

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-40857-2020 (O&M)
Date of decision: 02.02.2023

MUKESH GARG AND OTHERS

...Petitioner(s)

Versus

STATE OF HARYANA AND ANOTHER

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr.V.K. Jindal, Sr. Advocate with
Mr. Munish Kumar Garg, Ms. Bhawna Thakur and
Mr. Vikas Mehra, Advocates for the petitioners.

Mr. Tanuj Sharma, AAG Haryana.

AMAN CHAUDHARY. J.

Prayer in the present petition filed under Section 482 CrPC is for quashing of FIR No. 559 dated 23.07.2015, under Sections 332, 353, 186, 506 and 34 IPC, Annexure P-5, charge sheet dated 01.05.2019, Annexure P-13, order farming charge dated 01.05.2019, Annexure P-14, order dated 05.10.2020, Annexure P-23 passed by Additional Sessions Judge, Sirsa.

Facts in brief, as necessary for the adjudication of the present case are, that in the criminal complaint registered on account of a clash between two groups of teaching faculty of CDLU, Sirsa, a petition was filed before the Hon'ble High Court, during which it was observed that it is not

in the welfare of students and administration to have such clash among the teaching faculty. Thus, an enquiry was directed by the Hon'ble High Court to be conducted by the CBI. In pursuance of which, a CBI Team visited CDLU for conducting an enquiry by recording of statements of the concerned. Dr. Rajneesh Ahlawat, Dr. Mukesh Garg And Dr. Satyawan Dalal were informed by the undersigned to join the enquiry at faculty house CDLU Sirsa at About 11:30 am for the purpose of recording their statements. They started unnecessary arguments with CBI Team. Dr. Rajneesh Ahlawat was explaining about his earlier recorded statement duly signed by him, but he asked to provide the copy of his earlier statement alleging the enquiry team that his earlier statement recorded by CBI was not given by him. He was explained that there is no such provision of law of provide the copy of the recorded statement to the witness at this stage of enquiry. He was informed that he has signed the earlier statement after perusal of every word of it, his behavior became violent and highly objectionable. He started threatening the enquiry team that he will not give any further statement and challenged to face any consequences initiated against him by any authority. Observing the violent behaviour of Dr. Rajneesh Ahlawat, Sh. Sushil Chand Inspector of Police, S.I.S., S.P. Office Sirsa was informed telephonically by ASI Satbir Singh at about 01:40 PM who was attached with the CBI Team to provide the additional security immediately to prevent any untoward incident. Dr. Rajneesh Ahlawat was asked to leave the place and not to interfere in the proceeding, but instead of leaving the room he started shouting and asked the enquiry team to get out of the university campus. He was again told to move out but while going out

he was abusing the enquiry team. Dr. Mukesh Garg and Dr. Satyawar Dalal were made to sit in the adjacent room to avoid unnecessary arguments. They both also left the enquiry proceedings saying that they will get their further statement recorded only after conducting a meeting among them. Such type of hindrances were created by aforesaid faculties in the proceedings of the enquiry which was being monitored by Hon'ble High Court of Punjab & Haryana Chandigarh by giving a specific time period to conclude it. The misconduct of the aforesaid, faculty was reported for taking prompt action in accordance with the norms and standards being followed by the university and for onward legal action. As such conduct is hazardous for the enquiry proceedings. On the basis of the aforesaid, FIR in question was registered against the petitioners.

Learned Senior counsel contends that the FIR was investigated and rightly a cancellation report dated 13.11.2015 was presented. However, vide order dated 02.02.2018, the learned Chief Judicial Magistrate, Sirsa directed for further investigation, but the case was reinvestigated and challan was presented against the petitioners wherein learned trial Court has wrongly framed the charges without taking into consideration the fact that in the previous investigation, the petitioners were found innocent. Similarly even the revisional court has wrongly upheld the said order by merely referring to the ingredients of the Sections. He relies on judgments in the case of **Vinay Tyagi vs. Irshad Ali @ Deepak and others** 2013(4) SCC (Cr.) 557.

Learned State counsel states that the learned Chief Judicial Magistrate has rightly taken cognizance, framed charges in accordance with

law after due application of mind, which the revisional Court has affirmed by passing a well reasoned order, thus, the present petition deserves to be dismissed.

