

State Of Punjab vs Cbi & Ors on 2 September, 2011

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Author: A.K. Patnaik

Bench: A. K. Patnaik, R.V. Raveendran

Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO. 792 OF 2008

State of Punjab

..... Petitioner

Versus

Central Bureau of Investigation

& Ors.

..... Respondents

J U D G M E N T

A.K. PATNAIK, J.

This petition under Article 136 of the Constitution has been filed by the State of Punjab praying for special leave to appeal against the order dated 11.12.2007 of the High Court of Punjab and Haryana in Criminal Miscellaneous No. 51620 of 2007 (for short "the impugned order").

2. The facts very briefly are that on 18.04.2007 respondent no.3 lodged FIR No. 82 at Police Station City-I, Moga against Simran Kaur @ Indu and her husband Ajay Kumar alleging offences under Sections 366, 376, 406, 420, 506, 344 read with Section 34 of the Indian Penal Code, 1860 (for short 'the IPC'). Pursuant to the FIR, Simran Kaur and Ajay Kumar were arrested on 19.04.2007, but Ajay Kumar managed to escape from the custody of police and FIR No. 83, Police Station City-I, Moga dated 19.04.2007 under Section 224 of the IPC was registered against him. In course of investigation of the case, respondent no.3 made a statement before the police under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') on 23.04.2007 naming 14 other persons who had sex with her against her will and some of these persons were arrested by Sub-Inspector Raman Kumar. The statement of respondent no.3 was recorded on 25.04.2007 under Section 164 of the Cr.P.C. by the Chief Judicial Magistrate, Moga. On 08.05.2007, the investigation of the case was entrusted to Inspector Amarjit Singh, S.H.O. PS City-I, Moga. Some of the persons named by respondent no.3 in her statements were found to be innocent and were released. After completing the investigation, Inspector Amarjit Singh submitted a charge sheet on 01.06.2007 in Court under Section 173 of the Cr.P.C naming Simran Kaur @ Indu, Ajay Kumar, Vimal Kumar, Subhash Chander, Ramesh Kumar, Randhir Singh, Iqbal Singh, Bharat Bhushan and Inderjit Singh as accused persons.

3. On 04.06.2007 FIR No. 160 was registered under Sections 342, 323 and 506 read with Section 34 of the IPC at PS Baghapuran against several accused persons. One of the accused persons Ranjit Singh, however, made a complaint to the Additional Director General of Police (Law and Order) that he has been falsely implicated by Inspector Amarjit Singh in connivance with Manjeet Kaur because he had recorded a conversation by Inspector Amarjit Singh with him in the mobile that he would be arrested if he did not pay a certain amount to him and a compact disc containing the recorded conversation was prepared and attached with the complaint. Investigation into this case was entrusted to Inspector Bhupinder Singh, Deputy Superintendent of Police, Bhaga Pura, District Moga. On completion of the enquiry it was found that the allegations against the accused persons were false. Accordingly, on 24.10.2007 FIR No. 198 was registered at PS City -I, Moga under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 read with Sections 384, 211 and 120-B of the IPC against Inspector Amarjit Singh and Manjeet Kaur and respondent no.3 and Inspector Amarjit Singh were arrested.

During investigation it also came to light that Sub-Inspector Raman Singh, the then S.H.O., PS Badhnikalan was helping Manjeet Kaur and respondent no.3 and that Sub-Inspector Raman Singh had accepted illegal gratification.

Accordingly, offences under Sections 195, 201, 202, 218, 219, 221, 465, 468 and 471 of the IPC were added in the case registered as FIR no. 198 of 2007 and Sub-Inspector Raman Singh was also named as an accused alongwith Inspector Amarjit Singh. Sub-Inspector Raman Kumar was also dismissed from service by the Senior Superintendent of Police.

4. On 11.11.2007, Manjeet Kaur and respondent no.3 were arrested and during interrogation respondent no.3 alleged that on 04.11.2007, Sub-Inspector Raman Kumar took her and Bhupinder Kumar @ Rocky Sharma to a place at Karnal in Haryana, where Bhupinder Kumar @ Rocky Sharma raped her during the night of 04/05.11.2007. On 13.11.2007, a news item was published in the Hindustan Times headlined 'Moga Sex Scandal' and two ladies, namely, respondent no.3 of Village Varsaal and her relative Manjeet Kaur of Village Badduwal had been arrested. This news was also published in the Tribune dated 12.11.2007.

