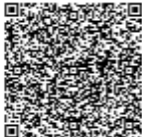


CRM-M-27162-2020 (O&M)

1 2024:PHHC:086659



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27162-2020 (O&M)
Reserved on: 05.04.2024
Date of Pronouncement:- 15.07.2024

SANDEEP SHARMA
.....PETITIONER

Vs.

STATE OF HARYANA AND OTHERS
.....RESPONDENTS

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN
(As on the reserved date)

Present: Mr. Amar Vivek, Mr. Ghanshyam Meena and
Ms. Richa Sharma, Advocates,
for the petitioner.

Mr. Kirpal Singh Thakur, A.A.G., Haryana.

HARPREET KAUR JEEWAN, J.

1. The petitioner by way of filing the present petition under Section 482 Cr.P.C. is seeking issuance of appropriate directions for conducting further or re-investigation in case FIR No. 128/2020, dated 03.05.2020, under Sections 498-A, 302 and 201 of the Indian Penal Code (for short '*the IPC*'), registered at Police Station Old Faridabad, District Faridabad (Haryana).

2. As per the petitioner, the marriage between the sister of the petitioner namely Shobhna Sharma @ Shobha Rani (hereinafter referred to as "the deceased") and the accused Rishi Raj (hereinafter referred to as "the husband") was solemnized on 15.04.2004. The husband and in-laws of

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Shobhna Sharma @ Shobha Rani were not satisfied with the dowry given at the time of marriage and they had been continuously harassing Shobhna Sharma @ Shobha Rani for bringing insufficient dowry. On 22.03.2005, a daughter and on 11.01.2007, a son (hereinafter referred to as “the Children”) were born out of the wedlock.

2.1 It is further alleged by the petitioner that on the evening of 02.05.2020, the petitioner learnt that the husband and his other family members had inflicted blows and badly injured the victim in the presence of her minor children. On the next morning, the minor Children found that the legs of their mother were tied, her face was badly swollen, she was motionless and all male members of the family and other members were taking away her body for cremation.

2.2 Petitioner has further alleged that on 03.05.2020, the accused persons informed the children that their mother had expired due to heart attack. All the accused persons named in the FIR were present in the house but they hastily, stealthily and hurriedly took the deceased in the cremation ground leaving the children behind and destroyed the vital evidence. On 03.05.2020 the daughter of the deceased wanted to inform the petitioner but she was not allowed to make a phone call and rather she was locked in a room by her aunt.

2.3 The petitioner has alleged that her sister was murdered by her husband and his family members and they never wanted anyone to know about the same till the body was disposed of. After disposing of the body, the petitioner was informed about the death of her sister on his mobile that his sister had died owing to a heart attack but the factum of strangulation



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and cremation of the dead body having been already held was withheld by the accused. As such, the petitioner lodged a complaint to the SHO Old Faridabad, Haryana, upon which the present FIR was registered.

2.4 The petitioner has further alleged that during the course of investigation the police got recorded the statements of both the children under Section 164 of the Code of Criminal Procedure, 1973 (for short '*the Cr.P.C.*').

2.5 The petitioner has alleged that on 04.05.2020, the husband was arrested and on the same day his confessional statement was recorded (Annexure P-4) wherein apart from the other details, he allegedly stated that with an intention to kill, he had strangled his wife and she immediately became unconscious. He further allegedly stated that during the lock-down, he immediately cremated the body so that nobody comes to know about the occurrence.

2.6 It is further alleged that both the children also suffered a statement before the Child Welfare Committee, which was recorded on 26.05.2020 (Annexure P-6).

2.7 It is further the case of the petitioner that the investigating agency completely discarded the statement of the minor children and hurriedly concluded the investigation by giving clean chit to all the relatives of the husband of the deceased and submitted the final report ('*challan*') (Annexure P-2) under Section 173 Cr.P.C. in the Court only against the accused Rishi Raj, under Sections 302, 201 and 498-A IPC but no action was taken against the other accused namely Babu Ram (father-in-law), Santosh (mother-in-law), Dayawati ('*Bua Saas*'), Ajay Sharma and

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Rajesh Sharma (brother-in-law), Seema Sharma, (so called *sister in law*) of the deceased, who were mentioned in the statements of the children recorded under Section 164 Cr.P.C.