Heard.

At the outset a reference is apposite to be made to the conclusion arrived in the cancellation report dated 13.11.2015, Annexure P-8, which reads thus:

“From the contents of the complaint offences under Sections 332/353/186/506/34 IPC are made out and after registering the case and the aforesaid case was registered by ASI Banwari Lal, Incharge Police Post HUDA. During investigation the spot of occurrence was examined and statement of the witnesses are got recorded. Thereafter, the aforesaid case was investigation ASI Ashok Kumar I/C PP HUDA Sirsa and during Investigation on dated 17.09.2015 the named accused persons doctor Satyawar Dalal and Dr. Rajneesh Ahlawat come present at the police post to whom after joining the investigation enquiry was got conducted and they produced one order of Hon'ble High Court in which Hon'ble High Court allowed the interim bail was accepted of the named accused persons and ordered to the accused persons for joining the investigation to which they were later on made to join investigation and thereafter left free and the investigation was verified by Smt. Pratiksha Godara, Deputy Superintendent of Police, Sirsa and during verification found that allegations levelled as per FIR regarding misbehave, by creating hindrance in the performance of duty and of giving threat to life are not to be confirmed and Hon'ble Superintendent of Police ordered for presenting the cancellation report in the case therefore the cancellation report is being prepared due to non- confirmation of the allegations levelled in the FIR. Kindly be accepted.”

Upon aforesaid cancellation report having been presented, the learned Magistrate directed further investigation in the case, vide order dated 2.2.2018, Annexure P-9, after recording the dissatisfaction of the

complainant and finding that investigation had not been conducted in a proper manner as neither she nor other witnesses were joined, as also despite there being incriminating statements of witnesses on record, the cancellation report was submitted, which reads thus:

“Complainant Smt.Neelam Singh, DSP, CBI has appeared in consequence of court notice issued for her presence. Complainant vide her separate statement has stated that she is not satisfied with the police report as she was not joined into police investigation nor other material witnesses were joined into investigation. The case has been cancelled wrongly in the absence of complainant. She has requested to order for further investigate the matter properly.

The perusal of the record revealed that FIR No.559 dated 24.07.2015 was registered under Sections 186, 332, 34, 353, 506 IPC on the complaint of complainant against the respondents. Police has prepared cancellation report in the case and submitted the same into the court. The perusal of the cancellation report/final report prepared by police revealed that statement of complainant Smt.Neelam Singh, DSP, CBI has nowhere been recorded by the police at the time of investigation, though, the police has recorded the statements of other officials. Statement of Shri Ram Pyare, Sub Inspector, CBI has also disclosed the fact of inquiry conducted by complainant and misbehaviour of the respondents namely Dr.Rajnish Ahlawat and Dr.Satyawan Dalal during the inquiry. The statement of EASI Satbir Singh also revealed the misconduct of the respondents during the inquiry conducted by CBI Team. Surprisingly even after incriminating statements of witnesses, cancellation report has been prepared in the case. It is revealed on record that investigation has not been conducted in proper manner. It is a fit case to send for further investigation under Section 173(8) Cr.P.C. Reliance has been placed upon case titled as Sanjaysinh Ramrao Chavan Vs. Dattatray Gulabrao Phalke, 2015(1) RCR(Criminal) 570, wherein it has been held by Hon'ble Supreme Court of India that “Court is not bound by the report submitted by the police under Section 173(2) Cr.P.C. If the report is that no case is made out, the Magistrate is still free, nay, bound, if a case according to him is made out, to reject and take cognizance. It is also open to him to order further investigation under Section 173(8) of Cr.P.C. In the light of above said authority, the

case is hereby sent for further investigation by police. Notice be issued to Superintendent of Police, Sirsa with direction to get conducted further investigation in the case by the police officials not below the rank of DSP. Now to come up on 02.04.2018 for awaiting police report.”

