

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-60734-2022

Reserved on 27.12.2022

Pronounced on 08.05.2023

GURJANT SINGH

...Petitioner

VS.

STATE OF HARYANA AND OTHERS

... Respondents

Present: Mr. Sukesh Kumar Jindal, Advocate for the petitioner

Mr. Gurmeet Singh, AAG Haryana

None for respondents No.4&5

Sandeep Moudgil, J.

(1) The petitioner seeks quashing of the order dated 11.12.2022 (Annexure P7) passed by JMIC, Yamuna Nagar as well as the arrest memo dated 10.12.2022, in case FIR No.228 dated 30.03.2021 under Sections 323/452/307/506/201/34 IPC, registered at Police Station City, Yamuna Nagar.

(2) Shorn of details, the facts of the case are that FIR No.228 dated 30.03.2021 was registered under Sections 323/452/307/506/201/34 IPC, at the instance of Deepak s/o Rakesh Kumar Lamba, regarding injuries sustained by him and two others persons, namely, Rajat and Deepika. After investigation by SHO and the DSP, challan under Section 173(2) CrPC was presented against Satnam Singh and Raj Kumar, whereas the petitioner-Gurjant Singh and his brother Arpan, were found to be innocent.

(3) Thereafter, complainant Deepak appeared as PW1 and filed application under Section 319 CrPC for summoning the petitioner and his brother Arpan as additional accused. However, the said application was

dismissed vide order dated 30.04.2022 (Annexure P4). The CRR No.1723 of 2022 filed by the complainant challenging the order dated 30.04.2022 is pending before this Court wherein notice of motion has been issued on 31.10.2022 and the same is pending for 01.02.2023.

(4) In the meantime, the petitioner was arrested vide memo dated 10.12.2022, allegedly under the garb of 're-investigation' under Section 173(8). The petitioner was produced before JMIC, Yamuna Nagar, who vide impugned order dated 11.12.2022 (Annexure P7) remanded the petitioner to judicial custody till 23.12.2022. Accordingly, it has averred that the arrest memo dated 10.12.2022 and the impugned order dated 11.12.2022 (Annexure P7) remanding the petitioner to judicial custody are illegal, and an abuse of process of law and as such the same are liable to be quashed being contrary to law.

(5) Notice of motion was issued on 23.12.2022 and the case was fixed for 27.12.2022 for hearing before the Vacation Bench. It is apt to mention here that no urgency has been highlighted by the counsel for listing of this case before the Vacation Bench, nonetheless, this Court proceeds to hear the counsel for the parties and decide the same on merits.

(6) Learned counsel for the petitioner has contended that it was only after thorough investigation which was verified upto the level of DSP that the petitioner along with his brother Arpan was found innocent. Even the application under Section 319 CrPC was dismissed which was very much in the knowledge of the police authorities. Despite these facts, the police, in an illegal manner and for extraneous considerations, has arrested the petitioner.

(7) It is vehemently argued that no 're-investigation' could be conducted without prior permission from the Court. No notice was issued calling upon the petitioner to join the SIT. The 're-investigation' was conducted under the orders of Inspector General of Police, Ambala Divn. and the investigation was transferred to District Kurukshetra and the SP, Kurukshetra had constituted SIT to conduct 're-investigation' vide order dated 06.10.2022 i.e. after the dismissal of the application under Section 319 CrPC for summoning the petitioner on 30.04.2022. Therefore, the constitution of SIT itself for 're-investigation' is arbitrary and illegal.

(8) Learned counsel for the petitioner further contends that even if 're-investigation' or 'further investigation' under Section 178(3) is to be conducted, it was incumbent upon the police authorities to forward a further report regarding such further evidence to the Magistrate, who shall consider both the initial report under Section 173(2) CrPC and the supplementary report under Section 173(8) as to whether there is ground for presuming that the accused has committed any offence or not. No such procedure was followed by the respondent, as such, the impugned action is patently illegal in the eyes of law. Reliance has been placed on the recent judgment of the Hon'ble Supreme Court in **Luckose Zachariah @ Zak Nedumchira Luke & Ors. Vs. Joseph Joseph & Ors., 2022 (2) RCR (CrL.) 260.**

(9) It is further averred that the court below did not apply mind to the facts of the case and casually passed the impugned order in a stereotype manner. As such, the arrest of the petitioner is violative of Article 21 of the Constitution of India. It is averred that the action of 're-investigation' is significant and has to be exercised sparingly, in exceptional cases and to

achieve the ends of justice. It is contended that though it is not a case of 'further investigation', and even if it is, it has been the procedure of propriety for the police to seek permission of the Court to continue 'further investigation' and file supplementary charge-sheet, which has not been adhered to in the present case. Reliance has been placed on **Vinay Tyagi vs. Irshad Ali @ Deepak & Ors. 2013(2) RCR (CrL) 197.**

