

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Crl.Revision No.1439 of 2003

Mohinder Singh Bola

...PETITIONER

VERSUS

C.B.I. and others

...RESPONDENTS

Crl.Misc.No.23921-M of 2004

Kamaljit Singh

...PETITIONER

VERSUS

State of Punjab

...RESPONDENT

DATE OF DECISION: JANUARY 31, 2007

CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL

Present: Mr. R.S.Athwal, Advocate,
for the petitioners.
Mr.Rajan Gupta, Standing Counsel
for CBI in Crl.Revision No.1439 of 2003.
Ms.Baljit Mann, Advocate,
along with Mr.D.D.Jain and Mr.Sandeep Jain,
Advocates, for respondents No.2 to 4.
in Crl.Revision No.1439 of 2003.
Mr.N.S.Gill, AAG, Punjab
in Crl.Misc.No.23921-M of 2004.
Mr.D.D.Jain and Mr.Sandeep Jain,
Advocates, for the complainant
in Crl. Misc.No.23921-M of 2004.

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This order shall dispose of Crl.Revision No.1439 of 2003 filed
by Mohinder Singh Bola and Crl.Misc.No.23921-M of 2004 filed by

Kamaljit Singh son of Mohinder Singh.

2. Crl.Revision No.1439 of 2003 has been filed for setting aside the order dated 27.3.2003 passed by the Special Judge, CBI, Punjab, Patiala, whereby the closure report submitted by the CBI in case FIR No.RCCHG2001A0006 dated 23.3.2001 under Section 120-B IPC read with Sections 420/467/468/471 IPC, and Section 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988, registered against Ram Pal Bhalla, Pawan Kumar Bhalla, Kuldeep Chand Bhalla (respondents No.2 to 4 herein) and unknown officials of Indo-Burman Petroleum Company Limited, Chandigarh and Delhi, was accepted.

3. Crl.Misc.No.23921-M of 2004 has been filed for quashing FIR No.301 dated 18.11.2002 registered under Sections 427/447/448/452/511/148/149 IPC at Police Station Banga, Nawanshahr, which was registered on the complaint made by Rampal Bhalla; the report submitted under Section 173(2) Cr.P.C. and all the consequent proceedings of the case.

4. The brief facts necessary for the disposal of these petitions are that in the year 1971, an IBP Company's petrol pump was allotted in the name of M/s. Swaran Oil Store, Nawanshahr Road, Banga. In the said firm, Mohinder Singh petitioner was having 51% share and one Swaran Singh was having 49% share. In the year 1982, Swaran Singh sold his share to one Piara Singh. Thereupon, he became partner in the said firm to the extent of 49% share. It is the case of the petitioner that in the year 1989, he went abroad and in his absence the said petrol pump was managed by Piara Singh and subsequently on 10.8.1993 he gave power of attorney to one Pawan

Kumar Bhalla to do all acts required for running the firm. He was also authorized to dissolve the firm and re-constitute the same with regard to the said petrol pump. The said power of attorney was sent from Canada. Piara Singh retired from the partnership and relinquished his 49% share in favour of Ram Pal Bhalla, who later on became one of the partner of the said firm along with petitioner Mohinder Singh. A partnership deed was executed on 17.2.1993 between Mohinder Singh petitioner and Ram Pal Bhalla. In the said partnership, Piara Singh was shown to have retired from the business of the firm and thereafter the firm was re-constituted. The said partnership deed was signed by Pawan Kumar Bhalla on behalf of petitioner Mohinder Singh. It is the case of the petitioner that at that time he did not authorize Pawan Kumar Bhalla to act on his behalf and to re-constitute the partnership firm. It is the case of respondent Ram Pal Bhalla that the aforesaid general power of attorney was sent by Mohinder Singh petitioner from Canada through a letter dated 10.8.1993 in his own handwriting along with an affidavit and irrevocable general power of attorney relinquishing his rights in favour of Ram Pal Bhalla in the said firm. In the said power of attorney, petitioner Mohinder Singh declared that he had no rights, claims and interest in M/s. Swaran Oil Store and had received full and final payment from Ram Pal Bhalla. On 4.11.1996, petitioner sent his resignation letter from Canada to the IBP Company with a copy to Ram Pal Bhalla. Thereafter Ram Pal Bhalla submitted an application to IBP Company for making him proprietor of the firm M/s. Swaran Oil Store as petitioner Mohinder Singh had resigned from the partnership firm. On his application, re-constitution of the firm was approved by the Company on 14.5.1997.

