



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

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CRM-M-12984-2025
Reserved on : 25.03.2025
Pronounced on: 22.04.2025

Ashish Tyagi

. . . Petitioner(s)

Versus

State of Haryana and another

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Veer Iman Singh Gill, Advocate
for the petitioner(s).

SANJAY VASHISTH, J.

1. Instant petition has been filed under Section 528 of BNSS, 2023 (Section 482 of Cr.P.C.), for quashing of the impugned order dated 01.03.2025 (Annexure P-12), having CIS No.: CANCR-107-2024, passed by Ld. Judicial Magistrate First Class, Ganaur, District Sonipat (in short, 'Ld. JMIC'), whereby, Ld. JMIC, has reviewed/rectified his own order dated 20.02.2025 (Annexure P-10).

2. Brief history of the case is that one application/complaint dated 30.02.2022, was moved by one Sudesh Kumari (respondent No.2 herein), against (i) Ankit, (ii) Ashish Tyagi (petitioner herein), (iii) Rajender, and (iv) Rohit, for registration of First Information Report (F.I.R.) against them.

Resultantly, FIR No.335, dated 16.10.2023, under Sections 419, 420, 467, 468, 471, 506, 120-B of IPC (Sections 419, 467, 468 and 471 of IPC deleted later on), was registered at Police Station HSIIDC Barhi, Tehsil



Ganaur, District Sonipat.

After investigation, a cancellation report was prepared by noticing that the dispute is found to be for the purchase of plots, and therefore, same is of civil nature. However, on presentation of cancellation report before the Court of Ld. JMIC, complainant (respondent No.2) expressed her dissatisfaction with the police proceedings and for the purpose of filing protest petition, proceedings were adjourned to 05.08.2024.

On 05.08.2024, complainant (respondent No.2), filed an application for conducting further investigation and to monitor the same. Said application was disposed of by directing the concerned Investigating Officer (I.O.) to conduct further investigation and then to brief the Court about the progress of investigation fortnightly (every 14 days), and proceedings were adjourned for 20.08.2024.

On the date fixed i.e. 20.08.2024, I.O. was required to file progress report on doing further investigation in cancellation bearing No. CANCR-107-2024, however, proceedings were adjourned to 03.09.2024, 17.09.2024, 01.10.2024, 15.10.2024 and then for 28.11.2024 for awaiting further outcome of the investigation.

3. Again challan was not filed by 28.11.2024, and even on 16.01.2025, therefore, on 16.01.2025, proceeding was adjourned by noticing as under:-

*“Present: Sh. Manoj Kumar, Ld. APP for the State.
Complainant in person.*

Today the case was fixed for filing of challan. Challan not filed. Short adjournment sought by Ld. APP for the State for filing of challan. Now the case is adjourned to 20.02.2025 for filing of challan. Notice to IO be also issued for the date fixed.”

It is on 20.02.2025, when an order was passed for acceptance of



the cancellation report by affording liberty to file protest petition by the complainant (respondent No.2). Order dated 20.02.2025, says as under:-

“Present: Sh. Manoj Kumar, Ld. APP for the State.

Notice issued to complainant received back served. Complainant has not appeared before the court in pursuance of summon issued against him. It appears that the complainant is not willing to pursue with the present matter. Therefore, the cancellation report is hereby accepted with liberty to file protest petition as and when complainant wants to file the same. File be consigned to the records after due compliance.”

4. While passing the aforementioned order, Ld. Court below missed out to notice that in fact, proceedings were fixed for awaiting report/challan in pursuance to the further investigation, since the time of the allowing of the application under Section 173(8) Cr.P.C. on 05.08.2024.

5. As a matter of fact, on 01.03.2025, SI Amit, Economic Offences Wing, Sonipat, filed an application stating therein that accused ‘Ankit’ had been arrested on 22.01.2025, and sooner challan will be presented before the Court.