(10) Further, in the present, the police have started fresh investigation into the matter which is against the law laid down by the Hon'ble Supreme Court in a catena of judgments to hold that after submission of initial report, the police has right to 'further' investigation under Section 172(8) but not of fresh investigation or re-investigation. [Ref. (i) **K.Chandrasekhar vs. State of Kerala 1998(2) RCR (CrL) 719**, (ii) **Rama Chaudhary vs. State of Bihar, 2009(2) RCR (CrL) 570**]

(11) It is further the contention of learned counsel for the petitioner that when a finding of fact has been reached in favour of the accused, such a finding would constitute an estoppels or *res judicata* against the prosecution and that the rule relates only to the admissibility of the evidence which is designed to upset the finding of fact recorded by a competent court at a previous lawful trial. Reliance is placed on the judgment of Hon'ble Rajasthan High Court in **Ladu Devi & Anr. Vs. State of Rajasthan, 2005(2) RCR (CrL) 948.**

(12) Learned State counsel submits that the impugned order passed by the JMIC, Yamuna Nagar is just, legal and valid and the same is based on the material facts which culminated into further investigation of the matter and as such, the action of the respondent is justified in arresting the petitioner.

It is further averred that the petitioner has been specifically named in the FIR, who has been attributed a brick blow on the head of the complainant, which is on the vital part of the body.

(13) Having heard learned counsel for the parties and going through the record, this Court is of the considered opinion that there is no merit in this petition and the same is liable to be dismissed.

(14) The final report under Section 173 CrPC in the present FIR was presented on 06.05.2021 by SHO, PS City Yamuna Nagar wherein it is stated that the DSP, Yamuna Nagar upon verification of the investigation, found the petitioner and Arpan both sons of Satnam Singh, as innocent and as such they were not challaned. It becomes equally important that challan stands presented against Satnam Singh, who is father of the petitioner and was found involved in the said occurrence. Whereas, the petitioner against whom specific attributions have been made by the same very complainant, has been found to be innocent. The final report is silent as to on what basis and what cogent material, the petitioner has been found innocent. Even the order dated 30.04.2022 vide which the application under Section 319 CrPC filed by the complainant praying for summoning of the petitioner as an additional accused, has been turned down, does not specific any ground, much less the reference of various case laws, to let off the petitioner from being summoned.

(15) It is pertinent to mention that vide order dated 02.09.2021 of the Inspector General of Police, Ambala Division, Ambala Cantt., the investigation of the case was transferred from District Yamuna Nagar to District Kurukshetra and the SP Kurukshetra vide order dated 14.09.2021 constituted an SIT for conducting 'investigation' of the case. On 24.08.2022,

the complainant party and the accused persons, Satnam Singh and Raj Kumar came present and however, petitioner could not be produced before the SIT. Due to transfer of all the members of the SIT, a fresh SIT under Randhir Singh, HPS, DSP, Shahabad was constituted and on investigation on 14.12.2022, no members of the accused party including the petitioner came present before the SIT and thereafter, upon verification by the SIT, the petitioner was found involved. The relevant portion the application for remand filed by the police is reproduced as under:-

*“The suspected accused in the case namely, Gurjant Singh and Arpan did not come present before the SIT. On 28th of November, 2022, investigation of the case was verified by the SIT head by Randhir Singh, HPS, DSP, Shahbad. In his verification of investigation, he found involvement of Gurjant Singh and Arpan sons of Satnam Singh residents of House No.116, Nanda Colony, Farakpur, PS Farakpur, District Yamuna Nagar, and the file was received by me – Inspector, for **further investigation** with a direction to arrest these accused persons immediately.”*

(16) A perusal of the above application filed by the police seeking judicial remand of the petitioner would show that the Inspector General of Police, Ambala Division, Ambala Cantt., transferred the case for investigation from District Yamuna Nagar to District Kurukshetra and under the orders of SP Kurukshetra, an SIT was constituted for conducting ‘further investigation’ of the case. The police authorities are well within their rights to order further investigation of the matter on the basis of evidence which was either ‘missed’ by the police authorities at Yamuna Nagar and that was the reason why the case was transferred for fair and proper ‘investigation’ to the SIT which was constituted by SP, Kurukshetra.

