IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-28395-2025 (O&M)
Date of decision : 08.10.2025

JITENDER

... Petitioner

Versus

STATE OF HARYANA & OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. R.S. Sangwan, Advocate
for the petitioner.

Mr. Vipul Sherwal, Asstt. A.G., Haryana.

Mr. J.S. Mehndiratta, Advocate as Amicus Curiae.

Mr. Sube S. Kaushik, Advocate and
Mr. Sandeep Ahlawat, Advocate
for respondent No.5.

Mr. Rajesh K. Dhankar, Advocate
for respondent No.6.

Mr. Harshit Jain, Advocate
for respondent No.7.

Mr. S.S. Momi, Advocate and
Mr. Tarun Kumar Prashar, Advocate
for respondent No.8.

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JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 528 of BNSS, 2023 is for quashing of the order dated 09.04.2025 (Annexure P-7) passed by the Addl. Sessions Judge-I, Charkhi Dadri and for issuance

of directions to respondent Nos.2 and 3 to constitute a Special Investigation Team (SIT) of senior official police officials to investigate the matter.

2. The brief facts of the case are that one Kajal W/o Vicky got registered an FIR No.136 dated 19.07.2022 U/s 376 and 506 IPC P.S. Baund Kalan against petitioner-Jitender alias Subhla S/o Chander Bhan.

3. On the very next day i.e. 20.07.2022, Kajal (prosecutrix) was taken to get recorded her statement under Section 164 Cr.P.C. and for her medico-legal examination. In her statement under Section 164 Cr.P.C., she denied the allegations of rape. She further refused to get herself medico-legally examine.

4. On 21.07.2022, ASI Karambir Singh on the basis of a source report received information that Rs.12 lakhs had been paid by the family members of Jitender by way of settlement to prosecrutix Kajal, Rajbir Singh SHO Baund Kalan, I.O. ASI Savita and Smt. Naresh, Advocate, Charkhi Dadri. The whole plan was conceived by HC Sanjay Kumar and Smt. Naresh Kumari, Advocate The copy of the source report is attached as Annexure P-2 to the petition.

5. Based on the source report, an FIR No.205 dated 14.11.2023 U/s 7, 13(1), (2) of Prevention of Corruption Act, 1988 and Sections 384, 389 and 34 IPC, P.S. Baund Kalan came to be registered against SHO Rajbir Singh, ASI Savita, H.C. Sanjay, Smt. Naresh, Advocate, Charki Dadri and one Sachin. The copy of the said FIR is attached as Annexure P-1 to the petition.

6. Pursuant to the registration of the FIR, the statements under Section 161 Cr.P.C. of Chander Bhan father of Jitender, Hardeep Singh S/o Sada Ram and Amit S/o Sukhbir Singh were recorded to the effect that they had paid a sum of Rs.12 lakhs to SHO Rajbir Singh, ASI Savita, H.C. Sanjay and Smt. Naresh, Advocate, Charki Dadri to effect a settlement in FIR No.136 dated 19.07.2022 U/s 376 and 506 IPC P.S. Baund Kalan which amount had been repaid to them. The statements were recorded on 11.02.2025 and are attached to the petition as Annexures P-3 to P-5 respectively.

7. Based on the investigation conducted, a cancellation report was submitted on 09.04.2025 which came to be accepted on the same day vide impugned order dated 09.04.2025 (Annexure P-7).

8. The present petition has been filed challenging the cancellation report with a further prayer to constitute an SIT of senior police officials to investigate the matter.

9. The learned counsel for the petitioner contends that the cancellation report has been accepted without issuing notice to the victim i.e. petitioner or Chander Bhan, father of the petitioner who are the persons aggrieved. This was all the more necessary because the impugned order itself observes that ASI Karambir Singh had no personal interest in the matter except that the source report was submitted by him in discharge of his official duties because of which the cancellation report was being accepted on the basis of the statement of one DSP Subhash Chander, DSP Badhra who had investigated the matter and

submitted the cancellation report. He further contends that the cancellation report ought to have been examined carefully and could not have been accepted merely on the statement of the said DSP as has been done in the present case. He, therefore prays that the impugned order dated 09.04.2025 (Annexure P-7) be quashed and the case be remanded back for a fresh adjudication on merits after hearing the aggrieved persons.

