

CRM-M-35772-2021

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(233B) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-35772-2021
Date of Decision: 01.06.2023

KULWINDER SINGH & ANOTHER

... Petitioners

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sidhant Vermani, Advocate
for the petitioner.

Mr. G.G. Dhuriwala, Sr. DAG, Punjab.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the FIR No.153 dated 09.07.2020 (Annexure P-1) registered under Sections 22/61/85 of NDPS Act, 1985 at Police Station Lopoke District Amritsar Rural and all subsequent proceedings arising therefrom.

2. The brief facts of the case are that an FIR No.153 dated 09.07.2020 under Sections 22/61/85 of NDPS Act, 1985 Police Station Lopoke District Amritsar Rural came to be registered against Jugraj Singh son of Balwinder Singh, petitioner No.1-Kulwinder Singh son of Harinder Singh, petitioner No.2-Jugraj Singh son of Jarnail Singh and Sharanjit Singh son of Dilbagh Singh with the allegations that while they were travelling in a vehicle, they were found in possession of a total of 7000 loose intoxicating tablets.

3. Petitioner No.1-Kulwinder Singh filed a petition bearing CRM-M-29517-2020 on 24.09.2020 seeking transfer of the investigation to the CBI

stating therein that the version in the FIR was a false and concocted one. In fact, he had been picked up by the Investigating Officer ASI Rajpal Singh on 08.07.2020 i.e. a day before the alleged date of the occurrence shown in the FIR, had been kept in illegal custody for the whole night and on the next day, the instant FIR had been registered based on concocted facts. A CCTV footage was also referred to which would demolish the prosecution version. This Court had disposed of the said petition by directing the SSP concerned to preserve all the CCTV footages of the concerned places and further directed the SSP to consider and decide the representation dated 09.09.2020 moved by petitioner No.1-Kulwinder Singh prior to approaching this Court.

4. A similar petition was moved by petitioner No.2-Jugraj Singh bearing No.CRM-M-31724-2020 on 09.10.2020 and the said petition was also disposed of with the directions to the SSP, Amritsar to decide the representation moved before him.

5. As the SSP concerned had failed to comply with the directions issued by this Court to decide the representation within a given time frame, COCP-440-2021 and COCP-439-2021 were filed but came to be disposed of on 19.02.2021 after the State gave an undertaking that the representations would be disposed of within 3 weeks.

6. In compliance of the directions of this Court, the SSP concerned decided the representation and by virtue of a compliance report dated 09.03.2021 (Annexure P-3 in CRM-M-15988-2021 and CRM-M-15317-2021) dismissed the claim of the petitioners. However, the SSP admitted that petitioner No.1-Kulwinder Singh had been apprehended a day before the

registration of the FIR i.e. 08.07.2020 but had been released after questioning. The SSP also admitted that the phone of petitioner No.1-Kulwinder Singh had been kept by ASI Rajpal Singh with him for the whole night (which as per the counsel for the petitioners would show that petitioner No.1-Kulwinder Singh had been kept in illegal custody at the Police Post itself).

7. Petitioner No.1-Kulwinder Singh then filed another petition bearing No.CRM-M-15317-2021 on 08.04.2021 seeking transfer of the investigation to the CBI. It was his contention that the police officials were trying to save themselves and had implicated the accused which was apparent from the contents of the compliance report submitted by the SSP.

8. Meanwhile, the Investigating Agency presented a report under Section 173(2) on 16.04.2021.

9. Petitioner No.2-Jugraj Singh also approached this Court vide petition bearing No.CRM-M-15988-2021 again seeking transfer of the investigation to the CBI on 19.04.2021. Both the petitions filed by the petitioners were taken up for hearing on 19.04.2021 and a response was sought from the IG concerned in the said petitions.

10. The IG Border Range (Amritsar) Mr. SPS Parmar enquired into the matter and filed an affidavit dated 05.08.2021 in CRM-M-15988-2021 referring to an enquiry report dated 30.07.2021 in which he stated that the petitioners and Jugraj Singh r/o Rai had indeed been illegally detained a day before the registration of the FIR and on the next day a manipulated story was put forth by the Investigating Agency after which the petitioners were

implicated. However, ASI Rajpal Singh (respondent No.5 in CRM-M-15988-2021) had concealed the actual facts from G.S. Sahota, PPS, DSP, Attari and SI/SHO Harpal Singh the then SHO Lopoke. He further found that various provisions of the NDPS Act had been violated. An FIR No.202 dated 31.07.2021 under Sections 58(1) (C), (2) of NDPS Act Police Station Lopoke was registered against erring police officials including the Investigating Officer, Home Guard and Constable. However, no criminal action was taken against the DSP and the SHO concerned though the explanation of the DSP was called for and regular departmental enquiry was to be conducted against the SHO. However, certain phone recordings were also mentioned to *prima facie* show the involvement of the DSP and the SHO in the false implication of the petitioners. Further action was to be taken as per directions of this Court. The copy of the said affidavit is attached as Annexure P-3 to the petition.

11. On 13.08.2021 when the case bearing No.CRM-M-15988-2021 and CRM-M-15317-2021 were taken up, liberty was sought by the petitioners to file a quashing petition on merits on the basis of the affidavits submitted by the IG concerned and the Trial Court was directed to adjourn the case beyond the date fixed before this High Court.

12. Thereafter, the instant petition for quashing of the FIR No.153 dated 09.07.2020 (Annexure P-1) was preferred by the petitioners bearing No.CRM-M-35772-2021.

