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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

201

CRM-25537-2016 in/and
CRM-M No.28910 of 2016
Date of decision: 16.12.2024

Richa Gupta ... Petitioner

Vs.

The State of Haryana and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Suman Jain, Advocate,
for the applicant-petitioner.

Mr. Neeraj Poswal, AAG, Haryana,
for the respondent-State.

Mr. Nishant Raj, Advocate
for respondent No.2.

Mr. Susheel Gautam, Advocate,
for respondent No.3.

MANISHA BATRA, J. (Oral)

CRM-25537-2016

The application is allowed as prayed for subject to just exceptions.

Main Case

1. The instant petition has been filed under Section 482 of the Code of Criminal Procedure (For short "Cr.P.C.") seeking quashing of notices dated 26.07.2016 and 05.08.2016 (Annexures P-15 and P-16)

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respectively as issued by the Investigating Officer against the petitioner pertaining to FIR No.361 dated 11.08.2014 registered under Sections 406, 420, 467, 468, 471 and 120-B of IPC at Police Station Panchkula Sector-5, District Panchkula.

2. The factual matrix of the case as briefly given is that the aforementioned FIR was registered by the respondent No.2-complainant Rohan Gupta on the allegations that he was born out of the unison of Smt. Usha wife of Sh. N.D. Nirmal and Sh. Raj Kumar Gupta, father of the present petitioner. Sh. Raj Kumar Gupta owned a plot No.1292-P situated at Sector 21, Panchkula. After his death on 02.07.2012, Rajni Gupta, sister of the present petitioner had got transferred the share of respondent No.2 in the abovesaid plot in her name on the basis of some forged and fabricated documents though the respondent No.2 being one of the legal heirs of Sh. Raj Kumar Gupta was entitled to the same by way of inheritance. Ms. Rajni Gupta was nominated as an accused. She was extended benefit of anticipatory bail. Now challan has been presented against her in the abovementioned FIR.

3. It is submitted by learned counsel for the petitioner that infact the respondent No.2 is son of Smt. Usha and Sh. N.D. Nirmal and not of Sh. Raj Kumar Gupta who is real father of the petitioner as well as Ms. Rajni Gupta, accused in the aforementioned FIR and a false story has been propounded by respondent No.2 in this regard. It is submitted that

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the aforementioned FIR has been lodged only to harass and humiliate her family and on the behest of respondent No.3, who is a journalist and who is having a personal vendetta against the family of the petitioner. Civil litigation was initiated by Smt. Usha, mother of the respondent No.2 but the same was subsequently withdrawn. The respondent No.2 had even filed a complaint making similar allegations before the Court of Chief Judicial Magistrate, Panchkula but the said complaint was dismissed for non-prosecution vide order dated 23.07.2014 (Annexure P-7). It is submitted that now in connivance with the respondents No.2 and 3, the police officials are trying to implicate the petitioner in the aforementioned FIR and have issued the impugned notices, under the garb of further investigation. Prayer is accordingly made for quashing the impugned notices and for giving direction to the police officials to not to summon the petitioner for further investigation.

4. On behalf of respondent-State, reply by way of affidavit has been filed by Assistant Commissioner of Police, Panchkula taking preliminary objections that after registration of aforementioned FIR and on conclusion of investigation, challan was presented against Ms. Rajni Gupta, sister of the present petitioner as well as two more persons namely, Daljit Seth and N.K. Gupta. The respondent No.2-complainant filed another complaint before the higher authorities of the police and vide order dated 24.06.2016 passed by the Deputy Commissioner of

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Police, Panchkula, the matter was marked for further investigation. An application for seeking permission for this purpose has also been submitted and the Court of learned Chief Judicial Magistrate, Panchkula vide order dated 09.08.2016 had directed further investigation in this case. It is further submitted that since allegations have been levelled in the complaint filed by the respondent No.2 to the effect that the present petitioner along with Surya Gupta had connived with the accused Rajni Gupta for commission of offences of cheating and forgery and even the petitioner had appeared before the concerned Tehsildar at the time of registration of Will which was found to be forged, therefore, further investigation qua her complicity is to be conducted and it is for this purpose that notices have been issued to the petitioner. Application for grant of anticipatory bail as filed by her already stands dismissed. She is required to be joined into investigation for conducting thorough investigation in the matter. The concerned police officials are competent to conduct further investigation even without seeking permission of the Court and with these broad submissions, it is urged that no illegality has been committed by issuing the impugned notices and it is urged that the petition is liable to be dismissed.

5. The respondent No.2 filed reply submitting that the petitioner has concealed and suppressed important facts in connivance with her sisters. She got transferred his share in the property of Sh. Raj Kumar

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Gupta in the name of accused Rajni Gupta on the basis of forged and fabricated Will. She is required to be joined for the purpose of thorough investigation in the matter and it is for that purpose that notices have been issued to her. The investigating agency is competent to conduct further investigation in the matter and as such it is submitted that the petition being devoid of any merit is liable to be dismissed.

