
Charanjit Singh @ Bittu Vs State of Punjab

Criminal Miscellaneous No. 65495-M of 2005

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 14, 2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 156, 173, 173(8), 190, 482#Penal Code, 1860 (IPC) â€” Section 306, 34, 342, 506

Citation: (2008) 2 RCR(Criminal) 310

Hon'ble Judges: A.N. Jindal, J

Bench: Single Bench

Advocate: D.S. Pheruman, for the Appellant; Satish Kumar Bhanot, D.A.G., for the Respondent

Final Decision: Allowed

Judgement

A.N. Jindal, J.

By way of this petition u/s 482 of the Code of Criminal Procedure (for short Cr.P.C.), the Petitioner Charanjit Singh alias

Bittu has sought quashing of the order dated 22.10.2005 (Annexure P-3) passed by Sub-Divisional Judicial Magistrate, Patti, rejecting the report

of the police submitted u/s 173(8) Cr.P.C., vide which, the police put the name of the Petitioner in column No. 2 as innocent person.

2. The facts in the background of the case are that on the death of Jaspal Singh, a case was registered against Brahm Dutt, Devinder Kumar,

Charanjit Singh (Petitioner) and some other persons vide FIR No. 34 dated 10.6.2004 under Sections 306, 342, 506 read with Section 34 of the

Indian Penal Code (for short IPC). Investigation was conducted and challan was filed against six persons, including the Petitioner, in the court of

the ilaqa Magistrate. However, later on, after an enquiry was conducted by the S.P. (Headquarters) under the orders of D.I.G. Border Range,

vide supplementary report u/s 173(8) Cr.P.C., filed by the Officer in-charge of Police Station Khalra, the name of the Petitioner (Charanjit Singh)

was placed in column No. 2. The Sub-Divisional Judicial Magistrate, Patti vide his order dated 22.10.2005 (Annexure P-3) rejected the said

report submitted by the police u/s 173(8) Cr.P.C, solely on the ground that the police had no power to further investigate the matter, without the

prior permission of the court concerned. The Petitioner has challenged the said order by way of the present petition.

3. Arguments heard. Record perused.

4. It needs mention that the supplementary challan was presented after the earlier challan had already been submitted in the Court. The Sub-

Divisional Judicial Magistrate while making a reference of two judgments, i.e., 2002(2) RCR 12 (P&H) and 1998(2) RCR 719 (SC) observed

that no further investigation could be conducted without prior permission of the Court when the court had taken cognizance of the case.

5. Before laying my hands over the application of the aforesaid judgments, I need to reproduce Section 173(8) Cr.P.C, which deals with powers

of further investigation by the police in the case, 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, whereupon, 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)."" Powers of the Police Officer to investigate the case have been defined u/s 156 Cr.P.C, which read as under:

156. Police officer's power to investigate cognizable cases - (1) Any officer in charge of a police station may, without the order of a magistrate,

investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire

into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such

officer was not empowered under this section to investigate.

(3) Any Magistrate empowered u/s 190 may order such an investigation as above-mentioned.

6. After the investigation is completed, the Investigating Agency is required to submit the charge report against the accused u/s 173 Cr.P.C, and

the court is to try the case on the said charge report, submitted to it and it has nothing to do with the further investigation of the case. The police

has been vested with the powers of further investigation u/s 173(8) Cr.P.C., irrespective of the fact that reinvestigation could be conducted under

the orders of the Court, but no embargo has been placed over the powers of the police for further investigating the case. From bare reading of

Section 173(8) Cr.P.C, it is evident that even after submission of investigation report under this Section, if the police comes across further

evidence, oral or documentary, then in order to facilitate the trial and to enable the Court to reach the truth, it is vested with all powers to further

investigate the matter, but cannot investigate afresh or reinvestigate the same. The dictionary meaning of "further" when used as an adjective is

"additional", "more", "supplemental". "Further investigation" certainly is continuation of the earlier investigation and not a fresh investigation or re-

investigation to be started ab initio wiping out the earlier investigation altogether. The provisions of Sub-section (8) of Section 173 Cr.P.C, clearly

envisage that on further investigation, the investigating agency has to forward a further investigation report and not a fresh report regarding the

further evidence obtained during such investigation and not fresh report or reports regarding further investigation obtained during such investigation.

