IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No. 800 of 2024
Reserved on: 23.08.2024
Date of Decision: 18.9.2024.

Raj Kumar ...Petitioner

Versus

State of Himachal Pradesh & Anr. ...Respondents

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] Yes

For the Petitioner : Mr. Prashant Chaudhary, Advocate.
For the Respondents : Mr. Lokender Kutlehria, Additional Advocate General.

Rakesh Kainthla, Judge

The present petition has been filed against the order dated 16.07.2024, passed by learned Special Judge, Mandi, District Mandi, H.P. in case Registration No.08/2024, titled State of H.P. vs Raj Kumar. It has been asserted that the petitioner is facing trial for the commission of offences punishable under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (***for short ND&PS Act***), registered vide F.I.R. No. 319 of 2023 dated 20.12.2023, at Police Station Sadar, District

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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Mandi, H.P. As per the F.I.R., the police checked a vehicle bearing registration No. HP01M-1714 (ETIOS) based on the information and found 268 grams of Heroin. Five persons including the petitioner were found inside the vehicle. The police filed a supplementary charge sheet stating therein that the blood samples of the accused were sent to Regional Forensic Science Laboratory Central Range, Mandi, H.P. The result dated 07.02.2024, was filed with the supplementary charge sheet. The learned Trial Court summoned the prosecution witnesses mentioned in the supplementary charge sheet on 29.07.2024 and 30.07.2024. These witnesses were also examined by the learned Trial Court. The learned Trial Court erred in taking cognizance of the supplementary charge sheet. The prosecution was supposed to mention that the blood samples of the accused were preserved and sent for examination. They should have reserved a right to bring on record the report of the Regional Forensic Science Laboratory Central Range, Mandi, H.P. The delay in producing the report of the Forensic Science Laboratory casts serious doubt on the prosecution case. The report was prepared on 07.02.2024 and the supplementary charge sheet was filed before the learned Trial Court on 16.07.2024. There is a delay of five months. Hence, it was prayed that the present petition be allowed and the cognizance taken based on the supplementary charge sheet be quashed.

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2. I have heard Mr. Prashant Chaudhary, learned counsel for the petitioner and Mr. Lokender Kutlehria, learned Additional Advocate General for the respondent/State.

3. Mr Prashant Chaudhary, learned counsel for the petitioner submitted that the learned Trial Court was not competent to take cognizance based on the supplementary charge sheet. There is an inordinate delay in filing the supplementary charge sheet for which no cogent and convincing reasons have been assigned. He prayed that the present petition be allowed and the cognizance taken based on the supplementary charge sheet be quashed. He relied upon the judgment of the Hon'ble Supreme Court passed in ***Mariam Fasihuddin & Anr. Vs. State of Adugodi Police Station & Anr. 2024 INSC 49*** in support of his submission.

4. Mr. Lokender Kutlehria, learned Additional Advocate General submitted that the State has a right under Section 173(8) of the Code of Criminal Procedure (***for short Cr. P.C***). to carry out further investigation. Learned Special Judge, Mandi, District Mandi, H.P. had rightly taken cognizance based on the supplementary charge sheet filed by the prosecution. There is no infirmity in the order passed by the learned Trial Court. Hence, he prayed that the present petition be dismissed.

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5. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

6. A perusal of the order passed by the learned Trial Court dated 16.07.2024 shows that a supplementary challan was filed. A copy of the same was supplied to the accused and their joint statement was recorded to this effect separately. The witnesses mentioned in the supplementary charge sheet were ordered to be summoned.