5. It is the case of petitioner Mohinder Singh that in January, 1997, he came to India and wrote a letter to the Company that he had come to know that his power of attorney was misused by Pawan Kumar Bhalla. He alleged that his resignation letter dated 4.11.1996 and other letters were forged by Ram Pal Bhalla, and the proposal regarding re-constitution of the firm on the application of Ram Pal Bhalla, was wrongly accepted, whereas the same should not have been done without the consent of the petitioner. It was stated that the power of attorney given to Pawan Kumar Bhalla was cancelled on 9.1.1997 and intimation was given to him on 13.1.1997. Thereafter, the petitioner made various complaints against Ram Pal Bhalla, Pawan Kumar Bhalla and officials of the Company for registration of the criminal case. Ultimately, FIR No.RCCHG2001A0006 dated 23.3.2001 under Section 120-B IPC read with Sections 420/467/468/471 IPC, and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 was registered against Ram Pal Bhalla, Pawan Kumar Bhalla, Kuldeep Chand Bhalla and unknown officials of IBP Company, on the allegations that Ram Pal Bhalla, Pawan Kumar Bhalla and Kuldeep Bhalla entered into criminal conspiracy during the year 1993-97 with the officials of IBP Company Limited. In furtherance of the same, they cheated petitioner Mohinder Singh by re-constituting the firm M/s. Swaran Oil Store in violation of the government guidelines for extraneous consideration, and by forging the resignation letter dated 4.11.1996 purported to have been submitted and signed by the petitioner as the main share-holder of the aforesaid firm. The officials of the IBP Company Limited, Chandigarh, by accepting the forged resignation letter dated 4.11.1996 submitted by Ram

Pal Bhalla as genuine, made him the sole proprietor of M/s.Swaran Oil Store, Banga, especially when it was well within their knowledge that the petitioner had neither resigned from the dealership nor submitted any resignation letter and had also cancelled the general power of attorney on 9.1.1997 issued in favour of Pawan Kumar Bhalla.

6. A detailed enquiry was conducted by the CBI. During the investigation, it was established that initially Mohinder Singh and Swaran Singh were the partners to the extent of 51% and 49% shares respectively. Subsequently, Swaran Singh had resigned from the partnership and one Piara Singh was inducted in his place. Later on Mohinder Singh shifted to Canada and stayed there for long period. During the said period, Piara Singh relinquished his 49% share in the partnership firm in favour of Ram Pal Bhalla. During investigation, it revealed that Mohinder Singh authorized Pawan Kumar Bhalla to act his power of attorney vide power of attorney dated 10.8.1993, which was sent from Canada authorizing Pawan Kumar Bhalla to do all acts required in connection with the running of the firm. Mohinder Singh petitioner also sent an affidavit dated 10.8.1993 duly attested by Notary, Canada as an agreement between him and Ram Pal Bhalla mentioning therein that he had received full and final payment of M/s. Swaran Oil Store, Banga and had no claims/rights in the said firm. During the investigation, it was further revealed that on 26.11.1996, Ram Pal Bhalla submitted an application to the Company for making him proprietor of the firm as Mohinder Singh had resigned from partnership. The investigation further revealed that Mohinder Singh sent his resignation letter on 4.11.1996 from Canada to the Company. The said letter was mailed from

Canada on 13.12.1996 and the same was received in the Divisional Office of the Company on 27.12.1996. The proposal was examined and ultimately vide letter dated 12.2.1997 the same was approved and the said firm was re-constituted on 14.5.1997. During the investigation, it was found that the letter dated 4.11.1996 was duly signed by petitioner Mohinder Singh. The expert opinion from GEQD was obtained wherein it was found that the signatures on the said resignation letter were those of Mohinder Singh and the same was not a forged document. Thus, during the investigation, the claim of the petitioner that his signatures on the resignation letter dated 4.11.1996 were forged, was found to be false.