2.8 It is further the case of the petitioner that he gave a representation, dated 13.07.2020 to the Commissioner of Police, Faridabad (Annexure P-7) but proper investigation was not conducted and final report ('*challan*') has been presented in a haste exonerating the relatives of the husband of the deceased.

3. A status report, dated 26.10.2020 was filed by way of an affidavit of Sh. O.P. Singh, the Commissioner of Police, Faridabad. It is alleged that on 04.05.2020 the Duty Magistrate and the FSL team, visited the place of occurrence where dead body of the deceased was disposed of. Accused Rishi Raj (husband of the deceased) was joined in the investigation and subsequently, he was arrested on 04.05.2020. On the same day, he suffered a disclosure statement to the effect that his wife made his life hell and with an intention to kill her, he strangled his wife. However, he gave information to her parents and other relatives that she has suffered heart attack. It is further alleged that verification of the facts from both the parties, Ram Babu, Santosh, Dayawati, Ajay Sharma, Sbobha Sharma, Rajesh Sharma and Seema (the relatives of the husband of the deceased) were found innocent and accordingly, Sections 498-A and 34 IPC were deleted. It is also confirmed that on 26.05.2020, the statements of Drishti and Sidhant (the children) were recorded before the Child Welfare Committee. It is contended that during the investigation it was found that accused Rishi Raj gave information to his in-laws only after cremation of his wife. It is further submitted that Ajay and Rajesh (elder



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brother of the accused) are residing separately at Purani Chungi, Old Faridabad and Kot Mohalla, respectively. It was also confirmed that on 22.06.2020, the final report ('*challan*') was submitted against accused Rishi Raj under the provisiosn of Section 173 Cr.P.C. under Sections 302, 498-A and 201 IPC.

4. On 02.11.2022, the following order was passed by the co-ordinate Bench of this Court:-

“Status report by way of an affidavit of Mr. O.P. Singh, IPS, Commissioner of Police, Faridabad, has been filed in pursuance to the order dated 10.09.2020 of this Court. Same is taken on record, subject to all just exceptions. Office to tag the same at appropriate place.

A perusal of the affidavit so filed by the Commissioner of Police, Faridabad, leaves much to be desired and is far from satisfactory. The officer seems to have viewed the matter in a very casual manner.

In paragraph 6 of the affidavit, it has been stated that pursuant to the statements recorded under Section 164 Cr.P.C. of Drishti (daughter of the deceased) and Sidhant (son of the deceased) on 08th May, 2020, both the parties were produced before the Assistant Commissioner of Police, Old Faridabad and after 'verification of facts' from the parties, Ram Babu, Santosh, Dayawati, Ajay Sharma, Shobha Sharma, Rajesh Sharma and Seems (in-laws) were found innocent and accordingly, Sections 498-A and 34 IPC were deleted.

The Commissioner of Police, Faridabad, shall file a fresh and detailed affidavit, not only with respect to the investigation carried out pursuant to the registration of FIR No. 128, dated 03.05.2020, under Sections 498-A, 302, 201, 34 IPC, but also detail “the verification of facts”, which led to the investigating agency declaring the aforementioned persons innocent, more so, in the light of the statements of



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both the children of the deceased recorded under Section 164 Cr.P.C., which prima facie reveals a totally contrary story with respect to the sequence of events, not only, qua the death of their mother (deceased), but also the conduct of the other accused, who were allegedly assigned a role in the crime in question.

Adjourned to 16.11.2020.”

