

CRR No. 3960 of 2018

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

Date of Decision: 30.07.2024

...Petitioner

Versus

...Respondent

CRR No. 3960 of 2018

...Petitioner

Versus

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. P.S. Ahluwalia, Advocate and
Mr. Keerat Dhillon, Advocate
for the petitioner (in CRR-2476-2018).

Ms. Anjali Sheoran, Advocate
Mr. Tejasvi Sheokand, Advocate and
Mr. Arjun Sheoran, Advocate
for the petitioner (in CRR-3960-2018).

Mr. Sukhdev Singh, A.A.G., Punjab.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
9	08.06.2015	Vigilance Bureau, Flying Squad-1, District SAS Nagar, Mohali	13(2) of PC Act and 109 IPC

A common order passed by the trial Court is under challenge in both petitions, so this common judgment decides both. For brevity, facts are being taken from CRR-2476-2018.

1. The petitioners facing prosecution on the allegations of possessing assets disproportionate to the known sources of the petitioner's earnings are aggrieved by the order dated 11.07.2018 passed by the Special Judge, SAS Nagar, Mohali, dismissing their discharge applications, had come up before this Court by filing the present petition in the year 2018.



CRR No. 2476 of 2018

CRR No. 3960 of 2018

2. The impugned order dated 11.07.2018 passed by the Special Judge, SAS Nagar Mohali, led to the filing of the present revision petitions, which were based on applications filed by the petitioner for clubbing police challan with a subsequent cancellation report and based on this, for discharge.

3. After the registration of FIR, the petitioner had raised the grievance of false implication and also that during the course of the investigation, although admissible evidence was brought to the notice of the investigator, the investigator, without considering such evidence, presented a police report without conducting a thorough investigation. Aggrieved by the non-consideration of such documents, the applicants represented the higher authorities of the Vigilance Bureau, and subsequently, the Chief Director of the Vigilance Bureau ordered further investigation into the matter through the Vigilance Department headed by the Vigilance Patiala. In this further investigation, the investigator took a contrary view and submitted a cancellation report before the Court. It is unnecessary to give the reason that led to the filing of an initial police report or the subsequent reason that led to the cancellation of the report. This Court is concerned only with the question of law in the present petition.

4. The main accused in this case is Amarjit Gupta (petitioner in CRR-3960-2018), who was working as Superintendent Engineer in Housefed, Punjab Chandigarh, and allegedly connived with his father Tarsem Kumar, widow sister Anita Rani (petitioner in CRR-2476-2018) and allegedly accumulated property much beyond their known sources of income. Later on, the matter was sent for further investigation, and the Vigilance Bureau filed a supplementary challan under Section 173(8) CrPC furnishing cancellation.

5. The learned trial Court considered the evidence and concluded that the Vigilance Bureau conducted further investigation without the Court's permission and dismissed the application. It is further submitted that the Vigilance Bureau had conducted an investigation without the Court's leave and referred to the judicial precedent of Beg Raj and another vs. State of Haryana 2017(4) AICLR 503.

6. The Trial Court was concerned that the investigation was conducted without permission of the Court, and even no explanation was offered as to why further investigation was conducted. Thus, the Court faced two contradictory investigation reports; one implicated the accused, and the other absolved them. As such, the trial Court opined that which of these was a correct report should be decided after taking the evidence on record and concluding the trial, and the cancellation report was not accepted. Aggrieved by the impugned order, the petitioner had come up before this Court.



CRR No. 2476 of 2018

CRR No. 3960 of 2018

7. The third Criminal Revision Petition was filed by Tarsem Kumar, the main accused's father; during the petition's pendency, Tarsem Kumar expired, and as such, the petition was rendered infructuous, and the proceedings qua him were abated.

8. Vide order dated 25.09.2018, the Coordinate Bench of this Court stayed the final order by the trial Court. This means that the recording of all evidence was not stayed, but only the pronouncement of judgment was stayed.

9. Let it be made very clear that on 25.09.2018, the Coordinate Bench of this Court stayed the proceedings with the following observation: -

“Learned trial Court may proceed with the case, but passing of final order by the learned trial Court shall remain stayed.”

10. Because of the limited stay, the trial was going on, and 10 of the 17 witnesses had been examined.

11. The petitioner filed an application to modify the restoration of the earlier stay order and recall the order dated 30.01.2024. On 10.04.2024, the application for modification was disposed of when the parties consented that the main matter be preponed for the final hearing.

12. Mr. P.S. Ahluwalia, Advocate, submits that the order passed by the trial Court violates the settled proposition of law in Vinay Tyagi. He further submits that the trial Court should not proceed further without adjudicating whether the supplementary police report absolved the petitioner or not. It is further submitted that this matter is pending before this Court, in which evidence has been recorded, and delay is not at the end of the petitioner.

13. The Counsel for the State submits that out of 17, 10 witnesses had already been examined up to April 2024, and he does not have written instructions on whether more evidence has been recorded. Whatever order this Court passes should be with a clear understanding that the statements of the witnesses have already been recorded, and there shall be no need for further recording of such statements.