7. The investigation further revealed that after resignation of Piara Singh, Ram Pal Bhalla was inducted as a partner, and Pawan Kumar Bhalla had acted as power of attorney holder of petitioner Mohinder Singh. It was further revealed that the petitioner had taken the amount of the sale of his share in the petrol pump from Ram Pal Bhalla as he acknowledged the same in the affidavit of agreement dated 10.8.1993. During investigation, it was also revealed that when petitioner Mohinder Singh started filing complaints against Ram Pal Bhalla, Pawan Kumar Bhalla and Kuldeep Kumar Bhalla, and also started interfering in the day to day working of the aforesaid firm, Ram Pal Bhalla filed a civil suit bearing No.178/97 for permanent injunction restraining Mohinder Singh and his son Kamaljit Singh from interfering in the management, possession, control and business of M/s. Swaran Oil Store, Banga. The Civil Judge, Nawanshahr vide order dated 14.10.1997 ordered for the maintenance of status-quo till further orders and the said civil suit is being contested by the petitioner on the

similar plea and the same is still pending. During investigation, it was found that re-constitution of the firm was done by the officials of the Company as per the policy of the Company which has been duly approved. During investigation, no evidence of payment of any illegal consideration in cash or in kind to any of the official of the Company could be found as had been alleged by the petitioner. Thus, during investigation, no alleged crime could be established against Ram Pal Bhalla, Pawan Kumar Bhalla, Kuldeep Chand Bhalla or any officials of the Company.

8. After investigation, the CBI submitted the closure report to the Special Judge, CBI, Punjab, Patiala. The Special Judge, CBI, Punjab, Patiala vide order dated 27.3.2003 accepted the closure report submitted by the CBI without prejudice to the rights of the petitioner to seek remedy by filing a private complaint.

9. Against the aforesaid order, Criminal Revision No.1439 of 2003 has been filed.

10. Counsel for the petitioner contends that the Special Judge has illegally accepted the closure report without appreciating and taking into consideration the evidence against the accused. Counsel submits that during the investigation, sufficient material/evidence came before the investigating agency which clearly established the offence of cheating and forging of the documents. But without properly evaluating and considering all those material, the Special Judge accepted the cancellation report in an arbitrary manner. Counsel for the petitioner submitted that a partnership deed was executed on 9.2.1993 between petitioner Mohinder Singh and Ram Pal Bhalla and the said deed was signed by Pawan Kumar Bhalla on behalf of

the petitioner. Counsel contends that the petitioner did not authorize Pawan Kumar Bhalla to enter into any partnership on his behalf prior to 10.8.1993 when the general power of attorney was given to him. Therefore, the investigating agency has not properly looked into this aspect of the matter. Counsel further submitted that the affidavit and agreement dated 10.8.1993 and the letter dated 4.11.1996 were forged by the accused and the petitioner got examined those documents from handwriting expert, who gave his opinion in favour of the petitioner. But the said opinion was not relied upon by the investigating agency and by relying upon the report given by the GEQD with regard to the genuineness of the documents, wrongly submitted the closure report. Counsel for the petitioner submitted that the investigating agency did not properly and fairly conducted the investigation in the case and the accused have been wrongly exonerated. Therefore, the Special Court should not have accepted the closure report. Counsel contends that in the facts and circumstances of the case, the impugned order passed by the trial court is not sustainable and the same is liable to be set aside as there is sufficient incriminating material/evidence against the accused on the record.

11. On the other hand, counsel for the respondent-CBI submitted that a thorough investigation was made in the case by the investigating agency. However, no criminal liability was established on the part of any accused persons and after approval from the competent authority, the closure report was submitted to the court. Counsel further submitted that in the year 1997, Ram Pal Bhalla filed a civil suit bearing No.178/97 for permanent injunction restraining Mohinder Singh and his son Kamaljit

Singh from interfering in the management, possession, control and business of M/s. Swaran Oil Store, Banga. The said civil suit is being contested by the petitioner taking all such pleas in which the order of status-quo has been passed. That civil suit is still pending between the parties. Counsel for the petitioner contends that the Special Judge, CBI, Punjab, Patiala vide order dated 27.3.2003 accepted the closure report submitted by the CBI without prejudice to the rights of the petitioner to seek remedy by filing a private complaint. Counsel contends that in view of the alternative remedy available to the petitioner, no interference in the impugned order is required as the investigation of the case is in the domain of the investigating agency which after investigating the matter came to the conclusion that no alleged offence was committed. Even after acceptance of the closure report, a remedy has been provided to the petitioner for filing a private complaint, which he has not availed.

