

2025-PHHC-022237



202 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28918-2024
Date of Decision: 13.02.2025

Dilbag Singh and others ...Petitioners

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Prateek Sodhi, Advocate for the petitioners.

Mr. Nitesh Sharma, DAG, Punjab.

Mr. Sarbjit Singh, Advocate for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

1. Instant petition has been filed under Section 482 Cr.PC seeking quashing of order dated 06.05.2024 (Annexure P-7) passed by the Ld. Judicial Magistrate Ist Class, Ajnala whereby the cancellation report was rejected and the matter was sent back for re-investigation in FIR No.308 dated 13.10.2020 under Sections 326/324/506/148/149 of IPC, 1860, registered at Police Station Lopoke, District Amritsar Rural (Annexure P-1). Further prayer has been made for quashing of FIR (supra) along with all subsequent proceedings arising therefrom qua the petitioners.

2. The brief facts of the prosecution case are that a complaint was made by the complainant stating therein that on 28.09.2020 at around 8:30 pm complainant was standing near Meter box then in the meanwhile Dilbag Singh (petitioner No.1) armed with Sickle, Roshan Singh (petitioner No.2) armed with Baton, Jashandeep Singh (petitioner No.3) empty handed, Laljit Singh

(petitioner No.4) armed with splinter, Jagroop Singh (petitioner No.5) armed with spade and Sarup Singh armed with Sickle came there and Jashandeep raised challenge that caught hold of complainant and teach him a lesson for hurling vituperation, then Dilbagh Singh (petitioner No.1) attacked with his Sickle which hit directly upon his left leg and rest all also started assaulting him. The complainant raised clamour of killed-killed, then his father Balwinder Singh and his wife Gurwinder Kaur rushed there to disengage him and the accused also bullyragged and slapped his father a lot and tore cloths of his wife and even they raised clamour of killed-killed, then upon hearing the clamour, his Uncle (Chacha) Joginder Singh son of Phula Singh also came to the spot, in the meanwhile his brother Mandeep Singh also came from fields. Upon seeing him all the assailants fled from the spot along with their weapons towards their respective homes. Then on next day the complainant got admitted in Civil Hospital for treatment, where the Doctor after giving treatment had discharged him. The cause of grudge is that on 11.06.2020 his son Khushbir Singh had gone out of the village along with cattle at the Canal then at that time he came to know that his son has been assaulted and was drowned in the water, as a result of which his death had taken place. Apart from that they also used to give threats to withdraw the applications which have been filed against them, otherwise he shall have to face dire consequences. Due to said grudge itself they have inflicted injuries to him. Till date they kept on putting pressure upon him for arriving at a compromise. And due to suffering substantial injuries, he could not walk freely. With these allegations, FIR (*supra*) was registered.

3. Learned counsel for the petitioners, *inter alia*, contends that the investigation was conducted and Investigating Officer had sought the opinion of the concerned Medical Officer with respect to the injury suffered by

respondent No.2 and the Medical Officer had clearly opined that the possibility of friendly hand cannot be ruled out. Further during the investigation it was found that there was previous animosities *inter se* the parties as son of respondent No.2 had accidentally died by drowning on June 11, 2020 and in this regard respondent No.2 had alleged that petitioners had killed his son. However, the said allegations were found false. Due to this grudge, respondent No.2 had again given a false complaint against the petitioners and also there is an unexplained delay of 13 days in lodging the FIR. Accordingly, cancellation report was filed, stating that no police interference was warranted but the learned Court below has erred in ordering re-investigation at the fag end of the trial. A perusal of the impugned order dated 06.05.2024 (Annexure P-7) would indicate that no cogent reason has been mentioned, that would necessitate re-investigation. Reliance in this regard is placed on the judgments rendered by the Hon'ble Supreme Court in ***Ramachandran Vs. R. Udhayakumar and others, (2008) 5 SCC 41, Kishan Lal Vs. Dharmendra Bafna and another, (2009) 7 SCC 685*** and ***Bhagwant Singh Vs. Commissioner of Police, in Contempt Petition No.4998 of 1983*** decided on 25.04.1985 and this Court in ***Ravinder Kumar Vs. State of Punjab*** in ***CRMM-5036-2019*** decided on 01.09.2020.

