



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

CRM-M-50185-2024(O&M)

Date of decision: 16.10.2024

Pankaj Kaul and others

....Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Aditya Sanghi, Advocate
for the petitioners.

Ms. Geeta Sharma, DAG Haryana

HARPREET SINGH BRAR, J.

1. The present petition has been preferred under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter 'BNSS') seeking quashing of impugned order dated 27.08.2024 passed by the learned Judicial Magistrate Ist Class, Karnal whereby the application of the petitioners under Section 173(8) Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') has been dismissed in the case stemming from FIR no. 161 dated 11.08.2022 registered under Sections 323, 377, 406, 498-A, 506 IPC at Women Police Station, Karnal.

2. Briefly, the facts, as alleged by the prosecution, are that the marriage between respondent No.2 and Abhishek Kaul, nephew of the petitioner No.1, was solemnized on 22.01.2018. After marriage, respondent No.2 started residing at her matrimonial home in Ajmer, in a joint family. However, soon after, petitioner No.2(mother-in-law) took away all her jewellery under the pretext of safekeeping. Petitioner No.2 and petitioner No.3(sister-in-law) often taunted her for not bringing a car in dowry. Also,



under the influence of alcohol, petitioner No.1 used abusive language with her. The petitioners made monetary demands but she refused to comply with the same. However, she deposited Rs. 42,000/- in the account of her husband.

3. On 22.04.2018, the petitioners quarrelled with respondent No.2 as to why she had not changed her surname after marriage. They took away her *mangalsutra* and wedding ring, and ousted her from her matrimonial home. A *panchayat* was subsequently convened where petitioner No.1 apologized and respondent No.2 began residing with her in-laws again at Noida, where she had shifted along with her husband and petitioners No. 2 and 3. Thereafter, when respondent No.2 got pregnant, she was forced to undergo sex determination test against her will. She gave birth to a female child which caused the petitioners to mistreat her further. The husband of respondent No.2 demanded Rs. 5,00,000/- from her father to move to Canada, but Petitioners No.1 and 2 refused to let him go. Respondent No.2 was brutally beaten up on 19.12.2021 on her refusal to engage in unnatural sexual relations with her husband. Consequently, respondent No.2 moved to her parental home and has been residing there since the incident, along with her daughter.

4. Learned counsel for the petitioners *inter alia* contends that the final report under Section 173 Cr.P.C. was submitted by the police on 23.09.2022 without taking into consideration the documents including photographs, medical records and WhatsApp chats submitted to the Investigating Officer during investigation. The petitioners moved an application under Section 173(8) Cr.P.C. seeking further investigation, which was unjustly dismissed by the learned Court below as there is an evident non-compliance of Section 173(6)&(7) Cr.P.C. The learned trial Court has merely stated that the accused can tender these documents at the stage of defence evidence.



5. Having heard the learned counsel for the parties and after perusing the record with their able assistance, this Court is of the opinion that a study of Section 173 Cr.P.C. is warranted. The relevant parts of the said provisions are reproduced below:

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

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report--

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(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).

6. It is trite law that Section 173(8) Cr.P.C. does not envisage a fresh investigation but is merely continuation a previous one. Therefore, the provision of Section 173(8) Cr.P.C. cannot be invoked to re-investigate a matter, ignoring the conclusions drawn by the investigating agency in the first instance. A two Judge bench of the Hon'ble Supreme Court in ***Ramachandran***



vs. *R. Udhayakumar and others* (2008) 5 SCC 413, speaking through Justice Dr. Arijit Pasayat, observed as follows:

“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 investigation 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."

7. Recently, a two Judge bench of the Hon'ble Supreme Court in *K. Vadivel vs. K. Shanthi and others* 2024(11) Scale 412, speaking through Justice K.V. Vishwanathan, has opined as follows:

“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 v. Union of India & Ors.* (2016) 3 SCC 135, para 83). As noticed in *Ram Lal Narang v. 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.

33. However, **the further investigation cannot be permitted to do a fishing and roving enquiry when the police had already filed a charge-sheet and the very applicant for further investigation, in this case respondent no. 1, has not whispered about anything new in her evidence as is now sought to be averred in the application.** There must be some reasonable basis which should trigger the application for further investigation so that the court is able to arrive at a satisfaction



that ends of justice require the ordering/permitting of further investigation...” (emphasis added)

8. A perusal of the impugned order indicates that the Investigating Officer has placed photographs or marriage and other related documents on the record along with the final report under Section 173 Cr.P.C. Since the material presented before the learned trial Court to establish a *prima facie* case against the petitioners, it was correct in taking cognizance of the offences allegedly committed by them and dismissing the application seeking further investigation. Nothing has been brought on the record to indicate that the documents sought to be considered by the petitioners would negate the fact that their implication in FIR(supra) is justified by the material already available.

9. The remedy under Section 178(3) Cr.P.C. can only be invoked in the background of some cogent new information; the same cannot be invoked merely at the *ipse dixit* of the accused. If such an archaic approach is allowed, it will not only make it well-nigh impossible for the criminal courts to conclude its proceedings but also jeopardize the concept of free, fair and speedy trial. Moreover, no such conclusive, credible and unimpeachable fresh information, which has been unjustly withheld or ignored by the investigating agency, has been brought to the fore that would strongly indicate innocence of the accused. Therefore, the sanctity of the investigation, and consequently the final report, cannot be challenged on such flimsy when nothing on the record indicates any partiality or impropriety on the part of the investigating agency.

10. A bare reading of Section 173(6) & (7) Cr.P.C., in the context of the factual matrix of the present case, would indicate that they are not applicable to the present situation and that no procedural impropriety has



occurred at the behest of the police. As such, it cannot be reasonably argued that the investigating agency has faltered, raising suspicions regarding the accuracy of its findings. Further still, the petitioners have failed to indicate the prejudice caused to them in the process. The petitioners have not been rendered remediless since they were given the liberty to produce and prove the documents cited by them at the stage of defence evidence.

11. In view of the discussion above, this Court is of the considered opinion that the learned counsel for the petitioners has been unable to indicate any perversity in the impugned order that would merit interference by this Court. Accordingly, the present petition is dismissed. Pending miscellaneous application(s), if any, shall also stand disposed of.

12. However, nothing observed herein shall be construed as expression of an opinion by this Court lest it may prejudice the trial. The learned trial Court is directed to proceed with the trial on its own merits, strictly in accordance with law.

(HARPREET SINGH BRAR)
JUDGE

16.10.2024
Neha

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