

CRM-M No.23433 of 2014 (O&M)2024:PHHC:022979

CRM-M No.32515 of 2014 (O&M)2024:PHHC:022981

CRM-M No.38780 of 2014 (O&M) 12024:PHHC:022983

222 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 16.02.2024

CRM-M No.23433 of 2014 (O&M)

Dinesh Kurl..... Petitioner

versus

State of Punjab..... Respondent

CRM-M No.32515 of 2014 (O&M)

Anil Kumar..... Petitioner

versus

State of Punjab & anr..... Respondents

CRM-M No.38780 of 2014 (O&M)

Kulbir Singh..... Petitioner

versus

State of Punjab & anr..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Rajesh Bhathija, Advocate
for the petitioner (CRM-M-23433-2014).

Mr. Swaran Tiwana, Advocate
for the petitioner (CRM-M-32515-2014).

Mr. Mandeep Singh Sachdev, Advocate
for the petitioner (CRM-M-38780-2014).

Mr. Harish Mehla, AAG, Punjab.

CRM-M No.23433 of 2014 (O&M)	2024:PHHC:022979
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PANKAJ JAIN, J. (ORAL)

1 This order shall dispose off above mentioned three petitions.

2 ***CRM-M No.23433 of 2014*** has been filed for quashing of FIR No.262 dated 18.06.2012 registered for offences punishable under Sections 420/467/468/471/120-B IPC and Sections 3/4/12 of Passports Act at Police Station Civil Lines, Amritsar and police report filed under Section 173 Cr.P.C. and the order dated 22.01.2023 passed by trial Court dismissing the application of discharge of the petitioner. Further challenge is to the order dated 12.04.2014 passed by the revisional Court affirming the said order.

3 ***CRM-M No.32515 of 2014*** has been filed for quashing of FIR No.262 dated 18.06.2012 registered for offences punishable under Sections 420/467/468/471/120-B IPC and Sections 3/4/12 of Passports Act at Police Station Civil Lines, Amritsar and all other consequential proceedings arising therefrom and also consider inquiry report dated 22.07.2013.

4 ***CRM-M No.38780 of 2014*** has been filed for quashing of FIR No.262 dated 18.06.2012 registered for offences punishable under Sections 420/467/468/471/120-B IPC and Sections 3/4/12 of Passports Act at Police Station Civil Lines, Amritsar and for setting aside the order dated 22.01.2013 passed by Chief Judicial Magistrate, Amritsar whereby application filed by the prosecution for discharge of the petitioner was declined.

5 The petitioners in all the 3 petitions are accused and have been booked in the impugned FIR. Thus the present petitions are being

taken together for adjudication.

6 After FIR came into being report under Section 173 Cr.P.C. was filed. Subsequently supplementary challan was filed under Section 173(8) Cr.P.C. declaring Dinesh Kurl, Gagan Joshi and H.C. Kulbir Singh to be innocent.

7 Trial Court, however, without going into the merits of the material on the basis of which the accused were ordered to be declared innocent refused to consider supplementary report under Section 173(8) Cr.P.C. on the ground that the same has been furnished without seeking prior permission of the Court. The operative part of the impugned order dated 22.01.2013 reads as under :-

“xxxxx xxxxxx The investigating agency after submitting of challan has furnished supplementary report under Section 173(8) Cr.P.C. without prior permission of the Court which in view of the above circumstances would not be tenable. So, in view of the above said discussions, the application for discharge of the above said accused, so moved by the prosecution stands dismissed. Accused Dinesh Kumar who has been discharged from the custody, be summoned in the Court and notice to him be issued for 30.01.2013 and also for further proceedings.”

8 Petitioner-Dinesh Kurl preferred revision petition which stands dismissed by the Revisional Court. The revisional Court observed as under : -

“10. In the given circumstances, no fault can be found with the order passed by the learned trial court. If the order dated 11.09.2012 is taken as order of discharge, it was discharge from custody only and not in the case. In these

circumstances, judgment referred to by the counsel for the petitioner reported as Mohit @ Sonu and another v. State of U.P. and another 2013 (3) RCR (Criminal) 673 and Kavita Kumari v. State and others 2013(2) RCR (Criminal) 1002, have got no application to the facts of the present case. In case Kavita Kumar (supra), a person was charge sheeted but was discharged by the Court. It was held that he cannot be summoned under Section 319 of Code of Criminal Procedure. In Mohit @ Sonu (supra), application under Section 319 of Code of Criminal Procedure was rejected by Sessions Court which order was set aside by the Hon'ble High Court, which summoned the accused to face trial without notice and opportunity to those accused persons. Said order was set aside by Hon'ble Supreme Court. It was held that while considering the legality and propriety of the order passed under Section 319 of Code of Criminal Procedure, it is required to give notice and opportunity of hearing to the person in whose favour some right has accrued by virtue of the order passed by the Trial Court. In a judgment reported as Hardip Singh v. State of Punjab 2014(1) RCR (Criminal) 623, Hon'ble Supreme Court has held that a person who has been discharged can be summoned under Section 319 of Code of Criminal Procedure, provided from the evidence it appears that such person can be tried along with the accused already facing trial subject to the condition that requirements of section 300 and 398 of Code of Criminal Procedure have to be complied with before he can be summoned afresh.”

9 It is evident that the Revisional Court totally misdirected itself in distinguishing between discharge from custody only and the discharge from trial which was not the issue at all.

10 Be that as it may, the petitioners approached this Court under Section 482 Cr.P.C. aggrieved by the orders passed by the trial Court refusing to consider supplementary challan merely for the reason that no prior permission was sought from the Court for further investigation. Initially interim order was granted to the petitioners vide order dated 08.01.2014 passed in CRM-M-18746-2013 preferred by one of the accused namely Gagan Joshi which subsequently stands withdrawn. The said order was vacated vide order dated 07.10.2017. Thereafter the trial has proceeded and as per State by now 19, out of 22 cited witnesses already stand examined.

11 Learned counsel for the petitioners have relied upon judgments passed by Supreme Court in ***Rama Chaudhary Vs. State of Bihar, 2009(6) SCC 346, Samaj Parivartan Samudaya & ors. Vs. State of Karnataka & ors., 2012(7) SCC 407, State through Central Bureau of Investigation Vs. Hemendhra Reddy & another etc. 2023 (3) RCR (Criminal) 636 and Vinubhai Haribhai Malaviya & ors. Vs. State of Gujarat & anr., 2019 (17) SCC 1*** to submit that the observation recorded by the trial Court for non-consideration of supplementary challan under Section 173(8) Cr.P.C. is in teeth of the settled law. As per the provisions of the Code, there is no bar upon the investigating agency from conducting further investigation and submitting supplementary report under Section 173(8) Cr.P.C. after final report submitted under Section 173(2) Cr.P.C. stands accepted.

12 There is no dispute with the aforesaid legal proposition canvassed in the binding precedents. However, keeping in view the fact

that the report under Section 173(8) Cr.P.C. is always subject to acceptance or rejection by the concerned Court and the Court is not bound by the same, this Court finds that at this stage when the trial is almost nearing conclusion, it would not be in the interest of justice to put the clock behind and order retrial. However, in order to balance the scales, petitioners are granted liberty to assert their cause on the basis of further investigation report in form of supplementary challan presented by the investigating agency under Section 173(8) at an appropriate stage. The supplementary challan shall not be discarded by the trial Court only for the reasons that the same was without there being prior approval.

13 With the aforesaid directions, present petitions are disposed off.

14 Photocopy of this order be placed on the connected files.

(PANKAJ JAIN)
JUDGE

16.02.2024
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No