In compliance of the said order, the investigating agency conducted further investigation as is revealed from the final report dated 20.10.2018, Annexure P-12, presented before the Court, the operative part thereof reads thus:

“As per the orders passed by the Hon'ble Court in the case the further investigation was carried out by Sh. Narender Bijarania IPS ACP. Sirsa and during investigation enquiry was got done from the named accused persons namely Dr. Satyawar Dalal, Dr. Rajnish Ahlawat and Dr. Mukesh Garg CDLU Sirsa and from the complainant Smt. Neelam DSP CBI/SCB, Chandigarh and then the investigation of the case was conducted by Sadhu Ram DSP Ellenabad and during investigation on dated 16.07.2018 the statement of ASI Banwari Lar No.222/H was got recorded under Section 161 Cr.P.C and on dated 17.07.2018 the statement of EASI Satbir singh No.299 Sirsa was got recorded under Section 161 Cr.P.C. and on dated 3 06.08.2018 the eye-witness namely Sh. Pyare Singh. DSP CBI, SCB, Chandigarh presently Nagpur was enquired in the case on his mobile No.09123305624 and from the enquiry from the Sadhu Ram, DSP Ellenabad the truth was found from the contents and through SI/SHO Raj Mahender, P.S. City Sirsa on dated 13.08.2018 status report was submitted before the Hon'ble Court, to which the Hon'ble Court on dated 31.10.2018 ordered for submitting the final report in the Court, as the accused persons had already obtained the anticipatory bail orders from the Hon'ble High Court, now no further enquiry is remain pending in the case. Upon the receipt of sufficient evidence on the case file against the accused persons Dr. Satyawar Dalal son of Sh. Karan Singh Dalal resident of D- 21, CDLU. Sirsa and Dr. Rajnish Ahlawat son of Sh. Dharampal Ahlawat resident of House No.64, Aggarwal Colony, Sirsa and Mukesh Garg son of Ishwar Chander Garg resident of D-41, CDLU Campus, Sirsa so the final report under Section 173 Cr.P.C. was prepared for the offences under Section 332, 353, 186, 506, 34 IPC and submitted before

the Hon'ble Court. After summoning the witnesses in the case, the further proceedings be carried out.

Thereafter, vide orders dated 01.05.2019, Annexures P-13 and P-14, the charges against the petitioners were framed to which they pleaded not guilty. The charge sheet reads thus:

“Firstly, that on 22.07.2015 in the area of Chaudhary Devi Lal University, Sirsa, you above-named accused in furtherance of your common intention voluntarily obstructed PW DSP Neelam Singh in discharge of their public function by using criminal force and thereby committed an offence punishable under Section 186 read with Section 34 IPC and within my cognizance.

Secondly, on the same date and place, you above-named accused in furtherance of your common intention, voluntarily caused simple injuries to PW Satbir in execution of his official duties, by using criminal force and thereby committed an offence punishable under Section 332 read with Section 34 IPC and within my cognizance.

Thirdly, on the aforesaid date and place, you above-named accused in furtherance of your common intention assaulted PW DSP Neelam Singh and members of CbI Team in execution of their official duties in order to deter them from discharging their duties as a public servants, by using criminal force and thereby committed an offence punishable under Section 353 read with Section 34 IPC and within my cognizance.

Lastly, on the same date, time and place, you all the accused accused in furtherance of your common intention committed criminal intimidation by threatening DSP Neelam Singh and her team with dire consequences and thereby committed an offence punishable under Section 506 read with Section 34 IPC and within my cognizance.

And I hereby direct that you be tried by this Court on the above said charge.”

The statement of complainant-Smt. Neelam Singh, DSP, CBI, as PW1 was recorded on 02.11.2019, the relevant of which and cross-examination reads thus:

“For their enquiry I had gone there. During this period these two (Satyawan Dalal and Rajnish Ahlawat) started abusing and threatened to leave from there otherwise the result will be bad. During this period, they tried to tear the original case file and started pushing and shove to my assisting staff SI R.P.Singh. After seeing all this Security Staff ASI Satbir Singh had informed from his mobile to the Inspector that fight has started here and security be sent.” xx xx “All the three accused had done fight and abused to me my colleague assistant SI R.P.Singh and tried to torn our case file. The purpose for which we had come for investigation they had intervened in that and our work could not be completed. At that time Police Security is also with us. Therefore, without completing our work we left by saving our life from them.”