6. It is, thereafter only, when JMIC realized the mistake, and therefore, on 01.03.2025 while accepting the error committed by it of accepting the cancellation report/challan to recall its order dated 20.02.2025, noticed, the report of Ahlmad, wherein, inadvertently, word “**accepted**” was written on the file cover. Observation made upon the report of the Ahlmad is reproduced here-under:-

“3. Report of Ahlmad, Steno concerned and Reader of the Court was called. Perusal of report of Ahlmad reveals that on 20.02.2025, the case was fixed for awaiting of challan and notice to I.O. were issued for the date fixed. However, due to inadvertence, the cancellation report was accepted. Perusal of report of Reader reveals that on 20.02.2025, five files pertaining to different cancellation reports were fixed and due to inadvertence, ‘accepted’ was written on the file cover and the instant cancellation report was accepted and disposed of in the CIS. Perusal of report of Steno concerned reveals that on 20.02.2025, the case was fixed for awaiting challan. However, he did not peruse the previous order dated



16.01.2025, carefully. He assured that such error will not happen in future.”

Lastly, in the impugned order dated 01.03.2025, Para No.11 says as under:-

“11. By virtue of this order, the order dated 20.02.2025 stands rectified being palpably erroneous. Reader of the Court is directed to rectify the noting on the file cover with red ink. Cancellation report bearing CIS Number CANCR-107- 2024 is ordered to be restored to its original number. Now the case is adjourned to 11.03.2025 for awaiting challan. The aforesaid date is fixed on the same date on which the remand papers bearing CIS No: REMP-8-2025 pertaining to accused Ankit is pending i.e., which is pending for 11.03.2025 for awaiting challan.”

7. For examining the issue before this Court, learned Senior counsel for the petitioner refers Section 362 of Cr.P.C. (Section 403 of BNSS, 2023), which reads as under:-

“403. Court not to alter judgment.—Save as otherwise provided by this Sanhita or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.”

8. Thus, learned Senior counsel argues that once the final order of disposing of the case has been signed, there was no authority to alter, review the same or to correct the clerical or arithmetical error.

Mr. Kanwaljit Singh, learned Senior counsel, submits that nothing can be assumed or presumed about the correctness of the order having been passed by the Magistrate on 20.02.2025, because the broader meaning of the order dated 20.02.2025, is of final decision of the case, as the cancellation report had been accepted, by granting liberty to the complainant to file protest petition. If there was any mistake in the order, same could be taken to the Higher Court by the complainant herself, and thus, there was no situation for the Court to take a U-turn and to look back to the mistake committed by it that too without being pointed out to it by anyone. Any fact, which was brought to the notice of the Court subsequently, would carry no



meaning after disposal of the case file by such Court finally, as it had attained the status of *functus officio*.

In support of his submissions, learned Senior counsel relies upon:-

- (i) Bindeshwari Prasad Singh v. Kali Singh, 1977 AIR Supreme court 2432 : Law Finder Doc Id # 105851;
- (ii) M/s HVAC System Pvt. Ltd. v. M/s ZECC Air Con Limited, 2022(2) KCCR 1875 : Law Finder Doc Id # 1938620; and
- (iii) State of Kerala v. M.M. Manikantan Nair, Law Finder Doc Id # 11611.

9. I have noticed the submissions addressed by learned Senior counsel and the provision mentioned in the Cr.P.C. as far as *pari materia* under the BNSS, 2023.

10. Obviously the proceeding fixed before the Court of Ld. Magistrate, prior to 20.02.2025, was to await the report of the Investigating Officer, after conducting of the further investigation.

To clear this issue, some of the orders (relevant extract) are reproduced here-under:-

“Order dated 05.08.2024

5. *Arguments heard. It is an established legal position that the power of a Magistrate under Section 156(3) of Cr.P.C. includes passing an order under Section 173(8) read with Section 156(3) of Cr.P.C. directing the concerned police officials to further investigate the matter where the Court is satisfied that the factual matrix of the case demands further investigation. In the case of **Vinubhai Haribhai Malaviya and Ors. Vs. State of Gujarat (supra)**, the Hon’ble Apex Court has explicitly held that a Magistrate is empowered to order further investigation under Section 173(8) read with Section 156(3) of Cr.P.C. when he deems it fit, as per the facts and circumstances of the case. In the instant case, it appears that a thorough investigation is required to unearth the true facts and material evidences and therefore, this Court deems it fit to order further investigation under Section 173(8) read with Section 156(3) of Cr.P.C. in the instant case (now Section 175(3) read with Section 193(9) of **Bhartiya Nagarik Suraksha Sanhita, 2023**).*

6. *In the case of **Sakiri Vasu Vs. State of UP** AIR 2008 SC 907, the Hon’ble Supreme Court has held that the trial Court has been vested with ample powers to monitor the investigation as and when required. In light of the same, the IO concerned is directed to further*



investigate the matter and brief this Court about the progress of investigation fortnightly (every 14 days).