4. Learned State counsel could not controvert the fact that the investigating agency had declared the petitioners to be innocent in the FIR (supra).

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that complainant appeared before learned trial Court on 29.03.2022 and recorded a statement expressing his dissatisfaction with the cancellation report put forth by the

investigating agency. Therefore, vide order dated 06.05.2024 (Annexure P-7), learned trial Court ordered re-investigation. A proper adjudication of the case at hand requires a study of Section 173(8) of Cr.P.C. (now *Section 193(9) of BNSS*), which reads as follows:

“Section 173 Cr.P.C.- Report of police officer on completion of investigation.

xxx xxx xxx

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under subsection (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 subsections (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 subsection (2).

Section 193, BNSS- Report of police officer on completion of investigation.

xxx xxx xxx

(9) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under subsection (3) 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 as the State Government may, by rules, provide; and the provisions of sub-sections (3) to (8) 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 (3): Provided that further investigation during the trial may be conducted with the permission of the Court trying the case and the same shall be completed within a period of ninety days which may be extended with the permission of the Court.

6. It is trite law that the concepts of ‘further investigation’ and ‘reinvestigation’ are disparate and must not be interpreted as synchronous. The findings of an earlier investigation cannot be set aside under the guise of further investigation. Section 173(8) of Cr.P.C. (now *Section 193(9) of BNSS*) only relates to continuation of investigation, when new material comes to the fore. A two Judge Bench of the Hon’ble Supreme Court in ***Ramchandran***’s case (*supra*), speaking through Dr. Justice Arijit Pasayat, made the following observations:

*“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 investigate 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. Further, when the police report states that no offence appears to have been committed, the Magistrate can take recourse to one of three options- (1) accept the report and put an end to the proceedings, (2) disagree with the report and issue process; and (3) direct further investigation to be made under Section 156(3) of Cr.P.C. (now *Section 175(3) of BNSS*). However, neither the

complainant nor learned Court below has disclosed as to what was missing in the original investigation, that requires to be remedied. A two Judge Bench of the Hon'ble Supreme Court in **Kishan Lal's** case (*supra*), speaking through Justice S.B. Sinha, the following was opined:

"An order of further investigation can be made at various stages including the stage of the trial, that is, after taking cognizance of the offence. Although some decisions have been referred to us, we need not dilate thereupon as the matter has recently been considered by a Division Bench of this Court in Mithabhai Pashabhai Patel & Ors. v. State of Gujarat [2009(7) SCALE 559] in the following terms:

"16. This Court while passing the order in exercise of its jurisdiction under Article 32 of Constitution of India did not direct re-investigation. This court exercised its jurisdiction which was within the realm of the Code. Indisputably the investigating agency in terms of sub-section (8) of Section 173 of the Code can pray before the Court and may be granted permission to investigate into the matter further. There are, however, certain situations, where such a formal request may not be insisted upon."

*"17. It is, however, beyond any cavil that 'further investigation' and 're-investigation' stand on different footing. **It may be that in a given situation a superior court in exercise of its constitutional power, namely under Articles 226 and 32 of the Constitution of India could direct a 'State' to get an offence investigated and/or further investigated by a different agency. Direction of a re-investigation, however, being forbidden in law, no superior court would ordinarily issue such a direction.**"*

Pasayat, J. In Ramachandran v. R. Udhayakumar, 2008(3) RCR (Criminal) 47 : 2008(3) RAJ 547 : [(2008)5 SCC 413], opined as under:-

"7. 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 investigate under subsection (8), but not fresh investigation or reinvestigation..." (emphasis added)

8. A perusal of the impugned order dated 06.05.2024 (Annexure P-7) would indicate that learned Court below has ordered 're-investigation' qua the FIR (*supra*), without assigning any reasons, that would indicate application of

judicial mind. Further, once the cancellation report is presented, there is nothing in the Cr.P.C. that enables the Magistrate to set aside the findings of the original investigation simply because the complainant, an interested party, was dissatisfied with the same. Certainly, Section 173(8) of Cr.P.C. (now *Section 193(9) of BNSS*) allows further investigation, when some fresh material is brought to the fore, that was not previously considered. However, a *de novo* investigation cannot be ventured into lightly and must be backed by compelling circumstances.

