IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-3193-2025 (O&M)
Reserved on: 21.01.2025
Pronounced on: 29.01.2025

Pawan Kharbanda

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manuj Nagrath, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

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HARPREET SINGH BRAR, J.

1. Present petition has been preferred under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking quashing of cross-case/DDR No.22 dated 05.06.2012 registered under Sections 323, 34 of the Indian Penal Code, 1860 (for short 'IPC') (Sections 307, 382, 148, 149 of IPC were deleted later on), in FIR No.119 dated 05.06.2012 under Sections 323, 324, 326, 506, 534 of IPC, registered at Police Station Salem Tabri, Ludhiana

and all the subsequent proceedings arising therefrom as well as the order dated 21.08.2024 (Annexure P-9) passed by learned Judicial Magistrate 1st Class, Ludhiana, whereby the cancellation report was rejected and the matter was sent back for re-investigation.

2. Brief facts of the case are that on 05.06.2012, when the petitioner was putting posters for promotion of his sister-in-law, who was contesting elections for the post of Councilor, then Satish Kumar, Pradeep Naagar and Shelly stopped him and raised *lalkara*, stating that no one else can contest elections in their ward. Thereafter, Vinod Kumar Noda and Bittu etc., armed with swords, baseball bats and sticks, came at the spot and they started beating the brother of the petitioner, namely Vinod Kharbanda as well as his cousin, namely Pawan Taneja. On coming to know about the incident, the complainant along with his brother Kishan Kharbanda reached at the spot. Satish Naagar gave a sword blow, that hit the head of Kishan Kharbanda and another blow to the elbow and arm of Vinod Kharbanda. When an alarm was raised to rescue them, the assailants fled away from the spot with their respective weapons. Thereafter, Vinod Kharbanda, Kishan Kharbanda and Pawan Taneja were got admitted in DMC Hospital, for treatment. With these allegations, FIR (*supra*) was registered.

3. On the other hand, Satish Naagar, accused in FIR (*supra*) got registered a cross-case vide DDR (*supra*), alleging that when they reached

Sarpanch street, the petitioner and 20-25 other persons abused them and hit them with sticks and *kirpans*. The petitioner gave a pistol butt blow on the head of Satish Naagar and also fired bullet shots towards him.

4. Subsequently, the investigation was conducted and offences under Section 326, 324, 323, 506, 34 of IPC were found to be made out in the FIR case and accordingly, final report under Section 173 of Cr.P.C. [*now Section 193 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS*)] (Annexure P-2) was presented on 16.09.2016. However, in the DDR case, a cancellation report was filed, stating that no police interference was warranted.

5. Learned counsel for the petitioner, *inter alia,* contends that respondent No.2 did not institute any complaint after the cancellation report was filed in the year 2020. After a delay of three years, respondent No.2 had approached this Court by filing CRM-M-51659-2023 seeking directions to the official respondents for presentation of final report in the DDR case and vide order dated 25.07.2024 (Annexure P-6), a notice was issued therein, however, respondent No.2 failed to disclose that Section 323 of IPC (*now Section 115(2) of Bharatiya Nyaya Sanhita, 2023*) is non-cognizable in nature. Further, status report by way of affidavit dated 29.04.2024 was filed by Assistant Commissioner of Police (North), Ludhiana (Annexure P-7) stating that the petitioner was found innocent in the DDR case. Learned Court below has erred in ordering re-investigation at the fag end of the trial, especially in view of the

fact that 12 years have passed since the alleged incident, which occurred on 05.06.2012. A perusal of the impugned order dated 21.08.2024 (Annexure P-9) 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. Udhayakuamr 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 ***CRM-M-5036-2019*** decided on 01.09.2020.

6. Learned State counsel could not controvert the fact that the investigating agency had declared the petitioner to be innocent in the DDR case.

7. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that Satish Kumar Naagar, complainant in the DDR case, appeared before learned trial Court on 09.04.2024 and recorded a statement expressing his dissatisfaction with the cancellation report put forth by the investigating agency. Therefore, vide order dated 21.08.2024 (Annexure P-9), 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.

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(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-sectgions (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).

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

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(9) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (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.