In cross-examination, she stated that :

“It is correct that I was conducting this enquiry in compliance of the direction issued by the Hon’ble Punjab & Haryana High Court and I had to submit the enquiry report before the Hon’ble High Court. I had submitted my enquiry report before the Hon’ble High Court in the year 2015.”

The petitioners filed revision petition challenging the charge sheet dated 01.05.2019, before the learned Additional Sessions Judge, Sirsa, contending that no case under Sections 332, 352 IPC was made out against them on the allegations of the complainant and that the matter had been earlier investigated by the local police finding against them a closure report was filed. The trial Court did not mention any ground for taking cognizance and not accepting the police report under Section 173 CrPC. The revisional Court dismissed the same vide order dated 05.10.2020, Annexure P-23, by taking into consideration the ingredients of the sections and applying the

facts thereto and finding that the revisionists were not correct to submit that no case under the said Sections was made out. The relevant paras read thus:-

“6. The facts in brief are that on 22.07.2015 CBI team visited CDLU, Sirsa in compliance of the order of the Hon'ble High Court to conduct an enquiry and to submit a report before the Hon'ble High Court. During such enquiry, revisionist Rajesh Ahlawat was examined but instead of cooperating Revisionist started misbehaving, abusing and manhandling with CBI officials. This matter was reported to the police and a case was registered against the revisionists. However, on enquiry a closure report was filed but on submission of protest petition, the Ld. Trial Court took cognizance and summoned the revisionists. Further the Ld. Trial Court framed charges vide the impugned order.

7. The Ld. Trial Court framed charges under Sections 332, 353, 186, 506, 34 IPC. So far as Section 186 IPC is concerned it deals about obstructing public servant in discharge of public function. This is the case of the complainant that on the Instructions of Hon'ble High Court, the complainant arrived at CDLU to conduct enquiry. It is not disputed that complainant was not a public servant or was not on official visit to conduct enquiry. Thus from the allegations and statement of complainant prima-facie a case under Section 186 IPC is made out.

Now coming to Section 332 IPC, it states about causing voluntarily hurt to deter public servant in discharge of his duty. It is submitted by Ld. counsel for revisionists that no hurt or injury was alleged to be caused by the revisionists to the complainant. There is also no medical evidence on record to support the allegations of hurt. After hearing the contentions of Ld. counsel for the revisionists and perusing the file, this Court does not finding itself in agreement with Ld. counsel for the revisionists. So far as the question of hurt is concerned, the same is provided under Section 319 IPC which is reproduced hereunder for ready reference: -

"319. Hurt

Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt."

Further as per Section 44 IPC injury may be upon body, reputation or emotion of a person. The same is also reproduced hereunder:-

44. "Injury"

The word "Injury denotes any harm whatever illegally caused to any person, in body, mind, reputation or property."

It is alleged by the complainant that on 22.07.2015 the revisionists did not allow her to perform her duties. This act of revisionist may cause some emotional and mental Injury to the complainant. The exact and actual state of her injury can only be assessed after taking the evidence on record. But primarily there is sufficient material on record to frame charge under Section 332 IPC against the revisionists.

The Ld. Trial Court also framed charge under Section 353 IPC which deals about assault or criminal force to deter public servant in discharge of his duty. These are the allegations against the revisionists that they did not allow the complainant to record their statements. It can be understood even by application of common sense that to not allow someone to record statement(s) can only be a result of force and in this case the force could only be criminal force. Further it is alleged that the revisionists also manhandled Inspector R.P. Singh. This is also objected by Ld. counsel for revisionists that in charge-sheet it is mentioned as Satbir Singh not R.P. Singh. Perusal of impugned order and charge-sheet shows that the name Satbir Singh is mentioned instead of R.P. Singh. But that is either a typing mistake or an inadvertent error. In both eventualities, the same can be rectified by Trial Court itself. This Court is of the opinion that such a minor mistake can never be subject of revisional jurisdiction. In view of the complaint and statement(s), prima-facie a case under Section 353 IPC is also made out against the revisionists. The Ld. Trial Court took the right view to frame charge under Section 353 IPC against the revisionists.

