

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr.Revision No. 751 of 2024****Reserved on: 02.05.2025****Decided on: 12.05.2025**

Dharam Chand

....Petitioner

Versus

State of H.P.

...Respondent

Coram

The Hon'ble Mr. Justice Sushil Kukreja, Judge

Whether approved for reporting?¹ Yes.

For the petitioner: Mr. G.R. Palsra, Advocate.

For the respondent: Mr. I.N. Mehta, Senior Additional Advocate General, with Mr. Ankush Thakur and Mr. Anish Banshtu, Deputy Advocates General.

Sushil Kukreja, Judge

The instant petition has been filed by the petitioner- Dharam Chand under Section 442 of the Bharatiya Nagrik Suraksha Sanhita, 2023 (for short 'BNSS') against order dated 28.09.2024, passed by learned Special Judge-II, Mandi, District Mandi, H.P., in CIS Registration No.32 of 2013, whereby the application filed by the petitioner-accused under Section 227 of Cr.P.C. for discharging him in case FIR No.10 of 2022 under Sections 409, 420, 467, 468, 471, 120-B of the Indian Penal

¹ Whether reporters of Local Papers may be allowed to see the judgment?

Code ('IPC') and Section 13(2) of Prevention of Corruption Act, 1988 ('PC Act'), was dismissed.

2. The brief facts, giving rise to the present petition, are that on the basis of a complaint made by one Lal Chand, Clerk in the office of HP Milk Federation Mandi Unit at Chakkar, FIR No.10/2002, dated 01.07.2002, under Sections 409, 420, 467, 468, 471, 120-B of IPC & Section 13(2) of PC Act was registered against the petitioner and other persons, wherein it was alleged that some part of the milk which was being brought to H.P. Milk Federation Mandi Unit at Chakkar, by its officers and officials from Kataula milk Chilling Centre, was being sold on the way and the amount received from such sale was misappropriated and embezzled. Thereafter, an initial inquiry was carried out by ASI Kapoor Chand, Enforcement North Zone, Dharamshala, in which, it was found that Dharam Chand, Incharge MCC Kataula (petitioner herein), used to collect the milk from Co-operative Societies, Kataula, Riyagri and the Government Live Stock Farm (GLF), Kamand, from where, it was taken to Milk Federation Unit plant Chakkar at Mandi, with a challan having a duplicate copy and the Superintendent, Milk Federation Unit, Chakkar Mandi after recording the quality and quantity of milk, used to hand over

the copy of challan to In-charge MCC Kataula and send the details of milk received daily to Incharge Manager P & I for information. At the end of month, the Milk Co-operative Societies Riyagri, Kataula and GLF Kamand used to send their bills to Senior Manager Chakkar, through post, who used to send the said bills to In-charge P & I for further necessary action and the incharge then used to send those bills to Incharge, MCC Katuala (petitioner) for verification of the quantity and quality of the milk. The petitioner used to verify those bills in the same form and after his verification, such bills again used to reach at in-charge Manager P&I Chakkar Mandi for further action, who used to verify those bills in the same form as were verified by in-charge MCC Kataulan and after verification, those bills were sent for payment to the account branch and those orders also used to be counter-signed. Thereafter, the payments were made by way of cheque to milk societies Riyagri, Kataula and GLF Kamand. In the inquiry, it was found that for the year June, 1994 to 31.03.1995, 4683 liters of the milk , amounting to the tune of Rs.37,464/-, for the year April 1995 to 31.03.1996, 12,633 liters of the milk amounting to Rs.1,10518/-, for the year April, 1996 to 31.03.1997, 9293 liters of milk amounting to Rs.97, 765.50/-, for

the year April, 1997 to 31.03.1998, 7881 liters of milk amounting to Rs.84,720/-, for the year April, 1998 to 31.03.1999, 8129 liters of milk worth Rs. 93,483.50/-, for the year April, 1999 to 31.03.2000, 9666 liters of milk amounting to Rs.1,20,825/- and for the year April, 2000 to 31.03.2021, 491 liters of milk worth Rs.6,383/- (in total, the milk of total worth Rs.5,56,656/-) was received less in the Milk Federation Unit at Chakkar, hence, the officers and employees of Milk Federation Chakar Unit Mandi had misappropriated and embezzled the aforesaid government money. On the basis of aforesaid inquiry, the FIR in question was registered.

3. Learned Senior Additional Advocate General submitted that during the course of investigation, it was found that during the period April, 1995 to March, 1996, the milk to the tune of Rs.1,07,198 was found deposited less in Milk Federation Chakkar and the petitioner, who was Incharge MCC Kataula, used to collect milk of Co-operative Societies Kataula, Riyagari and GLF Kamand and deposit the same at Milk Federation Chakkar Unit at Mandi. The record of Milk Federation Chakkar Unit Mandi revealed that the correct figures were not given and closing balance of milk in the end of month was not being rightly

shown in the opening balance of milk on the next month. Sudhir Chand Katoch, Assistant Manager, P&I, Amar Nath Gupta, Senior Manager, were not sending the correct figures and there were counter signatures on some of the records of Amar Nath Gupta, Senior Manager and Anil Sanyal, who remained posted as Senior Manager for the year 1990 to 2002 at H.P. Milk Plant Mandi Unit at Chakkar. The investigation also revealed that the petitioner, who was Incharge Milk Chilling Centre Kataula and one Ram Singh, MCC Kataula used to bring milk from MCC Kataula to HP Milk Plant Mandi Unit at Chakkar in a vehicle and on the way, the petitioner used to sell some milk and he had nowhere mentioned regarding the sold milk in the record, nor deposited the sale amount of such milk anywhere, hence, total 12683 liters of milk amounting to Rs.1,07,198/- was deposited less at H.P. Milk Plant Mandi Unit at Chakkar, thereby, a loss of Rs.1,07,198/- was caused to the Milk Plant, Mandi Unit at Chakkar during the year April 1995 to March, 1996.