7. Section 173(8) of Cr.P.C. empowers the police to carry out further investigation in respect of an offence after a report under section 173(2) of Cr.P.C. has been forwarded to the Magistrate. It was laid down by the Hon'ble Supreme Court in ***State of W.B. v. Salap Service Station, 1994 Supp (3) SCC 318: 1994 SCC (Cri) 1713*** that the supplementary charge sheet is in continuation of the main charge sheet and the Court does not have the power to reject the same outrightly. It was observed:

> **"2.** We have heard both counsel at length. The simple question that arises ultimately for consideration in this matter is whether the supplementary report filed by the investigating agency under Section 173(8) CrPC can be taken on file by the Magistrate or not. Section 173(8) CrPC lays down that nothing in Section 173 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. But the

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Special Judge instead of taking it on file rejected the same holding that "no cognizance of the offence on the basis of the supplementary charge-sheet can be taken". It may be mentioned here that in the supplementary charge-sheet allegations are to the effect that there was a violation of Direction 12 of the Control Order. The question of taking cognizance does not arise at this stage since cognizance has already been taken on the basis of the main charge sheet. What Section 173(8) lays down is that the investigating agency can carry on further investigation in respect of the offence after a report under sub-section (2) has been filed. The further investigation may also disclose some fresh offences but connected with the transaction which is the subject matter of the earlier report. In the instant case, the supplementary charge sheet mentions that there was a contravention of Direction 12 and whether the same is substantiated or not by sufficient material would be a question that has to be considered at a later stage. At the stage of filing the supplementary report itself, the trial court which took cognizance cannot reject the same outright since it is only a supplementary report in support of the earlier report. Somehow the Special Court rejected the report without taking it on record holding that no cognizance can be taken since facts do not support the offence under Direction 12. There is no question of taking cognizance at this stage since cognizance has already been taken. The purpose of sub-section (8) of Section 173 CrPC is to enable the investigating agency to gather further evidence and that cannot be frustrated. If the materials incorporated in the supplementary charge sheet do not make out any offence, the question of framing any other charge on the basis of that may not arise but in case the court frames a charge it is open to the accused persons to seek discharge in respect of that offence also as they have done already in respect of the offence disclosed in the main charge-sheet. The rejection of the report outright at that stage in our view is not correct."

8. It was held in ***Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557: 2012 SCC OnLine SC 1064*** that the police can file a charge

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sheet after obtaining oral or documentary evidence. It was observed at page 783:

> **"22.** "Further investigation" is where the investigating officer obtains further oral or documentary evidence after the final report has been filed before the court in terms of Section 173(8). This power is vested with the executive. It is the continuation of the previous investigation and, therefore, is understood and described as "further investigation". The scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as a "supplementary report". "Supplementary report" would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is a discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a "reinvestigation", "fresh" or "de novo" investigation."

9. It was submitted that the supplementary charge sheet was filed after delay and the Court should have refused to accept the same. This submission cannot be accepted. It was held by the Hon'ble Supreme Court in ***Rama Chaudhary v. State of Bihar, (2009) 6 SCC 346: (2009) 2 SCC (Cri) 1059: 2009 SCC OnLine SC 702*** that the hands of the investigating

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agency cannot be tied on the ground of delay. It was observed at page 349:

> "**18.** Sub-section (8) of Section 173 clearly envisages that on completion of further investigation, the investigating agency has to forward to the Magistrate a "further" report and not a fresh report regarding the "further" evidence obtained during such investigation.
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> **19.** As observed in ***Hasanbhai Valibhai Qureshi* v. *State of Gujarat*** *[(2004) 5 SCC 347: 2004 SCC (Cri) 1603]* the prime consideration for further investigation is to arrive at the truth and do real and substantial justice. The hands of the investigating agency for further investigation should not be tied down on the grounds of mere delay. In other words
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> > "[t]he 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." (SCC p. 351, para 13)
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> **20.** If we consider the above legal principles, the order dated 19-2-2008 of the trial court summoning the witnesses named in the supplementary charge sheet cannot be faulted with."