Now to come up on 20.08.2024 for the abovesaid purpose.

Copy of this order be forwarded to SP, Sonipat for information and necessary action.

Order dated 20.08.2024

*Present: Sh. Manoj Kumar, Ld. APP for the State.
Complainant in person.*

Today the case was fixed for providing fortnightly update of the investigation. However, IO-SI Shriniwas stated at bar that to carry the requisite further investigation, case file is required. Case file is provided to the IO who suffered a separately recorded statement that he has received the cancellation bearing No.Cancr-107-2024 for further investigation. Now the case is adjourned to 03.09.2024 for briefing this Court about the progress of the investigation.

Order dated 03.09.2024

*Present: Sh. Manoj Kumar, Ld. APP for the State.
Complainant in person.*

Today the case was fixed for briefing this Court about the progress of the investigation. Report received, as per which the case has been transferred to Economic Cell, Sonipat. Now the case is adjourned to 17.09.2024 for briefing this Court about the progress of the investigation.

Order dated 17.09.2024

*Present: Sh. Manoj Kumar, Ld. APP for the State.
Complainant in person.*

Today the case was fixed for briefing this Court about the progress of the investigation. Progress report filed, as per which the investigating agency sought some time for investigation due to elections in the State of Haryana. Though, this is not a justifiable reason, however, the same is allowed in the interest of justice. Now the case is adjourned to 01.10.2024 for filing progress report.

Order dated 01.10.2024

*Present: Sh. Hari Gopal, Ld. APP for the State.
Complainant in person.*

Today the case was fixed for filing progress report. Same not filed. Adjournment requested by the State. Heard and allowed. Now the case is adjourned to 15.10.2024 for filing progress report.

Order dated 15.10.2024

*Present: Sh. Manoj Kumar, Ld. APP for the State.
Complainant in person.*



Today the case was fixed for filing progress report in the instant matter. SI Amit Kumar, Economic Cell, Sonipat who is the IO in the instant case has appeared before the Court and suffered a separately recorded statement that due to election duty he was unable to file the progress report as desired and that he shall do the same on the next date of hearing. He further stated at bar that one month time be given so that he can file challan in the instant case. Keeping in view of the statement suffered by the IO, now to come up on **28.11.2024** for filing of challan.

Order dated 28.11.2024

Present: Sh. Manoj Kumar, Ld. APP for the State.
Complainant in person.

Today the case was fixed for filing of challan. Challan not filed. Progress report filed. Short adjournment sought by Ld. APP for the State for filing of challan. Now the case is adjourned to **16.01.2025** for filing of challan.

Order dated 16.01.2025

Present: Sh. Manoj Kumar, Ld. APP for the State.
Complainant in person.

Today the case was fixed for filing of challan. Challan not filed. Short adjournment sought by Ld. APP for the State for filing of challan. Now the case is adjourned to **20.02.2025** for filing of challan. Notice to IO be also issued for the date fixed.

Order dated 20.02.2025

Present: Sh. Manoj Kumar, Ld. APP for the State.

Notice issued to complainant received back served. Complainant has not appeared before the court in pursuance of summon issued against him. It appears that the complainant is not willing to pursue with the present matter. Therefore, the cancellation report is hereby accepted with liberty to file protest petition as and when complainant wants to file the same. File be consigned to the records after due compliance.”

