



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-37794-2016 (O&M)

Reserved on: 28.11.2024

Pronounced on: 10.12.2024

Pardeep alias Pardeep Kumar

....Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Raj Kapoor, Advocate
for the petitioner.Mr. Ishan Khetarpal, Advocate
for Mr. Rakesh Nagpal, Advocate
for respondent No.2.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J.

1. The present petition has been preferred under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') seeking quashing of supplementary report under Section 173(8) Cr.P.C (Annexure P-6) as well as the order dated 26.09.2016 (Annexure P-7) passed by the learned Additional Sessions Judge, Kaithal whereby the objections of the petitioner against filing of a supplementary report under Section 173(8) Cr.P.C were dismissed, in the case stemming from FIR No.113 dated 22.07.2015 registered under Sections 354-A, 354-B IPC at Police Station Rajound.

FACTUAL BACKGROUND

2. Briefly, the facts, as alleged by the prosecution, are that the petitioner obtained the mobile number of the respondent No.2 and would talk to her in a filthy language. He would ask her to make physical relations with him

but she refused multiple times. Subsequently, the petitioner came to her house



on a motorcycle. He stepped into her bedroom and tried to rape her. The respondent No.2 threw chili powder on him and locked him in the room. She raised alarm causing the petitioner to run away through the roof. A crowd gathered, hearing her screams, and damaged the motorcycle of the petitioner, parked outside the house of the respondent No.2.

3. On completion of investigation, the final report under Section 173(2) Cr.P.C. was submitted on the basis of which, learned Judicial Magistrate Ist Class, Kaithal (hereinafter 'JMIC') framed charge under Section 354-A IPC. Thereafter, respondent No.2 moved an application dated 31.07.2015 before the National Scheduled Caste Commission seeking offences under Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter 'SC/ST Act') to be added to FIR(supra).

4. An application was moved by the police authorities dated 30.01.2016 wherein it was stated that an offence under the SC/ST Act is made out against the petitioner. However, the JMIC dismissed the same vide order dated 30.01.2016 (Annexure P-5). In spite of the dismissal, DSP Satish Gautam reinvestigated the matter and filed a supplementary report under Section 173(8) Cr.P.C. whereby offence under SC/ST Act was added. Since offence under the SC/ST Act was added, the matter was committed to the Court of Sessions. The petitioner raised objections to the addition of offence under the SC/ST Act by way of supplementary report, which were dismissed vide impugned order dated 26.09.2016 (Annexure P-7).

CONTENTIONS

5. Learned counsel for the petitioner inter alia contends that respondent No.2 had moved a representation before the National Scheduled Caste Commission with mala fide intention to get undue monetary benefit.



Moreover, the JMIC had already rejected the investigating agency's application to add offence under the SC/ST Act to the FIR(supra), after due application of judicial mind, vide order dated 30.01.2016 (Annexure P-5). As such, the investigating authority ought not to have reinvestigated the case, merely under pressure from the National Scheduled Caste Commission. Further, the investigating agency did not seek permission from the learned JMIC to further investigate into the matter and submit a supplementary report under Section 173(8) Cr.P.C. Even otherwise, no new material has come on the record to justify this exercise. The learned JMIC has erred in committing the case to the Court of Sessions on the basis of the supplementary report. However, the petitioner raised objections to the same before the learned Court of Sessions but the same was unfairly dismissed vide impugned order dated 26.09.2016 (Annexure P-7).

6. *Per contra* learned counsel for respondent No.2 submits that the petitioner has committed the alleged offence on respondent No.2 due to her caste identity. She only approached the National Scheduled Caste Commission when the police failed to investigate the matter properly at the first instance as they had not provided call details in the final report submitted by them. Therefore, the offence under SC/ST Act has been correctly added to the FIR(supra). Moreover, prior permission of the Magistrate is not needed for the investigating agency to conduct further investigation and file a supplementary report under Section 173(8) Cr.P.C. Moreover, the supplementary report was presented in continuance of the earlier investigation and did not wipe out its findings. Learned counsel places reliance on the judgments rendered by the Hon'ble Supreme Court in ***Rama Chaudhary vs. State of Bihar 2009 AIR SC 2308*** and ***Ram Lal Narang vs. State (Delhi Admn.) (1979) 2 SCC 322***.