5. Thereafter, a detailed para-wise reply, dated 12.11.2020, was filed again by way of an affidavit of Sh. O.P. Singh, the Commissioner of Police, Faridabad. In addition to the facts submitted in the status report, dated 26.10.2020; it was submitted that on 07.05.2020, Dr. Anil Gupta, was joined into the investigation on 07.05.2020. As per his statement, he received the information on 03.05.2020 at about 10:30 a.m. from Ajay to come to the house quickly as his brother's wife had suffered a heart attack. When he reached the house of accused Rishi Raj, where Shobhna (deceased) was kept lying on the ground near the stairs, he checked her and there was no heartbeat. There was no fresh injury mark on her face. Recording of the statements of the children under Section 164 Cr.P.C. and also by the Child Welfare Committee were confirmed. It was further alleged that the facts were verified from both the parties by the investigating officer and he did not find any incriminating evidence against the family members of the accused Rishi Raj. The statement of both the parties were recorded and the statement of Manoj, son of Shakti Sharma; Narain Dass son of Sh. Moolchand; Bhoop Singh son of Sh. Hetiram and Sanjay Mangla (independent witnesses) were also recorded. Ajay (brother of the husband of the deceased) is residing separately at Faridbad from the last four years and the other brother Rakesh was also found residing in a

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separate house at Faridabad for the last 11 years. It was concluded that the accused Rishi Raj mis-guided his family members by saying that Shobhna Sharma @ Shobha Rani (his wife) has died due to a heart attack and gave information to his in-laws but they could not attend the cremation due to lock-down. Consequently to the said verification, relatives of the husband of the deceased were found innocent and the offence under Section 498-A read with Section 34 IPC was deleted. It is further alleged that from the verification, it was found that on the day of incident, i.e. 03.05.2020 the accused Rishi Raj made a call to his brother-in-law Sandeep at 13:57:00 and his sister-in-law Vandana @ Rekha at 13:57:50 from his mobile numbers 8510067006 and 9310337309.

5.1 Another status report, dated 07.12.2023, by way of an affidavit of Sh. Monica, Assistant Commissioner of Police, Women Safety, Faridabad, was submitted with almost similar contentions. It was submitted that in the verification made by the Assistant Commissioner of Police, Crime Against Women, the family members of the accused Rishi Raj were found innocent as nothing incriminating was found against them. On completion of the investigation, the final report ('*challan*') was prepared against the accused Rishi Raj and names of the innocent persons were kept in column No. 2 and the final report ('*challan*') was presented before the Area Magistrate on 22.06.2020. Charges were framed on 29.09.2020 under Sections 498-A, 302 and 301 IPC. On 08.09.2021, the complainant filed an application under Section 319 Cr.P.C. The same was dismissed, vide order dated 14.12.2021, passed by learned Additional Sessions Judge, Faridabad. Para-wise reply was also submitted.



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6. Learned counsel for the petitioner *inter alia* contends that the police has conducted a tainted and biased investigation. The statements of both the minor children recorded under Section 164 Cr.P.C. have been discarded by the investigating agency while exonerating the relatives of the husband of the deceased. The dead body was cremated without giving any information to the parents of the deceased with a view to conceal the material evidence. Therefore, a prayer has been made for issuance of a direction to conduct re-investigation by an independent and impartial agency like Crime Branch.

6.1 Counsel for the petitioner has supplied to the Court, copies of the various '*zimini*' interim orders passed by the learned Additional Sessions Judge Faridabad, w.e.f. 11.09.2020 to 08.01.2024. The same are taken on record.

7. On the other hand, learned counsel for the State submits that the matter has been properly investigated and the steps in the investigating have been detailed in the aforesaid status report.

8. I have heard the learned counsel for the parties and have gone through the paper-book carefully.

9. Keeping in view the facts of the case, it has been noticed that in the First Information Report (Annexure P-1), the petitioner-first informant has specifically named the husband of the deceased, as well as his other relatives as accused. He has categorically alleged that his sister was killed by her husband, mother-in-law, father-in-law, Babu Ram, parental aunt of her husband, husband's elder brothers and their wives and after committing her murder, they have cremated the body without