14. I have heard counsel for the parties and gone through the file, and its outcome would lead to the following outcome.

15. It remains undisputed that initially, police found evidence that assets collected by the main accused-Amarjit Gupta, widow sister-Anita Rani, and father, Tarsem Kumar,



CRR No. 2476 of 2018

CRR No. 3960 of 2018

were disproportionate to his known sources of income and launched prosecution. After filing the challan, the petitioner did not seek the permission of the Court for further investigation but straightway represented to the police authorities, who, without intimation or approval of the Trial Court, carried out a further investigation and filed a report under Section 173(8) CrPC furnishing the cancellation report.

16. In *Vinay Tyagi v. Irshad Ali and Ors.*, MANU/SC/1101/2012 [2012 INSC 587], the Hon'ble Supreme Court holds as follows: -

[31]. Having discussed the scope of power of the Magistrate under Section 173 of the Code, now we have to examine the kind of reports that are contemplated under the provisions of the Code and/or as per the judgments of this Court. The first and the foremost document that reaches the jurisdiction of the Magistrate is the First Information Report. Then, upon completion of the investigation, the police are required to file a report in terms of Section 173 of the Code. It will be appropriate to term this report as a primary report, as it is the very foundation of the case of the prosecution before the Court. It is the record of the case and the documents annexed thereto, which are considered by the Court and then the Court of the Magistrate is expected to exercise any of the three options afore-noticed. Out of the stated options with the Court, the jurisdiction it would exercise has to be in strict consonance with the settled principles of law. 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 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 of the Code. cancelled, proceeded further or case closed by the court of competent jurisdiction and that too in accordance with law. Neither the Police nor a specialised investigating agency has any right to cancel the said Report. Furthermore, in the present case, the High Court had passed no order or direction staying further investigation by the Delhi Police or proceedings before the court of competent jurisdiction.

[49]. On the contrary, the court had noticed explicitly in its order that it was a case of supplementary or further investigation and filing of a 'supplementary report'.

[50]. Once the Court has taken this view, there is no question of treating the first report as being withdrawn, cancelled or capable of being excluded from the records by the implication. In fact, except



CRR No. 2476 of 2018

CRR No. 3960 of 2018

by a specific order of a higher court competent to make said orders, the previous as well as supplementary report shall form part of the record which the trial court is expected to consider for arriving at any appropriate conclusion, in accordance with law. It is also interesting to note that the CBI itself understood the order of the court and conducted only 'further investigation' as is evident from the status report filed by the CBI before the High Court on 28th November, 2007.

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

[52]. It appears, the trial court may have three options, firstly, it may accept the application of accused for discharge. Secondly, it may direct that the trial may proceed further in accordance with law and thirdly, if it is dissatisfied on any important aspect of investigation already conducted and in its considered opinion, it is just, proper and necessary in the interest of justice to direct 'further investigation', it may do so.

17. On the face of it, it would have been appropriate for the trial Court to decide the legality of the second police investigation report, which was investigated without taking leave of the concerned Court after filing the police report. When after filing the police report, the police did not seek permission from the Court and, on their own, conducted an investigation. Whether such an investigation would be irregular and illegal and the impact of such an investigation was a question that the trial Court should have decided before proceeding further, which was not done.

18. In light of Vinay Tyagi's ratio, the Trial Court is directed to either accept or reject the second police report, which was based on further investigation carried out without the trial court's permission, absolving the accused.

19. Since, after the dismissal of the order of discharge and absolving by the trial Court that it will consider the cancellation report after recording the evidence as observed in the impugned order dated 11.07.2018, the petitioner had come up before this Court by filing the present petition in the year 2018 itself. This Court also did not stay the trial but only the final judgment, which this Court later clarified as the stay was for the final judgment. A perusal of the order sheet does not refer to any application filed by the petitioner seeking early hearing of the matter; thus, it is not the fault of this Court alone for not taking up the matter on priority but also lies with the petitioner who did not file any application for early hearing. Once the evidence was going on, the petitioner was aware of ongoing evidence, and despite that, he did not seek a stay; thus, whatever order this



CRR No. 2476 of 2018

CRR No. 3960 of 2018

Court has passed is with the clarification that evidence which has been recorded shall not be re-recorded and shall have no bearing on the same.

20. Thus, in the entirety of the facts and circumstances of the case, the present petition is partly allowed to the following effect and extent: -

21. The trial Court may consider the stage for Section 245 CrPC (Now Section 268 BNSS) if the evidence warrants.

22. If the trial Court proceeds beyond this stage, it must decide the above-captioned proposition of law before considering the case under Section 313 CrPC (Now Section 351 of BNSS).

23. Before putting up the prosecution's case against the accused under Section 313 CrPC (Section 351 BNSS), the trial Court shall decide the above-captioned proposition of law and legal value of the second police report, which was filed without the Court's permission.

24. Whatever way the trial Court decides the proposition of law until the stage of Section 245 or 313 CrPC (268 or Section 351 BNSS), it shall be legal, admissible, valid, and not illegal.

25. The petition is partly allowed to the extent mentioned above. All pending miscellaneous applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

30.07.2024
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Whether speaking/reasoned: Yes
Whether reportable: YES.