10. It was submitted that the learned Trial Court erred in taking cognisance of the supplementary charge sheet. This submission is not acceptable. It was held in ***Prasad Shrikant Purohit v. State of Maharashtra, (2015) 7 SCC 440: (2015) 3 SCC (Cri) 138: 2015 SCC OnLine SC 343*** that the Court does not take any cognisance on the filing of supplementary charge sheet because cognisance is taken only once. It was observed at page 483

> "**74.** In ***Salap Service Station [1994 Supp (3) SCC 318: 1994 SCC (Cri) 1713]***, the question as to what is the implication of a supplementary report filed by the investigating agency under Section 173(8) CrPC

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was considered. While dealing with the same, it has been stated as under in para 2: (SCC p. 319)

> "2. ... It may be mentioned here that in the supplementary charge sheet allegations are to the effect that there was a violation of Direction 12 of the Control Order. *The question of taking cognizance does not arise at this stage since cognizance has already been taken on the basis of the main charge sheet.* What all Section 173(8) lays down is that the investigating agency can carry on further investigation in respect of the offence after a report under sub-section (2) has been filed. The further investigation may also disclose some fresh offences but connected with the transaction which is the subject matter of the earlier report. ... The purpose of sub-section (8) of Section 173 CrPC is to enable the investigating agency to gather further evidence and that cannot be frustrated. *If the materials incorporated in the supplementary charge sheet do not make out any offence, the question of framing any other charge on the basis of that may not arise but in case the court frames a charge it is open to the accused persons to seek discharge in respect of that offence also as they have done already in respect of the offence disclosed in the main charge-sheet.* The rejection of the report outright at that stage in our view is not correct."
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> (emphasis supplied)

The above statement of law with particular reference to Section 173(8) CrPC makes the position much more clear to the effect that the filing of the supplementary charge sheet does not and will not amount to taking cognizance by the court afresh against whomsoever again with reference to the very same offence. What all it states is that by virtue of the supplementary charge sheet further offence may also be alleged and a charge to that effect may be filed. In fact, going by Section 173(8) it can be stated like in our case by way of supplementary charge-sheet some more accused may also be added to the offence with reference to which cognizance is already taken by the Judicial Magistrate. While cognizance is already taken of the main offence against the accused already arrayed, the supplementary charge sheet may provide scope for taking cognizance of additional charges or against more accused with reference to the offence already taken

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cognizance of and the only scope would be for the added offender to seek for discharge after the filing of the supplementary charge-sheet against the said offender.

75. In ***CREF Finance Ltd. [(2005) 7 SCC 467: 2005 SCC (Cri) 1697]*** para 10 is relevant wherein this Court has held as under: (SCC p. 471)

> "*10.* ... Cognizance is taken of the offence and not of the offender and, therefore, once the court on perusal of the complaint is satisfied that the complaint discloses the commission of an offence and there is no reason to reject the complaint at that stage and proceeds further in the matter, it must be held to have taken cognizance of the offence. One should not confuse taking of cognizance with issuance of process. *Cognizance is taken at the initial stage when the Magistrate peruses the complaint with a view to ascertain whether the commission of any offence is disclosed*."
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> (emphasis supplied)

The said statement of law reinforces the legal position that cognizance is always of the offence and not the offender and once the Magistrate applies his judicial mind with reference to the commission of an offence the cognizance is taken at that very moment.

76. To the very same effect is the judgment of ***Pastor P. Raju [(2006) 6 SCC 728: (2006) 3 SCC (Cri) 179***]. Para 13 is relevant for our purpose, which reads as under: (SCC p. 734)

> "*13.* It is necessary to mention here that taking cognizance of an offence is not the same thing as the issuance of a process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it *the court decides to proceed against the offenders against whom a prima facie case is made out*."
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> (emphasis supplied)

77. The above principle has been reiterated again in ***Videocon International Ltd. [(2008) 2 SCC 492: (2008) 1 SCC (Cri) 471]*** in para

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19. Para 19 can be usefully extracted, which reads as under: (SCC p. 499)

> "*19*. The expression 'cognizance' has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. *It merely means 'become aware of' and when used with reference to a court or a Judge, it connotes 'to take notice of judicially*'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone."
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> (emphasis supplied)

78. In ***Mona Panwar [(2011) 3 SCC 496: (2011) 1 SCC (Cri) 1181]*** at para 19 what is meant by "taking cognizance" has been explained as under: (SCC p. 503)