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informing them about her death. He has further alleged that upon receiving the information about the death of her sister, the husband of the deceased had tried to mislead the complainant by stating that the deceased died owing to heart attack and they had performed last rights of the deceased. It has been further noticed that in the final report ('*challan*') under Section 173 Cr.P.C. presented by the investigating officer, the investigating agency has made a reference about the statement of the children recorded on 08.05.2020 under Section 164 Cr.P.C. Even in the status report, dated 07.12.2023, this fact has been confirmed that the statement of the minor children was recorded under Section 164 Cr.P.C. on 08.05.2020. In the status report, this fact has also been confirmed that on 26.05.2020, the statements of the children of the deceased were recorded before the Child Welfare Committee. The relevant portion of the statement of the daughter of the deceased, who was 15 years of age at the time of occurrence, was recorded on 08.05.2021, is given as under:-

“Q Tell me what is the matter?”

Ans. Me, my brother Siddhant, PAPA and mother Shobha @ Shobhna are residing in joint family in Old Faridabad. In our home writ of my father's aunt (Bua) prevails because property belongs to her. But my mother was not looking for anything and therefore she never tried to indulge in her flattery like others. Owing to this there used to be bickering in home. In the evening of 02.05.2020 there had been a fight at home. My father, both uncles [Taya ji's] Ajay and Rajesh, aunties [Tal's] Shobha Seema and aunt Dayawati, grand-father& grandmother and Shubham had fought with my mother. Thereafter we went to sleep.



When I woke up in the morning I saw that my mother's face had swollen, eyes had blue [marks] [turned blue]. All male members of our family Le. my both [Tayas] uncles, Papa, Shubham, Manoj were taking my mother hastily and hurriedly from the back door of the house to the cremation ground. My aunt [Tai] caught hold of me and thereafter locked me in the room. She did not allow me to call my maternal uncle even. Thereafter they came back from cremation ground and had their lunch. After meals, my elder Tayaji informed my maternal uncle. All these persons in collusion with each other have killed my mother.

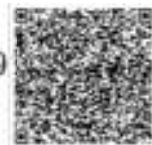
Q. Want to say something more? Ans. No.”

9.1 Similarly, the statement of the son of the deceased, who was 13 years of age at the time of the alleged occurrence, was recorded by the Judicial Magistrate First Class, Faridabad, reads as under:-

“In Camera

Q. Tell me what is the matter?

Ans. Our family is a joint family. All used to fight with my mother. My mother was very good. In the evening of 02.05.2020 also, my Papa, both uncles Ajay and Rajesh, aunties Shobha& Seema and aunt Dayawati, grand-father& grandmother and Shubham had a scuffle with my mother. When I woke up in the morning I saw that my mother was dead. Her legs were tied and her face was swollen, eyes were having dark circles. There were marks on her forehead. My Papa, both uncle. Shubham, Manoj were taking my mother hurriedly from the back door to cremation ground. I went to cremation ground with them. My sister had been caught and restrained at home. I was not allowed to make a phone call to my maternal uncle. Manoj brought the articles for last rituals for bier and all burnt my mother. My papa and uncle also refused to collect the ashes of my mother. Thereafter we came back at home and had



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lunch and after meals my Tayaji, uncle called my maternal uncle. All these persons in collusion with each other have killed my mother.

Q. Want to say something more? Ans. No.”

9.2 A joint statement of both the children was recorded before the Child Welfare Committee (Annexure P-5) on 26.05.2020. The relevant portion thereof reads as under:-

XXXX

XXXX

XXXX

XXXX

“What you want to say?

In the evening of 2nd, me my sister had food and went to sleep mom and papa didn't take food because they had a fight. I had Chapati which was cooked in the morning. The reason of fight was that my father's aunt didn't like my mother as my mother was not doing according to her. My both aunts [Tai's] used to harass my mother. In the night of 2nd papa hit me and my mother because I was trying to save her. Both uncles [Tayas] used to abuse my mother and had abused her before her death. Father's aunt also used to abuse to my mother. All persons fought with my mother a night prior to her death. At about 11 am when woke up I found that my mother was laid down in the courtyard. Lot of people were there. On seeing me my aunt [Tai] Seema said Siddhant is here. I woke up my sister Drishti and both went near to mummy. Her face wrapped in red cloth. My aunt Seema and uncle Ajay dragged me for changing clothes. My sister was shown mother's face by some-one, her face was swollen. Thereafter, she was taken to cremation ground from back door. The hearse van came to our garage and mummy was taken away in it. At that time the entire family my both uncle & aunts, Bua, Shubham, Priyam, Manoj grand parents and papa were present. I saw face of my mother in the cremation ground and it was swollen. Me and my father perfumed her last rites. My uncle has even refused to accept the leftover bones from Pandit Ji in the cremation ground.



