

242 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-43634-2017
Decided on : 28.02.2023

Raj Kumar

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. R.S.Rai, Sr. Advocate with
Mr. Karan Pathak, Advocate
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

Manjari Nehru Kaul, J.(Oral)

The petitioner is invoking the inherent jurisdiction of this Court under Section 482 Cr.PC for quashing FIR No.02 dated 04.01.2017 (Annexure P-1) along with police report under Section 173 (8) Cr.PC (Annexure P-4) as well as order dated 07.10.2017 (Annexure P-6) passed by learned Special Judge, Ferozepur.

It would be relevant to give a brief run upto the sequence of events leading to filing of the instant petition:

The FIR in question was registered against the petitioner for allegedly being found in possession of the following medicines during a routine Naka carried by the police on 04.01.2017:

5 strips of Petril-MG-0.5 each contained 10/10 tablets total of which was 50 tablets, 5 strips Petril-Plus each contained 10/10 tablets total

of which was 50 tablets, 7 strips of Petril-MD-0.25 each contained 10/10 tablets total of which 70 tablets, 88 strips Avil-0.5 blue each contained 15/15 tablets total of which 1320 tablets, 40 strips Avil-0.5 each contained 15/15 tablets total of which 600 intoxicant tablets, 9 strips of Sclonz-0.25-MD each contained 10/10 total of which 90 tablets, 11 strips of Sclonz-0.5 MD each contained 10/10 total of which 110 intoxicant tablets, 12 strips Sclovz Plus each contained 10/10 total of which 120 intoxicant tablets, 12 strips Ansit-0.25 each contained 15/15 total of which 175 tablets, 5 strips Mircro-Bep-0.5 each contained 10/10 total of which 50 intoxicant tablets, 30 strips of albion each containing 10 tablets total 750 tablets, 9 strips Clozet-0.5 each contained 10/10 total of which 90 intoxicant tablets, 29 strips Proease each contained 10/10 total of which 290 intoxicant tablets and 20 injections make Lori, 15 injections Lopez and 23 vials (injections) marka Avil-10-MG total of which 4065 intoxicant tablets and 58 intoxicant injections.

The petitioner was arrested on the spot. During investigation, it was found that on the fateful day, the petitioner who was a licensed chemist and running a shop in the name and style of M/s Friends Medical Hall, was carrying the recovered medicines from his residence to his shop. The petitioner produced his licence of being a wholesaler of medicinal drugs, (vide form No.20-B 6538-OW and Form No.21-B 6325-W on 24.10.1989), which was valid till 31.12.2017. Pursuant to a thorough investigation carried out by the Superintendent of Police (Investigation), Ferozepur, the petitioner was declared innocent. A cancellation report was prepared and

presented before the Special Court, Ferozepur vide Cancellation No.01 of 04.03.2017. Learned Special Judge, Ferozepur after issuing due notice to the Drug Inspector, accepted the Cancellation Report and discharged the petitioner vide order dated 17.03.2017 (Annexure P-3). The order dated 17.03.2017 thereafter attained finality as admittedly it was not challenged by the prosecution. However, subsequently, the police filed a supplementary report dated 03.10.2017 (Annexure P-4) under Section 173 (8) Cr.PC before the trial Court. On the basis of the supplementary report, the trial Court took cognizance and proceeded with the trial.

Learned Senior counsel *inter alia* has submitted that after the cancellation report had been accepted by the learned Special Court vide order dated 17.03.2017, strangely on the basis of an administrative letter dated 29.09.2017, issued by Inspector General of Police, Bathinda Zone, Bathinda, the matter was reinvestigated. Thereafter, the police presented a supplementary report dated 03.10.2017 (Annexure P-4) under Section 173 (8) Cr.PC before the trial Court, which on the face of it is not in consonance with the settled law. Learned Senior counsel has argued that the police had no authority to conduct reinvestigation under Section 173(8) Cr.PC on the basis of administrative instructions issued by the IGP, Bathinda Zone, Bathinda. Still further, after presentation of the supplementary challan under Section 173(8) Cr.PC, even the Special Judge had clearly erred in proceeding against the petitioner by totally ignoring that not only a cancellation report had been filed earlier but also accepted by it. In support of his submissions, learned Senior counsel has placed reliance upon the

judgment of Hon'ble Supreme Court in *Vinay Tyagi vs. Irshad Ali @ Deepak and others, 2013(2) RCR (Crl.) 197*.

On being put on notice, State of Punjab filed an affidavit of Deputy Superintendent of Police (Sub Division), Guruharsahai, District Ferozepur.