12. Counsel for respondents No.2 to 4 submitted that the question whether the partnership deed 9.2.1993 was signed by Pawan Kumar Bhalla on behalf of petitioner Mohinder Singh without any authorization is already under consideration in the civil suit filed by Ram Pal Bhalla. The petitioner being respondent is contesting the same. The said suit is still pending and the matter is sub judice. Counsel further contends that it is not the case of the petitioner that the said partnership deed was alleged to have been signed by the petitioner and his signatures were forged or he was impersonated. His only case is that he did not authorize Pawan Kumar Bhalla to act on his behalf on the relevant date. This controversy is pending consideration in the civil suit. Learned counsel further submitted that during the investigation, it

has been established that the petitioner had received consideration of his share and thereafter himself executed the affidavit and the agreement dated 10.8.1993 and also directly written a letter to the Company relinquishing his share from the firm. These documents were found to be genuine. This fact clearly establishes that the entire claim of the petitioner is not genuine and keeping these documents into consideration, the investigating agency has rightly submitted the closure report, which has been rightly accepted by the Special Judge.

13. The position of law with regard to scope of the power of the investigating agency to investigate the offence and submit the final report, and the power of the Court either to accept such report or not to accept such report is well settled. In Chapter XIV of the Code, the police has been given ample powers for the purpose of registering the case involving a cognizable offence and its investigation. Section 173 Cr.P.C. provides for an investigation to be completed without unnecessary delay and makes it obligatory on the officer-in-charge of the Police Station to send a report to the Magistrate concerned in the manner indicated therein, containing the various details. When a report forwarded by the police to the Magistrate under Section 173 of the Code is placed before him, several situations arise. If the report concludes that the offence appears to have been committed by the named accused, the Magistrate has two options. Firstly, the Magistrate may either accept the report and take cognizance of the offence and issue process; and secondly, he may dis-agree with the report and drop the proceedings. On the other hand, if the police report indicates that no offence appears to have been committed by the person named in the FIR and the

police recommends for cancellation of the FIR, in that situation, the Magistrate is required to issue notices to the complainant intimating him about the cancellation report and the complainant is having a right to file the protest report and to argue the matter. Thereafter, the Magistrate has three options open to him. Firstly, he may accept the report and drop the proceedings; secondly, he may direct further investigation to be made by the police; and thirdly he may dis-agree with the report and take the view that there is sufficient ground for proceeding against the accused and can take the cognizance of the offence himself and then issue the process. Though the Magistrate has the power to take cognizance of the offence himself, even if the police report is to the effect that no case is made out against the accused, but the Magistrate has no power to issue direction to the investigating agency or police to file challan in the Court.

14. Under the scheme of the Code, the investigating agency is the master of the investigation. It is the statutory right of the investigating agency to investigate the circumstance of the alleged cognizable offence without any permission from the judicial authorities or the Court. It is the authority of the investigating agency to form an opinion whether on the material collected by it during the investigation the accused is to be placed or not before the Magistrate for trial. The decision to submit a charge-sheet or a final report depends on the nature of the opinion formed by the investigating agency. The formation of the said opinion, by the police, is the final step in the investigation, and that final step is to be taken only by the police and not by any other authority.

15. In Union of India v. Prakash P.Hinduja and another, AIR 2003 SC 2612, it has been observed by the Supreme Court as under:-

“The formation of the opinion whether there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the case to a Magistrate or not as contemplated by Ss. 169 and 170 is to be that of the officer-in-charge of the police station and a Magistrate has absolutely no role to play at this stage. Similarly, after completion of the investigation while making a report to the Magistrate under S.173, the requisite details have to be submitted by the officer-in-charge of the police station without any kind of interference or direction of a Magistrate and this will include a report regarding the fact whether any offence appears to have been committed and if so, by whom as provided by clause (d) of sub-section (2) of this section. The Magistrate is no doubt not bound to accept a final report (sometimes called as closure report) submitted by the police and if he feels that the evidence and material collected during investigation justified prosecution of the accused, he may not accept the final report and take cognizance of the offence and summon the accused but this does not mean that he would be interfering with the investigation as such. He would be doing so in exercise of powers conferred by S. 190, Cr.P.C. The statutory provisions are, therefore, absolutely clear that the Court cannot interfere with the investigation.”