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Want to go to the home of Mama & Mami. (maternal uncle and aunt)”

10. It has further been observed that both the children have been mentioned in the list of witnesses at serial Nos. 2 and 3 in the report presented before the learned trial Court under Section 173 Cr.P.C. (Annexure P-2). As per the various orders passed by the learned trial Court, the children were summoned as prosecution witnesses. The statement of PW-Siddhant (son of the deceased) was recorded on 11.03.2021. As per the interim order passed by the trial Court on 08.09.2021, it has been observed that though PW-Drishti (daughter of the deceased) was present in Court but the Public Prosecutor has given up the said witness by making a statement, despite the fact that the said witness is a material witness as she was residing along with her mother at the time of her death and also in view of the fact that her statement was recorded during the investigation under Section 164 Cr.P.C.

11. The investigating agency has arrested the husband of the deceased (Rishi Raj) and alleged to have recorded his confessional statement (Annexure P-4), whereby he has allegedly admitted his guilt and further stated that he informed his in-laws and his sister-in-law Rekha after cremation of his wife and told that the deceased had suffered a heart attack and had died. He further identified the room in the house where he allegedly strangled his wife. The admissibility and the illegality of the statement is though a matter of trial, however, keeping in view the provisions of Section 26 of the Indian Evidence Act, 1872, a confession made by the accused before the investigating officer who was a police officer is inadmissible into evidence. However, the investigating officer did



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not make any effort for bringing the accused Rishi Raj before the Area Magistrate for recording of his confessional statement under Section 164 Cr.P.C.

12. Keeping in view the facts and circumstances on record, this Court is of the considered opinion that the investigation has not been properly conducted before submitting the final report (‘challan’) under the provisions of Section 173 Cr.P.C.

13. The Hon’ble Apex Court in The State through Central Bureau of Investigation vs. Hemendhra Reddy and another 2023 (3) RCR (Criminal) 636, has observed that even after the final report has been (‘challan’) presented before the Magistrate and it has been accepted, it is permissible for the investigating agency to carry out further investigation in the case and there is no bar against conducting further investigation under Section 173 (8) of the Code of Criminal Procedure, 1973, after the final report (‘challan’) has been submitted under Section 173 (2) of the Cr.PC. has been accepted. The conclusion summarized by Hon’ble the Apex Court in the aforesaid decision reads as under:-

XXXX XXXX XXXX XXXX

“77. 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 Cr.P.C 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.*

XXXX XXXX XXXX XXXX

14. In Dharam Pal vs. State of Haryana and others (2016) 4 SCC 160, in a matter relating to the murder of the wife of the appellant, where cause of death was due to strangulation coupled with head injury which was sufficient to cause death in ordinary course, the Hon’ble Apex Court considered a question as to “*whether such a situation calls for issuance of direction for transfer of the investigation to the CBI?*”, where investigation was complete and some witnesses were also recorded. The Hon’ble Apex Court held that the Constitution Courts can direct for further investigation or investigation by some other investigating agency. The purpose is that there has to be a fair investigation and a fair trial. The observations of the Hon’ble Apex Court are as under:-



XXXX XXXX XXXX XXXX

“20. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.

21. We may further elucidate. The power to order fresh, de-novo or re-investigation being vested with the Constitutional Courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic setup has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that Sun rises and Sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a Court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is



indentation or concavity in the investigation, can the ‘faith’ in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a Constitutional Court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the “tour de force” of the prosecution and if we allow ourselves to say so it has become “id’ee fixe” but in our view the imperium of the Constitutional Courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one’s wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbor the feeling that he is an “orphan under law”.