The extracted reproduction of the impugned order dated 01.03.2025, is also reproduced here-under:-

“11. By virtue of this order, the order dated 20.02.2025 stands rectified being palpably erroneous. Reader of the Court is directed to rectify the noting on the file cover with red ink. Cancellation report bearing CIS Number CANCR-107-2024 is ordered to be restored to its original number. Now the case is adjourned to 11.03.2025 for awaiting challan. The aforesaid date is fixed on the same date on which the remand papers bearing CIS No: REMP-8-2025 pertaining to accused Ankit is pending i.e., which is pending for **11.03.2025** for awaiting challan.”

11. Apparently, on 20.02.2025, proceedings were fixed for awaiting



the supplementary challan, however, as discussed by Ld. Magistrate in the impugned order, that there was a wrong reporting by the Ahalmad and on that account, the said mistake happened and even without noticing the previous proceedings for which the case was fixed on that particular date i.e. 20.02.2025, the cancellation report was accepted.

This Court has gone through the judgments relied upon by the petitioner's counsel, however, same would not be of much relevance because the issue before this Court requires to be discussed and decided by noticing the provision of law, i.e., Section 362 Cr.P.C. (Section 403 of BNSS, 2023), which itself makes it clear that it does not allow correction of any mistake by the Same Court, except the specified error, i.e., "clerical or arithmetic". It is also specified that such mistake has to be there in the final judgment/order disposing of a case. Import of the provision seems to be not to alter or review the judgment after the same has been signed finally, exercising the judicial power.

12. Obviously, the reason assigned in the impugned order denotes that due to the clerical mistake, Ld. Magistrate had to examine the complete file again, and thereon, Court realized its mistake, which in fact, had happened due to the result of clerical mistake done by the Ahalmad/Reader on 20.02.2025, who mentioned on the file "**accepted**".

13. This Court has also gone through the zimni orders or examined the proceedings and finds that Magistrate was competent enough to review his own order by noticing the mistake, which in fact, is clerical. Even before acceptance of the cancellation report on 20.02.2025, one of the accused had already been arrested on 22.01.2025 [as mentioned in the application dated



01.03.2025 (Annexure P-11)]. Therefore, it cannot be said that the case had been finally adjudicated by accepting the cancellation report. Thus, there is an apparent error on the file.

Otherwise also, import of the provision of law (Section 362 Cr.P.C.) is to, not to empower/allow the same Court to alter or review its own judgment/final order, except of, any clerical or arithmetical error noticed on the file, despite of same being finally decided. In the present case, it cannot be concluded by saying that case had been finally decided because one of the accused had already been arrested and the report was/is yet to be presented by the Investigating Agency, pursuant to the direction of conducting further investigation.

14. Therefore, this Court does not find any error in the impugned order, whereby, the order has been recalled/reviewed on account of the noticing the mistake committed by the Ahalmad/Reader, which is of clerical nature.

15. Even if the plea argued by Ld. Senior Counsel is accepted, there cannot be any debate that once erroneous order had been passed by the Magistrate on account of the clerical error done by the court staff and now having been noticed by the High Court through the instant petition filed u/s 528 BNSS-2023, this Court is also competent enough to exercise its supervisory power and to examine the proceeding as a whole, and then, not to allow to perpetuate the error any further.

Merely by setting aside the impugned order, this Court cannot shut its eyes or overlook the order dated 20.02.2025, which is contrary to the true position, which was there on record, even prior to that. Therefore, for a



conclusive decision of the case, order dated 20.02.2025 has to be made ineffective for all intents and purposes, so that the proceedings may go on, which was meant to be in the order dated 16.01.2025.

Even otherwise also, Court of Ld. Magistrate is required to reach to a final conclusion as per law, in pursuance to its own order of directing further investigation. If prayer of the petitioner is accepted, it may amount perpetuating the mistake, which took place in the Court of Magistrate and despite of noticing the same by this Court.

Therefore, in view of the circumstances, after being examined within the parameters of law i.e. Section 362 Cr.P.C. (Section 403 of BNSS, 2023), I find that there is no merit in the petition.

Accordingly, petition is hereby dismissed with aforementioned observations.

Pending misc. application(s), if any, also stand disposed of.

(SANJAY VASHISTH)
JUDGE

April 22, 2025

J.Ram

Whether speaking/reasoned: *Yes/~~No~~*
Whether Reportable: *Yes/~~No~~*