16. In Abhinandan Jha and others v. Dinesh Mishra, AIR 1968 SC

117, the Supreme Court after examining the provisions of Chapter XIV of the Code of Criminal Procedure in relation to the scope and power of the investigating agency, has observed as under:-

“....The entire scheme of Chapter XIV clearly indicates that the formation of the opinion, as to whether or not there is a case to place the accused for trial, is that of the Officer-in-charge of the police station and that opinion determines whether the report is to be under Section 170, being a `charge-sheet, or under section 169, a final report. It is no doubt open to the Magistrate, as we have already pointed out, to accept or disagree with the opinion of the police, if he disagrees, he is entitled to adopt any one of the courses indicated by us. But he cannot direct the police to submit a charge sheet, because the submission of the report depends upon the opinion formed by the police, and not on the opinion of the Magistrate. The Magistrate cannot compel the police to form a particular opinion, on the investigation, and to submit a report, according to such opinion. That will be really encroaching on the sphere of the police and compelling the police to form an opinion so as to accord with the decision of the Magistrate and send a report either under Section 169 or under Section 170, depending upon the nature of the decision. Such a question has been left to the police under the Code.”

17. In M.C.Abraham and another v. State of Maharashtra and others, (2003) 2 SCC 649, again it has been observed by the Supreme Court as under:-

“17. The principle, therefore, is well settled that it is for the investigating agency to submit a report to the Magistrate after full and complete investigation. The investigating agency may submit a report finding the allegations substantiated. It is also open to the investigating agency to submit a report finding no material to support the allegations made in the first information report. It is open to the Magistrate concerned to accept the report or to order further enquiry. But what is clear is that the Magistrate cannot direct the investigating agency to submit a report that is in accord with his finding that no case is made out for prosecution, it is open to the magistrate to disagree with the report and to take cognizance, but what he cannot do is to direct the investigating agency to submit a report to the effect that the allegations have been supported by the material collected during the course of investigation.”

18. In S.N.Sharma v. Bipen Kumar Tiwari, (1970) 1 SCC 653, the Supreme Court has observed as under:-

“It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court

can always issue a writ of mandamus restraining the police officer from misusing his legal powers.”

19. In light of the aforesaid legal position, I have examined the closure report submitted by the CBI as well as the impugned order and the other material placed on the record. I do not find any illegality in the impugned order. A perusal of the investigation report reveals that detailed and comprehensive investigation was being conducted by the CBI in this case. Each and every aspect of the case and the material document/evidence have been thoroughly considered. The allegations of the petitioner that the resignation letter dated 26.11.1996 was not signed by him and was a forged document, was thoroughly examined and it was established during the investigation that the same was signed by the petitioner and sent to the Company directly from Canada. During the investigation, it was also found that the petitioner also executed other documents on 10.8.1993 in which he acknowledged the factum of receiving consideration for his share. During the investigation, it was further found that Piara Singh relinquished his share in favour of Ram Pal Bhalla and later on petitioner also relinquished his share in his favour. It has also been found that the partnership deed dated 9.2.1993 was signed by Pawan Kumar Bhalla on behalf of Mohinder Singh. The question whether Pawan Kumar Bhalla was authorized or not authorized to sign the partnership deed on the relevant date, is pending consideration in the civil suit which is still pending between the parties. In other two civil suits filed by Ram Pal Bhalla against the electricity department as well as the company, the supplies of the petroleum produces and electricity connection, were restored by the interim order of the court.

The application of petitioner Mohinder Singh for becoming a party in those suits was dismissed and a revision was also dismissed. In these facts, in my opinion, the closure report was rightly accepted by the Special Judge without prejudice to the rights of the petitioner to seek remedy by filing a private complaint. Thus, in my opinion, the impugned order does not require any interference.

20. Hence, criminal revision is dismissed.

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21. Petitioner Kamaljit Singh son of Mohinder Singh has filed this petition under Section 482 Cr.P.C. for quashing FIR No.301 dated 18.11.2002 registered under Sections 427/447/448/452/511/148/149 IPC at Police Station Banga, Nawanshahr; the report submitted under Section 173 Cr.P.C.; and all the consequent proceedings arising therefrom.

