

2025:PHHC:099506



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

**CRM-M-5396-2018
DECIDED ON:14.07.2025**

KESHAV RAM

...PETITIONER

VERSUS

MAHAVIR RATHI AND OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Mukesh Rao, Advocate
for the petitioner.

Mr. Ashit Malik, Advocate
for respondents No.1 to 3.

Ms. Mayuri Lakhanpal Kalia, DAG, Haryana.

SANDEEP MOUDGIL, J

Prayer

1. The jurisdiction of this Court under Section 482 Cr.P.C. (now 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023) has been invoked seeking quashing of order dated 15.05.2015 passed by learned Judicial Magistrate Ist Class, Gurugram, vide which the criminal misc. Application filed by the complainant/petitioner in FIR No. 242, dated 09.05.2012, under Sections 323, 325 and 34 IPC, Police Station Civil Lines, Gurgaon, has been disposed of, allowing it partly by accepting the prayer to reframe charge by including charge under Section 452 IPC, but declining the prayer to order further investigation and frame charge under Section 354 IPC as well as the judgment dated

14.11.2017 passed by the learned Additional Sessions Judge, Gurugram, thereby dismissing the revision petition filed against the order dated 15.05.2015.

Brief Facts:-

2. The petitioner-complainant filed an application before the Learned Trial Court alleging that the accused persons unlawfully entered his residence, caused physical injuries, and forcibly took away the ear-rings of his wife. Despite the seriousness of these allegations, the police failed to conduct a proper and impartial investigation. They wrongfully exonerated two of the accused persons named in the FIR, did not record the statement of the complainant's wife, an important eyewitness and filed a challan only against one accused, namely Mahabir Rathi. The complainant alleged that this was done in collusion with the accused.

3. However, the version of the petitioner was found to be credible at the initial stage by the Courts, whereby, the Court, upon examining the matter found sufficient grounds to summon the other two accused persons, Kapil Dev and Gyan Dev (sons of Mahabir Rathi), under Section 319 of the Code of Criminal Procedure (CrPC). It is well settled that the standard for summoning under Section 319 CrPC is higher than that required for framing of charges, which only requires a prima facie case. In this case, the complainant's version not only met but surpassed the prima facie threshold and was believed by the Court.

4. Accordingly, the petitioner prayed for a direction to the police to conduct further investigation, particularly for the recovery of

the stolen ear-rings and to record the statement of the complainant's wife. He also sought reframing of charges against Mahabir Rathi, Kapil Dev, and Gyan Dev under Section 354 IPC and other relevant provisions, in line with the complainant's initial statement.

5. After hearing arguments on the said application, the learned Judicial Magistrate First Class, vide order dated 15.05.2015, partly allowed the application by accepting the prayer to include the charge under Section 452 IPC. However, the Magistrate declined the request for further investigation and also refused to frame charges under Section 354 IPC.

6. Aggrieved by the partial rejection of his application, the petitioner filed a revision petition. However, the Revisional Court dismissed the same vide order dated 14.11.2017. Dissatisfied with both the above orders, the petitioner has approached this Court by way of the present petition.

Submissions:-

On behalf of petitioner

7. Learned counsel for the petitioner submits that the impugned orders are legally unsustainable and deserve to be set aside. It is contended that the Courts below failed to appreciate that the investigation was incomplete and biased. The petitioner has placed sufficient material on record to show that on 18.04.2012 at around 7:00 PM, while returning home, he saw the accused Mahabir Singh Rathi molesting and quarreling with his wife after unlawfully trespassing into their house. When the petitioner intervened, Mahabir's sons, Kapil Dev and Gyan Dev also entered the house and assaulted both the petitioner

and his wife with a brick and a knife, causing injuries to their teeth and arms. The accused also snatched the ear-rings of the petitioner's wife.

8. Given these facts, a *prima facie* case is clearly made out under Sections 452 and 354 IPC. Moreover, Kapil Dev and Gyan Dev have already been summoned to face trial under Section 319 CrPC. In view of the above, it is respectfully submitted that the investigation was not conducted in a fair and impartial manner. Therefore, the present petition merits acceptance and the petitioner prays for appropriate directions in this regard.

On behalf of respondents:-

9. 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.

Analysis:-

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

11. 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 323, 325, 452 and 34 of IPC has been framed as against the accused-persons.

12. At the outset, it would be relevant to refer to provisions of Section 173 of the Code of Criminal Procedure (which is *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, wherein, 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 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.

13. 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.

14. Furthermore, 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.

15. So far as the power of police to conduct further investigation, as recognised under Section 173(8) Cr.P.C. 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 Apex 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 fact, in *State of Andhra Pradesh v. A.S. Peter* reported in (2008) 2 SCC 383, the Hon'ble Supreme Court observed it as a statutory right of the police and the law even does not mandate the taking of prior permission from the Magistrate for further investigation, even after filing of the charge-sheet. In *State through Central Bureau of Investigation v. Hemendra Reddy and another, 2023 SCC OnLine SC 515*, the Apex Court has held as under:-

"77. 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.

16. 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.

17. However, the Hon'ble Apex Court in *K. Vadivel vs K. Shanthy and others*, **AIR 2024 Supreme Court 5065**, while adjudicating as to 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.”

18. 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. 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 sparingly and in accordance with law and keeping in view the peculiar facts and circumstances of a particular case, to achieve the ends of justice and where fresh material comes to light. In the instant case, the petitioner has insisted on addition of offences under Sections 354 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. Now, even a charge under Section 452 of IPC has been framed against the accused. 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.

19. With regard to the applicability of Section 354 IPC, it is noted that the FIR contains an allegation that accused Mahabir Rathi was "teasing" the complainant's wife. In support of this, prosecution witness PW2, Smt. Urmila Devi (wife of Sh. Keshav Ram), deposed that accused Mahabir Rathi unlawfully entered her house and began teasing her. Upon witnessing this, her husband Keshav Ram intervened and objected to the accused's conduct. Following this, the two sons of

Mahabir Rathi, Kapil Dev and Gyan Dev also entered the house and allegedly assaulted both her and her husband.

20. However, upon careful examination of the material on record, this Court is of the considered view that a prima facie case under Section 354 IPC is not made out. Firstly, the allegation of "teasing" pertains solely to accused Mahabir Rathi and does not implicate Kapil Dev or Gyan Dev in this context. Secondly, the term "teasing" is vague and encompasses a broad range of possible behaviors. Mere mention of the word "teasing" without any concrete particulars does not meet the threshold required to invoke the offence under Section 354 IPC, which mandates evidence of assault or use of criminal force with the intent to outrage the modesty of a woman

Relief:-

21. 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 Section 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.

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

(SANDEEP MOUDGIL)
JUDGE

14.07.2025

Sham

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