10. The Amicus Curiae, who has very ably assisted this Court has argued that in terms of the judgment in ***Bhagwant Singh Versus Commissioner of Police, 1985(2) RCR (Criminal) 259***, while it is incumbent on the Court concerned to issue notice to the first informant before considering a cancellation report, in the instant case, once the Court was aware of the fact that ASI Karambir Singh and DSP Subhash Chander were only acting in their official capacity, the natural corollary was that either the petitioner or his father or the other persons whose statements were recorded under Section 161 Cr.P.C. ought to have been summoned for hearing at the time of consideration of the cancellation report. He further contends that a perusal of the impugned order itself would reveal that the concerned Court has not examined the report in any detailed whatsoever but has simply accepted the cancellation report on the mere statement of DSP Subhash Chander, DSP Badhra. Reliance is placed on the judgments in ***Jagjeet Singh & others Versus Ashish Mishra @ Monu & Another, 2022(2) RCR (Criminal) 788*** and ***Rajpal Versus State of Haryana & another, CRR No.871 of 2011, Decided on***

20.04.2015 to contend that not only must the victim be heard but the Trial Court must apply its mind independently to all the evidence collected during investigation including statements of witnesses and the said report cannot be accepted ipso facto. He, therefore, while supporting the case of the petitioner contends that the impugned order is liable to be set aside and the case be remanded back for a fresh adjudication on merits.

11. On the other hand, the learned State counsel contends that after due investigation, it was found that the allegations levelled as per the source report were found to be incorrect and therefore, the cancellation report was submitted which has been accepted by the Court concerned. Therefore, the present petition is liable to be dismissed.

12. The learned counsel for respondent No.5-SHO Rajbir Singh contends that in departmental proceedings the rank of Rajbir Singh has been reduced from that of Inspector to a Sub-Inspector. Only the first informant has a right to be heard and not any other victim/aggrieved unless such victim/aggrieved appears in the Court of his own accord. Therefore, the present petition is liable to be dismissed.

13. The learned counsel for respondent No.6-Lady ASI Savita contends that the petitioner filed CRM-M-39568-2022 seeking preservation of CCTV footage and transfer of the investigation. The said petition was dismissed as withdrawn. The present second petition is not maintainable. Chander Bhan, Hardeep Singh and Amit have given different versions as to the amount of bribe paid by them. The

cancellation report has been submitted on proper examination of the material on record. He, therefore prays that the present petition is liable to be dismissed.

14. The learned counsel for respondent No.7-H.C. Sanjay Kumar contends that petitioner-Jitender has admitted that the bribe amount has been returned to him and that he is aggrieved only by his illegal confinement. In fact, the petitioner has no locus standi. He is not a victim but actually an accused under Section 8 of the P.C. Act for giving a bribe and not making a complaint about the same having been paid under duress within a period of 7 days of making such payment. Witnesses are not required to be heard and notices are to be issued only to the complainant/first informant at the time of consideration of the cancellation report. He therefore prays that the present petition is liable to be dismissed.

15. The learned counsel for respondent No.8-Smt. Naresh Kumari, Advocate contends that the first petition filed by the petition was dismissed. The prosecutrix Kajal has challenged the cancellation report submitted in FIR No.136 dated 19.07.2022 U/s 376 and 506 IPC P.S. Baund Kalan in which she is the complainant. No action can be taken against a lawyer on account of attorney client privilege. Even otherwise, as the petitioner and others did not make a complaint regarding paying of bribe within a period of 7 days of making such payment, at this stage, they cannot claim that they were victims and in fact they were accused because of which notice is not required to be

issued to them by the Court concerned prior to the consideration of cancellation report. He therefore prays that the present petition is liable to be dismissed.

16. I have heard the learned counsel for the petitioner.

17. Before proceeding further in the matter, it would be apposite to examine the various judgments referred to and the relevant extracts of the same read as under:-

In ***Bhagwant Singh*** (supra), the Hon'ble Court held as under:-

> *"4. Now, when the report forwarded by the officer-in-charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things : (1) he may accept the report and take cognizance of the offence and issue process; or (2) he may disagree with the report and drop the proceeding; or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses; (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is*

not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the respondents that

if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2)(i) of Section 173 and if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate.

5. The position may, however, be a little different when we consider the question whether the injured person or a relative of the deceased, who is not the informant, is entitled to notice when the report comes up for consideration by the Magistrate. We cannot spell out either from the provisions of the Criminal Procedure Code, 1973 or from the principles of natural justice, any obligation on the Magistrate to issue notice to the injured person or to a relative of the deceased for providing such person an opportunity to be heard at the time of consideration of the report, unless such person is the informant who has lodged the First Information Report. But even if such person is not entitled to notice from the Magistrate, he can appear before the Magistrate and make his submissions when the report is considered by the Magistrate for the purpose of deciding what action he should take on the report. The injured person or any relative of the deceased, though not entitled to notice from the Magistrate, has locus to appear before the Magistrate at the time of consideration of the report, if he otherwise comes to know that the report is going to be considered by the Magistrate and if he wants to make his submissions in regard to the report, the Magistrate is bound to

hear him. We may also observe that even though Magistrate is not bound to give notice of the hearing fixed for consideration of the report to the injured person or to any relative of the deceased, he may, in the exercise of his discretion, if he so thinks fit give such notice to the injured person or to any particular relative or relatives of the deceased, but not giving of such notice will not have any invalidating effect on the order which may be made by the Magistrate on a consideration of the report.