22. The aforesaid FIR was registered on 18.11.2002 by complainant Ram Pal Bhalla on the allegations that the firm M/s. Swaran oil Store, Nawanshahr Road, Banga was a registered partnership concern and the same was constituted by Mohinder Singh and one Piara Singh. In February, 1993, Piara Singh retired from the said firm and his share was purchased by the complainant on 9.3.1993. In the month of August, 1993, Mohinder Singh also expressed his willingness to retire and his share was also purchased by the complainant. In this manner, the complainant became exclusive owner in possession of the said concern. Thereafter, some hostilities began between the parties. The complainant instituted a civil suit for permanent injunction against Mohinder Singh and his son Kamaljit Singh (petitioner) in which the Civil Court granted an order of stay in

favour of the complainant. During the pendency of the said suit, Mohinder Singh made a complaint to the Punjab State Electricity Board for disconnecting the electricity supply. When the electricity of the said firm was disconnected, the complainant filed a civil suit for mandatory injunction against the Punjab State Electricity Board. In that suit, Mohinder Singh filed an application for being impleaded as a party. The said application was dismissed by the Court. The revision filed against the said order was also dismissed. It was further alleged that subsequently the electricity connection was restored by the order of the Court. It was further alleged that Mohinder Singh also made a complaint to the Department of Petroleum for registration of a case against the complainant. On his complaint, an FIR was registered against the complainant by the CBI, but after due investigation in the said complaint, the allegations were found to be false. The IBP stopped the supply of the petroleum products to the complainant upon which the complainant filed another civil suit for permanent injunction against the said Company. In that suit also, Mohinder Singh filed an application to be impleaded as a party. The said application was dismissed by the trial court and a revision filed against the said order was also dismissed. The supply of the partnership concern was restored under the interim order passed by the Civil Court. It was further alleged that while transferring his right, title and interest in M/s. Swaran Oil Store, Mohinder Singh executed several documents in favour of the complainant. The genuineness and correctness of those documents were questioned by him in his complaint to the CBI, on which the above-said FIR was registered. A thorough investigation was conducted in the case by the CBI

and the allegations were not established. It has been further alleged that the complainant is in possession of the entire premises of the petrol pump and the Civil Court has also granted the order of status-quo in his favour. The Company has already granted licence in favour of the complainant. It has been alleged that in spite of all this, Mohinder Singh and his son Kamaljit Singh tried to take forcible possession of the petrol pump. As per the allegations, it was alleged that on 11.11.2002, Kamaljit Singh (petitioner) accompanied by about 10 other persons forcibly entered into the premises of the petrol pump and with intention to commit the theft, broke open the locks of some rooms. When the complainant got information about that, he came to the premises and on seeing him, the accused fled away from the premises of the petrol pump.

23. After registration of the FIR, the matter was thoroughly investigated by the police. After completion of the investigation, the police filed the challan under Section 173(2) Cr.P.C. against all the accused along with all the documents and the material collected during the investigation, including the order dated 27.3.2003 passed by the Special Judge, CBI, Punjab, Patiala. seventeen persons were cited as prosecution witnesses. All the accused appeared before the Court and they were admitted to bail. Thereafter, the case was adjourned several times for framing of the charge on the request of the accused. Suddenly, on 10.8.2004, DSP(D), Nawanshahr filed an application for discharging the accused on the plea that they are innocent and falsely implicated. The complainant filed reply to the said application opposing the prayer of the police. Meanwhile, the police filed a closure report under Section 173(8) Cr.P.C. before the Court on the

ground that a fresh investigation was conducted by the DSP(D) and in the said investigation, the allegations against the accused were found to be false. It was further found that the complainant himself had illegally taken possession of the property and forged some documents.

24. The trial Court vide its order dated 17.12.2004 rejected the application for discharge as well as the closure report submitted by the police under Section 173(8) Cr.P.C. and decided to take cognizance of the alleged offence on the basis of the earlier report submitted by the police under Section 173(2) Cr.P.C., while observing as under:-

“The perusal of judicial file reveals that during investigation, the police has found evidence against the accused and then that is why, they have presented report against the accused under section 173(2) Cr.P.C. Section 173(8) Cr.P.C. only authorized the police to obtain further evidence oral or documentary and to forward the same to the Magistrate with a further report/reports. Once challan has been presented against the accused, then the police has no right to declare the accused as innocent by exploiting provisions of section 173(8) Cr.P.C. No doubt, police has powers of further investigation, but they have no power of re-investigation or fresh investigation. If this is allowed to happen, then it was directly amounts to interference in the proceedings of courts by the police or investigating agency and ultimately fate of complainant to meet with injustice instead of justice.

