Before Satish Kumar Mittal, J.

HARINDER PAL SINGH,—*Petitioner*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondent*

Crl. M. No. 21336/M of 2003

25th February, 2004

*Prevention of Corruption Act, 1988—Ss. 7, 13(1)(d) and 13(2)—Code of Criminal Proccdure, 1973—Chapter XIV, S. 173—Charges of corruption—Registration of case—After thorough investigation C.B.I. submitting closure report—Special Judge, CBI disagreeing with the report and directing re-investigation of the matter—C.B.I. investigating the matter second time and submitting fresh closure report—Whether the Special Judge can direct the C.B.I. to re-investigate the matter for the third time—Held, no—If not satisfied with the cancellation report for the second time, he is entitled to take cognizance under section 190(1)(c) of the Code—Cancellation report could not be rejected for the second time on the same ground—Complainant making statement that he has no objection to cancellation of the case against the petitioner—Special Judge also failing to consider the statement—Petition allowed while setting aside the order of Special Judge, C.B.I. directing C.B.I. to reinvestigate the matter for the third time.*

*Held,* that after going through the contents of the cancellation report submitted by the C.B.I. for the second time there was no reason for issuing direction to further re-investigate the matter. The Special Judge could not reject the cancellation report submitted for the second time on the same ground and again order for further investigation. If at all he was not satisfied with the closure report submitted by the C.B.I. for the second time and was of the opinion that report was not based on full and complete investigation, he could have taken cognizance of the offence under section 190(1)(c) of the Code, but could not order for -re-investigation of the matter for the third time.

(Para 14)

*Further held,* that the Special Judge has not fully applied his mind in the case especially when he has not taken into consideration the statement made by the complainant made before him to the effect that he did not object to cancellation of the case against the petitioner.

In view of this, the fate of the prosecution case was imminent and it would be futile exercise to get the matter re-investigated.

(Para 14)

A.S. Kalra, Advocate, *for the petitioner.*

Ms. Baljit K. Mann, Sr. D.A.G., Punjab, *for the State.*

Rajan Gupta, Standing Counsel, *for C.B.I.*

**JUDGMENT**

*SATISH KUMAR MITTAL, J.*

(1) The petitioner-accused, who is serving as Junior Telecom Officer (J.T.O.) in Telephone Department, has filed the instant petition for setting aside the order dated 29th January, 2003 (Annexure P-6) passed by Special Judge, C.B.I., Punjab, Patiala,—*vide* which the closure report submitted by the C.B.I. in case RC No. 33/2000/CHG, dated 22nd November, 2000 under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act'), was not accepted and the matter was sent for re-investigation.

(2) The case against the petitioner was registered for the offences under the Act, mentioned above, on the complaint made by one Parminder Singh to D.S.P. Vigilance Bureau, Ludhiana, alleging therein that the petitioner was demanding Rs. 500 as bribe for shifting his telephone from one business premises to another. Accordingly, a raiding party was constituted by associating the complainant Parminder Singh, a shadow witness Charanjit Singh and two recovery witnesses. A trap was laid on 6th June, 2000, thereby allegedly catching the petitioner red handed while accepting bribe of Rs. 500 from the complainant.

(3) The matter was investigated by the C.B.I. After thorough investigation, a closure report dated 29th May, 2001 (Annexure P-1) was submitted by C.B.I., stating therein that during investigation it was revealed that old telephone number of the complainant had already been closed on 2nd June, 2000 and new number was allotted to him on 3rd June, 2000, which fact was very much in the knowledge of the complainant. As per the record collected during the investigation, it was found by the C.B.I. that after executing the shifting work, a

Jumper Slip (Annexure P-2) was issued on 1st June, 2000 i.e. much before 6th June, 2000, the date of trap, therefore, as on the date of trap nothing was pending with the petitioner with regard to shifting of the telephone, thus, there was no motive for the peitioner to demand any money from the complainant. In the closure report, it was further mentioned that there was no independent witness to observe the demand and acceptance of the bribe money by the petitioner as the complainant and the shadow witness are very good friends for the last many years. Further, it was found that when the team and recovery witnesses reached the spot the bribe money was lying on the ground.