4. During the course of trial, the petitioner-accused moved an application under Section 227, Cr.P.C., with a prayer to discharge him from the aforesaid offences, on the grounds that from perusal of the charge-sheet, no case is made out to

proceed against him for the alleged offences as he stood retired from service in the year 2006 and the charge-sheet was filed in the year 2011 after five years of his retirement and the complete record of the same was not supplied to him as per mandate of Section 207, Cr.P.C. It was further averred that after rejection of his application to supply the complete record, the petitioner had approached the High Court and even after the order of the High Court to supply the complete record of the documents, as contemplated under Section 207 (I to IV) subject to proviso contained in the Section, the complete documents were not supplied to him. The documents annexed with the *challan*, nowhere make out a *prima-facie* case against the petitioner because the FIR in question was registered without any sufficient evidence as the statements of the witnesses nowhere disclose any offence having been committed by him.

5. Vide impugned order dated 28.09.2024, the learned Trial Court dismissed the application preferred by the petitioner-accused and the charge-sheet was ordered to be returned back to the Police Station, with a direction to conduct further investigation on the points highlighted in the impugned order and then to file the charge-sheet , if needed.

6. Being aggrieved and dissatisfied, the petitioner preferred the instant petition laying challenge to the impugned order dated 28.09.2024

7. I have heard learned counsel for the petitioner, learned Senior Additional Advocate General, for the respondent-State and also gone through the material available on record.

8. The perusal of the record reveals that the petitioner alongwith co-accused Ram Singh was charge-sheeted for committing offence under Sections 409, 420, 467, 468, 471, 120-B of IPC and Section 13(2) of PC Act for causing loss of Rs.1,07,198/- to the Milk Federation on the ground that during the month of April, 1995 to March, 1996, 12683 liters of milk worth Rs.1,07,198/- was less deposited at HP Milk Plant Mandi Unit at Chakkar.

9. Learned counsel for the petitioner vehemently contended that the petitioner is facing trial since 2002 for no fault on his part as the case remained under investigation from 2002-2011 and *prima facie* no case is made out against him. He further contended that all the bills were duly verified by the competent authority and even the audit party did not find any embezzlement and in these circumstances, no role has been

played by the petitioner in misappropriating the money. He also contended that when the superior officers of the petitioner had duly verified the bills, there remained no liability on his part. He further contended that the investigating agency has miserably failed to prove that the petitioner had caused a loss to the Milk Federation. He also contended that after taking cognizance, power under Section 173 (8) Cr. P. C. can not be exercised by the court *suo moto* to direct the police to conduct further investigation. With these submissions, he prayed that there is no need to conduct further investigation, that too, after a period of more than 20 years which would result in wastage of time and also harassment to the petitioner

10. Now the question which arises for consideration before this court is as to whether the Magistrate can *suo moto* direct the police to conduct further investigation in exercise of the power under Section 173 (8) Cr. P. C. At this stage, it would be relevant to reproduce Section 173(8) of Cr.P.C., which reads as under:-

“Section 173(8), Cr.P.C.: Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer-in-charge of the police station obtains further evidence, oral or documentary, he shall

forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

11. Law is no more *res integra* and stands settled in regard to the ambit and scope of Section 173 (8) of the Cr.PC in the judgment passed by the Hon'ble Supreme Court in the case of ***Vinubhai Haribhai Malaviya and others Vs. State of Gujarat and another, (2019) 17 SCC, 1*** wherein it is held as under:-

"42. There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri (supra), Samaj Parivartan Samudaya (supra), Vinay Tyagi (supra), and Hardeep Singh (supra); Hardeep Singh (supra) having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution Page - 5 of 7 and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases mid-way through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a

narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h), and Section 173(8) of the Cr.PC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in Hasanbhai Valibhai Qureshi (supra). Therefore, to the extent that the judgments in Amrutbhai Shambubhai Patel (supra), Athul Rao (supra) and Bikash Ranjan Rout (supra) have held to the contrary, they stand overruled. Needless to add, Randhir Singh Rana v. State (Delhi Administration) (1997) 1 SCC 361 and Reeta Nag v. State of West Bengal and Ors. (2009) 9 SCC 129 also stand overruled."

12. Hence, in the light of the judgment as referred above, even after taking cognizance, power under Section 173 (8) Cr. P. C. can be exercised by the Magistrate *suo moto* to direct the police to conduct further investigation. Article 21 of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him under Section 173(2), Cr.PC.

13. Keeping in mind the aforesaid principles and position of law and reverting back to the case in hand, the perusal of the material available on record reveals that the investigation has not been conducted properly as to the factum of deposition of money in Govt. Treasury vide TR-V bills regarding the milk sold during the transit. The learned Trial court rightly held that in such circumstances, when the proper investigation has not been conducted on the said aspect of the case, at this stage, the accused cannot be discharged, but it is in the interest of justice that the investigating agency should be directed to conduct further investigation on the aspect of sale of milk and deposition of sale proceeds in advance or otherwise after the sale vide TR-V bills in Govt. Treasury and, if any, embezzlement is further found then the charge sheet be filed after complete investigation on all aspects of the case.

14. Thus, in view of aforesaid discussion, this Court finds that the learned Court below had passed a reasoned order, which was well within its power and, as such, the order under revision, being in accordance with law, requires no interference by this Court. Accordingly, the present revision petition, being

devoid of any merits, is dismissed, so also the pending miscellaneous application(s), if any.

May 16, 2025
(VH)

(Sushil Kukreja)
Judge