10. No doubt police and judiciary are separate organs and

governed by the powers given to them, but at the same time, they have to be governed by Cr.P.C. or law of the land. When police arrives at one time that there is incriminating evidence against the accused and report has to be submitted under section 173(2) Cr.P.C., then there is no reason or rhyme to further reach on the conclusion that accused are innocent and closure report has to be submitted u/s 173(8) Cr.P.C. As such this court is of considered opinion that it is clearly an abuse and misuse of process of law at the hands of police for the reasons best known to them. Once the challan has been presented against the accused in court, then court alone will determine the guilt or innocence of the accused. Police has no right under section 173(8) Cr.P.C. to present the contradictory report in the court. In the preliminary report under section 173(2) Cr.P.C. sufficient evidence was found by the police against the accused, but afterwards now they have found accused as innocent under section 173(8) Cr.P.C.

11. The production of closure report by the police under section 173(8) Cr.P.C. is clear cut suggestive of the fact that it was either fault with the previous investigating officer or with the present one. This fact has to be determined by the court only after conclusion of evidence by the prosecution and not merely by bringing reports by the police. The evidence of prosecution has to be evaluated after appearance of witnesses. In the present case, when warrants of arrest were issued against two accused

namely Makhan Singh and Avtar Singh, then police has tried to restrain the court proceedings through application and then submitted closure report against all the accused. In the given set of circumstances, this court is of the considered opinion that it amounts to suppress of justice by the police for ulterior purpose or under compelling circumstances for the reasons best known to them.”

25. During the pendency of this petition, when the aforesaid order was passed, the petitioner filed Crl.Misc.No.16516 of 2005 with a prayer for setting aside the said order also.

26. Counsel for the petitioner contends that the allegations levelled by the complainant against the petitioner are false and concocted. The complainant has claimed the exclusive possession, ownership and management of the petrol pump on the basis of forged and fabricated documents. Actually, he was not in possession of the premises of the petrol pump and he lodged the aforesaid FIR on the basis of false facts. Counsel contends that under the political pressure, initially the challan was filed by the police against the petitioner and other accused, but subsequently on a complaint made by the petitioner, the matter was re-investigated by DSP(D), who in his enquiry report found the allegations levelled by the complainant as totally false and it was further found that the complainant himself has committed the offence by forging certain documents and by forcibly taking possession of 2 kanals 16 marlas of land of Mohinder Singh, father of the petitioner. Counsel contends that the police has wide powers to further investigate the matter under Section 173(8) Cr.P.C. even after filing of the

challan and taking cognizance of the offence by the court, and then to submit the fresh report. Counsel submits that the power of the police is wide and even no prior permission of the court is required. In support of his contention, learned counsel relied upon a decision of the Supreme Court in Zahira Habibulla H.Sheikh and Anr. v. State of Gujarat and Ors., 2004(2) RCR (Crl.) 836 and further contends that the order dated 17.12.2004 passed by the trial court rejecting the closure report submitted by the police under Section 173(8) Cr.P.C. is liable to be set aside.

27. On the other hand, counsel for the complainant submitted that after thorough investigation in the FIR, sufficient material was collected by the police and thereafter challan was filed by the police. Even the order dated 27.3.2003 passed by the Special Judge, CBI, Punjab, Patiala, clearly established the alleged offence. In the challan, seventeen witnesses were cited. The accused also appeared and were released on regular bail. Counsel further contends that subsequently on the application of the petitioner, DSP (D) gave a bias report to the effect that the allegations levelled by the complainant in the aforesaid FIR were totally false and the accused were wrongly found as innocent. Counsel contends that in the said report, it was wrongly observed that the complainant had forged some documents and taken forcible possession of the business premises. The said report is totally contrary to the closure report submitted by the CBI in case FIR No.RCCHG2001A0006 dated 23.3.2001 under Section 120-B IPC read with Sections 420/467/468/471 IPC, and Section 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988, in which it was alleged by the father of the petitioner that the complainant and his brother had forged