(4) When the said closure report (Annexure P-1) was submitted by the C.B.I., the Special Judge, C.B.I., Patiala did not agree with the same and directed the C.B.I. to further investigate the matter,—*vide* order dated 19th November, 2001 (Annexure P-4), while observing that the Jumper Slip, which was alleged to be issued on 1st June, 2000, was not taken into possession by the C.B.I. during investigation, therefore, he found that there is nothing on record to suggest that in fact, the petitioner had sent the Jumper Slip to J.T.O. Indoor/SD (Traffic) and the matter requires further investigation as until and unless it is established that the petitioner had in fact despatched the Jumper Slip, it cannot be said that he had no motive to demand money from the complainant. Secondly, it was observed that merely because the complainant and the shadow witness are the good friends, it is too early to discard their version at this stage. It was further observed that in the recovery memo pertaining to the tainted money, it was specifically mentioned that on seeing the raiding party, the petitioner-accused took out the bribe money from his pocket and threw it on the ground. According to the learned Judge, these facts were not properly considered by the investigating agency.

(5) In compliance of the aforesaid order, C.B.I. further investigated the matter for th second time. The Jumper Slip (Annexure P-2), which was issued by the complainant to mechanic (Indoor), was taken into possession. The same was found to be entered into the register regarding inter-exchange shifting of telephone. From the records of the telephone department, it was found that the complainant, after executing the complete work, issued Jumper Slip No. 42 on 1st June, 2000, therefore, the C.B.I. again reached to the same conclusion that on the date when the raid was conducted, there was nothing pending with the petitioner with regard to shifting of the

telephone ; there was no motive for the complainant to demand money from the complainant ; the complainant and the shadow witness are very good friends for the last many years ; there is no other independent witness to the demand and acceptance of the bribe by the petitioner and when the trapping party and the recovery witness reached the spot, the bribe money was lying on the ground. In view of these facts, the C.B.I. submited fresh closure report dated 24th June, 2002 (Annexure P-5).

6. The learned Special Judge, C.B.I., Patiala,—*vide* his order dated 29th January, 2003 (Annexure P-6), again declined to accept the closure report submitted by the CBI, while observing that even though the Jumper Slip was issued on 1st June, 2000, but there is nothing to suggest that the fact with regard to issuance of Jumper Slip by the petitioner was made known to the complainant or it was kept as a closely guarded secret by the petitioner to extract money from him. Regarding the tainted money, it was again observed that though the tained money was lying on the ground, but it has been specifically mentioned in the recovery memo that on seeing the raiding party, petitioner-accused took out the tainted money from his pocket and threw it on the ground. Regarding the discrepancy in the version of the complainant and the shadow witness and the fact that both are close friends, it has been observed that the evidentiary value of these witnesses would be adjudicated at the stage of trial. On these premises, Special Judge again declined to accept the closure report submitted by the C.B.I. for the second time and directed the re-investigation in the matter.

(7) Learned counsel for the petitioner has submitted that the Special Judge has gravely erred by not accepting the closure report (Annexure P-5), submitted by the CBI for the second time, almost on the same grounds on which it was previously rejected,—*vide* order dated 19th November, 2001 (Annexure P-4). The learned Judge took conjecturous view while observing that even on the assumption that the petitioner had issued Jumper Slip on 1st June, 2000, there is nothing to suggest that the fact with regard to its issuance was made known to the complainant or it was kept as a closely guarded secret to extract money from him. Learned counsel further submitted that statement of the complainant, to the effect that he firstly met the petitioner on 28/29 May, 2000 and subsequently on two occasions and the petitioner had raised demand for bribe for the purpose of shifting of telephone, carries no value in the light of the documentary proof. When the Jumper Slip, as per record of the department, stand entered