The complainant also alleged that revisionists threatened her to face dire consequences. The revisionists also used threatening language against Director, CBI and Vice Chancellor, CDLU. This fact was also mentioned by the complainant in her protest petition. Thus, prima-facie a case under Section 506 IPC is also made out and the Ld. Trial Court committed no error while framing the charge under Section 506 IPC.

The revisionists were also booked under Section 34 IPC which deals about joint liability of all accused. In the present case there are three accused and as a natural sequence of their act they are liable to be tried and punished same as if the act was done by an accused alone.

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10. In the present case on a complaint of a public servant who was on duty on the instructions of Hon'ble High Court, the Ld. Trial Court took cognizance, summoned the accused and put them on trial by framing charges. The Ld. Trial Court while accepting the protest petition passed a detailed order giving reasons for summoning of accused. This order was never challenged by the revisionists which shows that accused accepted their summoning. The summoning order also attains finality. by afflux of time and by submissions of petitioner before the Trial Court.

Xx xx

15. So from above discussion, it is clear that at the stage of framing charge it is not necessary that each ingredient of offence should be linguistically reproduced in the report and backed with meticulous facts - Suffice would be substantial compliance to the requirements of the provisions. At this stage Court is not to see whether allegation in FIR were correct or not. Court have only to see whether treating the FIR allegations as correct an offence is made out.”

The pith and substance of the contentions raised by the learned Senior Counsel for the petitioners is that there was no fresh evidence collected by the investigating agency during the further investigation conducted and even the statement of the complainant, was not recorded and there was a mere re-recording of statements of witnesses, who were part of the previous investigation wherein their statements had so been recorded, which shows reinvestigation has been done, thus, the Court has wrongly taken the cognizance of the matter.

It is pertinent to notice that the learned Magistrate had ordered further investigation in the matter after hearing the complainant, who had laid a protest to the cancellation report, apprising the fact that neither she nor other material witnesses were made to join the investigation. It was further observed by the learned Magistrate that despite Sh. Ram Pyare, Sub Inspector CBI having disclosed regarding the misbehaviour of the

petitioners and EASI Satbir Singh having revealed the misconduct of the petitioners during the enquiry conducted by the CBI team, the cancellation report had been prepared, which thus led to a conclusion that the investigation had not been conducted in a proper manner. There was and is no challenge to the aforesaid order by the petitioners.

As has been held by Hon'ble The Supreme Court of India in the case of **Vinubhai Haribhai Malaviya Vs. The State of Gujarat and another**, (2019) 17 SCC 1, that Fair and impartial investigation is a necessary concomitant of a vibrant judicial system. The observations of para as relatable to the present case read thus:

37. The scheme of [Section 173](#) of the Code even deals with the scheme of exclusion of documents or statements submitted to the Court. In this regard, one can make a reference to the provisions of [Section 173\(6\)](#) of the Code, which empowers the investigating agency to make a request to the Court to exclude that part of the statement or record and from providing the copies thereof to the accused, which are not essential in the interest of justice, and where it will be inexpedient in the public interest to furnish such statement. The framers of the law, in their wisdom, have specifically provided a limited mode of exclusion, the criteria being no injustice to be caused to the accused and greater public interest being served. This itself is indicative of the need for a fair and proper investigation by the concerned agency. What ultimately is the aim or significance of the expression 'fair and proper investigation' in criminal jurisprudence? It has a twin purpose. Firstly, the investigation must be unbiased, honest, just and in accordance with law. Secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. Once these twin paradigms of fair investigation are satisfied, there will be the least requirement for the court of law to interfere with the investigation, much less quash the same, or transfer it to another agency. Bringing out the truth by fair and investigative means in accordance with law would essentially repel the very basis of an unfair, tainted investigation or cases of false implication. Thus,

it is inevitable for a court of law to pass a specific order as to the fate of the investigation, which in its opinion is unfair, tainted and in violation of the settled principles of investigative canons.

