



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

134

CRM-M-1684-2025

Date of decision: 15th January, 2025

Hardev Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sandeep Kumar Yadav, Advocate for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

MANISHA BATRA, J (ORAL):-

The instant petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') for quashing of order dated 12.09.2023 passed by the Court of learned Additional Chief Judicial Magistrate, SAS Nagar (Mohali) in case arising out of FIR No. 21 dated 06.03.2018 registered under Sections 381 read with Section 34 of IPC at Police Station Phase 11, SAS Nagar (Mohali) as well as the judgment dated 24.07.2024 passed by the revisional Court i.e. the Court of learned Additional Sessions Judge, SAS Nagar, thereby dismissing the revision petition filed against the order dated 12.09.2023.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR had been registered on the basis of a complaint lodged by the petitioner Hardev Singh i.e. complainant on



06.03.2018 alleging therein that he had employed respondent No.-7 Baljeet Kaur for taking care of his aged mother and for doing household chores in his house. The respondent No.8, who is younger sister of respondent No.7 also used to come with the latter from the last few months and used to help respondent No.7 in her work. Sometimes, they used to stay at his house till late, if the complainant had to leave his house to attend some functions. On 12.12.2017, the respondents No.7 and 8 took the keys of cupboards from the purse of his aged mother in his absence. The complainant questioned the respondents No. 7 and 8 and then it was disclosed that, they had been committing theft of money from his house whenever they found opportunity. He alleged that theft of an amount of more than Rs. 10,00,000/- had been committed by them as disclosed and they assured to return the same. On 14.12.2017, they returned an amount of Rs. 5,00,000/- while promising to pay rest of the money soon. However, they failed to return the same subsequently. After registration of FIR under Section 381 read with Section 34 of IPC, investigation proceedings were initiated. The respondents No. 7 and 8 were arrested and subsequently, they were granted benefit of bail. After completion of investigation, challan was presented as against them and presently, they are facing trial for commission of offence punishable under Section 381 read with Section 34 of IPC.

3. The petitioner-complainant moved an application before the learned trial Court making prayer for conducting further investigation in the matter by submitting that from the allegations levelled in the complaint filed by him, a case for commission of offences punishable under Sections 201, 206, 451 and 454 had also been made out apart from offence under Section



381 of IPC. However, neither FIR under those Sections has been lodged nor these Sections were subsequently added. Respondents No. 7 and 8 were not challaned under the aforementioned Sections and challan was presented only under Section 381 read with Section 34 of IPC. It is submitted that he had moved several complaints/applications with the police authorities for adding these Sections and conducting further investigation but to no avail.

4. Status report had been filed by the respondent-State. After hearing arguments in the said application, the learned Additional Chief Judicial Magistrate vide order dated 12.09.2023 dismissed the application by observing that no case for conducting further investigation/re-investigation was made out.

5. Feeling aggrieved, the petitioner filed a revision petition, which as discussed above had been dismissed by the revisional Court vide order dated 24.07.2024. It was observed by learned revisional Court that petitioner being complainant could not dictate to the investigating agency the mode and manner of conducting the investigation and no glaring misconduct on the part of investigating agency, which could impel the Court to order further investigation was made out.

6. Being dissatisfied by the aforementioned orders, the present petition is filed.

7. It is argued by learned counsel for the petitioner that the impugned orders are liable to be set aside as they are not sustainable in the eyes of law. While passing the same, the learned Courts below ignored the fact that the police had not conducted proper investigation in the matter. There was sufficient material on record to show that respondents No. 7 and 8

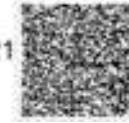


had committed theft of huge amount of money from the house of the petitioner. The allegations in the FIR clearly made out a case for commission of offences punishable under Sections 201, 206, 401 and 454 of IPC, since the petitioner had produced material on record to show that the respondents had been depositing money in their bank accounts, the respondent No.7 had spent money on the marriage of her daughter, a plot had been purchased by respondent No. 8 and they had also purchased a vehicle in their name, besides spending money on renovation of their house and purchased modern gadgets as well as jewellery. It is submitted that proper investigation was not conducted by the Investigating Agency. Investigation conducted was biased. With these broad submissions, it is urged that the petition deserves to be allowed. To fortify his arguments, learned counsel for the petitioner has placed reliance upon judgment dated 02.02.2024 passed by Hon'ble Supreme Court in Criminal Complaint No. 562 of 2024 arising out of SLP (Criminal) No. 11685 of 2022 titled as '**XXX Vs. The State represented through the Inspector of Police and another.**'

8. Learned State counsel who has advance notice of the petition and submits that the orders passed by the learned trial Court as well as revisional Court are well reasoned and do not warrant any interference. Accordingly, it is urged that the petition is liable to be dismissed.