6. The respondent No.3 has filed a separate reply making prayer for dismissal of the petition alleging that he has been wrongly impleaded as a party to the present petition.

7. Keeping in view the contentions as raised by both the sides, the principal question of law that falls for consideration before this Court is whether the investigating agency was justified in issuing the impugned notices against the present petitioner and whether it can conduct further investigation irrespective of the fact that a chargesheet has already been submitted in the aforementioned FIR against sister of the petitioner namely, Rajni Gupta and two more persons.

8. So far as the right of the Investigating Officer to conduct further investigation in respect of some offence even after a report under Section 173 (2) of Cr.P.C. is forwarded to the concerned Court, is concerned, the position of law in this regard has been well settled by Hon'ble Apex Court by a catena of judgments. Before discussing the same, it would be relevant to refer to Section 173 of Cr.P.C. which states

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about the steps to be taken by the Investigating Officer after completion of investigation. As per this Section, the officer incharge of the police station is required to forward report under said section to the Magistrate empowered to take cognizance of the offence in prescribed form. Then 173 (8) of the Cr.P.C. deals with further investigation and supplementary report. This provision may be fragmented or dissected as under:-

(i) Further investigation can be done in respect of an offence wherein report under Section 173 (2) has been forwarded to the Magistrate; and

(ii) During further investigation, the officer in-charge has power to obtain further evidence, oral or documentary and to forward to the Magistrate a further report or reports regarding such evidence in the form prescribed.

9. So far as the term "further investigation" is concerned, its meaning has been described by Hon'ble Supreme Court in **Rama Chaudhary v. State of Bihar** reported in (2009) 6 SCC 346, wherein it was observed that further investigation within the meaning of provision of Section 173 (8) Cr.P.C. 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.

10. In **Hasanbhai Valibhai Qureshi v. State of Gujarat and**

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others reported in (2004) 5 SCC 347, the prime consideration for further investigation is to arrive at the truth and do real substantial justice. The hands of investigating agency for further investigation should not be tied down on the grounds of mere delay.

11. So far as the power of police to conduct further investigation is concerned, in **Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P. and others** reported in (1999) 5 SCC 740, it was observed by Hon'ble Supreme Court that power of police to conduct further investigation, after laying final report is recognized under Section 173 (8) of Cr.P.C. Even after the Court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. In **State of Andhra Pradesh v. A.S. Peter** reported in (2008) 2 SCC 383, it was observed by Hon'ble Supreme Court that carrying out of a further investigation even after filing of the charge-sheet is a statutory right of the police and the law even does not mandate the taking of prior permission from the Magistrate for further investigation. In **Vinay Tyagi v. Irshad Ali alias Deepak and others** reported in (2013) 5 SCC 762, it was observed that "further investigation" in terms of Section 173 (8) of Cr.P.C. can be made in a situation where the investigating officer obtains further oral or documentary evidence after the final report has been filed before the Court. A Magistrate has power to direct "further investigation"

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after filing of a police report. In **Bohatie Devi (Dead) through LRs v. State of U.P.**, AIRONLINE 2023 SC 362, the Apex Court has recognized the rights of the Investigating Officer to further investigate in respect of the offence, even after a report under Section 173 (2) of the Code was forwarded to the Magistrate and it was held that no prior approval of the Magistrate is required before taking up the further investigation. In **State through Central Bureau of Investigation v. Hemendra Reddy and another**, 2023 SCC OnLine SC 515, the Apex Court has held as under:-

"83. We may summarise our final conclusion as under:

(i) Even after the final report is laid before the Magistrate and is accepted, it is permissible for the investigating agency to carry out further investigation in the case. In other words, there is no bar against conducting further investigation under Section 173(8) of the CrPC after the final report submitted under Section 173(2) of the CrPC has been accepted.

(ii) Prior to carrying out further investigation under Section 173(8) of the CrPC it is not necessary that the order accepting the final report should be reviewed, recalled or quashed.

(iv) Further investigation is merely a continuation of the earlier investigation, hence it cannot be said that the accused are being subjected to investigation twice over. Moreover, investigation cannot be put at par with prosecution and punishment so as to fall within the ambit of Clause (2) of Article 20 of the Constitution. The principle of double jeopardy would, therefore, not be applicable to further investigation.

(v) There is nothing in the CrPC to suggest that the court is obliged to hear the accused while considering an application for further

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investigation under Section 173(8) of the CrPC."