in the register regarding inter exchange shifting of telephone on 2nd June, 2000, there remains no question at all to demand any bribe after four days of the completion of work. Learned counsel submitted that the C.B.I. has investigated the matter twice and found that the complainant was telling lie regarding demand of bribe by the petitioner, as he was having full knowledge regarding completion of work of shifting of his telephone. According to the learned counsel, the learned Special Judge, without applying his judicious mind, has declined to accept the closure report second time while giving almost the same reasons, on which the closure report was declined on earlier occasion. Learned counsel further submitted that after submission of the closure report dated 29th May, 2001 (Annexure P-1), the learned Judge called the complainant to make statement in that regard. He made the statement on oath on 17th September, 2001 (Annexure P-8) to the effect that he did not have any objection at all if the closure report is accepted. In spite of the said statement, the learned Judge, arbitrarily rejected the closure report and ordered for re-investigation of the matter for the second time. Learned counsel for the petitioner submitted that the Court has no jurisdiction to send back the case for re-investigation for number of times. It is within the purview of the investigating agency to investigate the matter, but the Court cannot compel the investigating agency to take a particular view or to change their opinion, so as to accord with the view of the Court. The submission of the charge sheet or the final report depends upon the nature of the opinion framed by the investigating agency and the investigating agency has the final say to form such an opinion. According to the learned counsel, the Court cannot compel the investigating agency to take a different view or order for submission of the challan. Learned counsel further submitted that in the instant case, the learned Special Judge did not accept the closure report for two times while giving almost the same reasonings and, thus, was compelling the investigating agency to take a particular view in the matter, which is beyond the scope and jurisdiction of the Court. In support of his contentions, learned counsel placed reliance upon the decisions of the Hon'ble Supreme Court in **Abhinandan Jha and others** *versus* **Dinesh Mishra (1), State through CBI** *versus* **Raj Kumar Jain (2),** and **R. Sarala** *versus* **T.S. Velu and others (3).**

(1) AIR 1968 S.C. 117
(2) (1998) 6 S.C.C. 551
(3) (2000) 4 S.C.C. 459

(8) Though the CBI has not challenged the impugned order by filing a petition, but its learned standing counsel supported the contention raised by learned counsel for the petitioner regarding the scope of power of the Court for rejecting the closure report for the second time and ordering for re-investigation. According to him, the Police is the master of the investigation and the Court, however, has a jurisdiction of not accepting the closure report submitted by the police, but at the same time, the Court is not empowered under the law to direct the Police to take a particular view in the matter and to submit the challan. The functions of the Magistrate and the Police are entirely different. Though the Magistrate may or may not accept the report but he cannot impinge upon the jurisdiction of the Police by compelling them to change their opinion or to submit the challan.

(9) After hearing the arguments of learned counsel for the parties and going through both the cancellation reports submitted by the CBI as well as the orders passed thereon and the judgments, cited by learned counsel for the petitioner, in my opinion, the peition deserves to be allowed.

(10) In Chapter XIV of the Code of Criminal Procedure ('hereinafter referred to as 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 of the Code provides for an investigation to be completed without unnecessary delay and also 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. If the Police submits a report under Section 173 of the Code to the effect that a case is made out for sending the accused for trial, the Magistrate is not bound to accept the opinion of the Police. It is open to the Magistrate to take the view that the facts disclosed in the report do not make out an offence for taking cognizance or he may take the view that there is no sufficient evidence to justify and accused being put on trial. On the other hand, if the Magistrate agrees with the report, then he will take cognizance of the offence. In case, the Police submits a report stating therein that no case is made out against the accused for sending him for trial, the Magistrate, agreeing with the report, may accept the final report and

close the proceedings, but the Magistrate may also take a view on consideration of the final report that the opinion framed by the Police is not based on full and complete investigation and in such a situation, the Magistrate can order for further investigation. It is always open for the Magistrate to decline to accept the closure report and direct the Police to further investigate the matter but once the closure report is not accepted by the Magistrate and the matter has been ordered to be re-investigated, then for the second time the Magistrate cannot compel the Police to take a particular view in the matter and submit the challan in the case. If the Magistrate does not agree with the opinion formed by the Police and still suspects that an offence has been committed, he is entitled, notwithstanding the opinion of the Police, to take cognizance under Section 190 (1)(c) of the Code, but in my opinion, he cannot direct the Police to re-investigate the matter for the third time. The Hon'ble Supreme Court in **Abhinandan Jha and others** *versus* **Dinesh Mishra** (supra) 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.

We have already pointed out that the investigation, under the Code, takes in several aspects, and stages, ending ultimately with the formation of an opinion by the police, as to whether on the material covered and collected a case is made out to place the accused before the Magistrate for trial, and the submission of either a charge sheet, or a final report is dependent on the nature of the opinion, so formed. The formation of the said opinion, by the police, as pointed out earlier, is the final step in the investigation, and that final step is to be taken only by the police and by no other authority.