those documents. While accepting the closure report vide order dated 27.3.2003, the Special Judge, CBI had come to the conclusion that the complainant and his brother did not forge any such documents. Counsel contends that while totally ignoring the closure report submitted by the CBI and its acceptance by the Special Judge, DSP (D) submitted an incorrect and bias report. Counsel further contends that once the challan has been filed by the police and the Court has taken cognizance of the matter, the police has no right to reinvestigate the matter and then to file a report contrary to the earlier report. In support of his contention, learned counsel for the complainant relied upon a decision of the Supreme Court in K.Chandrasekhar v. State of Kerala, 1998(2) RCR (Criminal) 719. Counsel further contends that there are specific allegations against the petitioner and other accused in the FIR which constitute the alleged offence and the trial Court has rightly rejected the closure report submitted by the police under Section 173(8) Cr.P.C. by the impugned order, therefore, this petition for quashing the FIR as well as the said order is liable to be dismissed.

28. After hearing the counsel for the parties and going through the record of the case, I do not find any merit in the instant petition. In this case, after thorough investigation in the impugned FIR, the challan was filed by the police along with the material and the documents collected during the investigation. In the challan, seventeen persons were also cited as witnesses. The accused were arrested and also released on regular bail. After presentation of the challan, the cognizance was taken and the case was adjourned several times on the request of the accused for framing the charge. On 10.8.2004, the police filed an application for discharge of the

accused. Subsequently on 27.10.2004, the police placed on record the closure report under Section 173(8) Cr.P.C. Undisputedly, no permission/approval was obtained from the concerned court for further investigation of the matter under Section 173(8) Cr.P.C. The said closure report was submitted by the police at the stage of framing of the charge against the accused on the plea that during the investigation, which was conducted by the DSP(D) on the representation of the accused, the allegations levelled in the FIR against the accused were found to be false. Rather the complainant himself had taken illegal possession of the premises of the father of the accused and had also forged certain documents. It appears that in the re-investigation, the order dated 27.3.2003 passed by the Special Judge, CBI, Punjab, Patiala, whereby the closure report submitted by the CBI in case FIR No.RCCHG2001A0006 dated 23.3.2001, was accepted, has not been taken into consideration on the plea that the revision against the said order is pending. Even otherwise, once the allegations of forging of certain documents were investigated by the CBI and a closure report was submitted and accepted by the competent court, the local police was not competent to re-investigate the matter with regard to those facts. In this regard, reference can be made to the decision of the Supreme Court in K.Chandrasekhar's case (supra).

29. From the plain reading of Section 173, it is clear that even after submission of the police report under sub-section(2) on completion of the investigation, the police has a right of further investigation under sub-section (8). This sub-section empowers the police to conduct further investigation even after the Court took cognizance of any offence on the

strength of a police report submitted earlier. Though seeking of prior permission for conducting further investigation from the court is not necessary but it would ordinarily be desirable that before conducting further investigation, the police should inform the Court and seek formal permission to make further investigation when some fresh facts come to light to the police [see *Hasanbhai Valibhai Qureshi v. State of Gujarat*, (2004) 5 SCC 347]. But the Supreme Court in K.Chandrasekhar's case (supra) has observed that the police has a right of further investigation under Section 173(8) Cr.P.C., but the said right does not include the fresh investigation or reinvestigation of the case. The Supreme Court in that case observed as under:-

“....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.”

30. Thus, from the aforesaid observations, it is clear that further investigation should be to supplement the earlier report but the same cannot be done to entirely reverse the earlier investigation. In the instant case, this

was done by the police while submitting the closure report under Section 173(8) Cr.P.C. The trial court while considering the matter came to the conclusion that in this case the police exercised the right of further investigation under Section 173(8) Cr.P.C. for an ulterior purpose and under compelling circumstances for the reasons best known to them. The trial court also come to the conclusion that after thorough investigation the challan was filed along with material and the documents collected during the investigation. Therefore, there was no justification and material for filing the closure report in the case. In these facts and circumstances, I do not find any illegality in the order dated 17.12.2004 passed by the trial court as well as the order dated 27.3.2003 passed by the Special Judge, CBI, Punjab, Patiala, whereby the closure report submitted by the CBI in case FIR No.RCCHG2001A0006 dated 23.3.2001, was accepted. Thus, I also do not find any ground to quash the impugned FIR and the subsequent proceedings arising therefrom.

31. Hence, this petition is dismissed.

January 31,2007
vkg

(SATISH KUMAR MITTAL)
JUDGE