12. In **Vinubhai Haribhai Malaviya v. State of Gujarat** reported in (2019) 17 SCC 1, the Hon'ble Supreme Court observed that a Magistrate has power to direct "further investigation" after filing of a police report in terms of Section 173 (2) & (6) of the Code. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. It was also clarified that the investigation spoken of in Section 156 (3) of the Code would embrace the entire process, which begins with the collection of evidence and continues until charges are framed by the Court, at which stage the trial can be said to have begun.

13. In **K. Vadivel vs K. Shanthi and others**, AIR 2024 Supreme Court 5065, the question which was required for adjudication was under what circumstances the power for further investigation could be invoked. Observations made by Hon'ble Supreme Court which are relevant for the purpose have been reproduced as under:-

"28. The legal position on the aspect of further investigation is fairly well settled. Under the Code of Criminal Procedure, 1973, pursuant to the recommendation of the Law Commission, in its 41st Report, Section 173(8) has been expressly engrafted setting at rest any controversy that may have obtained earlier. Section 173(8) reads as under:

"173(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence

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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).”

29. The question really is, under what circumstances could this power be invoked and whether on the facts of this case, is a further investigation warranted.

32. Ultimately, the contextual facts and the attendant circumstances have to be singularly evaluated and analyzed to decide the needfulness of further investigation or reinvestigation to unravel the truth and mete out justice to the parties (see Pooja Pal vs. Union of India & Ors. (2016) 3 SCC 135, para 83). As noticed in Ram Lal Narang vs. State (Delhi Administration) (1979) 2 SCC 322, (para 20) where fresh materials come to light which would implicate persons not previously accused or absolve persons already accused or where it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, it may be the duty of the investigating agency to investigate the genuineness of the same and submit a report to the court.

34. In Vinay Tyagi vs. Irshad Ali alias Deepak & Ors., (2013) 5 SCC 762, this Court dealing with the aspect of the power of Magistrate to direct further investigation had the following to say:

“41.The power of the Magistrate to direct “further investigation” is a significant power which has to be exercised sparingly, in exceptional cases and to achieve the ends of justice. To provide fair, proper and unquestionable investigation is the obligation of the

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investigating agency and the court in its supervisory capacity is required to ensure the same. Further investigation conducted under the orders of the court, including that of the Magistrate or by the police of its own accord and, for valid reasons, would lead to the filing of a supplementary report. Such supplementary report shall be dealt with as part of the primary report. This is clear from the fact that the provisions of Sections 173(3) to 173(6) would be applicable to such reports in terms of Section 173(8) of the Code.”

35. It is essential to note that this Court emphasized that though power to order further investigation is a significant power it has to be exercised sparingly and in exceptional cases and to achieve the ends of justice (see Devendra Nath Singh vs. State of Bihar & Ors., (2023) 1 SCC 48, para 45). Whether further investigation should or should not be ordered is within the discretion of the Magistrate and the said discretion is to be exercised on the facts of each case in accordance with law. This Court also held that in an appropriate case, where the High Court feels that the investigation is not in the proper direction and to do complete justice where the facts of the case so demand, the inherent powers under Section 482 Cr.P.C. could be exercised to direct further investigation or even reinvestigation. This Court reiterated the principle that even under Section 482 Cr.P.C. the wide powers are to be exercised fairly with circumspection and in exceptional cases.”

14. In view of the above discussion, it emerges that there is no dispute about the proposition that Sections 173 (8) of the Code of Criminal Procedure permits further investigation and even *de hors* any direction from the Court, it is open to the police to conduct proper investigation, even after the Court takes cognizance of any offence on the

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strength of a police report earlier submitted and as such, there is no hesitation to hold that the Investigating Officer has power to conduct further investigation in a case even after challan has been presented against an accused and even charges are framed and that power can be exercised while at its own or by seeking permission from the concerned Magistrate. In the instant case, the petitioner has challenged notices dated 26.07.2016 and 05.08.2016 whereby she had been directed to appear before the Investigating officer. The respondent No.1 has placed on record Anneuxre R-1 which is copy of order dated 09.08.2016 passed by Chief Judicial Magistrate, Panchkula showing that necessary permission had been granted to further investigate the case in respect of the role of the present petitioner in the alleged offence and the application moved by the Investigating Officer for further investigation had been allowed. This order might have been passed after issuance of the impugned notices, however, only because of that fact, it cannot be held that any illegality had been committed by the Investigating agency in issuance of the same since the Investigating Officer was competent to initiate further investigation even without seeking such permission. Benefit of the fact that challan against the accused Rajni Gupta and two others has been presented after conclusion of investigation against them, does not debar the police to conduct further investigation. Accordingly, this Court finds no reason to hold that the impugned notices are liable to be quashed or

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any direction is required to be issued for not calling upon the petitioner
for joining further investigation. In view of the discussion as made above,
finding no merit in the petition, the same is dismissed.

16.12.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes