

(2015) 04 P&H CK 0327
In the Punjab And Haryana At Chandigarh
Case No : CRM-M-3473 of 2015

Shantanu Goswami

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 156, 173, 173(8), 482
Penal Code, 1860 (IPC) — Section 323, 328, 34, 506

Citation : (2015) 04 P&H CK 0327

Hon'ble Judges : Fateh Deep Singh, J

Bench : Single Bench

Advocate : J.S. Bedi, Senior Advocate and Diya Sodhi, T.S. Sangha, Senior Advocate with H.S. Sangha, for the Appellant; Deepak Sabherwal, A.A.G, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Fateh Deep Singh, J.—As the maxim goes everything is fair in love and war and true to this after having waded through their matrimony for about seven years what initially and apparently appears to be a pure matrimonial dispute between husband respondent No. 2-Sita Ram Ola and his wife Shalini has spread out like an inferno engulfing, even the relatives out of whom the present petitioner Shantanu Goswami has come to be acknowledged as an accused in this attrition.

2. The petitioner before this Court, who happens to be one of the accused in case registered by way of FIR No. 199 dated 6.9.2012 under Sections 323,328,506, 34 IPC pertaining to Police Station, Kherki Daula, District Gurgaon and also happens to be a close relation of the wife's side has challenged by way of this petition under Section 482 Cr.P.C. order dated 13.11.2014 Annexure P/5 passed by OSD/Chief Minister, Haryana alleged to be an order for reinvestigation of this case.

3. Before venturing into the relative merits, the brief sketch of the imbroglio is

that the wife Shalini along with her parents consisting of her father Subhash Krishania, mother Sarwan Lata, grandfather Harish Krishania, brother Sushant and the present petitioner-Shantanu Goswami, all accused and complainant-husband Sita Ram Ola, who claims to be working as a Shift Manager in an Airline at Delhi formed an Educational Society under the name and style of Bhagwan Singh Educational Society (referred to as "Society") for running a college by the name of Indraprastha College, Shikohpur (for short, "College") wherein, the complainant was named as director of this College. It is during the course of events, a dispute arose between the family over this business and it was on 2.9.2012 a daily diary report No. 20 was entered in the rapat roznamcha No. 16 by ASI Satya Parkash on the statement of the husband-Sita Ram Ola alleging that for the last 7-8 years he was having health problems, whereby, his liver and kidneys were damaged along with other parts of the body and while under treatment at Medanta Hospital, Gurgaon it was suspected to be a case of poisoning and, thus, was referred to AIMS, New Delhi, from where he was getting treatment since 11.6.2012. It is alleged by the husband that on 26.8.2012 his wife mixed chemical poison in his food which was seen by his nephew Anurag Ola and who confronted Shalini about it. The husband alleged that there were bottles lying in the refrigerator and the cook told him that they were kept by his wife after the same were brought by all the accused and, thus, suspected that he was being given slow poison. It has been further alleged by the husband that on 27.8.2012 his wife gave marching orders to the cook and on the next day i.e. 28.8.2012 Shalini went away to Jaipur and claimed that from 24.2.2012 till 8.3.2012 she had given poison to him and again from 9.5.2012 to 8.6.2012 did the same very act and even alleged that Shalini did so in connivance with the present petitioner as they were having illicit relations and wanted to grab his property in connivance with other co-accused. The husband has also sought to level allegations of fidelity against the wife that on the pretext of business activities she used to visit out stations along with present petitioner for a rendezvous and sought to place his reliance on various hotel documents.

4. The police after necessary formalities of obtaining MLR and securing reports and seeking opinion of the experts got registered the aforesaid FIR in which the petitioner was arrested on 22.2.2013 and after investigations the challan was presented on 20.5.2013. It is during the course of further events that vide orders dated 23.7.2013 of Additional Director General of Police, Crime, Haryana ordered further investigations. It was through this process it transpired that while opening the Society a loan of Rs. 4.97 crores was secured from Corporation Bank, Mahipalpur in the year 2007 for which land was purchased in Gurgaon for running this College whereby, the house of accused Swaran Lata was put up by way of collateral security and in fact it was the failure of the wife who was an Engineering Graduate to bear a child which led to this dispute whereby, husband is shown to have physically abused her and expressed doubts over the allegations that mercury found in thermometer cannot be mixed with glycerine as per the allegations of the complainant and after necessary investigations the

cancellation report was submitted before the Court on 22.10.2014 with the prayer for discharging the accused Shantanu Goswami, the present petitioner.