Further investigation is a continuation of such investigation, which culminates in a further police report. To put it differently, if during the further

investigation, the police finds some evidence against an additional accused or it finds some of the accused innocent, then the police could submit

such a report to the Court and it is only upto the Court, which is to decide from the earlier report as well as the later report and also the evidence

put up before it by the police, as to whether there was sufficient evidence for trial against them. No doubt, the Trial Court has relied upon the

decision of the Apex Court in case K. Chandrasekhar and Anr. v. State of Kerala, 1998(2) RCR(Crl.) 719 (SC): 1998(2) RCR 720(SC), but the

same is of no help to the prosecution, rather, it has clarified and created a distinction in the words, "further investigation" and "re-investigation" or

"fresh investigation" of the case and observed that further investigation in the case notwithstanding any consent, has been obtained from the court,

is not bad. Such proposition again arose before the Apex Court in a recent judgment delivered in case, Hasanbhai Valibhai Qureshi v. State of

Gujarat and others, 2004(2) RCR(Crl.) 463 (SC): 2004(2) Apex Crl. 609 (SC): JT 2004 (4) 305, wherein, it was observed as under:

10. Coming to the question whether a further investigation is warranted, the hands of the investigating agency or the Court should not be tied down

on the ground that further investigation may delay the trial, as the ultimate object is a to arrive at the truth.

11. Sub-section (8) of Section 173 of the Code permits further investigation, and even de hors any direction from the Courts as such, it is open to

the police to conduct proper investigation, even after the Court took cognizance of any offence on the strength of a police report earlier submitted.

All the more so, if as in this case, the Head of the Police Department also was not satisfied of the propriety or the manner and nature of

investigation already conducted.

12. In Ram Lal Narang Vs. State (Delhi Administration), it was observed by this Court that further investigation is not altogether ruled out merely

because cognizance has been taken by the Court. When defective investigation comes to light during course of trial, it may be cured by further

investigation if circumstances so permitted. It would ordinarily be desirable and all the more so in this case, that police should inform the Court and

seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the

need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable

and necessary as an expeditious disposal of the matter by the Courts. In view of the aforesaid position in law if there is necessity for further

investigation the same can certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not

stand in the way of further investigation if that would help the Court in arriving at the truth and do real and substantial as well as effective justice.

We make it clear that we have not expressed any final opinion on the merits of the case.

In *Om Parkash Narang*'s case (supra), the Apex Court had only expressed its desire in the circumstances of that case and the fact that

adjudication of the trial may not be delayed, to inform and seek permission of the court before proceeding for further investigation, but it never

intended to issue such mandate in every case having its own circumstances. That is why, the Apex Court repeated the observations to the following

effect:

In view of the aforesaid position in law if there is necessity for further investigation the same can certainly be done as prescribed by law.

8. In the present case, the trial was at a very initial stage and the police had not done any fresh investigation by itself or through any other agency,

rather, it had conducted further investigation to make a deep probe into the matter and found that the Petitioner (*Charanjit Singh*), who was earlier

arrayed as an accused, was innocent. This may not be taken as end of road for *Charanjit Singh*. The accused is already before the Court on

account of the earlier report u/s 173 Cr.P.C., submitted two months prior to the filing of the next report i.e. 23.5.2007. The supplementary report

does not tie its hands for taking cognizance against him as the Court is vested with vast powers to proceed against him even u/s 190 Cr.C. Further,

the report submitted by the police u/s 173(8) Code of Criminal Procedure could not be condemned merely for the reason that further investigation

was not conducted without the permission of the Court. In the case of *Zahira Habibulla H. Sheikh and Another Vs. State of Gujarat and Others*, ,

the Apex Court laid down as under:

Sub-section (8) of Section 173 of the Code permits further investigation, and even de hors any direction from the Court as such, it is open to the

police to conduct proper investigation, even after the Court took cognizance of any offence on the strength of a police report earlier submitted .

9. As such, it would not be inappropriate to hold that irrespective of the fact that the Court had taken cognizance of the matter, there was no

embargo on the powers of the police to further investigate the matter and the Court should not go by the technicalities of seeking or not seeking its

formal permission. The main object of the police while conducting investigation is to collect maximum evidence and reach the real culprit, so as to

bring them to book. So, is the main object of the trial, wherein, the Court is to scrutinise the evidence as collected by the police and punish the real

culprits. The Investigating Agency is not the final authority to decide, the fate of the accused, but it is to nominate one as innocent and the other as

culprit, but the ball is ultimately in the dominion of the court. It may further be observed that in the present case, the challan was just presented and

the court had not taken cognizance of the case, when the supplementary report u/s 173(8) Code of Criminal Procedure was submitted by the

Investigating Agency. As such, the Trial Court fell into an error in holding the formal permission of the Court was required for further investigation

of the case. As a sequel of the above discussion. the present petition is accepted, the impugned order is set aside and the Trial Court is directed to

take into consideration the report submitted u/s 173(8) Cr.P.C, dated 23.7.2007 along with earlier report dated 23.5.2007 and, only then,

proceed in accordance with law.

The parties are directed to appear before the Trial Court on 9.1.2008.