5. The High Court took suo motu notice of the news items and issued notices to the State of Punjab, Senior Superintendent of Police, Moga and Deputy Inspector General of Police, Ferozpur Range and directed the Deputy Superintendent of Police, Bhupinder Singh, who was investigating into the case, to file the status report of the investigation on the next date of hearing. On 15.11.2007, Bhupinder Kumar was arrested and FIR No. 225 was registered at Police Station Tarawari, Distt. Karnal under Sections 376, 342 and 34 of the IPC against him. On 19.11.2007, status report was submitted before the High Court by Deputy Superintendent of Police, Bhupinder Singh stating that the investigation is still in progress. On 19.11.2007, a Criminal Miscellaneous Application was moved by an advocate on behalf of Bhushan Garg and Inderjit Singh, two Municipal Councilors of Moga, alleging that at the instance of local influential political persons and senior police officers, many innocent persons, including Bhushan Garg and Inderjit Singh were implicated in FIR No.82 dated 18.04.2007 registered with Police Station City-

I, Moga. The applicants apprehended that the investigation may not be fair and proper because senior police officers and highly influential persons were involved in the case.

6. When the case was taken up before the High Court on 20.11.2007, the Additional Advocate General placed before the High Court a copy of the order of the Additional Director General of Police (Crime), Punjab dated 19.11.2007 entrusting the investigation into FIR No. 82 dated 18.04.2007, FIR No. 83 dated 19.04.2007, FIR No. 160 dated 04.06.2007 and FIR No. 198 dated 24.10.2007 to a special investigation team (for short 'the SIT'). On 20.11.2007, the High Court observed that the SIT had been constituted without the permission of the Court and issued notice to the CBI for the purpose of entrusting the investigation of the case to the CBI.

7. Pursuant to the notice, the CBI appeared and stated in its reply that the CBI was over burdened with investigation of the cases referred to by this Court, the High Court and the Union of India and that it was facing acute shortage of man power and resources and therefore the case should not be entrusted to the CBI particularly when it does not have any interstate and international ramifications. The High Court, after hearing the learned counsel for the parties and after considering various status reports filed by the state police passed the impugned order on 11.12.2007 directing that the investigation of the cases be entrusted to the CBI.

On 12.12.2007, the High Court passed an order clarifying that the CBI has been directed by the order dated 11.12.2007 to investigate into FIR No.82, FIR No.83 and FIR No.198 of P.S. City I, Moga, FIR No.160 of P.S. Baghapurana and FIR No.225 of P.S. Tarawari, District Karnal (Haryana).

By the order dated 12.12.2007, the High Court also stayed further proceedings before the Trial Court in the case arising out of FIR No.82 of P.S. City I, Moga, till further orders.

8. Dr. Rajeev Dhawan, appearing for the petitioner (State of Punjab) submitted that the High Court had failed to appreciate that on 01.06.2007 charge sheet had already been filed against nine accused persons after investigation into FIR No. 82 of Police Station City-I, Moga, and, therefore, no direction could be given to the CBI to conduct the investigation into the case. He cited the observations of this Court in Vineet Narain v. Union of India [(1998) 1 SCC 226] that the task of the monitoring Court would end the moment charge sheet was filed in respect of a particular investigation and thereafter the ordinary procedure of law would then take over. He submitted that after the charge sheet is filed, the Court has powers under sub-section (8) of Section 173 of the Cr.P.C. to direct further investigation by the police, but the Court has no power to direct a fresh investigation or reinvestigation into the case by the police.

He submitted that the High Court, therefore, could not have directed the CBI to start a fresh investigation or reinvestigation of the case after the police had filed charge sheet under sub-section (2) of Section 173 of the Cr.P.C. In support of this submission, he cited the decision of this Court in Mithabhai Pashabhai Patel v. State of Gujarat [(2009) 6 SCC 332] in which this Court made a distinction between further investigation and reinvestigation and held that under sub-section (8) of Section 173 of the Cr.P.C., the Court can grant permission for further investigation and not for reinvestigation.