(17) The foremost contention of the petitioner is that the police authorities cannot 're-investigate' or 'further investigate' the matter, once the petitioner has been found to be innocent, in the initial report. Section 173 CrPC is necessary to be referred herein, which reads as under:-

173. Report of police officer on completion of investigation.

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation,

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order- for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate alongwith the report-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements- recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject- matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub- section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to

such report or reports as they apply in relation to a report forwarded under sub- section (2).”

(18) The legislature has unambiguously used the expression ‘nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Section 173(2) has been forwarded to the Magistrate’, which shows that even after filing of a report before the court of competent jurisdiction, the Investigating Officer can still conduct further investigation and where upon such investigation, the officer in charge of a police station gets further evidence, oral or documentary, he shall forward to the Magistrate, a further report or reports regarding such evidence in the prescribed form. In other words, the investigating agency is competent to file a supplementary report to its primary report in terms of Section 173(8) and the same shall be treated in continuation of the primary report and the same provisions of law shall apply when the Court deals with such report.

(19) Having said that it is necessary to highlight that the 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. Since it is in continuation of the previous investigation, therefore, it is to be understood and described as a ‘further investigation’ but such investigation is restricted to further oral and documentary evidence. The sole purpose of further investigation is to bring the true facts before the Court even if they are discovered at a subsequent stage to the primary investigation. The subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer by way of supplementary report which would taken as part and parcel of the primary report. But this does not

necessarily means that further investigation would wipe out, directly or impliedly, the effect of initial investigation conducted by the investigating agency. However, the learned Magistrate has no jurisdiction to direct 'fresh' or 'de novo' investigation as in that case, there has to be a definite order of the Court. Neither the investigating agency nor the Magistrate has any power to order or conduct 'fresh investigation', which is opposed to the Scheme of Code. In the present case, further investigation has been ordered by the IGP and not 'fresh investigation'. [Ref. **K. Chandrasekhar s. State of Kerala 1998(2) RCR (CrL) 719**]

(20) In **Mithabhai Pashabhai Patel & Ors. v. State of Gujarat [(2009) 6 SCC 332]**, the Hon'ble Supreme Court while referring to the provisions of Section 173 of the Code, observed that the police has the power to conduct further investigation in terms of Section 173(8) of the Code but also opined that even the Trial Court can direct further investigation in contradistinction to fresh investigation, even where the report has been filed. It further held that:-

“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.”

(21) The view taken in **Mithabhai Pashabhai Patel & Ors.** was reiterated in **Ramachandran v. R. Udhayakumar (2008) 5 SCC 513**, where the Hon'ble Supreme Court held 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' 're-investigation.' A distinction, therefore, exists between a reinvestigation and further investigation. It was further held that 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 CrPC or otherwise and that the pre-cognizance jurisdiction to remand must be exercised within the four corners of the Code.

(22) In *Ram Lal Narang Versus State (Delhi Admn), AIR 1979 Supreme Court 1791*, the Hon'ble Supreme Court held that further investigation by the police would not be barred even where the Magistrate had taken cognizance of the offence and the right of the police to further investigate is not exhausted and the police can exercise such a right as often as necessary when fresh information comes to light. *Ram Lal Narang's* case also made reference to *King Emperor Versus Khwaja Nazir Ahmed, AIR 1945 PC 18* wherein the Privy Council had noticed that there was no provision in 1898 Code prescribing the procedure to be followed by the police, where, after the submission of a report under Section 173(1) Criminal Procedure Code and after the Magistrate had taken cognizance of the offence, the fresh facts came to light which required further investigation. The court, however, also noticed that no express provision prohibiting the police from launching upon an investigation into the fresh facts coming to light after the submission of the report under Section 173(1) or after the Magistrate had taken cognizance of the offence. The report of the Law Commission in this

regard was accordingly made and finally the provision in the form of Section 173(8) was introduced. The apprehension and criticism that the further investigation by the police would trench upon the proceedings before the court was observed to be really not of very great substance since whatever the police had to do, the final decision in the discretion in this regard to further action would always remain with Magistrate. This was found to be a sufficient safeguard against any excessive use or abuse of power of the police to make further investigation.

(23) In *Ramachandran Versus R.Udhayakumar and others, (2008) 5 SCC 413*, the Hon'ble Supreme Court reiterated the impermissibility of holding 'fresh investigation' and unequivocally held that 'further investigation' may be permissible but 'fresh investigation' is impermissible. Thus, no 'fresh investigation' is envisaged nor it can be permitted. It further explained and elaborated the word "*further*" to mean "*additional*", "*more*", or "*supplemental*". It also referred to Section 173(8), making it clear that 'further investigation' is permissible but 're-investigation' is prohibited. The Hon'ble Supreme Court also observed that the law does not mandate taking of '*prior permission from the Magistrate*' for 'further investigation' but carrying out a 'further investigation' even after filing of charge sheet is a statutory right of the police and 're-investigation' without prior permission is prohibited.