8. It is trite law that the concepts of ‘further investigation’ and ‘re-investigation’ 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 :*
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> > *"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."*

9. 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.*
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> *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 :*
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> *"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 sub-seection (8), but not fresh investigation or reinvestigation..." (emphasis added)

10. A perusal of the impugned order dated 21.08.2024 (Annexure P-9)

would indicate that learned Court below has ordered ‘re-investigation’ qua the DDR case, 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.

11. 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."*

12. Adverting to the matter at hand, it transpires that DDR (*supra*) was lodged on 05.06.2012 under Section 323 of IPC (*now Section 115(2) of BNS*), which is non-cognizable in nature. The petitioner was also declared innocent during the investigation, however, after 12 years, the matter has been sent for re-investigation, subjecting the petitioner to unduly prolonged trial. There is no justification for subjecting a citizen to an indefinite period of investigation and trial.

13. In view of the facts and circumstances of the case, present petition is allowed and DDR No.22 dated 05.06.2012 registered under Sections 323, 34 of IPC, in FIR No.119 dated 05.06.2012 under Section 323, 324, 326, 506, 534 of IPC, registered at Police Station Salem Tabri, Ludhiana and all the subsequent proceedings arising therefrom as well as the order dated 21.08.2024 (Annexure P-9) passed by learned Judicial Magistrate 1st Class, Ludhiana, are hereby quashed qua the petitioner.

14. All the pending miscellaneous application(s), if any, shall stand disposed of.

15. Before parting, it is necessary to mention that this Court has noted variations in the manner, in which learned Magistrates deal with applications under Section 156(3) of Cr.P.C. (*now Section 175(3) of BNSS*) as well as the criteria for evaluation of cancellation reports submitted under Section 173 of Cr.P.C. (*now Section 193 of BNSS*), following the conclusion of investigation. As a watchful guardian of the rights of the citizens, the Courts bears the responsibility of ensuring that these provisions are not misused to harass individuals or to subvert the due process of law. The provisions under Sections 156 and 173 of Cr.P.C. (*now Sections 175 & 193 of BNSS*) are powerful legal instruments, meant to uphold justice, however, their indiscriminate use can lead to unnecessary hardships. Judicial oversight is, therefore, imperative in order to prevent abuse while ensuring that legitimate grievances receive the attention they deserve. To ensure uniformity and judicial coherence, this Court deems it appropriate to issue the following directives:

1. <u>Guidelines for considering Cancellation Reports under Section 173 of Cr.P.C. (*now Section 193 of BNSS*):</u>

a) As already clarified, there is no legislative mandate that empowers the Magistrates to order re-investigation. Further, the concept of re-investigation has not been prescribed in criminal matters by the legislature. The role of the Magistrates in evaluating the Cancellation Report is, therefore, strictly confined to the legal options available under the Cr.P.C. (*now BNSS*). In

fact, when a cancellation report is presented by the Investigating Officer, concluding that no offence appears to have been committed, the Magistrate has the following three options:

(i) Accept the report and drop the proceedings.

(ii) Disagree with the report, take cognizance of the offence and issue process.

(iii) Direct further investigation by the police under Section 156(3) of Cr.P.C (*now Section 175(3) of BNSS*)

(b) The Magistrate must not direct further investigation solely based on the dissatisfaction of the complainant with the Cancellation Report. Ordering further investigation at the *ipse dixit* of the complainant could prove to be detrimental to the cause of justice, since he/she is an interested party and may have ulterior motives. It is not the satisfaction of the complainant, which would ultimately matter, but the satisfaction of the Court alone for the purposes of the acceptance or rejection of the Cancellation Report. If such a defunct approach is allowed, it will not only make it well-nigh impossible for the criminal Courts to conclude proceedings but also jeopardize the concept of free, fair and speedy trial. The complainant is obligated to specifically indicate the shortcomings in the investigation and demonstrate what crucial piece of evidence has been ignored or overlooked by the Investigating Officer, that would necessitate further investigation.

(c) When the Magistrate does deem it necessary to direct further

investigation, the order so passed must reflect satisfaction supported by judicial reasoning, demonstrating that:

(i) Some crucial evidence was overlooked by the investigating agency.

(ii) A key piece of material evidence or document, which would aid in the effective adjudication of the case, required to be collected.

(iii) The Investigating Officer has acted with bias or in a manner that obstructs the course of justice.