9. The Hon'ble Supreme Court has reiterated that the right to speedy trial forms a part of the right to life as enshrined under Article 21 of the Constitution of India. In this regard, the trial would refer to investigation, trial, appeal and covers all stages i.e. from accusation to the final verdict of the last Court. No citizen can be deprived of his liberty by a procedure, which is not reasonable, fair or just, as such deprivation would be in direct violation of Article 21 of the Constitution of India. A Constitution Bench of the Hon'ble Supreme Court in ***Maneka Gandhi Vs. Union of India and another, 1978(1) SCC 248*** has held that the protection enshrined under Article 21 of the Constitution of India confers a fundamental right on every citizen not to be deprived of his liberty except according to the procedure established by law, which must be reasonable, fair and just. The right to speedy trial, undoubtedly, flows from this concept of fairness. It was observed that any procedure, which does not ensure a reasonably quick trial, would fall foul of Article 21 of the Constitution of India. Reference in this regard can also be made to the judgments rendered by the Hon'ble Supreme Court in ***P. Ramachandra Rao Vs. State of Karnataka, 2002(4) SCC 578***, ***Hussainara Khatoon Vs. Home Secretary, State of Bihar, 1980 (1) SCC 81***, ***Abdul Rehman Antulay Vs. R.S.***

Nayak, 1992 (2) RCR (Criminal) 634, Common Cause A Registered Society Vs. Union of India, 1996 (6) SCC 775. A Larger Bench of the Hon'ble Supreme Court in ***Abdul Rehman Antulay***'s case (*supra*) has observed that the determination of the guilt or innocence of the accused must be arrived at with reasonable dispatch. Speaking through Justice B.P. Jeevan Reddy, the following was opined:

“49.... In other words, such law should provide a procedure which is fair, reasonable and just. Then alone would it be in consonance with the command of Article 21. Indeed, wherever necessary, such fairness must be read into such law. Now, can it be said that a law which does not provide for a reasonably prompt investigation, trial and conclusion of a criminal case is fair, just and reasonable? It is both in the interest of the accused as well as the society that a criminal case is concluded soon. If the accused is guilty, he ought to be declared so. Societal interest lies in punishing the guilty and exoneration of the innocent but this determination (of guilt or innocence) must be arrived at with reasonable despatch - reasonable in all the circumstances of the case. Since it is the accused who is charged with the offence and is also the person whose life and/or liberty is at peril, it is but fair to say that he has a right to be tried speedily. Correspondingly, it is the obligation of the State to respect and ensure this right. It needs no emphasis to say, the very fact of being accused of a crime is cause for concern. It affects the reputation and the standing of the person among his colleagues and in the society. It is a cause for worry and expense. It is more so, if he is arrested. If it is a serious offence, the man may stand to lose his life, liberty, career and all that he cherishes.”

10. Adverting to the matter at hand, it transpires that FIR (*supra*) was lodged on 13.10.2020 under Sections 326/324/506/148/149 of IPC. The petitioners were declared innocent during the investigation, however, the matter has been sent for re-investigation, subjecting the petitioners to unduly prolonged criminal proceedings. There is no justification for subjecting citizens to an indefinite period of investigation and trial.

11. In view of the facts and circumstances of the case, present petition is allowed and order dated 06.05.2024 (Annexure P-7) passed by the Ld.

Judicial Magistrate Ist Class, Ajnala is hereby quashed qua the petitioners and the matter is remanded back to the concerned trial Court with a direction to decide the same afresh in accordance with law in the light of judgment passed by this Court in CRM-M-3193-2025, titled as *Pawan Kharbanda Vs. State of Punjab and another*, decided on 29.01.2025 whereby directions/guidelines have been issued to all the Magistrates in the States of Punjab and Haryana as well as Union Territory of Chandigarh, with regard to the evaluation of cancellation reports submitted under Section 173 Cr.PC.

12. The petition is disposed of accordingly.
13. All the pending miscellaneous application(s), if any, shall stand disposed of.

13.02.2025
Parveen kumar

(HARPREET SINGH BRAR)
JUDGE

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