

2023:PHHC:115478

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

201

**CRR-1530-2022 (O&M)
Date of decision : 23.08.2023**

Vivek Chaudhary (DSP)

..... Petitioner

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Sumeet Goel, Senior Advocate with
Mr. Shivam Kaushik, Advocate
for the petitioner.

Mr. Ashok Kumar Sehrawat, DAG, Haryana.

PANKAJ JAIN, J. (Oral)

Present petition has been filed under Section 482 Cr.P.C.
impugning order dated 22.12.2021 passed by CJM, Kaithal, which reads
as under:-

“Accused Sonu produced before me in custody by SI Chander Parkash with a request of judicial remand of 14 days. SI Chander Parkash has also made a statement recorded separately to the effect that IO/DSP Vivek Chaudhary is out of station and has gone to Palwal after signing the remand papers.

2. Heard. Material perused. The present case is under Section 323/325/34/506 IPC and Section 3(1) (r). Section 3(1)(s), 3(2) (va) of SC/ST Act. Further as per, Rule 7 of the SC/ST (Prevention of Atrocities) Rules, 1995 an offence committed under the said shall be investigated by a police officer not below the rank of Deputy Superintendent of Police

2023:PHHC:115478

(DSP). Arrest memo perused. Remaining papers perused. Though the same bears the signatures of IO/DSP but the Arrest memo and other documents does not appears to be in the hand-writing of IO/DSP and seems to be in the handwriting of some other officials and are only bearing the signatures of concerned IO. Otherwise also the IO has not bothered to appear in the Court to seek judicial remand of the accused and on the contrary the accused was earlier sent for judicial remand by the police official even below the rank of Sub-Inspector and even Sub-Inspector Chander Parkash had only came when the Court asked about the Investigating Officer. The IO/DSP has not appeared before the Court to produce the accused and seek judicial remand which shows utter negligence and disregard of the IO/DSP qua the mandate given under Rule 7 (referred supra). The documents prepared during investigation especially arrest memo and other documents does not seem to be in the hand-writing of IO/DSP concerned. All this shows that infact DSP/IO is not doing the investigation himself and he has only signed the papers. In view of the said facts, a letter be written to DGP, Haryana to look into the matter and taking action against the erring officials. Copy of the same be forwarded to SP, Kaithal and IG of the Kaithal Range.

3. Heard on granting judicial remand. Accused Sonu has allegedly committed the offence under Sections 323, 324, 506/34 of IPC and 3(1)(r) 3(1)(s), 3(2) (va) SC/ST Act. Further, the name of the accused sonu has been mentioned in the FIR. The offences allegedly committed by accused under Section 3(1)(r), 3(1)(s) 3 (2) (va) SC/ST Act, are exclusively triable by learned Special Court,

2023:PHHC:115478

therefore, offences being non-bailable, pending Investigation, accused Sonu is remanded to judicial custody and be produced before the learned Special Court on 03.01.2022. Papers be sent to the learned Special Court forthwith, complete in all respect.”

2. On the basis of the aforesaid order, CJM further proceeded onto, write communication dated 21.05.2021 addressed to the Director General of Police, Haryana for taking action against the petitioner on the basis of the impugned order.

3. While issuing notice of motion, this Court on 17.08.2022 passed the following order:-

“By this petition, the petitioner challenges the order passed by the learned Chief Judicial Magistrate, Kaithal, dated 22.12.2021, which reads as under:-

“It is submitted that on 22 12.2021 accused Sonu was produced before the Court by Sub-Inspector Chander Parkash No.53/Ktl. in case FIR No. 591 dated 16.10.2021, under Sections 323, 325 read with Section 34 and 506 of Indian Penal Code, 1860. As per Rule 7 of the Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Rule, 1995 an offence committed under the said Act shall be investigated by a police officer not belong the rank of Deputy Superintendent of Police (DSP). The remand papers relating to above mentioned FIR perused, the same bears the signatures of Investigating Officer/DSP, however the other documents i.e. arrest memo etc. does not appears to be in the hand-writing of Investigating Officer/DSP and seems to be

2023:PHHC:115478

in the hand-writing of some other officials and are only bearing the signatures of concerned Investigating Officer. Otherwise also, the Investigating Officer even not bothered to appear in the Court to seek judicial remand of the accused and on the contrary accused was earlier sent for judicial remand by the police official even below the rank of Sub-Inspector and even Sub-Inspector Chander Parkash had only came when the Court asked about the Investigating Officer. It shows that infact Investigating Officer/DSP is not doing, the investigation himself and he has only signed the papers. The said conduct of Investigating Officer/DSP shows utter negligence and disregard qua the mandate given under Rule 7 (referred supra). In view of the said facts, you are directed to look into the matter and taking action against the erring officials under intimation to this Court.”

Mr. Goel, learned senior counsel appearing for the petitioner, submits that as regards the non-presence of the petitioner as the investigating officer of the case, firstly there is no such legal requirement either under the provisions of Section 167 of the Cr.P.C. or even under the provisions of Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, and consequently, the inference taken that the IO must be present on each and every hearing before the court would be beyond the statutory provisions; and further, in any case on that date, i.e. 22.12.2021, the petitioner was present before the learned Special Court (Additional Sessions Judge, Fast Track

2023:PHHC:115478

Court), Palwal, he having been summoned there on that date in the context of a case being tried there pertaining to FIR no.553, dated 31.10.2018, even as per the court certificate issued by that court (copy Annexure P-2).

Learned senior counsel next submits that vide the impugned order the learned CJM has in fact given a finding that the petitioner as the investigating officer has not done the investigation himself and has only signed the papers, as the handwriting on the papers (other than the signatures), does not appear to be that of the petitioner.