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40. We have already noticed that there is no specific embargo upon the power of the learned Magistrate to direct 'further investigation' on presentation of a report in terms of [Section 173\(2\)](#) of the Code. Any other approach or interpretation would be in contradiction to the very language of [Section 173\(8\)](#) and the scheme of [the Code](#) for giving precedence to proper administration of criminal justice. The settled principles of criminal jurisprudence would support such approach, particularly when in terms of [Section 190](#) of the Code, the Magistrate is the competent authority to take cognizance of an offence. It is the Magistrate who has to decide whether on the basis of the record and documents produced, an offence is made out or not, and if made out, what course of law should be adopted in relation to committal of the case to the court of competent jurisdiction or to proceed with the trial himself. In other words, it is the judicial conscience of the Magistrate which has to be satisfied with reference to the record and the documents placed before him by the investigating agency, in coming to the appropriate conclusion in consonance with the principles of law. It will be a travesty of justice, if the court cannot be permitted to direct 'further investigation' to clear its doubt and to order the investigating agency to further substantiate its charge sheet.

While following the aforesaid pronouncement, Hon'ble The Supreme Court of India in the case of **Devendra Nath Singh vs. The State of Bihar**, SLP (Criminal) No. 9609 of 2022 decided on 12 October, 2022, held that, "In the totality of circumstances and in the larger interest of justice, we are clearly of the view that in this case, the investigation contemplated by the order impugned should be allowed to be taken to its logical end."

In so far as the contention of the learned Senior Counsel is concerned that during further investigation, statement of complainant was

not got recorded nor was any new evidence collected is misconceived being contrary to record, with regard to which, it is pertinent to refer to the final report, Annexure P-12, wherein it has been categorically recorded that the further investigation was carried out by Sh.Narender Bijarania, IPS, ACP, Sirsa and during investigation, an enquiry was got done from the petitioners as also the complainant-Smt. Neelam Singh, DSP, CBI, which stands affirmed from her cross-examination dated 29.01.2020, the relevant of which reads thus:

“After raising my objection the Hon’ble Court sent the present case for further investigation, which was sent to S.P.Sirsa. I do not know that further investigation of the case was got conducted by DSP Sadhu Ram, self stated that my statement was got recorded by Sh.Narender Bijarania, ASP. It is incorrect that even after the passing of the order regarding further investigation, I had not joined the investigation.”

Still further, during further investigation, statement of ASI Banwari Lal, was recorded under Section 161 CrPC, who had investigated the place of occurrence, recorded the statements of witnesses, did enquiry from the complainant and found the petitioners to be the correct accused, still cancellation was filed, which reads thus:

“Deposed that in the present time I was posted from District Sirsa to the Upper Circle Madhuban and upon the receipt of the message in the context of above complaint I came to join the investigation. On dated 23.07.2015 I was posted as Station Incharge of Police Post HUDA, City Sirsa and during that time Smt. Neelam DSP CBI/SCB, Chandigarh had moved one complaint against Dr.Rajnish Ahlawat, Dr.Mukesh Garg and Dr.Satyawan Dalal CDLU Sirsa regarding misbehave during duty and giving threat. Upon which I got registered the aforesaid complaint and investigation was carried out. The place of

occurrence was investigated by me during the course of investigation and statement of the witnesses were got recorded and enquiry was got done from the complainant in the case. From my enquiry Dr.Rajnish Ahlawat, Dr.Mukesh Garg and Dr.Satyawan Dalal all three were found to be correct accused, who had applied for the anticipatory bail before the Hon'ble Court but the Hon'ble Court dismissed the same. From my enquiry the contents of the complaint were found to be correct. Statement is got written head, which is correct.”

The Magistrate has all powers necessary, which may also be incidental or implied, that would include the ordering of further investigation after a report is received by him under Section 173(2) CrPC; in order to ensure that a “proper investigation” takes place in the sense of a fair and just investigation by the police as was observed in the case of **Vinubhai Haribhai Malaviya** (supra), thus, in the present case, the learned Magistrate having rightly singularly evaluated and analyzed needfulness of further investigation in the contextual facts and the attendant circumstances of incriminating evidence in shape of statements of witnesses already being on record, to unravel the truth and mete out justice to the parties, issued the directions to get further investigation conducted by an officer not below the rank of DSP, thereafter further investigation was carried out by Sh. Narender Bijarania IPS ACP. Sirsa wherein enquiry was got done from complainant-Smt. Neelam DSP CBI/SCB, Chandigarh. Likewise, was the statement of ASI Banwari Lal, recorded, who had investigated the case on the previous occasion and had found the allegations in the matter against the accused person (petitioners) to be correct, cancellation report was presented. At this stage, it is pertinent to note that it is revealed from the cancellation report, the fact of ASI Banwari Lal having initially examined the spot of