(24) As regards the submission of learned counsel for the petitioner that the police have over-reached the orders of the trial court and as such the arrest of the petitioner has resulted in violation of Article 21 of the Constitution of India, the observations made by Hon'ble Supreme Court in

Sidhartha Vashisht alias Manu Sharma Versus State (NCT of Delhi),

(2010) 6 SCC 1, needs to be kept in mind. The Apex Court held that every effort should be made to bring the guilty to law as nobody stands above law *de hors* his position and influence in the society. The courts are not to accept the report which is '*contra legem*' and can direct to conduct judicious and fair investigation. The investigation is to be conducted in a manner so as to draw a just balance between citizen's right under Articles 19 and 21 and expansive power of police to make investigation. It further held:-

“Where investigation is done under the garb of carrying out further investigation, but it does not further the cause or course of earlier investigation and takes the shape of fresh report or reports and is not confined to further evidence obtained during the investigation, then obviously the same may not validly pass the test of being a further investigation but would definitely take the shape of fresh or reinvestigation where different conclusions and finding are given either on the basis of same evidence or on the basis of some new evidence which may have surfaced.”

(25) The doctrine of estoppels or *res judicata*, as pleaded by the petitioner, also would also not come to the rescue of the petitioner as the basic ingredients for application of estoppels in a criminal trial is that the issue of fact should have been tried by a competent court on a former occasion and a finding of fact has been reached in favour of the accused but that too shall not be a bar to the trial and conviction of the accused for a different or distinct offence. Reliance has been placed on **Ladu Devi & Anr.** (supra) is wholly misplaced. Present case is totally distinct than the one relied upon since the no finding of fact has been returned in favour of the petitioner, more-so when the matter is still *sub judice* before the trial court.

Besides, the issue of summoning of the petitioner is also pending before this Court in CRR-1723-2022.

(26) In the present case, due to transfer of all the members of the earlier SIT, a fresh SIT under Randhir Singh, HPS, DSP, Shahabad was constituted and on investigation on 14.12.2022, no members of the accused party including the petitioner came present before the SIT and thereafter, upon verification by the SIT, the petitioner was found involved and as such they were arrested. Interestingly, it needs to be noticed that the matter, which was earlier investigated by the investigating agency at Ambala was transferred to Kurukshetra and an SIT was ordered to be constituted. Meaning thereby, the senior police officials might have been connected to the some 'facts' which were earlier 'missed' by the investigating agency at Ambala which led to ordering of 'further investigation' by the SIT. Fresh facts come to light which would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding.

(27) Petitioner cannot claim innocence, as a matter of right, as the trial is still on progress. In that eventuality, the police machinery is duty-bound to bring the facts to the notice of the court and bring the actual culprit to books. The petitioner, seemingly, exercised influence over the investigating agency at Ambala and earned innocence. Specific attribution of injury has been made against the petitioner is sufficient to make out prima facie opinion at this stage to summon him. However, that is a matter of trial for final adjudication about the guilt and this Court refrains from commenting

on merits of the case. Even otherwise, since the trial is still going on, the petitioner would be at liberty to prove his innocence by leading evidence, if any, which might have been taken into 'consideration' by the earlier investigating agency at Ambala.

(28) In the light of the above discussion, this Court is firm in its view that (i) the respondent-police authorities are well within their rights to order 'further investigation', after the final report has been filed before the Court in terms of Section 173(8), on the basis of further oral or documentary evidence and this power is vested with the Executive; (ii) 'further investigation' shall be in continuation of the previous investigation, therefore, it is to be understood and described as a 'further investigation' but such investigation is restricted to further oral and documentary evidence; (iii) the right of the police for 'further investigation' is not exhausted and would not be barred even where the Magistrate had taken cognizance of the offence and, it can exercise such a right, as often as, necessary when fresh information comes to light; (iv) the law does not mandate taking of prior permission from the Magistrate for 'further investigation', and (v) the report submitted pursuant to 'further investigation' would be supplementary to the initial report.

(29) For the reasons afore-stated and in view of the law laid down by the Hon'ble Supreme Court, referred to above, this Court does not find any ground, much less valid, to quash the order dated 11.12.2022 (Annexure P7) and Arrest Memo dated 10.12.2022 in FIR No.228 dated 30.03.2021 under

Sections 323/452/307/506/201/34 IPC, registered at Police Station City,
Yamuna Nagar.

(30) Accordingly, this petition is dismissed. No costs.

08.05.2023
V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No