

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

267

CRM-M-15142-2023 (O&M)
Date of decision: 05.03.024

Kxxx ...Petitioner

Versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Ferry Sofat, Advocate
for the petitioner.

Mr. Arjun Lakhanpal, Addl. A.G., Haryana.

Mr. Amit Jhanji, Sr. Advocate with
Ms. Nandita Verma, Advocate,
Mr. Sumanjit Kaur, Advocate and
Mr. Vipin Raina, Advocate
for respondent No. 5.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed under Section 482 Cr.P.C. by the petitioner with a prayer for issuance of appropriate direction for constituting a Special Investigation Team (*for short 'SIT'*) headed by some senior police officer to conduct a fair and impartial de-novo investigation in FIR No. 224 dated 07.08.2022, registered under Sections 328, 376 of the IPC at Police Station Sector 40, Gurugram.
2. Brief facts of the case are that the aforementioned FIR was registered on the written complaint submitted by the petitioner/complainant 'K' (*name withheld*) alleging therein that in July, 2022, she had gone to Bangalore along with her mother and maternal grandmother to the house of her maternal uncle Ravi, who was a Pilot in an airlines. Her uncle used to visit

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Gurugram for his professional work. On 22.07.2022 also, he had visited Gurugram and as some articles for her grandmother, who was staying in Bangalore, were to be collected from her house, therefore, her uncle had told her that he would visit the complainant the next and they would have dinner together. On 23.07.2022, her uncle reached at her house at about 09:00 PM and they had two drinks at home. Thereafter, they went to 32 Milestone for dinner. While enjoying music, they again had a drink at Pianomen Bar and thereafter, her uncle got her served with a drink, on consuming which, she lost her consciousness and got up in the next morning. She was feeling dizziness and her clothes were changed. When the petitioner asked her uncle, who was sitting in living room, as to what had happened, he admitted giving her some intoxicating substance and committing wrong act with her. Out of fear, the petitioner did not disclose about the incident to anyone. While submitting complaint to the police with aforesaid allegations, the petitioner prayed for taking penal action against the accused.

3. After registration of the FIR, investigation proceedings were initiated. The accused filed an application under Section 438 Cr.P.C. seeking concession of anticipatory bail but the same was dismissed, vide order dated 09.09.2022, passed by the Additional Sessions Judge (FTC), Gurugram. Thereafter, the petitioner filed a petition before this Court, bearing **CRM-M-45251-2022**, whereby vide order dated 29.09.2022, his arrest was stayed and the Commissioner of Police, Gurugram was directed to depute a senior officer of the rank of a Deputy Commissioner of Police to investigate the matter. After completion of necessary investigation, a cancellation report was filed by the investigating agency in the present FIR on 12.12.2022 by

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stating that during investigation and on interrogating the complainant and the accused and other witnesses, no evidence had been found substantiating the allegations of the complainant. Feeling aggrieved with the filing of the cancellation report, the petitioner /complainant has filed the present petition seeking formation of an SIT to conduct a de novo investigation in the matter.

4. Learned counsel for the petitioner has argued that the accused, who is complainant's maternal uncle, had ravished her on 23.07.2022 after administering her some intoxicating substance by mixing the same in a drink while they were out for dinner. However, the investigating agency extended its undue favour to the accused by not arresting him and allowed him to influence the witnesses and tamper with the evidence. The petitioner had filed a representation to the Commissioner of Police on 29.08.2022 regarding failure of the police officials to arrest the accused and for conducting a fair investigation. The petitioner had also moved an application before the Court concerned at Gurugram for monitoring to gauge the investigation in the present FIR, which was fixed for 23.09.2022 and upon receiving the status report, the petitioner came to know that the investigating agency had concealed material evidence like call recording and Whatsapp messages, vide which, the accused had admitted the commission of aforesaid offence and the said evidence was provided to the police during recording of her statement under Section 164 Cr.P.C. The petitioner again moved a representation before the Commissioner of Police, Gurgaon about the aforesaid facts and requested to change the investigating officer. It is further submitted that after the direction of this Court, issued on 22.09.2022, DCP, East was assigned the case for investigation but he too did not conduct the investigation properly and on

07.12.2022, during the hearing of bail application before this Court, she came to know that the police is filing a cancellation report in the matter.