9. Mr. Anoop G. Chaudhari, learned counsel for respondent no.3, argued that once challan is filed and charges are framed, the High Court cannot direct reinvestigation by the CBI. He submitted that in the present case, the challan had been filed on 01.06.2007 in respect of FIR No.82, Police Station City-I, Moga dated 18.04.2007 and the Court had also framed charges on 08.11.2007 and therefore the High Court could not have passed the impugned order on 11.12.2007 directing the CBI to carryout a fresh investigation or reinvestigation into the case. He submitted that the High Court was conscious of this limitation on the power of the Court to direct further investigation and mentioned in the impugned order dated 11.12.2007 that if the challan had been presented to the Court, the Miscellaneous Petition will stand as having become infructuous. He submitted that the impugned order passed by the High Court that the investigation of the case will be taken up by the CBI was, therefore, bad in law and should be set aside by this Court.

10. Mr. H.P. Raval, learned Additional Solicitor General for Respondent No.1 (the CBI), on the other hand, submitted that this Court has held in Ram Lal Narang v. State (Delhi Administration) [(1979) 2 SCC 322] that even where a Magistrate has taken cognizance of an offence upon a police report submitted under Section 173 of the Cr.P.C., the right of the police to further investigate was not exhausted and the police can exercise such right as often as necessary when fresh information came to light. He also relied on a recent decision of this Court in Nirmal Singh Kahlon v. State of Punjab &

Ors. [(2009) 1 SCC 441] wherein this Court has sustained the order of the High Court directing investigation by the CBI even after the charge sheet had been filed by the State police on completion of the investigation. He submitted that in Nirmal Singh Kahlon (supra) this Court has clarified that the observations in Vineet Narain (supra) cited by Dr. Dhawan are applicable to cases where the investigation was being monitored and in such cases the monitoring of the High Court will come to an end after the charge sheet is filed. He submitted that in the present case, the High Court found that the state police is not a position to carry out a fair and truthful investigation and has directed the investigation by the CBI in the interest of justice in exercise of its powers under Section 482 of the Cr.P.C.

11. Mr. Raval further submitted that pursuant to impugned order of the High Court the CBI has carried out the investigation into the cases and the status report of the cases is as follows:

S.No. CBI Case No. Local Police Case No. Status of the case

1. RCCHG2007S0031 FIR No. 82, 1) Investigation completed, dated 18.04.2007 of which revealed that a false P.S. City I, Moga. rape case was registered by the Moga Police.
- 2) Charge sheet has been filed under Sections 366-A and 406 of the IPC and Sections 4 & 5 of the Immoral Traffic (Prevention) Act, 1956 against two persons, namely, Simran Kaur @ Indu and Ajay Kumar on 10.11.2008.
2. RCCHG2007A0030 FIR No.198, Investigation completed dated 24.10.2007 of and charge sheet has been P.S. City I, Moga. filed in Court on 09.11.2009 in which the senior police officers of the rank of SSP and SP are sought to be prosecuted after sanction from the Central Government.
3. RCCHG2008S0003 FIR No.83, 1) Investigation completed dated 19.04.2007 of and charge sheet has been P.S. City I, Moga. filed in the Court on 10.11.2008 against Ajay Kumar and the Court convicted the accused on 30.09.2009.

2) Accused has filed appeal in the Court of Ld. Special Judge, Punjab, Patiala and the appeal has been dismissed 09.02.2011. Accused has

in the High Court,
is pending.

4. RCCHG2008S0001 FIR No.160, Investigation com

dated 04.06.2007 of and closure report has P.S. Baghapurana, been filed in Court on District Moga 10.11.2008 and the Court has accepted the closure report on 12.12.2008.

5. RCCHG2008S0002 FIR No.225, Investigation completed dated 15.11.2007 of and closure report filed in P. S. Tarawari, the Court and the same District Karnal has been accepted on (Haryana) 03.06.2009.

12. Sub-sections (1), (2) and (8) of Section 173 and Section 482 of the Cr.P.C. which are relevant for deciding this case are quoted herein below:

"Section 173. Report of police officer on completion of investigation -

(1) Every investigation under this Chapter shall be completed without unnecessary delay. (2)(i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating -

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to

be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under Section 170;

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under Section 376, 376A, 376B, 376C or 376D of the Indian Penal Code.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

x x x x x x x x x x x x x x x x (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 an 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)".

"Section 482. Saving of inherent power of High Court - Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice".

13. Sub-section (1) of Section 173 of the Cr.P.C. provides that every investigation by the police shall be completed without unnecessary delay and sub-section (2) of Section 173 provides that as soon as such investigation is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government. Under sub-section (2) of Section 173, a police report (charge sheet or challan) is filed by the police after investigation is complete. Sub-section (8) of Section 173 states that nothing in the Section shall be deemed to preclude any further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate. Thus, even where charge sheet or challan has been filed by the police under sub-section (2) of Section 173, the police can undertake further investigation but not fresh investigation or re-investigation in respect of an offence under sub-section (8) of Section 173 of the Cr.P.C.

14. Section 482 of the Cr.P.C., however, states that nothing in the Cr.P.C. shall be deemed to limit or affect the inherent powers of the High Court to make such orders as is necessary to give effect to any order under the Cr.P.C. or to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Thus, the provisions of the Cr.P.C. do not limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Court or to prevent the abuse of any process of the Court or otherwise to secure the ends of justice. The language of sub-section (8) of Section 173 of the Cr.P.C., therefore, cannot limit or affect the inherent powers of the High Court to pass an order under Section 482 of the Cr.P.C. for fresh investigation or re-investigation if the High Court is satisfied that such fresh investigation or

re-investigation is necessary to secure the ends of justice.

15. We find support for this conclusion in the following observations of this Court in *Mithabhai Pashabhai Patel v.*

State of Gujarat (supra) cited by Mr. Dhawan:

"13. It is, however, beyond any cavil that "further investigation" and "reinvestigation"

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 reinvestigation, however, being forbidden in law, no superior court would ordinarily issue such a direction. *Pasayat, J. in Ramachandran v. R. Udhayakumar [(2008) 5 SCC 413]* opined as under: (SCC p. 415, para

7) "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-section (8), but not fresh investigation or reinvestigation."

A distinction, therefore, exists between a reinvestigation and further investigation."

"15. The investigating agency and/or a court exercise their jurisdiction conferred on them only in terms of the provisions of the Code. The Courts subordinate to the High Court even do not have any inherent power under Section 482 of the Code of Criminal Procedure or otherwise. The pre-cognizance jurisdiction to remand vested in the subordinate courts, therefore, must be exercised within the four corners of the Code."

It is clear from the aforesaid observations of this Court that the investigating agency or the Court subordinate to the High Court exercising powers under Cr.P.C. have to exercise the powers within the four corners of the Cr.P.C. and this would mean that the investigating agency may undertake further investigation and the subordinate court may direct further investigation into the case where charge sheet has been filed under sub-section (2) of Section 173 of the Cr.P.C. and such further investigation will not mean fresh investigation or re-investigation. But these limitations in sub-section (8) of Section 173 of the Cr.P.C. in a case where charge sheet has been filed will not apply to the exercise of inherent powers of the High Court under Section 482 of the Cr.P.C. for securing the ends of justice.

16. This position of law will also be clear from the decision of this Court in *Nirmal Singh Kahlon v. State of Punjab & Ors. (supra)* cited by Mr. Raval. The facts of that case are that the State police had investigated into the allegations of irregularities in selection of a large number of candidates for the post of Panchayat Secretaries and had filed a charge sheet against Nirmal Singh Kahlon. Yet the

High Court in a PIL under Article 226 of the Constitution passed orders on 07.05.2003 directing investigation by the CBI into the case as it thought that such investigation by the CBI was "not only just and proper but a necessity".

Nirmal Singh Kahlon challenged the decision of the High Court before this Court contending inter alia that sub-

section (8) of Section 173 of the Cr.P.C. did not envisage an investigation by the CBI after filing of a charge sheet and the Court of Magistrate alone has the jurisdiction to issue any further direction for investigation before this Court.

Amongst the authorities cited on behalf of Nirmal Singh Kahlon was the decision of this Court in Vineet Narain case that once the investigation is over and charge sheet is filed the task of the monitoring Court comes to an end. Yet this Court sustained the order of the High Court with inter alia the following reasons:

"63. The High Court in this case was not monitoring any investigation. It only desired that the investigation should be carried out by an independent agency. Its anxiety, as is evident from the order dated 3-4-2002, was to see that the officers of the State do not get away. If that be so, the submission of Mr. Rao that the monitoring of an investigation comes to an end after the charge-sheet is filed, as has been held by this Court in Vineet Narain and M.C. Mehta (Taj Corridor Scam) v. Union of India [(2007) 1 SCC 110], loses all significance".

Though the decision of this Court in Nirmal Singh Kahlon v.

State of Punjab & Ors. (supra) is in the context of the power of the High Court under Article 226 of the Constitution, the above observations will equally apply to a case where the power of the High Court under Section 482 of the Cr.P.C. is exercised to direct investigation of a case by an independent agency to secure the ends of justice.

17. This leads us to the next question whether the High Court in the facts of the present case passed the order for investigation by the CBI to secure the ends of justice. The reasons given by the High Court in the impugned order dated 11.12.2007 for directing investigation by the CBI are extracted herein below:

"The Investigating Officer, who is a D.S.P. in rank, will not be in a position to investigate the case fairly and truthfully, as senior functionaries of the State in the Police Department and political leaders are being named. By this we are not casting any doubts on the investigating team, but it seems that political and administrative compulsions are making it difficult for the investigating team to go any further to bring home the truth. Apart from revolving around a few persons who have been named in the status report, nothing worthwhile is coming out regarding the interrogation of the police officers, political leaders and others. The investigation

seems to have slowed down because of political considerations.

Not less than eight police officials, political leaders, Advocates, Municipal Councilors and number of persons from the general public have been named in the status report. We feel that justice would not be done to the case, if it stays in the hands of the Punjab Police. Having said this, we want to make one thing very clear that the team comprising of Shri Ishwar Chander, D.I.G, Shri L.K. Yadav, S.S.P. Moga and Shri Bhupinder Singh, D.S.P. have done a commendable job in unearthing the scam. We feel it a fit case to be handed over to the C.B.I."

On a reading of the reasons given by the High Court, we find that the High Court was of the view that the investigating officer even of the rank of DSP was not in a position to investigate the case fairly and truthfully because senior functionaries of the State police and political leaders were to be named and political and administrative compulsions were making it difficult for the investigating team to go any further to bring home the truth. It further observed that not less than eight police officials, political leaders, advocates, municipal councilors besides a number of persons belonging to general public had been named in the status report of the State local police. In the peculiar facts and circumstances of the case, the High Court felt that justice would not be done to the case if the investigation stays in the hands of the local police and for these reasons directed that the investigation of the case be handed over to the CBI.

The narration of the facts and circumstances in paragraph 2, 3, 4 and 5 of this judgment also support the conclusion of the High Court that investigation by an independent agency such as the CBI was absolutely necessary in the interests of justice. Moreover, even though the High Court in the impugned order dated 11.12.2007 did make a mention that in case challan has been filed, then the petition will stand as having become infructuous in the order dated 12.12.2007, the High Court has stayed further proceedings before the trial court in the case arising out of FIR No.82 of P.S. City I, Moga, till further orders. Thus, the High Court was of the view that even though investigation is complete in one case and charge sheet has been filed by the Police, it was necessary in the ends of justice that the CBI should carry out an investigation into the case.

18. In the recent case of State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others [(2010) 2 SCC 571] a Constitution Bench of this Court, while holding that no Act of Parliament can exclude or curtail the powers of the High Court under Article 226 of the Constitution, has cautioned that the extra-ordinary powers of the High Court under Article 226 of the Constitution must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and confidence in investigation or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice and enforcing fundamental rights.

This caution equally applies to the cases where the High Court exercises inherent powers under Section 482 of the Cr.P.C. to direct investigation by the CBI for securing the ends of justice. In the facts and circumstances of this case, however, the High Court has held that the state local police was unable to carry out investigation into the cases and for securing the ends of justice the investigation

has to be handed over to the CBI. In other words, this was one of those extra-ordinary cases where the direction of the High Court for investigation by the CBI was justified.

19. This is, therefore, not a fit case in which we should exercise our powers under Article 136 of the Constitution and grant leave to appeal. The Special Leave Petition is dismissed.

.....J. (R.V. Raveendran)J. (A. K. Patnaik) New Delhi, September 02, 2011.