5. It is subsequent thereto fearing throwing off to the winds and nemesis of his allegations, the complainant husband moved an application to the Hon"ble Chief Minister, Haryana dated 13.11.2014 Annexure P/5 by way of representation regarding reinvestigations of the case. It was upon this representation the OSD/ Chief Minister, Haryana passed the impugned order which needs to be reproduced:-

"Presented to Hon"ble C.M. He has desired that the case may be re-examined and report be submitted at the earliest.

OSD/CM

6. The same is subject matter of challenge before this Court.

7. Heard. Learned counsel for the parties and perused the records of the case. Though, on behalf of the contestants to this petition much force and vehemence has been at display, whereby, from the petitioner's side reliance has been placed on Ram Rikh Dass Daga Vs. Mahant Taran Parshad Chela Mahant Chander Parshad, (2013) 169 PLR 255 : (2013) 2 RCR(Civil) 197 : (2013) 1 RCR(Rent) 306 ; Mithabhai Pashabhai Patel and Others Vs. State of Gujarat, (2009) 7 JT 666 : (2009) 7 SCALE 559 : (2009) 6 SCC 332 : (2009) 7 SCR 1126 : (2009) 6 UJ 2891 ; Ramachandran vs. R. Udhayakumar and others 2008(3) RCR (Criminal) 47 ; Kishan Lal Vs. Dharmendra Bafna and Another, AIR 2009 SC 2932 : (2009) CLT 1553 : (2009) CriLJ 3721 : (2009) 9 JT 669 : (2009) 7 SCC 685 : (2009) 11 SCR 234 : (2009) AIRSCW 4677 : (2009) 6 Supreme 60 and State of Haryana Vs. Madan Lal and Others . In all these ratios it has been clearly laid down that the term "reinvestigation" and "further investigation" stand on a different footing and it is only in the exercise of constitutional powers under Articles 226 and 32 of the Constitution of India, a Court can direct a State to get an offence investigated or further investigated by a different agency and, thus, directions of reinvestigation are completely forbidden and which settled position of law could not even be controverted on behalf of the other side, who to enliven their arguments have heavily placed reliance on State of A.P. Vs. A.S. Peter 2008(3) RCR (Criminal) 131; Charanjit Singh @ Bittu vs. State of Punjab 2008(2) RCR 748 and Raghvendra Pratap Singh vs. State of U.P. and another 2007 (Suppl.) Allahabad Criminal Cases 298 to hammer home the point that police can make further investigations even after submission of a challan in terms of Sections 156 and 173 Cr.P.C. and for that permission of a Court is not required.

8. It is undisputed that there are unbridled powers with the investigating agency in terms of Section 173(8) of the Cr.P.C. which empowers the police after further investigations to submit a fresh report in Court and to which disclosure of new material none can object too. What flows from the impugned order Annexure P/5 makes it explicitly clear from the wording itself that the Administrative Authority

in question has only desired that the case may be re-examined and report be submitted. A plain reading of this and its english connotation amply demonstrates that word "re-examine" is an administrative procedure by which a party can seek a review of an order/document/evidence and such a relook into the matter does not means or can be construed to be a recollection of evidence and, thus, it tantamounts to only reinterpretation of what has already come on records. Thus, the arguments of the counsel for the petitioner that by virtue of Annexure P/5 the Administrative Authority has overstepped its jurisdiction by ordering reinvestigation is certainly off the tangent and nowhere reflects initiation of steps towards reinvestigation of the case. Thus, from this it flows that if as a consequence of Annexure P/5 the police authorities transgressed their powers and limitations is another matter which is not subject matter of challenge before this Court. The petitioner would be at liberty to adopt the recourse in that eventuality, if so advised.

9. Though, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its powers under Section 482 Cr.P.C. Since the impugned order Annexure P/5 is purely an administrative/executive exercise, this Court has reservations over its challenge under the provisions of Section 482 Cr.P.C. and which powers are as has been laid down in State of Haryana vs. Bajan Lal 1992 SCC (Criminal) 426 for doing substantial justice where there is a grouse against process of a Court and should not be allowed to be used to stifle a legitimate prosecution. More so, when there is a more efficacious remedy available under the law resort to such a means is highly uncalled for.

10. The inherent jurisdiction vesting in this Court under the provisions of Section 482 Cr.P.C. as has been laid down in the case of Dr. Monica Kumar and Another Vs. State of U.P. and Others, (2008) 7 JT 194 : (2008) 9 SCALE 166 : (2008) 8 SCC 781 has to be exercised very sparingly, carefully and with a caution. Learned counsel for the petitioner could not convince this Court if any of these tests so laid down in this ratio have been violated which could be a cause of grievance of reasonable apprehension in the mind of the petitioner of denial and miscarriage of justice.

11. Thus, in view of these discussions, there is no merit in the instant petition and the same stands dismissed.