9. I have heard learned counsel for the parties at considerable length and have gone through the record carefully.

10. Keeping in view the contentions as raised by both the sides, the question of law that falls for consideration before this Court is as to whether, the petitioner could ask for conducting further investigation in the matter



irrespective of the fact that a charge sheet had already been submitted in the aforementioned FIR and even charge under Section 381 of IPC has been framed as against the respondents.

11. At the outset, it would be relevant to refer to provisions of Section 173 of the Code of Criminal Procedure (which *pari materia* with Section 193 of the Bharatiya Nagarik Suraksha Sanhita, 2023), which describes the steps to be taken by the Investigating Officer after completion of investigation. As per this Section, Officer incharge of the concerned police station is required to forward a report under the said Section to the Magistrate empowered to take cognizance of the offence in prescribed form after completion of investigation. Then Section 173(8) of 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.

12. 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.

13. In *Hasanbhai Valibhai Qureshi v. State of Gujarat and others* reported in (2004) 5 SCC 347, it was observed that 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.

14. 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’ after filing of a police report. In ***Bohatie Devi (Dead) through LRs v. State of U.P., AIR ONLINE 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.*

15. 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.

16. 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 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 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.”

17. 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 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 who is lodger of FIR No. 21 dated 06.03.2018 as against respondents No. 7 and 8, is challenging the order dated 12.09.2023 passed by the Court of the concerned Judicial Magistrate and the judgment dated 24.07.2024 passed by the revisional Court whereby prayer made by him to give direction to the police authorities to conduct further investigation in the matter had been declined. No doubt, a Magistrate has power to give direction to conduct further investigation. However, in view of the ratio of law as laid down in the above cited authorities, it is clear that the further investigation can be ordered only when the same is required to arrive at the truth and to do real substantial justice. Exercising of powers for directing further investigation is purely a discretion of the Magistrate which is required to be exercised in accordance with law and keeping in view the peculiar facts and circumstances of a particular case. This power is to be exercised sparingly in exceptional cases, to achieve the ends of justice and where fresh material



comes to light. In the instant case, the grievance of the petitioner is that though he had lodged FIR qua theft of a sum of more than Rs. 25,00,000/- by the respondents No. 7 and 8 and these respondents returned an amount of Rs. 5,00,000/- to him but they did not pay the remaining amount to him. The petitioner has insisted for addition of offences under Sections 201, 451, 454 and 206 of IPC. Merely because such Sections are not added cannot be considered to be a ground for directing the police authorities to conduct further investigation. As informed, now even a charge under Section 381 read with Section 34 of IPC has been framed as against respondents No. 7 and 8. It is for the learned trial Magistrate to frame charges under the relevant Sections against the accused person/persons on appraising the record and observing as to what offences are *prima facie* made out as against such accused. Even, if, the investigating agency does not challan an accused under a particular Section(s), the Magistrate had still power to frame charge(s) under any particular Section if a *prima facie* case is made out. Obviously, the charges under the aforementioned Sections have not been framed as against respondents No. 7 and 8 by the Magistrate as according to him, no case for framing of the same was made out. During the course of arguments, learned counsel for the petitioner has not been able to convince this Court on the point that the charged under the proposed Sections 201, 451, 454 and 206 of IPC have been made out. Undisputedly, a Magistrate is competent to frame/amend charges at any stage of the trial, if the petitioner succeeds in producing evidence of any such nature which can be considered to be sufficient by the learned trial Magistrate to frame charges under the proposed Sections, obviously, the petitioner would be at liberty to ask for the



same but non framing of charges under the above mentioned Sections cannot be held to be a ground seeking further investigation of the matter. The Court of trial Magistrate after considering all the facts have passed a well reasoned order, which has been rightly affirmed by the learned Revisional Court. These orders do not suffer from any illegality, infirmity or irregularity and therefore, do not warrant any interference. As such, finding no reasonable ground to allow the petition, the same is dismissed.

18. Since the main petition has been dismissed, pending application, if any, is rendered infructuous.

[MANISHA BATRA]
JUDGE

15th January, 2025
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |