent that even where the facts of the case and the ends of justice demand, the Court can still not direct the investigating agency to conduct further investigation which it could do on its own.*

6. *It has been a procedure of propriety that the police has to seek permission of the Court to continue 'further investigation' and file supplementary chargesheet. This approach has been approved by this Court in a number of judgments. This as such would support the view that we are taking in the present case."*

14. Taking similar view, it has been held by the Hon'ble Supreme Court in the case of **Ramachandran (Supra)** that after completion of investigation under Section 173(2) Cr.P.C., police has the right of further investigation under Section 173(8) Cr.P.C., but not the fresh investigation or reinvestigation. In the case of **Neetu Kumar Nagaich (Supra)**, Hon'ble Supreme Court held that when investigation has been concluded and police report is submitted, it is only further investigation that can be ordered. However, in case the Constitutional Court is satisfied that investigation has not been conducted in proper and objective manner, fresh investigation with help of independent agency can be considered to secure ends of justice so that truth is revealed. Said power may also be exercised if the court comes

to conclusion that investigation has been done in manner to help someone escape clutches of law. While holding so, Hon'ble Supreme Court has held as under: -

“9. Normally when an investigation has been concluded and police report submitted under Section 173(2) of the Code, it is only further investigation that can be ordered under Section 173(8) of the Code. But where the constitutional court is satisfied that the investigation has not been conducted in a proper and objective manner, as observed in Kashmeri Devi vs. Delhi Administration, (1988) Suppl. SCC 482, fresh investigation with the help of an independent agency can be considered to secure the ends of justice so that the truth is revealed. The power may also be exercised if the court comes to the conclusion that the investigation has been done in a manner to help someone escape the clutches of the law. In such exceptional circumstances the court may, in order to prevent miscarriage of criminal justice direct de novo investigation as observed in Babubhai vs. State of Gujarat, (2010) 12 SCC 254. A fair investigation is as much a part of a constitutional right guaranteed under Article 21 of the Constitution as a fair trial, without which the trial will naturally not be fair. The observations in this context in Babubhai (supra) are considered relevant at paragraph 45 as follows:

“45. Not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh investigation.”

15. In the light of factual and legal position noticed above, let the impugned order (Annexure P-2) passed by Id. Magistrate be perused. It reads as under:

“Present: APP for State

File taken up today on an application seeking return of original file/final report. Arguments heard. Vide a separately recorded statement, Investigating Officer ASI Jagmender Singh stated on oath that initially Untraced/Cancellation report had been presented in the court on 10.02.2020 in FIR No. 144 dated 14.10.2019 under Section 306 IPC and Section 3 (2) (v) SC/ST Act, but subsequently a SIT was constituted on the directions of I.G.; in these circumstances, now he does not want to press the Untraced/Cancellation report earlier filed by the police and wants to withdraw the same and also requires the original Untraced/Cancellation report for proper reinvestigation of this case.

In view of the facts mentioned in the application as well as statement made by the Investigating Officer on oath, the instant application is allowed. Accordingly, the Untraced Report presented on 10.02.2020 is dismissed as being not pressed, with liberty to the investigating agency to present fresh final report under Section 173 Cr.PC as & when the investigations in this case are complete. Original Untraced Report be returned to the Investigating Officer against proper receipt, whereas copy thereof be retained along with original zimni orders and applications filed before the court and the same be consigned to records after due compliance.

Date of order: 12.06.2020
Stenographer Gt. III: Ranju

(Jyoti Grover)
JMIC, Panipat
(UID-HR0434)”

16. Perusal of the aforesaid order would reveal that Id. JMIC did not order for reinvestigation or fresh investigation. Rather, the Court only allowed the request of the investigating agency to withdraw the untraced/cancellation report earlier filed in the Court and to submit the fresh final report, as and when investigation is complete.

17. Status report as placed on record in this case would reveal that after filing of the untraced report, son of the deceased had approached the higher authorities and then Inspector General of Police ordered for constituting of the SIT. Said SIT carried forward the earlier investigation

on certain specific points. Thus, it was not a fresh/de novo investigation. Statement of the deceased already recorded under Section 164 Cr.P.C. was also taken into consideration, apart from recording the statement of Sonia etc.

18. Thus, it is clear that it is a case of further investigation and not a case of reinvestigation or fresh investigation or de novo investigation. Although in the impugned order, ld. Magistrate has used the word “to present fresh final report”, but mere use of the said words would not change the import of the order passed by ld. Magistrate, which when read with the status report of the police would clearly reveal that it was a case of further investigation and not fresh investigation.

19. In view of the aforesaid facts and circumstances, case law cited by ld. counsel for the petitioner as noticed above, is not helpful to advance his case.

20. Consequently, it is held that no fault can be found with the impugned order passed by ld. Magistrate. Hence, the present petition is hereby dismissed.

(DEEPAK GUPTA)
JUDGE

21.08.2023

Vivek

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No