5. Learned counsel for the petitioner has further argued that the investigation of the matter has not been conducted in a fair and impartial manner and the matter needs a *de novo* investigation by some senior police officer. To fortify his argument, he has placed reliance upon ***Vinay Tyagi vs. Irshad Ali and Ors : (2013) 5 SCC 762***, wherein Hon'ble Supreme Court has held that it is the right of an suspect or any accused to have a just and fair investigation and trial. It is further held that where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the Courts would set aside such an investigation and direct fresh or de novo investigation and, if necessary, even by another independent investigating agency. Learned counsel for the petitioner has also relied upon a judgment rendered by Hon'ble Supreme Court in ***Neetu Kumar Nagaich vs. the State of Rajasthan and others***, Writ Petition (Crl.) No. 141 of 2020, decided on 16.09.2020, wherein it has been held that where the Court is satisfied that the investigation has not been conducted in a proper and objective manner, fresh investigation with the help of an independent agency can be considered to secure the ends of justice so that the truth is revealed. Learned counsel for the petitioner has also placed reliance upon ***Babubhai vs. State of Gujarat and others : 2010 (4) RCR (Criminal) 311, Dharam Pal vs. State of Haryana and others : 2016 (1) RCR (Criminal) 926, Samaj Parivartan Samudaya and others vs. State of Karnataka and others : (2012) 7 SCC 407 and Manu Sharma vs. State (NCT of Delh) : (2010) 6 SCC 1***. He has, thus, argued that the investigating agency, in connivance with the accused, has not conducted a fair and impartial

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investigation in the matter and has filed cancellation report and, therefore, urged for issuing appropriate direction for conducting a de novo investigation by a senior police officer.

6. *Per contra*, learned State counsel, assisted by learned counsel for respondent No.5/accused, has argued that the cancellation report has been filed by the police before the concerned Court after conducting a proper, fair and impartial investigation. During investigation, accused as well as the complainant were interrogated at length. Even the driver of the vehicle, in which, they had gone to Pianomen Bar was interrogated. The attendant of the table, on which they had dinner, was also joined in investigation besides other witnesses and interrogated by the police. CCTV footage of the restaurants was also procured, which revealed that at no point of time, the complainant was in unconscious condition. The complainant got her medical examination done herself within 37-38 hours of the alleged incident from Max Hospital in order to check the presence of drugs in her body but as per her own claim, the report was negative. The doctor concerned opined that no symptom of the presence of drugs was found in the complainant's blood and if someone consumes drugs and the test is within 24-48 hours, then the report would come positive. It is further submitted that after the direction given by this Court, the investigation of the matter was entrusted to Deputy Commissioner of Police, East, who is a senior police officer and there is no reason to doubt his honesty and integrity. Learned State counsel has argued that since no truth was found in the allegations levelled by the complainant during thorough investigation conducted by the police, a cancellation report had been filed and now, nothing else is required to be done in this matter. Learned State counsel has further

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argued that vide order dated 16.12.2022, passed by the JMIC, Gurugram, the petitioner had been given liberty to file protest petition and if she is not satisfied with the cancellation report, she can seek her alternative remedies in accordance with law. Hence, it is urged that the petition is liable to be dismissed.

7. I have heard learned counsel for the parties and have also gone through the material placed on record.

8. The petitioner, who is complainant of the aforementioned FIR, has alleged that accused, who happens to be her maternal uncle, had ravished her on 23.07.2022 after administering some drugs/intoxicating substance to her by mixing the same into her drink. The petitioner has alleged that the police has not conducted a proper, fair and impartial investigation in the matter and is praying for setting up a *de novo* investigation to be conducted by some senior police officer. Now, the question that arises before this Court is as to whether the investigation conducted by the police lacks fairness and the matter needs a *de novo* investigation under the supervision of a senior police officer? Before answering this question, it would be appropriate to have a glance on the legal position on this point. Undoubtedly, an investigation can be transferred from State investigating agency to any other independent agency to do the justice between the parties, to instill confidence in public mind, or where investigation by the police lacks credibility or it is necessary for having a fair, honest and complete investigation. Reference in this context can be made to ***Prof. K. V. Rajendran vs. Superintendent of Police, CBCID, South Zone, Chennai, (2013) 12 SCC 480***. However, it is also well established that the order giving direction to conduct investigation by SIT or

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CBI is not to be passed as a matter of routine but in a rarest of rare circumstance, such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instill confidence in the investigation or where the investigation is *prima facie* found to be tainted/biased.