7. Learned State counsel submits that upon further investigation, Call Detail Record (CDR) of the petitioner and respondent No.2 was obtained, which resulted in addition of the offence under Section SC/ST Act to FIR(supra). The matter was correctly committed to the Court of Sessions as the offences under the SC/ST Act are exclusively triable by it.

OBSERVATIONS AND ANALYSIS

8. Having heard the learned counsel for the parties and after perusing the record with their able assistance, it transpires that offence under the SC/ST Act was added to the proceedings upon submission of a supplementary report (Annexure P-6). Consequently, the matter was committed to the Court of Sessions as the JMFC did not wield the jurisdiction to try offences under the SC/ST Act.

9. A proper adjudication of the case at hand requires a study of Section 173(8) Cr.P.C., which reads as follows:

Section 173- Report of police officer on completion of investigation.

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(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).

It is trite law that the concepts of ‘further investigation’ and ‘reinvestigation’ are disparate and must not be interpreted as synchronous. The findings of an earlier investigation cannot be set aside under the guise of further investigation. Section 173(8) Cr.P.C. only relates to continuation of



investigation when new material comes to the fore. A two Judge bench of the Hon'ble Supreme Court in ***Ramchandran vs. R. Udhayakumar and Others*** (2008) 5 SCC 413, speaking through Dr. Justice Arijit Pasayat, made the following observations:

"6. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident 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 or re-investigation. This was highlighted by this Court in K. Chandrasekhar v. State of Kerala and Ors., 1998(2) RCR (Criminal) 719 : (1998(5) SCC 223). It was, inter alia, observed as follows :

"24. The dictionary meaning of "further" (when used as an adjective) is "additional; more; 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. In drawing this conclusion we have also drawn inspiration from the fact that sub-section (8) clearly envisages that on completion of further investigation the investigating agency has to forward to the Magistrate a "further" report or reports - and not fresh report or reports - regarding the "further" evidence obtained during such investigation."

10. Additionally, a reading of the abovementioned provision indicates that the investigating agency must provide a report indicating additional evidence gathered while undertaking further investigation. Nowhere does it stipulate that the investigating agency can only embark on this task on prior permission of the Magistrate. In fact, a two Judge bench of the Hon'ble Supreme Court in ***State of Andhra Pradesh vs. A.S. Peter reported in*** (2008) 2 SCC 383, speaking through Justice S.B. Sinha, has categorically observed as follows:

"6. Indisputably, the law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out of a further investigation even after filing of the charge-sheet is a statutory right of the police. A distinction also exists between further investigation and



reinvestigation. Whereas reinvestigation without prior permission is necessarily forbidden, further investigation is not."

11. Further still, a two Judge bench of the Hon'ble Supreme Court in ***State through Central Bureau of Investigation vs. Hemendhra Reddy & Another. Etc. 2023(3) R.C.R.(Criminal) 636*** has categorically held that further investigation can be conducted even if the concerned Court has accepted the final report under Section 173(2). Speaking through Justice J.B. Pardiwala, the following conclusions were drawn:

"7. 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, 1973 after the final report submitted under section 173(2) of the CrPC, 1973 has been accepted.

(ii) Prior to carrying out further investigation under section 173(8) of the CrPC, 1973 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 investigation under section 173(8) of the CrPC, 1973."