XXXX XXXX XXXX XXXX

15. In view of the facts and circumstances of the present case and in view of the ratio of the aforesaid decision, this Court is of the considered opinion that proper investigation has not been conducted in this case and even the prosecution agency is trying to shut the material evidence by not examining the material witnesses. As such, to ensure proper investigation and for ends of justice, further investigation is required to be conducted in this case.

16. Accordingly, the present petition is allowed and it is hereby ordered that a Special Investigation Team headed by an officer of the rank of the Additional Director General of Police be constituted to conduct further investigation in this case. Before parting with, it is important to



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consider as to which report will be considered by the trial Court.

17. The following question of law was framed by the Hon'ble Apex Court for decision in Vinay Tyagi vs. Irshad Ali @ Deepak and others 2013 (2) RCR (Criminal) 197:-

“Question No. 1: Whether in exercise of its power under Section 173 of the Code of Criminal Procedure, 1973 (for short ‘the Code’), the trial Court has the jurisdiction to ignore anyone of the reports, where there are two reports by the same or different investigating agencies in furtherance of the orders of a Court? If so, to what effect?”

17.1 The Hon'ble Apex Court while dealing with the said question observed that the trial Court has to consider the entire record including both the reports. The observations made by the Hon'ble Apex Court in paragraph No. 51 reads as under:-

“51. In our considered view, the trial Court has to consider the entire record, including both the Delhi Police Report filed under Section 173 (2) of the Code, as well as the Closure Report filed by the CBI and the documents filed along with these reports”

18. Similarly, the Hon'ble Apex Court in Luckose Zachariah @ Zak Nedumchira Luke and others vs. Joseph Joseph and others 2022 (2) RCR (Criminal) 260, also observed that the Magistrate has to take due regard to both the reports, i.e. the initial report which was submitted under Section 173 (2), as well as the supplementary report which was submitted after further investigation, in terms of Section 173 (8) Cr.P.C. The relevant portion reads as under:-



XXXX XXXX XXXX XXXX

“16. In view of the clear position of law which has been enunciated in the judgments of this Court, both in Vinay Tyagi (supra) and Vinubhai Haribhai Malaviya (supra), it is necessary for the Magistrate, to have due regard to both the reports, the initial report which was submitted under Section 173(2) as well as the supplementary report which was submitted after further investigation in terms of Section 173(8). It is thereafter that the Magistrate would have to take a considered view in accordance with law as to whether there is ground for presuming that the persons named as accused have committed an offence. While the High Court has relied upon the decision in Vinay Tyagi (supra), it becomes necessary for this Court to set the matter beyond any controversy having due regard to the fact that the Sessions Judge in the present case had while remitting the proceedings back to the Magistrate relied on the judgment of the Single Judge of the Kerala High Court in Joseph (supra) which is contrary to the position set out in Vinay Tyagi. Hence, the JFCM – I Alappuzha shall reexamine both the reports in terms of the decisions of this Court in Vinay Tyagi vs Irshad Ali alias Deepak and Vinubhai Haribhai Malaviya vs State of Gujarat as noted above and in terms of the observations contained in the present judgment. The Magistrate shall take a considered decision expeditiously within a period of one month from the date of the present order.”

19. After completing further investigation by the Special Investigation Team, the report under Section 173 (8) Cr.P.C. would be submitted before the trial Court within a period of three months. In view of the ratio of the aforesaid decisions, the trial Court shall look into both the reports, i.e. the report already submitted under Section 173 (2) Cr.P.C., as well as the subsequent report which shall be submitted by the Special



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Investigation Team under Section 173 (8) Cr.P.C.

20 Pending miscellaneous applications, if any, also stand disposed of.

(HARPREET KAUR JEEWAN)
JUDGE

July 15, 2024
nitin

Whether Speaking	Yes
Whether Reportable	Yes