> "*19*. The phrase 'taking cognizance of' means cognizance of an offence and not of the offender. *Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence*. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint or a police report or upon information of a person other than a police officer. Before the Magistrate can be said to have taken cognizance of an offence under Section 190(1)(*b*) of the Code, he must have not only applied his mind to the contents of the complaint presented before him but must have done so for the purpose of proceeding under Section 200 and the provisions following that section. However, when the Magistrate had applied his mind only for ordering an investigation under Section 156(3) of the Code or issued a warrant for the purposes of investigation, he cannot be said to have taken cognizance of an offence."
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> (emphasis supplied)

The above statement of law makes the position amply clear that cognizance is of an offence and not of the offender, that it does not involve any formal action and as soon as the Magistrate applies his

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judicial mind to the suspected commission of offence, cognizance takes place.

79. Again in a recent decision of this Court in ***Sarah Mathew [Sarah Mathew v. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62: (2014) 1 SCC (Cri) 721]*** in para 34, the position has been reiterated as under: (SCC p. 93)

> "34. Thus, a Magistrate takes cognizance when he applies his mind or takes judicial notice of an offence with a view to initiating proceedings in respect of the offence which is said to have been committed. This is the special connotation acquired by the term 'cognizance' and it has to be given the same meaning wherever it appears in Chapter XXXVI. It bears repetition to state that taking cognizance is entirely an act of the Magistrate. Taking cognizance may be delayed because of several reasons. It may be delayed because of systemic reasons. It may be delayed because of the Magistrate's reasons."

11. It was held in ***Sanjay Kumar Pundeer v. State (NCT of Delhi), 2023 SCC OnLine Del 5696*** that the police have a right to submit the reports by filing supplementary charge sheets. It was observed:

> **"18.** In the present case, the investigation *qua* the applicant was complete at the time the first chargesheet was filed, as regards the offences mentioned in the FIR, on 02.12.2021. At the time of filing of the first chargesheet, there was sufficient material on record *qua* the applicant such as statements of eyewitnesses and other material evidence collected and placed on record. Mere non-filing of the FSL Report is not sufficient to conclude that the chargesheet filed in the present case was incomplete. The said report can be filed by way of a supplementary chargesheet. In any case, the case of the prosecution is primarily based on the eyewitness account of the complainant. The FSL report, if any, would be a corroborative piece of evidence. As pointed out hereinabove, even after the filing of the chargesheet, further investigation can continue under Section 173(8) of the CrPC. The opinion of the expert can always be filed before the learned Trial Court by way of a supplementary chargesheet. It is further

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> pertinent to note that in the present case, the learned Trial Court had taken the cognizance after the chargesheet was filed and the said order was not challenged by the petitioner.
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> **20.** In view of the observations made in ***Judgebir Singh*** (supra) and ***Syed Maqbool*** (supra), it is noted that the chargesheet filed in the present case satisfies the conditions contained in sub-clause (a) to (d) of Section 173(2)(i). There is a distinction between filing a chargesheet and obtaining an expert opinion. The chargesheet is filed upon completion of the investigation after the Investigating Officer has found sufficient evidence to prosecute an accused for offences under which the FIR has been registered. The FSL report or any other scientific examination would only be corroborative in nature to the material collected by the Investigating Officer and filed along with the chargesheet. Collection of a report of the FSL or a scientific expert, would, therefore, be covered under Section 173(8) of the CrPC..."

12. Thus, there is no infirmity in filing a supplementary charge sheet.

13. In ***Mariam's case(supra)***, the Hon'ble Supreme Court held that further investigation under Section 173(8) of Cr.P.C. obligates the Officer in Charge of the Police Station to obtain further evidence oral as well as documentary, therefore, fresh oral and documentary evidence should be obtained rather than evaluating the existing material

14. In the present case, the police have filed the reports which are in the nature of further evidence obtained and not reevaluation of the material filed with the original charge sheet; hence, the judgment of ***Mariam*** (supra) does not apply to the present case.

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15. In view of the above, there is no infirmity in the order passed by the learned Trial Court. Hence, the present petition fails and the same is dismissed.

16. The observation made hereinabove shall remain confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla)
Judge

18th September, 2024
(ravinder)