Learned State counsel while opposing the prayer made by learned senior counsel submits that no doubt a cancellation report had indeed been prepared and also accepted by the learned Special Judge, Ferozepur, however, the said cancellation report had been prematurely presented before the Court concerned and that too without the permission of IGP, Bathinda Zone, Bathinda. It was thus, in the above background, the Special Investigation Team was constituted to reinvestigate the case against the petitioner as the petitioner produced only purchase bills of the medicines w.e.f. 01.01.2017 to 31.01.2017 and failed to produce the sale bills qua the same. Due to non-maintenance of relevant records qua sale and purchase of the wholesale medicines, he was found to be violating provisions of the Drugs and Cosmetics Act.

Heard learned counsel for the parties and perused the relevant material available on record.

There is no doubt that the investigating agency is well within its right to investigate a criminal offence as and when it is reported to it. However, there is a clear bar that once challan has been presented before a Court of law, further investigation, cannot be carried out by police except with the permission of the Court concerned. Further, reinvestigation can certainly not be conducted by the police *suo motu*, more so, like in the facts

of the instant case, when on the basis of the material on record, after the FIR had been registered, a cancellation report was prepared and filed by the investigating agency and even accepted by the learned Special Court.

It would be apposite to reproduce the relevant extract of the order passed by the Special Judge, Ferozepur while accepting the cancellation report, which is as under:

“Apparently though accused Raj Kumar was apprehended with the above detailed manufactured drugs, he had a wholesale license to purchase, stock and sell the same, which was valid and he also had the bills vide which the same were purchased. The report of the Drug Inspector, who also appeared in the Court and reported that he had verified the license and bills, is the basis of the cancellation report moved by the police. Thus, as reported by the Drug Inspector all the medicines recovered from the accused were covered under the license hence, no offence would be made out under the NDPS Act and accordingly, the cancellation report filed by the police is accepted and the accused is discharged from the time being.

Cancellation file be consigned to the quarter concerned and the proceedings of this Court be consigned to the record room.”

This Court finds it extremely strange as to how the very same investigating agency, which in its cancellation report clearly mentioned that the petitioner had a licence of wholesale medicines, and the bills of the medicines allegedly recovered from him, were not kept by the petitioner “without any wrong intention” and had been kept by him to avoid any inconvenience to his regular customers, as there was a strike of the

chemists, *suo motu* reinvestigated the case against the petitioner, by terming it as “further investigation” and over ruled its earlier inquiry report.

Once the cancellation report had been filed by the police and also accepted, after giving due notice to the Drug Inspector, the investigating agency cannot now be permitted to say that it had been presented prematurely and without the permission of the Inspector General of Police, Bathinda Zone, Bathinda. In case, some new material had subsequently come to light, the prosecution should have approached the trial Court for seeking necessary permission for conducting further investigation. It certainly erred in proceeding *suo motu* and presenting a supplementary report (Annexure P-4). The investigating agency cannot be permitted to conduct a reinvestigation as has been done in the present case, under the garb of further investigation under Section 173(8) Cr.PC without obtaining any permission of a Court of superior jurisdiction.

Hon'ble Supreme Court in ***Mithabhai Pashabhai Patel and others vs. S.O. Gujarat, 2010(1) RCR (Crl.) 171*** has held as under:

“13. It is, however, beyond any cavil that ‘further investigation’ and ‘reinvestigation’ stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a ‘State’ to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no superior court would ordinarily issue such a direction. Pasayat, J. in [Ramachandran v. R. Udhayakumar](#) (2008) 5 SCC 513 opined as under: (SCC

p. 415, para 7)

‘7. At this juncture it would be necessary to take note of [Section 173](#) of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of [Section 173](#) of the Code, the police has right to further investigate under sub-section (8), but not fresh investigation or reinvestigation.’

A distinction, therefore, exists between a reinvestigation and further investigation.

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15. The investigating agency and/or a court exercise their jurisdiction conferred on them only in terms of the provisions [of the Code](#). The courts subordinate to the High Court even do not have any inherent power under [Section 482](#) of the Code of Criminal Procedure or otherwise. The precognizance jurisdiction to remand vested in the subordinate courts, therefore, must be exercised within the four corners [of the Code](#).”

Further, Hon'ble Supreme Court in *Vinay Tyagi's case(supra)* has also held as under:

“No investigating agency is empowered to conduct a ‘fresh’, ‘de novo’ or ‘re-investigation’ in relation to the offence for which it has already filed a report in terms of [Section 173\(2\)](#) of the Code. It is only upon the orders of the higher courts empowered to pass such orders that aforesaid investigation can be conducted, in which event the higher courts will have to pass a specific order with regard to the fate of the investigation already conducted and the report so filed before the court of the learned magistrate.”

As a sequel to the above, this Court has no hesitation in holding that the instant revision petition seeking quashing of the FIR and consequent proceedings arising therefrom deserves to be allowed. Accordingly, the present petition is allowed.

(MANJARI NEHRU KAUL)
JUDGE

28.02.2023
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No