(Emphasis supplied)

In ***Jagjeet Singh*** (supra), the Hon'ble Supreme Court held as under:-

"A. Victim's right to be heard:

19. On the domestic front, recent amendments to the Cr.P.C. have recognised a victim's rights in the Indian criminal justice system. The genesis of such rights lies in the 154th Report of the Law Commission of India, wherein, radical recommendations on the aspect of compensatory justice to a victim under a compensation scheme were made. Thereafter, a Committee on the Reforms of Criminal Justice System in its Report in 2003, suggested ways and means to develop a cohesive system in which all parts are to work in coordination to achieve the common goal of restoring the lost confidence of the people in the criminal justice system. The Committee recommended the rights of the victim or his/her legal representative "to be impleaded as a party in every criminal proceeding where the charges punishable with seven years' imprisonment or more".

20. It was further recommended that the victim be armed with a right to be represented by an advocate of his/her choice, and if he/she is not in a position to afford the same, to provide an advocate at the State's expense. The victim's right to participate in criminal trial and his/her right to know the status

of investigation, and take necessary steps, or to be heard at every crucial stage of the criminal proceedings, including at the time of grant or cancellation of bail, were also duly recognised by the Committee. Repeated judicial intervention, coupled with the recommendations made from time to time as briefly noticed above, prompted the Parliament to bring into force the Code of Criminal Procedure (Amendment) Act, 2008, which not only inserted the definition of a `victim' under Section 2 (wa) but also statutorily recognised various rights of such victims at different stages of trial.

21. It is pertinent to mention that the legislature has thoughtfully given a wide and expansive meaning to the expression `victim' which "means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir"

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23. It cannot be gainsaid that the right of a victim under the amended Cr.P.C. are substantive, enforceable, and are another facet of human rights. The victim's right, therefore, cannot be termed or construed restrictively like a brutum fulmen. We reiterate that these rights are totally independent, incomparable, and are not accessory or auxiliary to those of the State under the Cr.P.C. The presence of `State' in the proceedings, therefore, does not tantamount to according a hearing to a `victim' of the crime.

24. A `victim' within the meaning of Cr.P.C. cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a `victim' has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that `victim' and `complainant/informant' are two distinct connotations in criminal jurisprudence. It is not always

necessary that the complainant/informant is also a `victim', for even a stranger to the act of crime can be an `informant', and similarly, a `victim' need not be the complainant or informant of a felony.

25. The above stated enunciations are not to be conflated with certain statutory provisions, such as those present in Special Acts like the Scheduled Cast and Scheduled Tribes (Prevention of Atrocities) Act, 1989, where there is a legal obligation to hear the victim at the time of granting bail. Instead, what must be taken note of is that; First, the Indian jurisprudence is constantly evolving, whereby, the right of victims to be heard, especially in cases involving heinous crimes, is increasingly being acknowledged; Second, where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing. If the right to file an appeal against acquittal, is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave miscarriage of justice. Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses.

(Emphasis supplied)

This Court in ***Rajpal*** (supra), held as under:-

"5. It is an undisputed fact that ASI Wazir Singh was posted as Incharge Police Post Titram. On a complaint lodged by Rajpal to Deputy Commissioner, a direction was issued to State Vigilance Bureau to lay a trap that too, in the presence of Executive Magistrate, Kaithal. Accordingly, a raid was conducted and respondent No. 2 was caught red handed and tainted notes 8 in number of the denomination of Rs. 500/- each were recovered from him. On the next day, statements of complainant as well as other witnesses were recorded under