(These illustrations are enumerative and not exhaustive)

The Magistrate must record his findings guided by objective standards of reason and justice.

2. <u>Guidelines with respect to applications under Section 156(3) of Cr.P.C. (*now Section 175(3) of BNSS*):</u>

(a) When exercising authority under Section 156(3) of Cr.P.C. (*now Section 175(3) of BNSS*), the Magistrate must not order registration of an FIR merely by reiterating the allegations levelled by the complainant in the application.

(b) The order directing registration of an FIR under Section 156(3) of Cr.P.C. (*now Section 175(3) of BNSS*) must demonstrate application of judicial mind. The rationale behind directing an investigation under Section 156(3) of Cr.P.C. (*now Section 175(3) of BNSS*) must be explicitly reflected in the order and simply stating that the Magistrate has reviewed the complaint, documents and heard the complainant, would be considered inadequate. While an

exhaustive explanation is not required, the reasoning must be clear and dictated by objectivity.

(c) As per the directions issued by the Hon'ble Supreme Court in ***Priyanka Srivastava Vs. State of U.P., (2015) 6 SCC 287*** and the subsequent incorporation of the same in Section 175(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), all applications under Section 156(3) of Cr.P.C. or Section 175(3) BNSS must be supported by a sworn affidavit. Such affidavits should confirm that the applicant has exhausted the remedies under Sections 154(1) and 154(3) Cr.P.C. (*now Sections 173(1) and 173(4) of BNSS*) before seeking intervention from the Magistrate. In order to support the affidavit, relevant supporting documents must also be attached therewith.

The filing of such an affidavit has been made a pre-requisite to filing an application under Section 156(3) of Cr.P.C. (*now Section 175(3) of BNSS*), with an intention to prevent undue harassment of the accused individuals. The objective is to ensure that only bona fide applicants with legitimate grievances take advantage of this provision and citizens remain safeguarded from frivolous complaints.

(d) The Courts are not expected to act as passive transmitters of information, but must carefully examine whether an investigation by the State is genuinely warranted. In that vein, the Magistrate must not act as a mere conduit for forwarding complaints to the police. The Courts must shun the

antiquated practice of simply passing the buck to the investigating agency in a routine manner. A more dynamic and vibrant approach to advance the cause of reasonableness is called for, thereby enthroning justice as the paramount guiding principle in judicial decision-making. If the complaint presents straightforward allegations that can be directly adjudicated by recording evidence and proceeding to trial, the Magistrate should adopt this course instead of unnecessarily involving the police under Section 156(3) of Cr.P.C. (*now Section 175(3) of BNSS*). However, in cases involving intricate facts or requiring specialized investigative skills and resources beyond the capacity of the Court, referring the matter for police investigation may be justified. The Magistrate must, therefore, exercise a judicial approach in assessing whether police intervention is necessary or if the matter can proceed without it. (See: ***Om Prakash Ambadkar Vs. The State of Maharashtra and Others, Criminal Appeal No.352 of 2020*** decided on ***16.01.2025***).

16. Furthermore, Section 175(3) of BNSS has introduced additional safeguards ensuring that before directing the registration of an FIR, the Magistrate is required to conduct such inquiry as deemed necessary and consider the submissions made by the police officer. The power to conduct an inquiry under this provision must be exercised liberally and the Magistrate shall mandatorily seek the submissions of the Investigating Agency. This procedural safeguard ensures that the Magistrate arrives at a reasoned and

well-considered decision, preventing unnecessary invocation of investigative machinery as well as expenditure of public resources and ensuring that the resort to police intervention is warranted in the given circumstances.

17. The Magistrates in the States of Punjab and Haryana as well as Union Territory of Chandigarh are directed to strictly adhere to the aforementioned guidelines to ensure consistency, judicial propriety and uphold the majesty of law.

18. Registry is directed to circulate a copy of these directions amongst learned District & Sessions Judge in the States of Haryana and Punjab as well as Union Territory, Chandigarh, who, in turn, shall circulate it amongst learned Magistrates. Further, a copy of these directions shall also be sent to the Director, Chandigarh Judicial Academy, Chandigarh in order to impart necessary training to all the Magistrates.

[HARPREET SINGH BRAR]
JUDGE

29.01.2025
vishnu

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