

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

263

CRM-M-2265-2018

Date of decision: 03.08.2023

Mohan Singh

..Petitioner

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Sumit Sangwan, Advocate for the petitioner.

Mr. Dhruv Sihag, AAG, Haryana.

AMAN CHAUDHARY, J.

1. This petition has been filed for quashing/setting aside the supplementary chargesheet/challan dated 09.03.2017 in FIR No.183, dated 27.11.2013 registered under Sections 409, 465, 466, 468, 471, 477A IPC, at Police Station Saha, District Ambala as well as order dated 03.06.2017 passed by Judicial Magistrate Ist Class, Ambala.

2. Learned counsel contends that after having examined 8 witnesses, without any permission obtained from the Magistrate, further investigation was carried out and supplementary challan has been presented. He relies on **Vikas Gupta vs. State of Punjab**, 2002(2) RCR (Criminal) 12, **Harmel Singh vs. State of UT Chandigarh**, 2007(1) RCR (Criminal) 789 and **Neetu Dheer vs. State of Haryana**, 2016(2) Law Herald 1387.

3. Learned State counsel on the other hand submits that even a bare perusal of the provision that does not envisage that there is any permission is required from the Magistrate. It is only proprietary that police seek formal

permission to continue further investigation however, there is no statutory obligation. He relies on **Rama Chaudhary vs. State of Bihar**, (2009) 6 SCC 346.

4. Heard.

5. It would be worthwhile to make a reference to the judgment in the case of **Rama Chaudhary** (supra), wherein Hon'ble The Supreme Court had upheld the judgment of High Court which rejected the revision, by observing and holding that law does not mandate taking prior permission from the Magistrate for further investigation. Relevant paras reads thus:-

“11. As observed in *Hasanbhai Valibhai Qureshi vs. State of Gujarat and Others*, (2004) 5 SCC 347, the prime consideration for further investigation is to arrive at the truth and do real and substantial justice. The hands of investigating agency for further investigation should not be tied down on the ground of mere delay. In other words, the mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice.

12. If we consider the above legal principles, the order dated 19.02.2008 of the trial Court summoning the witnesses named in the supplementary charge-sheet cannot be faulted with. It is true that after enquiry and investigation charges were framed on 11.03.2004 and thereafter in the course of trial about 21 witnesses were examined. In the meantime, Police submitted supplementary charge-sheet with certain new materials and on the basis of supplementary charge-sheet, the prosecution filed an application on 12.01.2008 in a pending Sessions Trial No. 63 of 2004 to the trial Court for summoning the persons named in the charge-sheet for their examination as prosecution witnesses. On a careful perusal of the application, the trial Court, by order dated 19.02.2008, allowed the same and has summoned those witnesses named in the supplementary charge-sheet.

13. The law does not mandate taking prior permission from the Magistrate for further investigation. It is settled law that carrying out further investigation even after filing of the charge-sheet is a statutory right of the Police. [vide *K. Chandrasekhar vs. State of Kerala and Others*, (1998) 5 SCC 223.] The material collected in further investigation cannot be rejected only because it has been filed at the stage of trial. The facts and circumstances show that the trial Court is fully justified to summon witnesses examined in the course of further investigation. It is also clear from Section 231 of the Cr.P.C. that the prosecution is entitled to produce any person as witness

even though such person is not named in the earlier charge-sheet. All those relevant aspects have been taken note of by the learned Magistrate while summoning the witnesses based on supplementary charge-sheet. This was correctly appreciated by the High Court by rightly rejecting the revision. We fully agree with the said conclusion.”

6. In **Samaj Parivartan Samudaya vs. State of Karnataka**, (2012) 7

SCC 407 Hon’ble The Supreme Court observed that, “Thus, CrPC leaves clear scope for conducting of further inquiry and filing of a supplementary charge-sheet, if necessary, with such additional facts and evidence as may be collected by the investigating officer in terms of sub-sections (2) to (6) of Section 173 CrPC to the court. To put it aptly, further investigation by the investigating agency, after presentation of a challan (charge-sheet in terms of Section 173 CrPC) is permissible in any case impliedly but in no event is impermissible.”

7. Hon’ble The Supreme Court in **State vs. Hemendhra Reddy**, 2023

SCC OnLine SC 515, observed that, “Thus, in view of the law laid down by this Court in the various decisions cited hereinabove, it is well settled that sub section (8) of Section 173 of the CrPC permits further investigation, and even dehors any direction from the court, it is open to the police to conduct proper investigation, even after the court takes cognizance of any offence on the strength of a police report earlier submitted.”

8. In the present case, reply by way of affidavit has been filed by Deputy Superintendent of Police, Barar, para 3 of the preliminary submissions thereof reads thus:

“3. That in the meanwhile, the Police of Police Station-Saha was informed about filing of the Supplementary Challan in the above FIR No.183 dated 27.11.2013 in view of the Special Audit of Sub Division and report in this regard was submitted about the involvement in embezzlement of Nigam Revenue by the petitioner. During conducting the investigation in this regard, Virender Kumar SDO and Surender Kumar SDC, UHBVN, Kesri Saha were joined in the investigation and after

the verification, the copies of Enquiry Report conducted by Prem Chand Saini Enquiry Officer, OP Division UHBVN Kaithal bearing Memo No.CH-1/INO-Kesri dated 25.08.2015 and Special Audit Report Memo No.CA/EA/IAR-51/CH- 212 dated 05.03.2014 were taken into possession by the police. The statements of the witnesses were recorded and as per the Enquiry Report as well as Special Audit Report, the petitioner is found to have embezzled Rs.19,77,726/-. Accordingly the Supplementary Challan under Section-173 (8) Cr.P.C. was prepared on 09.03.2017 (Annexure P1) and the same was filed in the Court of Learned Illaqua Magistrate, Ambala, which has been legally accepted by the Learned Court vide Order dated 03.06.2017 (Annexure P-2). Since the Supplementary Challan as well as acceptance of the same are legal and thus the same are not liable to be quashed or set-aside and the instant petition being meritless is liable to be dismissed.”

9. The judgments relied upon by the counsel for the petitioner are distinguishable on facts.

10. Considering the allegations levelled against the petitioner and the huge amount having been alleged to be embezzled by him with regard to which the enquiry report as well as special audit report were received, whereupon supplementary challan was presented, in light of the law as enunciated in the afore-referred judgments, this Court finds no merit in the present petition and as such, the same is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

03.08.2023
ashok

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No