The question can also be considered from another point of view. Supposing the police send a report, viz., a charge-sheet under Section 170 of the Code. As we have already pointed out the Magistrate is not bound to accept that report, when he considers the matter judicially. But can he differ from the police and call upon them to submit a final report, under section 169 ? In our opinion, the Magistrate has no such power. He has no such power, in law, it also follows that the Magistrate has no power to direct the police to submit a charge sheet, when the police have submitted a final report that no case is made out for sending the accused for trial. The functions of the Magistracy and the police, are entirely different, and though, in the circumstances mentioned earlier, the Magistrate may or may not accept the report, and take a suitable action, according to law, he cannot certainly infringe (sic. impinge ?) upon the jurisdication of the police, by compelling them to change their opinion, so as to accord with his view.

(11). Similarly, in **State through CBI** versus **Raj Kumar Jain** *(supra),* the Hon'ble Supreme Court, while dealing with a question as to whether the C.B.I. is required to first obtain sanction from the sanctining authority in a corruption case before approaching the Court for accepting the report under Section 173(2) of the Code

for discharge of the accused, observed that the Special Judge can only direct for further investigation, if it is found on consideration of the police report that the opinion framed by the Investigating Officer seeking discharge of the accused in not based on full and complete investigation.

(12) in **R. Sarala** versus **T.S. Velu and others,** *(supra),* the Hon'ble Supreme Court, while considering the question regarding giving of direction by the Court to the Investigating Officer to take opinion of the Public Prosecutor for filing the chargesheet, has observed as under :—

> ".....The formation of the opinion, whether or not there is a case to place the accused on trial, should be that of the officer in charge of the police station and none else. There is no stage during which the investigating officer is legally obliged to take the opinion of a Public Prosecutor or any authority, except the superior police officer in the rank as envisaged in Section 36 of the Code. A Public Prosecutor is appointed as indicated in Section 24 Cr. PC, for conducting any prosecution, appeal or other proceedings in the court. He has also the power to withdraw any case from the prosecution with the consent of the court. He is the officer of the court. Thus the Public Prosecutor is to deal with a different field in the administration of justice and he is not involved in investigation. It is not in the scheme of the Code for supporting or sponsoring any combined operation between the investigating officer and the Public Prosecutor for filing the report in the court.

(13) Thus, from the aforesaid judgments, it is clear that the Police is the master of the investigation and formation of opinion as to whether, on the material collected, a case is made out to place the accused for trial is the exclusive function of the officer in charge of the Police Station and or his superior officers. The Magistrate, while accepting or rejecting the report, cannot compel the investigating agency to change its opinion and to form a

particular opinion or to submit the challan. 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 other authority.

(14) In the light of the aforesaid legal position, I have examined the impugned order. In my opinion, the Special Judge, while not accepting the closure report for the second time and order re-investigation in the matter for the third time, has not given valid reasons. On the first occasion when the cancellation report was not accepted and direction was issued for further investigation, it was mentioned that Jumper Slip in question was not taken into possession by the investigating agency. During the re-investigation, after taking all the relevant documents including the Jumper Slip into possession, the C.B.I. again came to the conclusion that in view of the fact Jumper Slip was issued by the petitioner on 1st June, 2000, there was no reason and motive for him to demand and accept bribe on 6th June, 2000. After going through the contents of the cancellation report submitted by the C.B.I. for the second time, in my opinion, there was no reason for issuing direction to further re-investgate the matter. The Special Judge could not reject the cancellation report submitted for the second time on the same ground and again order for further investigation. If at all he was not satisfied with the closure report submitted by the C.B.I. for the second time and was of the opinion that report was not based on full and complete investigation, he could have taken cognizance of the offence under Section 190(1)(c) of the Code, but could not order for re-investigation of the matter for the third time. Further, in my opinion, the Special Judge has not fully applied his mind in the case, especially when he has not taken into consideration the statement made by the complainant made before him to the effect that he did not object to cancellation of the case against the petitioner. In view of this, the fate of the prosecution case was imminent and it would be futile exercise to get the matter re-investigated.

(15) In view of the aforesaid discussion, this petition is allowed and the order dated 29th January, 2003 (Annexure P-6) is set aside.

*R.N.R.*