9. Now in order to give answer to the aforementioned question, this Court feels the need to take a deep dive into the investigation conducted by the police. A perusal of cancellation report would reveal that the statements of the complainant under Sections 161 as well as 164 were recorded. Her medical examination was also conducted at General Hospital, Gurugram, as per which, the fact of rape could not be confirmed. The CCTV footage of the cameras installed at Pianomen Bar was also procured and the statements of concerned witnesses were also recorded. The recording of the conversation that had taken place between the accused and the complainant was also taken into possession in a pen drive. The statement of the driver of the vehicle, in which, accused and complainant had gone to aforesaid bar was also recorded and thereafter, the investigation was entrusted to Deputy Commissioner of Police, Gurugram. The place of occurrence was visited by the police and the staff therein as well as car driver were interrogated. The complainant and accused were joined in investigation and were interrogated at length. As per prosecution, during the course of investigation, it surfaced that on 23.07.2022, the accused had come to the house of complainant and they both had a drink and thereafter they moved to 32nd Milestone Pianomen Bar, where they had had two more drinks. Thereafter, they went to House of Celeste restaurant,

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where they had had two more drinks. Attendant Arjun Singh, who was serving at the table of complainant and accused, on inquiry, told that on the said night there was nobody in the restaurant who had fainted or had become unconscious and as a policy, they never serve more drinks to a customer, if he/she seems to be in highly intoxicated state. He further stated that the accused did not force the complainant to consume liquor and they both were having drinks willingly. Although the complainant had levelled allegations that the accused had mixed some intoxicating substance in her drink at Pianomen Bar and after consuming the same, she lost her consciousness and had woken up only on the next morning, whereas the CCTV footage of the Pianomen Bar reflected that the complainant was leaving the said bar in a full conscious state. Even the driver of the taxi, they boarded to go home, also stated that the complainant was in a conscious state and they both were having conversation normally. The tox screen test of the complainant also came negative, though it was conducted within the prescribed time limit. The doctor, who conducted the tox-screen test of the complainant, opined that there were no symptoms of drugs in the blood of complainant. Even as per medical report, it was opined that the fact of rape could not be confirmed. The incident is alleged to have taken place on 23.07.2022, however, the complainant took 15 days to report the matter to police on 07.08.2022. The reason that complainant assigned for this delay was that her mother and maternal grandmother were in Bangalore at the house of accused and she was concerned about their safety, whereas her mother and maternal grandmother had returned to Gurugram on 03.08.2022 only. Even the mother of the complainant was interrogated, who stated that she had no threat from the

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accused. The cancellation report is concluded by stating that since no evidence was found against the accused in order to prove the allegations of the complainant, the investigation agency had to file the cancellation report.

10. The core of the claim of the complainant for filing the present petition is that the investigating agency had not taken into consideration the Whatsapp messages, which were exchanged between her and accused, as well as recording of conversation between them. However, as per investigation conducted, the conversation was looked into by the police. The petitioner has placed on record screenshots of Whatsapp messages and a transcript of the conversation, which took between them on 30.07.2022, as Annexures P-2, a perusal of which, shows that at no point of time, the complainant was firm with her allegations that she was ravished by the accused. Even she seemed to be in a state of confusion as to what had happened with her. The prime allegation of the complainant is that the police has not investigated the matter properly and the same should be done afresh by a senior police officer. However, a perusal of the record shows that a detailed and thorough investigation had been conducted by the police and even at a stage, on the direction of this Court, a senior police officer of the rank of Deputy Commissioner of Police was entrusted with the investigation, who concluded to file the cancellation report in the matter. It is also relevant to recall here that on 16.12.2022, the complainant had taken liberty to file a protest petition before the Illaqua Magistrate against the cancellation report, however, on 22.03.2023, i.e. after a period of more than three months, she had filed the present petition with a prayer to form an SIT and conduct a *de novo* investigation.

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11. In view of the discussion as made above, no case is made out to issue any direction to the official respondents. Accordingly, the present petition is dismissed.

05.03.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>