> *Section 164 Cr.P.C., 1973 by learned JMIC, Kaithal. Entire evidence collected during investigation has been ignored and disbelieved by DSP Radhey Sham simply on the ground that tainted currency notes were thrusted in the right pocket of respondent No. 2 and the same were neither demanded nor accepted.*
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> *6. Here it would be pertinent to mention that respondent No. 2 was arrested at the spot. He was produced before Duty Magistrate on the next day. Subsequently, he was bailed out. To the utter surprise, he did not utter even a single word either in the bail application or in any other documents that tainted currency notes were thrusted in his pocket by Rajpal-petitioner. On one fine morning after about 8 months of raid, a complaint was lodged by father of respondent No. 2, which ultimately culminated into the cancellation of FIR. The learned trial Court appears to have been swayed by the report of DSP with regard to cancellation and failed to appreciate the other evidence collected by investigating agency at the initial stage i.e. when the trap was laid and tainted currency notes were recovered. The court is not to act as a post office to accept the cancellation report and has to apply mind to the various factors. The mere fact that protest petition has not been filed by complainant or his counsel does not ipso facto mean that whatever has been projected by investigating agency, is a gospel truth. The matter requires a thorough probe.*
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> *7. In the light of what has been discussed above, the impugned order dated February 08, 2011 is set aside and learned trial Court is directed to re-appreciate the evidence and then to proceed in accordance with law. Copy of this order be transmitted immediately to the concerned quarters.*
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> (Emphasis supplied)

18. In ***Bhagwant Singh*** (supra) the Hon'ble Supreme Court held that it was incumbent upon the Court of a Magistrate to give notice

for the hearing fixed to the first informant when the said Court is not inclined to take cognizance and issue process. It has also been observed that though the Magistrate is not bound to give notice of the hearing fixed for consideration of the report to the injured person or to any relative of a deceased, he may in the exercise of his discretion, if he thinks fit, give notice to any relative of the person or to any particular relative of the deceased but not giving such notice will not have any invalidating effect on the order which the Magistrate may pass on consideration of such report.

In ***Jagjeet Singh*** (supra), it was held that a victim has a legally vested right to be heard at every step post the occurrence in question and has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision.

In ***Rajpal*** (supra) this Court held that the Court is not to act as a post-office to accept a cancellation report but has to apply its mind to the various facts of the case and mere non-filing of a protest petition filed by the complainant does not mean that whatsoever projected by the Investigating Agency is the gospel truth.

19. Coming back to the facts of the present case, two distinct questions arise for the examination of this Court. The first one is as to who was to be given notice at the time when the cancellation report was being examined by the Court and secondly whether the impugned order

is a reasoned order passed with due application of mind on a proper appreciation of the evidence on record.

20. As regards the first question, it would be pertinent to mention here that while in ***Bhagwant Singh*** (supra), the Hon'ble Supreme Court has held that notice has to be given only to a first informant, in the exercise of it's discretion if it so thinks fit, the Court concerned can issue notice to an injured person or any relative as well. In the instant case, a perusal of the impugned order would reveal that the Court was quite conscious of the fact that the case was registered on the written information/source report of ASI Karambir Singh the then Incharge, Security Branch, SP Office Charkhi Dadri who had no personal interest in the matter and acted in the discharge of his official duty. It was in that situation that DSP Subhash Chander, DSP Badhra, the Investigating Officer of the case had submitted the cancellation report. Once the concerned Court was aware that the person who was being heard at the stage of the examination of the cancellation report had absolutely no personal interest in the matter, he ought to have certainly called upon either the petitioner, being an accused in FIR No.136 dated 19.07.2022 U/s 376 and 506 IPC P.S. Baund Kalan or his father Chander Bhan along with Hardeep Singh and Amit. That path not having been adopted, it can be safely held that the impugned order has been passed without due notice to the persons aggrieved. Even otherwise, whether or not the aggrieved persons are in the nature of accused persons as per the

Prevention of Corruption Act is a fact to be considered after they have been given an opportunity to oppose the cancellation report.

21. As regards the second question of the impugned order not having been passed after due application of mind and on a thorough examination of the material on record, it is relevant to note here that the cancellation report was submitted on 09.04.2025. On the same day the Court of ADJ, Charkhi Dadri accepted the same merely on the statement of DSP Subhash Chander, DSP Badhra without any reference to the material on record, including, the statements (Annexures P-3 to P-5) under Section 161 Cr.P.C. Therefore, there is complete non-application of mind by the concerned Court.

22. As regards the maintainability of this petition, clearly the instant petition has been filed challenging the order dated 09.04.2025 (Annexure P-7) along with an additional prayer of the investigation to be conducted by senior police officials. The 1st petition bearing No.CRM-M-39568-2022 has not been filed to challenge the order dated 09.04.2025 though there is prayer for transfer of the investigation outside District Charkhi Dadri. Therefore, the present petition is certainly maintainable.

23. The upshot of the aforementioned discussion is that the impugned order dated 09.04.2025 (Annexure P-7) passed by the Addl. Sessions Judge-I, Charkhi Dadri is set aside. The matter is remanded back to the said Court for a fresh adjudication on merits after duly

hearing the victims/aggrieved persons and on a proper examination of the material on record.

(JASJIT SINGH BEDI)
JUDGE

08.10.2025
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No