He however points then to the communication from the SP, Kaithal, to the DGP, Haryana, dated 30.05.2022 (Annexure P-3), wherein it is stated that all the proceedings during the investigation, including recording of witnesses etc., were conducted by the DSP (AEC), Kaithal, himself, i.e. the petitioner, and consequently, he submits that the finding of the learned CJM, to the contrary, is wholly erroneous.

Mr. Goel also submits that the finding has been given without even giving a hearing to the petitioner, which is obviously against the principles of natural justice, with him citing a judgment of the Supreme Court in **Manish Dixit and others vs. State of Rajasthan**, 2000 (4) RCR (Cr.) 583, wherein it was held that:

“Even those apart, this Court has repeatedly cautioned that before any castigating remarks are made by the court against any person, particularly when such remarks could ensue serious consequences on the future career of the person

2023:PHHC:115478

concerned he should have been given an opportunity of being heard in the matter in respect of the proposed remarks or strictures. Such an opportunity is the basic requirement, for, otherwise the offending remarks would be in violation of the principles of natural justice. In this case such an opportunity was not given to PW-30 (Devendra Kumar Sharma). [(State of U.P. vs. Mohd. Naim, 1964 (2) SCR 363, Ch. Jage Ram vs. Hans Raj Midha, 1972 (1) SCC 181, R.K. Lakshmanan vs. A.K. Srinivasan, 1975(2) SCC 466, Niranjana Patnaik vs. Sashibhusan Kar, 1986 (2) SCC 569, State of Karnataka vs. Registrar General, 2000 (5) Scale 504.]”

Notice of motion.

Mr. Saurav Girdhar, DAG, Haryana, accepts notice at the asking of the court on behalf of the respondent State.

A copy of the petition be supplied to him today itself.

Without making any comment on the actual merits of what has been contended, or even what has been held by the CJM, at this stage it is considered appropriate that while examining the matter, the Director General of Police, Haryana, would not take what is stated in the impugned order, to be the findings of the CJM but only observations, with him to further look into the matter himself after duly going into the case files, as also the impugned order, and the letter of the SP, Kaithal.

The DGP, Haryana, would then submit to this court his own affidavit with regard to his own opinion on the matter.

2023:PHHC:115478

In the meanwhile, the CJM, Kaithal, would not pass any final order against the petitioner.

Adjourned to 29.09.2022.”

4. Pursuant to the said order, Director General of Police, Haryana-respondent No.4 has filed affidavit observing/opining as under:-

“That it is submitted that after going through relevant documents, the deponent is of the opinion as under:-

(i) That investigation in Case FIR No. 591 dated 16.10.2021 u/s 323, 325, 506, 34 IPC and 3(1)(r), 3(1)(s), 3(2) (v-a) SC/ST Act, Police Station, City Kaithal has been conducted by Vivek Chaudhary, HPS, the then DSP, CAW/AEC, Kaithal as per requirement of provisions contained in rule 7 of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995. In total, 12 number of Case Diaries have been recorded in this case, out of which all 09 Case Diaries pertaining to investigation have been recorded and signed by Vivek Chaudhary, HPS, DSP. Case Diary No. 1 dated 16.10.2021 had been recorded by Inspector Surender Kumar vide which FIR had been registered and Case Diary No. 11 dated 27.12.2021 had been recorded by the then SHO, PS City, Kaithal vide which challan had been prepared. Case Diary No. 12 dated 24.01.2022 had been recorded by MHC, PS City, Kaithal vide which submission of Challan before Ld. Trial Court has been recorded.

(ii) That Ld. Chief Judicial Magistrate, Kaithal has raised objection that IO/DSP did not appear before the Court to produce the accused and seek

2023:PHHC:115478

judicial remand. In this context, reference can be made to the provisions contained in Section 167 Cr.P.C. Section 167 (1) Cr.P.C.s is reproduced as under:-

“Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well- founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of Sub-Inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.”

It is clear from above provision that an officer not below the rank of Sub-Inspector shall produce arrested person before Ld. Magistrate. In this case, Ld. Chief Judicial Magistrate, Kaithal has recorded in order dated 22.12.2021 that accused Sonu was produced before her in custody by SI Chander Prakash with request of judicial remand of 14 days. Therefore, provisions laid down under the law stand complied with. Further, Vivek Chaudhary, HPS, DSP CAW/AEC, Kaithal was to appear in the Ld. Court of Sh. Mahesh Kumar, Special Court, ASJ (Fast Track) POCSO, Palwal for 22.12.2021. He appeared in the Court and Ld. Judge issued certificate of attendance of the officer on 22.12.2021 (already annexed as Annexure P-2 with the petition).

(iii) That investigation in Case FIR No. 591 dated

2023:PHHC:115478

16.10.2021 u/s 323, 325, 506, 34 IPC and 3(1)(r), 3(1)(s), 3(2) (v-a) SC/ST Act, Police Station, City Kaithal has been conducted by Vivek Chaudhary, HPS, DSP, CAW/AEC, Kaithal. Mere filling of some forms/documents by some other officer/official which were duly signed by DSP Vivek Chaudhary does not mean that investigation in this case had not been conducted by him.”

- 5. In view of the specific affidavit filed by the Director General of Police, in the considered opinion of this Court anything observed in the impugned order against the petitioner has lost its sting.
- 6. In view of above, it is ordered that the impugned order dated 22.12.2021 stands modified and anything observed against the petitioner therein will have no bearing for future career.
- 7. Disposed off, accordingly.

(PANKAJ JAIN)
JUDGE

23.08.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No