occurrence and recording the statements of witnesses, but, for the reasons best known, the said investigation was handed over to ASI Ashok Kumar, that led to the filing of the cryptic cancellation report without recording any reasons whatsoever, except by mentioning that during verification the allegations leveled as per FIR regarding misbehave, by creating hindrance in the performance of Govt. duty and giving threat to life are not to be confirmed. Both the aforesaid statements recorded during the further investigation having been found to contain fresh evidence, led to filing of the final report under Section 173 CrPC.

In the case of **Rama Chaudhary vs. State of Bihar**, (2009) 6 SCC 346, it was observed by Hon'ble The Supreme Court of India that, "From a plain reading of sub-section (2) and sub-section (8) of [Section 173](#), it is evident that even after submission of police report under sub-section (2) on completion of investigation, the police has a right to "further" investigation under sub-section (8) of [Section 173](#) but not "fresh investigation" or "reinvestigation". The meaning of "Further" is additional; more; or supplemental. "Further" investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether.." Since, in the present case, in order to maintain continuity of the investigation and to bring out the complete true facts, the statements of SI Ram Pyare and EASI Satbir Singh which the learned Magistrate in the order dated 02.02.2018 had found to be incriminating, despite which, the cancellation report filed, were got verified.

In the case of **Hasanbhai Valibhai Qureshi vs. State of Gujarat and others** (2004) 5 SCC 347, Hon'ble The Supreme Court of India observed that the prime consideration for further consideration is to arrive at the truth and do real and substantial justice.

Noteworthy observations made in the case of **Vinay Tyagi** (supra), are as under:

“15. ‘Further investigation’ is where the Investigating Officer obtains further oral or documentary evidence after the final report has been filed before the Court in terms of [Section 173\(8\)](#). This power is vested with the Executive. It is the continuation of a previous investigation and, therefore, is understood and described as a ‘further investigation’. Scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the Court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as ‘supplementary report’. ‘Supplementary report’ would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a ‘reinvestigation’, ‘fresh’ or ‘de novo’ investigation.”

Hon'ble The Supreme Court of India in the case of **Pooja Pal Vs. Union of India**, 2016(1) R.C.R. (Criminal) 880, observed that, “Though, well demarcated contours of crime detection and adjudication do exist, if the investigation is neither effective nor purposeful nor objective nor fair, it would be the solemn obligation of the courts, if considered necessary, to order further investigation or reinvestigation as the case may

be, to discover the truth so as to prevent miscarriage of the justice. No inflexible guidelines or hard and fast rules as such can be prescribed by way of uniform and universal invocation and the decision is to be conditioned to the attendant facts and circumstances, motivated dominantly by the predication of advancement of the cause of justice.”

The expression “fair and proper investigation” in criminal jurisprudence was held in the case of **Vinay Tyagi** (supra) to encompass two imperatives; firstly the investigation must be unbiased, honest, just and in accordance with law and secondly, the entire emphasis has to be to bring out the truth of the case before the court of competent jurisdiction.

While referring to the cases of **National Human Rights Commission vs. State of Gujarat and others** (2009) 6 SCC 767 and **Manohar Lal Sharma vs. Principal Secretary and others** (2014) 2 SCC 532, Hon’ble The Supreme Court of India in the case of Pooja Pal (supra) observed that, “did proclaim unambiguously that discovery, investigation and establishment of truth are the main purposes of the courts of justice and indeed are *raison d’etre* for their existence and adverting to the role of the police to be one for protection of life, liberty and property of citizens, with investigation of offences being one of its foremost duties, it was underscored in that the aim of investigation is ultimately to search for truth and to bring the offender to book.”