12. Be that as it may, a perusal of the supplementary report under Section 173(8) Cr.P.C. (Annexure P-6) clearly indicates that the offence under the SC/ST Act was added under the guise of further investigation. No fresh material had come to the fore that would indicate the need for further investigation. Merely obtaining the call records does not necessitate addition of



the offence under the SC/ST Act as nothing in the supplementary report (Annexure P-6) indicates existence of any ingredients of the alleged offence. In fact, it appears that the facts already on the record have been mechanically reiterated. While it is clear that it is the statutory right of the police authorities to carry out further investigation, the same cannot be exercised to merely add or delete offences on the basis of regurgitation of the same facts and evidence. Moreover, the police authorities did not challenge the order dated 30.01.2016 (Annexure P-5) passed by the learned JMIC whereby the application moved by DSP, Kaithal seeking permission to undertake further investigation was dismissed, at any stage.

13. Further, a two Judge bench of the Hon'ble Supreme Court in ***Vinay Tyagi vs. Irshad Ali @ Deepak and others (2013) 5 SCC 762*** has opined that while the police has the right to carry out further investigation, it is a matter of procedural propriety to seek permission for the same from the concerned Court. Speaking through Justice Swatenter Kumar, the following was observed:

“40.6. **It has been a procedure of propriety that the police has to seek permission of the court to continue “further investigation” and file supplementary charge-sheet. This approach has been approved by this Court in a number of judgments. This as such would support the view that we are taking in the present case.**

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49. Now, we may examine another significant aspect which is how the provisions of Section 173(8) have been understood and applied by the courts and investigating agencies. **It is true that though there is no specific requirement in the provisions of Section 173(8) of the Code to conduct 'further investigation' or file supplementary report with the leave of the Court, the investigating agencies have not only understood but also adopted it as a legal practice to seek permission of the courts to conduct 'further investigation' and file 'supplementary report' with the leave of the court.** The courts, in some of the decisions, have also taken a similar view. The requirement of seeking prior leave of the Court to conduct 'further investigation' and/or to file a 'supplementary report' will have to be read into, and is a necessary implication of the provisions of Section 173(8) of the Code. The doctrine of contemporanea expositio will



fully come to the aid of such interpretation as the matters which are understood and implemented for a long time, and such practice that is supported by law should be accepted as part of the interpretative process.

50. *Such a view can be supported from two different points of view. Firstly, through the doctrine of precedence, as afore-noticed, since quite often the courts have taken such a view, and, secondly, the investigating agencies which have also so understood and applied the principle. The matters which are understood and implemented as a legal practice and are not opposed to the basic rule of law would be good practice and such interpretation would be permissible with the aid of doctrine of contemporanea expositio. **Even otherwise, to seek such leave of the court would meet the ends of justice and also provide adequate safeguard against a suspect/accused.***”(emphasis added)

14. Further still, a three Judge bench of the Hon'ble Supreme Court in ***Vinubhai Haribhai Malaviya and others vs. State of Gujarat and another*** **2019 AIR Supreme Court 5233**, speaking through Justice R.F. Nariman, has observed as follows:

“38. ...To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h) and section 173(8) CrPC, 1973 as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. 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) 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.”

CONCLUSION

15. A perusal of the record indicates that the investigating agency has merely reiterated the circumstances as spelt out in the final report and presented



a supplementary report (Annexure P-6) without introducing any new facts, evidence or conducting any further investigation. In view of the discussion above, the following conclusions are drawn:

- (i) The provision of Section 173(8) Cr.P.C. cannot be invoked without there being any fresh material available before the investigating agency.
- (ii) The obje­cy and purpose of Section 173(8) Cr.P.C. is not to mechanically add or delete offences by merely reiterating the facts already available on the record or by presenting them with a new twist. The concerned Court is fully competent to frame charges based on the *prima facie* case made out against the accused, on the basis of material available on the record.
- (iii) It is a matter of procedural propriety to seek permission of the concerned Court before embarking on further investigation, in order to ensure free and fair investigation, which is a cherished fundamental right under Article 21 of the Constitution of India, especially since the trial had commenced.

16. Accordingly, the present petition is allowed and the supplementary report under Section 173(8) Cr.P.C (Annexure P-6) as well as the order dated 26.09.2016 (Annexure P-7) passed by the learned Additional Sessions Judge, Kaithal are hereby quashed.

17. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

10.12.2024
Neha

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