13. On 11.10.2021, the three petitions were taken up together and the Court directed the IG concerned to file a fresh affidavit explaining why no action was taken against the senior police officials.

14. On 03.12.2021, the new IG namely, Mohinish Chawla, IPS, Inspector General of Police, Border Range, Amritsar submitted an affidavit dated 29.11.2021 stating that efforts were being made to arrest the various police officials and the mobile phones/conversations of DSP, GS Sahota, PPS, DSP Attari and SI/SHO Harpal Singh were being examined. It was further clarified that the earlier IG Mr. SPS Parmar had not concluded in his enquiry report that the officials i.e. the DSP and SI/SHO were not present at the place of occurrence at the relevant time. It was stated that the investigation was still pending.

15. Meanwhile, on 10.01.2023, this Court had directed the Investigating Agency to file a supplementary report under Section 173(8) Cr.P.C. based upon the enquiry conducted by the IG concerned.

16. On 04.02.2023, the first report under Section 173(8) Cr.P.C. was submitted before the Trial Court to place on record the extract of the affidavit of the IG dated 05.08.2021.

17. Today, a fresh reply dated 29.05.2023 by way of an affidavit of Satinder Singh, IPS, Senior Superintendent of Police, Amritsar (Rural) has been filed on behalf of the State by the learned counsel for the State in the connected petition bearing No.CRM-M-15988-2021, wherein, it is stated that a cancellation report/supplementary challan has been submitted before the Trial Court.

18. The learned counsel for the petitioners contends that the IG had submitted an affidavit dated 05.08.2021 (Annexure P-3) whereby, it has been found that the petitioners had been picked up earlier and falsely implicated in the present case. Relevant penal and departmental action has also been initiated against all the concerned police officials. The extract of the said affidavit dated 05.08.2021 has been placed before the Trial Court in the 1st report under Section 173(8) Cr.P.C. Thereafter, a supplementary challan/cancellation report under Section 173(8) Cr.P.C. exonerating the petitioners has been presented in Court on 30.05.2023 as is borne out from the affidavit dated 29.05.2023 filed by Satinder Singh, IPS, Senior Superintendent of Police, Amritsar (Rural) in connected petition bearing No.CRM-M-15988-2021. Therefore, the 1st report under Section 173 Cr.P.C. dated 16.04.2021 inculcating the petitioners and the 1st report under Section 173(8) Cr.P.C. filed on 04.02.2023 were liable to be quashed and the proceedings, if any, were to continue only with respect to the supplementary report/cancellation report submitted under Section 173(8) Cr.P.C. on 29.05.2023.

19. On the other hand, the learned State counsel without entering into any controversy so far as the contentions of the petitioners are concerned states that he would have no objection if the reports under Sections 173(2) Cr.P.C. dated 16.04.2021 and the first report under Section 173(8) Cr.P.C. submitted on 04.02.2023 are quashed as in any case, the Investigating Agency has submitted a supplementary challan/cancellation report dated 29/30.05.2023.

20. I have heard the learned counsel for the parties at considerable length.

21. The Hon'ble Supreme Court in the case of **Vinay Tyagi Versus Irshad Ali @ Deepak & others, 2013(2) R.C.R. (Criminal) 197**, held as under:-

“40.1. The court of competent jurisdiction is duty bound to consider all reports, entire records and documents submitted therewith by the Investigating Agency as its report in terms of Section 173(2) of the Code. This Rule is subject to only the following exceptions;

a) Where a specific order has been passed by the learned Magistrate at the request of the prosecution limited to exclude any document or statement or any part thereof;

b) Where an order is passed by the higher courts in exercise of its extra- ordinary or inherent jurisdiction directing that any of the reports i.e. primary report, supplementary report or the report submitted on 'fresh investigation' or 're-investigation' or any part of it be excluded, struck off the court record and be treated as non est.”

(emphasis supplied)

22. Admittedly, in the present case, initially a report under Section 173(2) was submitted on 16.04.2021 inculcating the petitioners. Thereafter, the IG concerned filed an affidavit dated 05.08.2021 in CRM-M-15988-2021, wherein certain allegations were levelled against the junior police officials but the matter was left open ended. The extract of the said affidavit was filed as a report under Section 173(8) Cr.P.C. before the Trial Court on 04.02.2023. Be that as it may, as per affidavit dated 29.05.2023 of Satinder Singh, IPS, SSP, Amritsar (Rural) now a cancellation report/supplementary challan under

Section 173(8) Cr.P.C. dated 29.05.2023 has been filed before the Trial Court completely exonerating the petitioners.

23. Keeping in view the aforementioned facts as also the judgment rendered in the case of **Vinay Tyagi** (supra), the report under Section 173(2) Cr.P.C. dated 16.04.2021 and the first report under Section 173(8) Cr.P.C. filed on 04.02.2023 are quashed.

24. The Trial Court is free to proceed with the matter on the basis of the original FIR and the final supplementary challan/cancellation report submitted under Section 173(8) Cr.P.C. on 29/30.05.2023 in FIR No.153 dated 09.07.2020 (Annexure P-1) registered under Sections 22/61/85 of NDPS Act, 1985 at Police Station Lopoke District Amritsar Rural.

25. However, it is clarified that proceedings emanating out of FIR FIR No.202 dated 31.07.2021 under Sections 58(1) (C), (2) of NDPS Act at Police Station Lopoke and disciplinary/departmental proceedings shall continue against the respective police officials in accordance with law.

(JASJIT SINGH BEDI)
JUDGE

01.06.2023
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No