It is trite that the prime concern and the endeavour of the court of law is to secure justice on the basis of true facts which ought to be unearthed through a committed and resolved investigation. Further

investigation is a continuation of the earlier investigation and not a fresh investigation or reinvestigation. The latter two are those to be started ab initio, wiping out the earlier investigation altogether. As per section 173(8) Cr.P.C, on completion of further investigation, the investigating agency has to forward to the Magistrate a 'further' report and not a fresh report regarding the 'further' evidence obtained during such investigation. The above propositions can be culled out from the decisions in **State of Bihar and Another v. J.A.C.Saldanha and Others**, (1980) 1 SCC 554, and **K.Chandrasekhar v. State of Kerala and Others** (1998) 5 SCC 223.

In view of the aforesaid judgments as also the facts referred to hereinabove, fresh incriminating evidence during further investigation had surfaced in shape of enquiry made from the complainant and ASI Banwari, as additional and supplemental and in order to give the report of a final character, holistic and meaningful investigation, the witnesses, whose statements stood recorded previously, were also got verified as a measure of lending credence, in continuation of the same offence and chain of events relating to the same occurrence and incidental thereto, which formed basis of report under Section 173 CrPC, without wiping out the earlier investigation altogether, in terms of the order passed by the learned Magistrate. The allegations made in the complaint stood duly corroborated by conduct of further investigation, and thus, in no manner can it be termed as reinvestigation, which is to be started ab initio. The Investigating Officer has to unearth the real truth behind the alleged crime so as to serve the ends of justice. The term 'further evidence' cannot be interpreted restrictively

and the right of the investigating agency to collect all evidence cannot be cribbed, cabined or crippled.

The petitioners being unsuccessful before the revisional Court, wherein by way of a well reasoned order the framing of charge was affirmed by aptly considering and deciding their revision, therefore, the present petition amounts to a second revision, the bar under Section 397(3) Cr.P.C. can be lifted by this Court in case there is some special reason to use the inherent power vested which as has been held by Hon'ble The Supreme Court of India in the cases of **Krishnan vs. Krishnaveni and another**, 1997(1) RCR (Crl.) 724, as reiterated in the case of **Shakuntala Devi and others vs. Chamru Mahtro and another**, 2009(2) RCR (Crl) 125., the High Court is preserved with to be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings, in appropriate cases in order to meet the ends of justice or to prevent abuse of the process. The object of the introduction of sub-section (3) in Section 397 Cr.P.C. was to prevent a second revision so as to avoid frivolous litigation.

Considering the peculiarity of facts and circumstances of the case, this Court finds existence of no such special circumstance in the present case that would have persuaded it to lift the bar under Section 397(3) Cr.P.C.

In exercise of power under Section 482 of CrPC, the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. Whether the allegations are true or

untrue would be decided in the trial. Criminal proceedings cannot be nipped in the bud by quashing the same at the inception itself without further trial, was held by Hon'ble The Supreme Court of India in the case of **Ramveer Upadhyay and another vs. State of UP and another** SLP Criminal 2953 of 2022, decided on 20.4.2022 wherein the charges had been framed, aggrieved against which, the application under Section 482 CrPC was filed praying for quashing of the complaint as well as the order taking cognizance, dismissal of which by the High Court was upheld. The case in hand being wherein initially despite there being incriminating evidence available but without joining the complainant and taking into consideration the investigation conducted by ASI Banwari Lal, who had found the petitioners to be the correct accused, the cancellation was filed, *albeit* without any conclusive finding, which the learned Magistrate had rightly noticed as investigation having not been properly conducted and sent the case for further investigation, whereon fresh incriminating evidence having been collected, final report presented and accepted whereafter, charges were framed, in the challenge of which the petitioners failed before the revisional Court, and prosecution evidence is going on, this Court finds there to be no exceptional case made out.

In light of the exposition of law and as a natural and consequential corollary of afore discussion, neither is there any ground for quashing of the FIR, nor any infirmity or illegality in the impugned orders, calling for any intervention. As such, the present petition is sans merit and the same stands dismissed.

It is made clear that observations made hereinabove in no manner be construed as an expression of opinion on the merits of the case as these are meant only for the purpose of deciding the present petition.

02.02.2023
gsv

(AMAN CHAUDHARY)
JUDGE

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